

CONTRACT #2
RFS # 33201-06413
FA # Pending
Edison # Pending

**Tennessee Higher Education
Commission (THEC)**

VENDOR:
Walker and Associates

RICHARD G. RHODA
Executive Director



BILL HASLAM
Governor

STATE OF TENNESSEE
TENNESSEE HIGHER EDUCATION COMMISSION
PARKWAY TOWERS, SUITE 1900
NASHVILLE, TENNESSEE 37243-0830
(615) 741-3605
FAX: (615) 741-5555
www.state.tn.us/thec/

MEMORANDUM

TO: Leni Chick, Contract and Audit Coordinator, Fiscal Review Committee

FROM: Marcie Mills, Contracts Administration Manager for
Scott Sloan, Associate Executive Director, Legal and Regulatory Affairs

DATE: February 15, 2013

RE: Non-Competitive Contract Summary
Walker and Associates

The Tennessee Higher Education Commission (THEC) proposes to submit a non-competitive contract with Walker and Associates. The purpose of this federally-funded contract is to provide comprehensive creative services and a public outreach campaign as mandated by Tennessee's Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) grant from the United States Department of Education (USDOE). Tennessee's GEAR UP program includes allocation for resources to support a public outreach campaign to provide Tennessee communities with information and materials to promote access to and success in postsecondary education. THEC also received a College Access Challenge Grant (CACG) in 2012 that will provide additional funds to promote the use of CollegeforTN.org, a college-access web portal that provides resources on college access specific to Tennessee. The public outreach campaign will include information on the importance of post-secondary credentials and degrees, the benefits higher education provides to individuals and the state of Tennessee, and resources for gaining access to college and preparing for success in gaining a degree.

Pursuant to *Tennessee Code Annotated* § 12-4-109, Procurement of Service, the following information is presented for the Fiscal Review Committee's review and consideration.

Background and Objective: In the summer of 2012, the USDOE awarded THEC the GEAR UP grant in the amount of \$4,227,183 a year for the next seven years to provide direct college access and success services to approximately 37,500 students. Tennessee's program, GEAR UP TN, includes funding from the USDOE to develop a public outreach campaign on the value of postsecondary education and tools for increasing access to higher education.

THEC committed in its GEAR UP TN proposal to the USDOE to the development of an outreach campaign and community support services. This included allocation of resources to provide local GEAR UP TN sites with collateral and educational materials for schools and communities, including information on financial aid and literacy, early adopted standards, college entrance requirements, and resources for the college application process, including Tennessee's college access web portal, CollegeforTN.org. GEAR UP

TN is also committed to an outreach campaign that includes promoting the importance of education beyond high school to students and families through grassroots, traditional and social media. Development of a robust outreach campaign is both a requirement of Tennessee's GEAR UP program and will also provide necessary public outreach to ensure the success of GEAR UP TN services. THEC has also received funding through the College Access Challenge Grant, an annual grant awarded in August 2012, which will provide an additional \$88,000 in funding to market and promote the use of CollegeforTN.org and adult enrollment programs.

In 2008, Tennessee contracted with Walker and Associates of Memphis, TN for the provision of the creation of a broad based public outreach campaign to encourage college access in Tennessee. The contract was awarded through a competitive Request for Proposal (33201-00513) procurement process, with Walker and Associates selected as presenting the best services at the most favorable, competitive, prices.

Purpose of the Contract: The Contractor will provide services from planning, implementing, and evaluation tools for the public outreach campaign. The planning will include providing the Tennessee Higher Education Commission (THEC) with an annual one-year strategic, statewide communication plan that adheres to the outreach goals of GEAR UP TN. The Contractor will conduct market research prior to implementation of the public campaign to ensure that outreach methods and messages are effective and will reach target audiences. The Contractor will design, develop and produce non-print media for the campaign, including television, radio, web, *etc.*, that will reach target audiences. The Contractor will be responsible for the creation of all advertisements, from the development of the advertisement to the media buys, in consultation with THEC staff. The Contractor will conduct on-going evaluation of all advertising and media campaigns to ensure effectiveness and provide regular evaluation reports. The Contractor will work with THEC to develop printed materials and their electronic equivalents, including collateral and informational resources to support advertising and media campaigns, newsletters and materials for GEAR UP TN stakeholders, and design support for GEAR UP TN's annual report.

Contract Term: The Contract term is April 29, 2013 through April 28, 2018

Maximum Expenditure: One Million Sixty-Three Thousand (\$1,063,000)

Projected Costs: The projected cost of the service is based on the annual needs foreseen to successfully implement a public outreach campaign and serve the goals and objectives of Tennessee's GEAR UP TN grant and College Access Challenge Grant. The maximum liability amount was reached based on historical cost information from Tennessee's previous contract with the vendor, availability of GEAR UP and CACG grant funds, communications objectives listed in the proposal for the current GEAR UP and CACG grants, and mutual discussion of the cost necessary to successfully implement the scope of work. Walker and Associates provided cost estimates for the annual deliverables and milestones (Section C.3.b.1) and the remaining annual amounts were determined based on the annual needs and focus of the contract and the results of the market research that will be conducted as a part of the proposed contract. The projected cost was also based on the amount of funding allocated by each grant to focus on public outreach and communications.

Deliverable description:	FY: 13-14	FY:14-15	FY:15-16	FY:16-17	FY:17-18
Research and strategy development *FY 1 will continue research performed in current contract)	\$25,000	NA	\$50,000	NA	\$50,000
On-going campaign evaluation/ reports	\$3,000	\$6,000	\$6,000	\$6,000	\$6,000
Annual statewide communications plan *FY 1 does not require a plan, as research and initial strategy will still be in development	NA	\$7,500	\$7,500	\$7,500	\$7,500
Annual Report *FY 5 annual report is anticipated to be longer as a result of the conclusion of the contract and increased annual activities in FY 5.	\$10,000	\$10,000	\$10,000	\$10,000	\$15,000
Development of campaign materials, kick-off of campaign	\$137,000	\$176,500	NA	NA	NA
On-going campaign costs and material updates *FY 5 amount increases to accommodate materials for GEAR UP cohort's senior year of high school	NA	NA	\$126,500	\$151,500	\$146,500
CollegeforTN.org marketing materials and adult enrollment materials	\$88,000	NA	NA	NA	NA

Justification for Non-Competitive Contract: A non-competitive contract is requested to provide continuity of work and consistency for THEC's college access and success outreach campaigns. Walker and Associates has provided exceptional services to the GEAR UP TN program for the past five years and has developed a specialized campaign that would be difficult to transition to a new vendor. Walker and Associates is familiar with the messages and campaign strategies that have been successfully used in Tennessee's previous GEAR UP grant. Procuring Walker and Associates' services would provide continuity and consistency for GEAR UP staff and the communities with which GEAR UP works. Transitioning to a new vendor would also incur significant set-up costs that would otherwise be avoided by continuing to work with Walker and Associates.

Diversity: Walker and Associates is an award-winning communications firm; federally recognized as a woman-owned small business; certified as a woman-owned business by the Tennessee Governor's Office of Diversity Business; and certified as a woman-owned business by the EEOC Administration in Shelby County, Tennessee.

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Scott Sloan, Associate Executive Director for Regulatory and Legal Affairs, or Marcie Mills, Contracts Administration Manager	*Contact Phone:	615.741.7571 Scott.Sloan@tn.gov , or 615.532.3500 Marcie.Mills@tn.gov		
*Original Contract Number:	TBD	*Original RFS Number:	3201-06413		
Edison Contract Number: <i>(if applicable)</i>	TBD	Edison RFS Number: <i>(if applicable)</i>	NA		
*Original Contract Begin Date:	04/29/2013	*Current End Date:	04/28/2018		
Current Request Amendment Number: <i>(if applicable)</i>		NA			
Proposed Amendment Effective Date: <i>(if applicable)</i>		NA			
*Department Submitting:		Tennessee Higher Education Commission			
*Division:		GEAR UP TN / CACG			
*Date Submitted:		02/15/2013			
*Submitted Within Sixty (60) days:		YES			
<i>If not, explain:</i>		NA			
*Contract Vendor Name:		Walker and Associates			
*Current Maximum Liability:		\$1,063,000.00			
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY: 13-14	FY: 14-15	FY: 15-16	FY: 16-17	FY: 17-18	FY
\$ 263,000	\$200,000	\$200,000	\$175,000	\$225,000	\$
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>					
FY:	FY:	FY:	FY:	FY	FY
\$	\$	\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			NA		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			NA		

Supplemental Documentation Required for
Fiscal Review Committee

IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:		NA	
*Contract Funding Source/Amount:	State:	Federal:	\$1,063,000.00
Interdepartmental:		Other:	
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>	
Method of Original Award: <i>(if applicable)</i>		The 2008-13 Contract was procured through the competitive Request for Proposal process	
*What were the projected costs of the service for the entire term of the contract prior to contract award?		\$1,063,000	

The projected cost of the service is based on the annual needs foreseen to successfully implement a public outreach campaign and serve the goals and objectives of Tennessee's GEAR UP TN grant and College Access Challenge Grant. The maximum liability amount was reached based on historical cost information from Tennessee's previous contract with the vendor; GEAR UP grant; communications objectives listed the proposal for the current GEAR UP grant; and mutual discussion of the cost necessary to successfully implement the scope of work. Walker and Associates provided cost estimates for the annual deliverables and milestones (Section C.3.b.1) and the remaining annual amounts were determined based on the annual needs and focus of the contract and the results of the market research that will be conducted as a part of the proposed contract. The projected cost was also based on the amount of funding allocated by each grant to focus on public outreach and communications.

Supplemental Documentation Required for
Fiscal Review Committee

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.

If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.

Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.

Deliverable description:	FY: 13-14	FY:14-15	FY:15-16	FY:16-17	FY:17-18
Research and strategy development *FY 1 will continue research performed in current contract)	\$25,000	NA	\$50,000	NA	\$50,000
On-going campaign evaluation/ reports	\$3,000	\$6,000	\$6,000	\$6,000	\$6,000
Annual statewide communications plan *FY 1 does not require a plan, as research and initial strategy will still be in development	NA	\$7,500	\$7,500	\$7,500	\$7,500
Annual Report *FY 5 annual report is anticipated to be longer as a result of the conclusion of the contract and increased annual activities in FY 5.	\$10,000	\$10,000	\$10,000	\$10,000	\$15,000
Development of campaign materials, kick-off of campaign	\$137,000	\$176,500	NA	NA	NA

Supplemental Documentation Required for
Fiscal Review Committee

On-going campaign costs and material updates *FY 5 amount increases to accommodate materials for GEAR UP cohort's senior year of high school	NA	NA	\$126,500	\$151,500	\$146,500
CollegeforTN.org marketing materials and adult enrollment materials	\$88,000	NA	NA	NA	NA
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:
<p>In 2008, Tennessee contracted with Walker and Associates of Memphis, TN for the provision of the creation of a broad based public outreach campaign to encourage college access in Tennessee. The contract was awarded through a competitive Request for Proposal (33201-00513) procurement process, with Walker and Associates selected as presenting the best services at the most favorable, competitive, prices. This request to pursue a non-competitive contract with Walker and Associates stems from Tennessee's receipt of two grants focused on expanding access to higher education across the state: the federally-funded \$29.5 million GEAR UP grant which was awarded in July 2012 and the College Access Challenge Grant which was awarded in August 2012. The outreach objectives and needs for both grants are consistent with those of the previous grants, during which Walker and Associates services were initially procured. The proposed non-competitive contract limits additional costs from transitioning to a new vendor.</p>					
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:

Special Contract Request

NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.
Route a completed request, as one file in PDF format, via e-mail attachment sent to: agsprs.agsprs@tn.gov.

APPROVED
Chief Procurement Officer

Request Tracking #	33201-06413
1. Contracting Agency	Tennessee Higher Education Commission
2. Type of Contract	<input checked="" type="checkbox"/> Non-Competitive <input type="checkbox"/> No Cost <input type="checkbox"/> Revenue
3. Requestor Contact Information	<p>Marcie Mills, Contracts Administration Manager, 615.532.3500 Marcie.Mills@tn.gov</p> <p>Scott Sloan, Associate Executive Director for Regulatory and Legal Affairs, 615.741.7571 Scott.Sloan@tn.gov</p>
4. Date Requested	02/15/2013 for a 04/29/2013 Start Date
5. Brief Service Caption	Creative Services for GEAR UP TN Public Outreach Campaign
6. Proposed Contractor	Walker and Associates
7. Proposed Contract Period – with ALL options to extend exercised <i>The proposed contract start date shall follow the approval date of this request.</i>	60 months
8. Maximum Contract Cost – with ALL options to extend exercised	\$ 1,063,000
9. Office for Information Resources Endorsement – information technology (N/A to THDA)	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
10. eHealth Initiative Support – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
11. Human Resources Support – state employee training	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached

Request Tracking #	33201-06413
12. Has the contracting agency procured the subject service before?	
<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES , it was procured by... <input checked="" type="checkbox"/> <i>RFP</i> <input type="checkbox"/> <i>Non-Competitive Negotiation</i> <input type="checkbox"/> <i>Another Competitive Method</i>	
13. Will the State incur any substantial cost as a result of the subject agreement? (For No Cost or Revenue Contracts <u>only</u>)	<input type="checkbox"/> NO <input type="checkbox"/> YES <input checked="" type="checkbox"/> Not Applicable
14. Will the State also contract with other parties interested in entering substantially the same agreement?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES
15. Description of Product/Services Contractor Will Provide	
<p>The purpose of this federally-funded contract is to provide comprehensive creative services and a public outreach campaign as mandated by Tennessee's Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) grant from the United States Department of Education (USDOE). Tennessee's GEAR UP program includes allocation for resources to support a public outreach campaign to provide Tennessee communities with information and materials to promote access to and success in postsecondary education. The public outreach campaign will include information on the importance of post-secondary credentials and degrees, the benefits higher education provides to individuals and the state of Tennessee, and resources for gaining access to college and preparing for success in gaining a degree.</p> <p>The Contractor will provide services from planning, implementing, and evaluation tools for the public outreach campaign. The planning will include providing the Tennessee Higher Education Commission (THEC) with an annual one-year strategic, statewide communication plan that adheres to the outreach goals of GEAR UP TN. The Contractor will conduct market research prior to implementation of the public campaign to ensure that outreach methods and messages are effective and will reach target audiences. The Contractor will design, develop and produce non-print media for the campaign, including television, radio, web, etc., that will reach target audiences. The Contractor will be responsible for the creation of all advertisements, from the development of the advertisement to the media buys, in consultation with THEC staff. The Contractor will conduct on-going evaluation of all advertising and media campaigns to ensure effectiveness and provide regular evaluation reports. The Contractor will work with THEC to develop printed materials and their electronic equivalents, including collateral and informational resources to support advertising and media campaigns, newsletters and materials for GEAR UP TN stakeholders, and design support for GEAR UP TN's annual report.</p>	
16. Is this product/service currently available on a statewide contract? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES	
If YES, please explain why the current statewide contract is not being used for this procurement.	
17. Summary of State Responsibilities Under Proposed Contract (For No Cost and Revenue Contracts <u>only</u>)	
Not Applicable	
18. Explanation of Need for or Requirement Placed on the State to Acquire the Service	
<p>In the summer of 2012, the USDOE awarded THEC the GEAR UP grant in the amount of \$4,227,183 a year for the next seven years to provide direct college access and success services to approximately 37,500 students. Tennessee's program, GEAR UP TN, includes funding from the USDOE to develop a public outreach campaign on the value of postsecondary education and tools for increasing access to higher education.</p> <p>THEC committed in its GEAR UP TN proposal to the USDOE to the development of an outreach campaign and community support services. This included allocation of resources to provide local GEAR UP TN sites with collateral and educational materials for schools and communities, including information on financial aid and literacy, early adopted standards, college entrance requirements, and resources for the college application process. GEAR UP TN is also committed to an outreach campaign that includes promoting the importance of education beyond high school to students and families through grassroots, traditional and social media. Development of a robust outreach campaign is both a requirement of Tennessee's GEAR UP program and will also provide necessary public outreach to ensure the success of GEAR UP TN services.</p> <p>Additionally, in August 2010, the USDOE awarded THEC a College Access Challenge Grant in the amount of \$2,814,699 to fund a college access web portal, CollegeforTN.org, (developed and administered through THEC's contract with XAP Corporation). CollegeforTN.org is a college and career planning web portal tailored specifically to Tennesseans.</p>	

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<p>CollegeforTN.org requires an outreach campaign to increase recognition of the resource and increase awareness of the portal to the general public. CollegeforTN.org will be central to all public outreach from THEC regarding college access, including awareness around state resources available for college access and a tool for statewide events, such as College Application Week.</p>	
<p>19. Proposed Contract Impact on Current State Operations</p> <p>As the GEAR UP Grant funds from the USDOE are federal funds, there will be no impact on state operations.</p>	
<p>20. Justification – Specifically explain why the procurement method being requested is required.</p> <p>A non-competitive contract is requested to provide continuity of work and consistency for THEC’s college access and success outreach campaigns. Walker and Associates has provided exceptional services to the GEAR UP TN program for the past five years and has developed a specialized campaign that would be difficult to transition to a new vendor. Walker and Associates is familiar with the messages and campaign strategies that have been successfully used in Tennessee’s previous GEAR UP grant. Procuring Walker and Associates’ services would provide continuity and consistency for GEAR UP staff and the communities with which GEAR UP works. Transitioning to a new vendor would also incur significant set-up costs that would otherwise be avoided by continuing to work with Walker and Associates.</p>	
<p>21. Contractor Selection Process and Efforts to Identify Reasonable, Competitive, Procurement Alternatives</p> <p>In 2008, Tennessee contracted with Walker and Associates of Memphis, TN for the provision of the creation of a broad based public outreach campaign to encourage college access in Tennessee. The contract was awarded through a competitive Request for Proposal (33201-00513) procurement process, with Walker and Associates selected as presenting the best services at the most favorable, competitive, prices. This request to pursue a non-competitive contract with Walker and Associates stems from Tennessee’s receipt of two grants focused on expanding access to higher education across the state: the federally-funded \$29.5 million GEAR UP grant which was awarded in July 2012 and the College Access Challenge Grant which was awarded in August 2012. The outreach objectives and needs for both grants are consistent with those of the previous grants, during which Walker and Associates services were initially procured. The proposed non-competitive contract limits additional costs from transitioning to a new vendor.</p>	
<p>22. Name & Address of the Contractor’s Principal Owner(s)</p> <p>Ceil Walker Norris President/CEO Walker and Associates 5100 Poplar Avenue – Suite 2812 Memphis, TN 38137</p>	
<p>23. Evidence of Contractor’s Experience & Length Of Experience Providing the Service</p> <p>Walker and Associates, founded in 1987, is one of the most established full-service marketing and communications firms based in the Mid-South. The agency is results-oriented achievement forwarded by expanding the firm’s services and client base. Walker and Associates serves clients across the U.S. and several international markets.</p> <p>Walker and Associates is an award-winning communications firm; federally recognized as a woman-owned small business; certified as a woman-owned business by the Tennessee Governor’s Office of Diversity Business; and certified as a woman-owned business by the EEOC Administration in Shelby County, Tennessee.</p>	
<p>24. Was there an initial government estimate?</p>	<p><input checked="" type="checkbox"/> NO <input type="checkbox"/> YES</p>
<p>25. Cost Determination Used- How did agency arrive at the price?</p>	

Request Tracking #	33201-06413
The price is consistent with the outreach budget provided to the USDOE in Tennessee's GEAR UP proposal.	
<p>26. Documentation of Discussions with Contractor- How did agency document discussions with Contractor?</p> <p>The discussions were on renewal of a current contract, thus formal proposals were not required. All electronic communication with Walker and Associates regarding the contract renewal was documented and archived, including draft versions of the proposed contract. In-person and phone correspondence was documented through written notes by both Walker and Associates and Higher Education Commission staff and relevant information confirmed via email after in-person and phone conversations.</p>	
<p>27. Explanation of Fair and Reasonable Price- Explain why price is fair and reasonable under the circumstances.</p> <p>The fees proposed by Walker and Associates are consistent with the fees proposed during the original bid of the current contract (FY08-13). Walker and Associates will freeze their hourly rates at the same pricing level as the last three years of the current contract, with no annual increases for the length of the proposed contract. By renewing the current contract with Walker and Associates, THEC also avoids setup and development expenses that would be incurred by transitioning to a new vendor.</p>	
<p>Agency Head Signature and Date – <i>MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented exigent circumstances</i></p> <p>RICHARD G. RHODA, EXECUTIVE DIRECTOR DATE</p>	



CONTRACT

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

Begin Date 04/29/2013	End Date 04/28/2018	Agency Tracking # 33201-06413	Edison Record ID TBD
Contractor Legal Entity Name Walker and Associates			Edison Vendor ID 0000094812

Service Caption (one line only)
Creative Services for GEAR UP TN Public Outreach Campaign

Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	CFDA # 84.334.S
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Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
13-14		\$263,000.00			\$263,000.00
14-15		\$200,000.00			\$200,000.00
15-16		\$200,000.00			\$200,000.00
16-17		\$175,000.00			\$175,000.00
17-18		\$225,000.00			\$225,000.00
TOTAL:		\$1,063,000.00			\$1,063,000.00

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

Ownership/Control

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

Selection Method & Process Summary (mark the correct response to confirm the associated summary)

<input type="checkbox"/> RFP	The procurement process was completed in accordance with the approved RFP document and associated regulations.
<input type="checkbox"/> Competitive Negotiation	The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.
<input type="checkbox"/> Alternative Competitive Method	The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.
<input checked="" type="checkbox"/> Non-Competitive Negotiation	The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.
<input type="checkbox"/> Other	The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with <u>all</u> interested parties or <u>all</u> parties in a predetermined "class."

<p>Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.</p> <p>Russ Deaton, Associate Executive Director of Fiscal Affairs 615.532.3860</p>	<p>OCR USE - FA</p>
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Speed Chart (optional) 3320105130	Account Code (optional)
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**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
TENNESSEE HIGHER EDUCATION COMMISSION
AND
WALKER AND ASSOCIATES**

This Contract, by and between the State of Tennessee, Tennessee Higher Education Commission (THEC), hereinafter referred to as the "State" and Walker and Associates, hereinafter referred to as the "Contractor," is for the provision of the creation of a broad based public outreach campaign to encourage college access, as further defined in the "SCOPE OF SERVICES."

The Contractor is a For-Profit Corporation.

Contractor Place of Incorporation or Organization: Tennessee

Contractor Edison Registration ID: 0000094812

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. Background and Program Characteristics. In July 2012, the U.S. Department of Education awarded a \$29.5 million federal grant (\$4.2 million annually for six years), known as Gaining Early Awareness & Readiness for Undergraduate Programs (GEAR UP), to the Tennessee Higher Education Commission. GEAR UP TN is designed to increase the number of low-income, underserved students enrolling and succeeding in postsecondary education. Through the creation and implementation of early intervention programs, enhanced academic assessments and a broad-based public awareness campaign, GEAR UP TN has the following goals:

- a. Increase the academic performance and preparation for postsecondary education for GEAR UP TN students.
- b. Increase the rates of high school graduation and enrollment in postsecondary education for GEAR UP TN students.
- c. Increase GEAR UP TN students' and their families' knowledge of postsecondary education options, preparation, and financing.

GEAR UP TN directly serves students in Anderson County, Bradley County, Campbell County, Claiborne County, Davidson County, Grainger County, Hardeman County, Haywood County, Henderson County, Johnson County, McNairy County, Robertson County, Shelby County, Union County, and Wayne County. All Tennessee students will be served through GEAR UP TN's statewide public awareness campaign.

A.3. Reasons for Intervention. Economically disadvantaged students in Tennessee are not enrolling in higher education at the rate of their peers. As of 2011, fewer than 30 percent of Tennesseans had a college degree. Although Tennessee has been successful in graduating students from high school, the state trails in students gaining a degree from a postsecondary institution. For Tennessee to compete in an increasingly national and international market, a better educated workforce across all socioeconomic levels is essential.

A.4. Objectives.

- a. Increase student educational aspiration;

- b. Increase parent and student expectations of educational attainment;
- c. Inform target audiences about academic preparation required for college;
- d. Correct misperceptions about the cost of postsecondary education;
- e. Provide information about the actual cost of postsecondary education;
- f. Inform target audiences about federal and state financial aid opportunities; including the Tennessee Student Assistance Award and the Tennessee Education Lottery Scholarship program;
- g. Foster and improve parental involvement in preparing children for college;
- h. Help teachers and counselors academically prepare their students for college;
- i. Prevent teachers from limiting students based on assumptions of student capabilities;
- j. Provide local educators with the tools to effectively communicate with their students, families, and local communities about the importance of college and steps to a degree;
- k. Increase educational expectations of students among school faculty; and
- l. Inform teachers and counselors of the many resources available to help prepare students for college.

A.5. Target Audiences. Services provided by the Contractor will help GEAR UP TN increase college access and success awareness through the creation and implementation of a strategic, statewide communication campaign that targets the listed audiences.

- a. The primary target audiences of the GEAR UP TN campaign are:
 - (1) Tennessee 7th–12th grade students, especially first-generation students and underserved, low-income students;
 - (2) Parents of Tennessee students in 7th–12th grade, especially the economically disadvantaged; and
 - (3) Educators of Tennessee students in 7th–12th grade.
- b. Secondary target audiences of the GEAR UP TN campaign are:
 - (1) Tennessee government, the Governor and staff, senators, and representatives;
 - (2) Adults with influence in 7th–12th grade students' lives (community and faith-based leaders, coaches, youth organization leaders, mentors, tutors, *etc.*); college students (retention); and
 - (3) Local community leaders, including business and industry leaders (employers).

A.6. Inputs. All communication strategies, tactics, efforts, services, and media buys provided by the Contractor are subject to the approval of the THEC representative, GEAR UP TN public relations specialist. The THEC representative will serve as the project director.

THEC reserves the right for final approval of all materials. All materials must be easy to understand and must not exceed a 6th grade reading level. The Contractor will develop/select a methodology for testing printed materials for adherence to this literacy standard. THEC will pre-approve the methodology. CollegeforTN.org is Tennessee's one-stop college shop that allows

students to plan, prepare, pay and apply for college. This is the website to which students and parents will be directed. All collateral materials will include this Website address.

In addition to GEAR UP TN and THEC, the Contractor will work with THEC to consider the needs of partner organizations, such as the Tennessee Student Assistance Corporation, the Tennessee Department of Education, the chosen evaluator for GEAR UP TN, and other pertinent organizations and partners, when creating, designing and implementing all communication strategies, tactics and creatives. These groups have similar goals and aim to align their messages to create top-of-mind awareness and create attitude and behavior changes. These groups will assist in delivering communication materials to target audiences.

- A.7. Intended Outputs. The Contractor is expected to develop and execute targeted college access and success information strategies for the target audiences listed in Contract Section A.6. Widespread exposure to campaign messages is necessary in order to get attention, create awareness and create attitude and behavior changes.

The first year of the contract will focus on audience research, message development, preparation of initial outreach materials, development of communications tools for GEAR UP TN local educators, and the kickoff of the state outreach campaign. Additionally, as outlined in Tennessee's College Access Challenge Grant program, outputs for the first year of the contract will include the creation of marketing collateral promoting implementation and use of CollegeforTN.org and materials focused on encouraging adults to enroll in higher education.

The second and third year of the contract will focus on evaluation and continuation of the campaign based on research and feedback from target audiences, with a heavy focus on the GEAR UP TN Class of 2018 cohort.

The fourth year will continue public outreach and updates to previous materials.

The fifth year will include additional communications targeted to the GEAR UP TN 7th grade cohort as they enter their senior year of high school and begin college the final college application and financial aid process.

- A.8. Intended Outcomes. The overall outcomes for this campaign are to: 1) better educate Tennessee students, parents, educators, business leaders and community members about the importance higher education, 2) Increase the number of economically disadvantaged, underserved students enrolling and succeeding in college, and 3) Increase the number of students participating in financial aid opportunities.

Today's increasingly competitive knowledge-based economy boasts a growing pool of jobs that require postsecondary education, creating the need for interventions that increase education's expectations, enhance academic preparation, and encourage community engagement.

- A.9. Detail of Services to be Provided.

- a. The Contractor will provide THEC with an annual, one year communication strategy.
- (1) The communication strategies will address the aforementioned GEAR UP TN goals and objectives while also addressing sustainability.
 - (2) The communication strategy will be based on primary research performed by the Contractor regarding GEAR UP TN and college attainment, and secondary research that will include published research performed by third parties of the target audiences.

- (3) An updated strategy must be developed and implemented each year, with the annual strategy (following year-one) based on data gathered from completed campaign(s) evaluations.
- b. The Contractor will conduct primary research on the effectiveness of the outreach campaign, and will be responsible for gathering secondary research and providing bi-annual reports on the campaign.
 - (1) Data collected from this research will be used to make recommendations on media buys, outlining different media channels' effectiveness with the target audiences.
 - (2) Data collected from this research will be used to strategize, write and develop the annual communication plans, especially year-one.
- c. The Contractor will design, develop and produce non-print media for the campaign including television, radio, movie theaters, etc., that reaches the target audiences.
 - (1) The Contractor will be responsible for all details involving the development and production of advertisements. This includes writing script, hiring talent, obtaining talent buyout, art production, filming, editing, and any other aspects associated with development and production of advertisements.
 - (2) Advertisements will showcase a variety of ethnicities and reflect the diversity of the target audiences.
 - (3) The Contractor shall arrange for duplication and distribution of non-print media.
 - (4) The Contractor shall ensure continued availability of non-print media and creative materials regarding the campaign.
- d. The Contractor will conduct on-going evaluation of the campaign and perform semi-annual primary research on the campaign's messages and communications mediums.
 - (1) The Contractor will conduct focus groups and concept tests to ensure campaign messages and ideas will create the desired attitude and behavioral changes among target audience members.
 - (2) The Contractor will conduct copytesting on all developed media to ensure the pieces resonate with target audience members and accurately present the message(s).
 - (3) Testing is expected to capture the views of urban and rural sectors of the target audiences.
 - (4) The reports will include suggested campaign revisions based on the results of the on-going evaluations.
- e. The Contractor will conduct media buys and provide reports of media placement (paid and free).
 - (1) Based on research, the Contractor will recommend a cost-effective media mix (included in the communication plans) to reach the target audiences and maximize the effectiveness of the campaign. THEC will make the final determination of the amount of media purchased.
 - (2) Upon THEC's approval of each media buy, the Contractor will negotiate the best possible rates for media buys, including for each minute of air time purchased; the Contractor will negotiate to receive an equal amount of free air time.
 - (3) The Contractor will track and monitor media placement (paid and free) and provide THEC with quarterly reports. These reports will also include media post-buy analyses verifying that reach and frequency goals (established in the communication plans) are met.

- f. The Contractor will develop and produce print materials and collateral materials, with input and content provided by THEC and any relevant education partners, which further support the campaign and its messages.
 - (1) The Contractor will provide THEC with classroom materials such as information sheets and workbooks that encourage students to enroll and succeed in postsecondary education. THEC will work with the Contractor to develop content and messages for these materials. These materials may also be used by businesses and community organizations.
 - (2) The Contractor will provide THEC with parent communication materials that explain the importance of postsecondary education and the necessary steps to get there.
 - (3) The Contractor will negotiate and conduct purchases of educational supplies, such as folders, notebooks and writing utensils that will be branded with CollegeforTN.org and other promotional slogans that are needed to support tactics of the communication plans.

- g. The Contractor will provide THEC with annual evaluation reports of the communication campaign.
 - (1) The annual evaluation reports should include related media statistics (paid vs. free), reach and frequency numbers, changes in public awareness, attitude changes and behavioral changes among target audience members, clipping counts, etc. for each year.

A.10. Activities. Within five days of the signing of the contract, the Contractor and THEC representatives will schedule a timely planning meeting. After this meeting, the Contractor will prepare a draft of the year-one communication strategy.

Within sixty (60) days of receipt of the signing of the contract, representatives (no more than two per agency) from the state agencies listed in Contract Section A.6. will meet with the Contractor to review an initial draft of the year-one communication plan, including a broad timeline, goals, objectives and strategies.

Within twenty (20) days of the initial draft meeting, the Contractor will present a final draft of the strategic, statewide campaign plan to the aforementioned group representatives.

Upon THEC approval of the final draft of the plan, the Contractor will immediately begin implementation of the campaign.

An updated one-year strategy will be developed and implemented each year. Annual strategies will be based on data gathered from completed campaign(s) research.

The Contractor must be able to provide THEC with hands-on review and approval of developed campaign materials.

The Contractor must meet, either in person or virtually, with THEC bi-weekly or as needed by the activities and components of the campaign. A report on the successes and challenges of strategies and tactics used will be provided along with recommendations for change if needed and/or requested by THEC.

A.11. College Access Challenge Grant. To aid THEC in its charge to increase the quality and quantity of college access related information and services for Tennessee students in its GEAR UP TN campaign THEC was awarded a College Access Challenge Grant. To achieve these goals, the

Contractor shall provide the following services to improve student and parent knowledge and understanding of postsecondary education, access and opportunities.

The Contractor shall develop and produce media and collateral materials that further promote the unified statewide message of the current GEAR UP TN college access campaign. Media shall include, but not be limited to; photo shoots for bulletin boards and other categories of distribution, television spots, viral videos (a video that becomes popular through the process of Internet sharing, typically through internet media sharing websites), financial aid brochures, standing display for outreach visits and other meeting opportunities, outreach materials focused on adult students, and branding for adult-focused initiatives including, but not limited to, expansion of prior learning assessment opportunities for adults.

Additionally, the Contractor shall use these materials to promote the message of CollegeforTN.org, promoting relating the information learned in schools, personal interests, and life experiences to careers, and help the student be academically prepared and understand the need for advanced education.

Outreach success will be measured by the number and type of materials supplied to individual schools, school systems and other student-serving organizations.

B. CONTRACT TERM:

This Contract shall be effective for the period commencing on April 29, 2013 and ending on April 28, 2018. 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 One Million Sixty-Three Thousand Dollars (\$1,063,000.00). 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:

(1) Research, Plans and Reports.

Research, Plans and Reports	Year 1	Year 2	Year 3	Year 4	Year 5
	April 29, 2013	April 29, 2014	April 29, 2015	April 29, 2016	April 29, 2017
	-	-	-	-	-
	April 28, 2014	April 28, 2015	April 28, 2016	April 28, 2017	April 28, 2018
Research and Strategy Development (Delivered by September 15 of Years 1, 3, and 5) A.9.b	\$25,000		\$50,000		\$50,000
On-Going Campaign Evaluation and Reports Semi-Annually (Delivered by April 15 Year 1; Delivered By October 15 and April 15 of Years 2-5) A.9.d.	\$3,000	\$6,000	\$6,000	\$6,000	\$6,000
Annual Statewide Communication Plans (Delivered by June 15 of Years 2, 3, 4, and 5.) A.9.a.		\$7,500	\$7,500	\$7,500	\$7,500
Annual Report (Delivered no later than October 15 Of Years1-5) A.9.g.	\$ 10,000	\$10,000	\$10,000	\$10,000	\$15,000

- (2) Media Buy and Placement. Following State approval for each media buy, the Contractor shall negotiate the best possible rates for each and negotiate for free media as stated in Section A.9.c. For each media buy approved by the State in advance, the State shall reimburse the Contractor for the Contractor's actual net cost of the media buy and shall compensate the Contractor for the media placement in the amount of eight percent (8%) of the Contractor's actual net cost of the media buy. Said payment shall constitute the total amount payable to the contractor for any and all costs associated with a media buy and placement. The Contractor shall not be reimbursed or compensated for any media buy not approved by the State in advance.

- (3) Printing/Materials. The State may authorize the Contractor to procure printing services or materials listed in Contract Section A.9.f., the cost of which is not

remunerated in accordance with preceding contract sections. In which case, the Contractor shall procure such service(s) or materials on a competitive basis, document the competitive basis and provide the documentation to the State. For each printing service or material approved by the state in advance, the State shall reimburse the Contractor for the Contractor's actual net cost of the service and/or materials and shall compensate the Contractor in the amount of eight percent (8%) of the Contractor's actual net cost of the service or material. Said payment shall constitute the total amount payable to the Contractor for any and all costs associated with a printing service or material. The Contractor shall not be reimbursed or compensated for any printing service or material not approved by the State in advance.

- (4) Creation and Production Rates. In accordance with Contract Section A.9.f. and Contract Section A.9.c., the Contractor will design, develop and produce target audience specific non-print and print media. The creative materials in Section A.9. which have not been included in the Research, Plans and Reports payment rate table are to be paid under the Creation and Production Service Rates. The Creation and Production Service Rates delineate entire compensation for Section A.9. Printing and material costs associated with Section A.9.f. are covered in Section C.3.b.(3) Printing/Materials.

Remuneration for creative material projects shall be based on a project plan and maximum cost as proposed by the Contractor and approved by the State. The Contractor shall invoice the State at rates not to exceed the applicable Creation and Production payment rate(s) detailed below and the total amount shall not exceed the maximum project plan cost accepted by the State.

Creation and Production Service	Amount per Hour (per compensable increment)				
	April 29, 2013 - April 28, 2014	April 29, 2014 - April 28, 2015	April 29, 2015 - April 28, 2016	April 29, 2016 - April 28, 2017	April 29, 2017 - April 28, 2018
Account Executive	\$95	\$95	\$95	\$95	\$95
Art Director •Digital pre-press •Illustration •Photography /photo retouching	\$100	\$100	\$100	\$100	\$100
Copywriter	\$100	\$100	\$100	\$100	\$100
Film Producer	\$100	\$100	\$100	\$100	\$100
Production Supervisor	\$85	\$85	\$85	\$85	\$85

- c. The Contractor shall not be compensated for travel time to the primary location of service provision.
- d. Pursuant to outputs listed in section A.7 and milestones listed in section C.3.b.1, the anticipated annual budget for the Walker contract is as follows:

Funding Source	Year 1	Year 2	Year 3	Year 4	Year 5
	April 29, 2013 – April 28, 2014	April 29, 2014 – April 28, 2015	April 29, 2015 – April 28, 2016	April 29, 2016 – April 28, 2017	April 29, 2017 – April 28, 2018
GEAR UP Grant	\$175,000	\$200,000	\$200,000	\$175,000	\$225,000
College Access Challenge Grant	\$88,000				

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 present said invoices no more often than quarterly, with all necessary supporting documentation, to:

Tennessee Higher Education Commission
Gear UP TN
Suite 1900, Parkway Towers
404 James Robertson Parkway
Nashville, TN 37243

a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).

- (1) Invoice Number (assigned by the Contractor);
- (2) Invoice Date;
- (3) Contract Number (assigned by the State);
- (4) Customer Account Name: THEC College Access Challenge Director;
- (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer);
- (6) Contractor Name;
- (7) Contractor Tennessee Edison Registration ID Number Referenced in Preamble of this Contract;
- (8) Contractor Contact for Invoice Questions (name, phone, and/or fax);
- (9) Contractor Remittance Address;
- (10) Description of Delivered Service; and
- (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.

b. The Contractor understands and agrees that an invoice 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) only be submitted for completed service and shall not include any charge for future work;
- (3) not include sales tax or shipping charges; and
- (4) initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.

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. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following documentation properly completed.

- a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, 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).
- b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

D. STANDARD TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

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.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.

- 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 handicap, 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 *Tennessee Code Annotated*, Section 12-4-124, *et seq.* 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. 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.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.12. 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.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, 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.14. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.15. 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, acts of God, natural disasters, riots, wars, epidemics or any other similar cause.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.17. 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 therefrom, 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.18. 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.19. 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.20. 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:

Troy Grant, Director of College Access Initiatives
Tennessee Higher Education Commission
Suite 1900, Parkway Towers
404 James Robertson Parkway

Nashville, TN 37243
Troy.Grant@tn.gov
Telephone Number: 615.532.0423
Fax Number: 615.741.2630

Kate Derrick, Communications Director
Tennessee Higher Education Commission
Suite 1900, Parkway Towers
404 James Robertson Parkway
Nashville, TN 37243
Kate.Derrick@tn.gov
Telephone Number: 615.532.0428
Fax Number: 615.741.2630

All Refunds or other Monetary Returns:

Russ Deaton, Associate Executive Director, Fiscal Affairs
Tennessee Higher Education Commission
Suite 1900, Parkway Towers, 404 James Robertson Parkway
Nashville, TN 37243
Russ.Deaton@tn.gov
Telephone: 615.532.-3860
FAX: 615.741.6230

The Contractor:

Ceil Walker Norris
President/CEO
5100 Poplar Ave.
Suite 2812
Memphis, TN 38137
cwnorris@waker-assoc.com
Telephone # (901) 522-1100
Fax # (901) 522-1101

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- 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. 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.6. 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 pursuant to this contract unless a printing authorization number has been obtained and affixed as required by *Tennessee Code Annotated*, Section 12-7-103 (d).

- E.7. State Ownership of Work Products. The State shall have ownership, right, title, and interest, including ownership of copyright, in all work products, including computer source code, created, designed, developed, derived, documented, installed, or delivered under this Contract subject to the next subsection and full and final payment for each “Work Product.” The State shall have royalty-free and unlimited rights and license to use, disclose, reproduce, publish, distribute, modify, maintain, or create derivative works from, for any purpose whatsoever, all said Work Products.

- a. To the extent that the Contractor uses any of its pre-existing, proprietary or independently developed tools, materials or information (“Contractor Materials”), the Contractor shall retain all right, title and interest in and to such Contractor Materials, and the State shall acquire no right, title or interest in or to such Contractor Materials EXCEPT the Contractor grants to the State an unlimited, non-transferable license to use, copy and distribute internally, solely for the State’s internal purposes, any Contractor Materials reasonably associated with any Work Product provided under the Contract.
- b. The Contractor shall furnish such information and data as the State may request, including but not limited to computer code, that is applicable, essential, fundamental, or intrinsic to any Work Product and Contractor Materials reasonably associated with any Work Product, in accordance with this Contract and applicable state law.

- c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.
 - d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.
- E.8. Intellectual Property Licenses and Releases. The Contractor is responsible for any indemnification issues related to or arising from its undertaking and performance of the Scope of Services; and for obtaining all releases, licenses, waivers, permits, or other permission needed for use of talent, copyrighted or trademarked materials, information, sound, or images, or that are or may be subject to common law or other property rights. The Contractor is solely responsible for any contracts agreements, licenses, releases, fees or negotiations needed to obtain the necessary rights to use of any and all such talent, materials, information images, sound, and property as well as all related administrative and legal expenses. The Contractor's cost to secure and defend intellectual property rights related to performance under the contract shall be included in the firm fixed price contract.
- E.9. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State. The State shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.
- E.10. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies and/or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

- a. Reporting of Total Compensation of the Contractor's Executives.
 - (1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:
 - i. 80 percent or more of the Contractor's annual gross revenues from Federal procurement contracts and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - ii. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if

the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

Executive means officers, managing partners, or any other employees in management positions.

(2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

- i. Salary and bonus.
- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax qualified.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
- c. If this Contract is amended to extend its term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the amendment to this Contract becomes effective.
- d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

The Contractor's failure to comply with the above requirements is a material breach of this Contract for which the State may terminate this Contract for cause. The State will not be obligated to pay any outstanding invoice received from the Contractor unless and until the Contractor is in full compliance with the above requirements.

IN WITNESS WHEREOF:

WALKER AND ASSOCIATES:

CEIL WALKER NORRIS, PRESIDENT/CEO

DATE

TENNESSEE HIGHER EDUCATION COMMISSION:

RICHARD G. RHODA, EXECUTIVE DIRECTOR

DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	33201-06413
CONTRACTOR LEGAL ENTITY NAME:	Walker and Associates
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number) Contractor Edison ID	0000094812

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.

Ceil Walker Norris, President/CEO

DATE OF ATTESTATION