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An Audit Report on

# **Selected State Contracts at the Texas Education Agency**

July 2013

Report No. 13-042



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### **Overall Conclusion**

The Texas Education Agency (Agency) complied with most requirements related to planning and procuring its \$462 million contract with NCS Pearson, Inc. (vendor) to provide student assessments for Texas public education students (see text box for more information about the contract). However, it did not ensure that the contract contained sufficient detail about deliverables and costs to independently determine the reasonableness of changes in the price of the contract. That limits the Agency's ability to assess the fiscal effect of changes to statewide testing requirements in House Bill 5 (83rd Legislature, Regular Session).

#### **Student Assessment Contract**

The Texas Education Agency (Agency) contracted with NCS Pearson, Inc. (vendor) to provide services related to student assessments for Texas public education students from September 1, 2010, through August 31, 2015. The original contract amount totaled \$468.4 million. The contract represents 61 percent of the total dollar amount of all Agency contracts. The contract amount was amended to \$462.2 million as of December 31, 2012.

Sources: The Legislative Budget Board's unaudited database of state contracts and the Agency.

Although statewide tests were administered and graded in a timely manner, the Agency lacks adequate processes for monitoring the contract. The Agency's Student Assessment Division manages the student assessment contract. However, that division does not have comprehensive written policies and procedures for monitoring the contract, which has contributed to inconsistencies in approvals of key deliverables. Student Assessment Division managers also lack required contract management training.

The Agency does not comply with regulations related to disclosing whether vendor employees formerly worked for the Agency. The contract was amended in May 2011 to remove the requirement for the vendor to (1) disclose its intention to employ a former Agency employee or retiree and (2) restrict a former Agency employee or retiree from working on services or a project that the former employee or retiree worked on while employed by the Agency. At auditors' request, the Agency identified 11 former employees who worked on student assessments for the Agency and later worked for the vendor as temporary or permanent employees (see Chapter 1-C on page 9).

The contract contained all essential contract terms in the *State of Texas Contract Management Guide*, and the Agency processed contract payments in a timely manner according to the *State of Texas Contract Management Guide*.

Auditors communicated other, less significant issues regarding the procurement and management of the contract separately in writing to the Agency.

## ***Key Points***

**The contract includes a schedule of tasks completed that lists the payment amounts due to the vendor on a monthly basis; however, the contract does not itemize the price per testing subject, grade level, or interim deliverable.**

As a result, the Agency cannot verify that tasks and deliverables are completed prior to payment.

**The Agency relies on the vendor to determine the dollar amount for reductions in contract related to the vendor's failure to meet contract requirements.**

There is a risk that the Agency will not receive the appropriate reductions in contract if it does not independently calculate or verify those amounts.

**The Agency did not retain key deliverable documents related to the contract in compliance with its record retention policies.**

The Agency's record retention policies state that files associated with the student assessment contract should be retained through the completion of the contract plus four years. However, the Agency did not properly retain all documents related to key deliverables.

**The Agency did not ensure that eight external reviewers of the responses to the contract's request for proposals signed conflict of interest statements.**

A conflict of interest statement would have helped the Agency ensure that external reviewers were independent from bidders for the contract.

**The Agency did not implement some key recommendations that the Contract Advisory Team made to include more specific information in the request for proposals.**

The weaknesses in the request for proposals have been incorporated into the contract. By implementing the recommendations from the Contract Advisory Team, the Agency could have addressed some of the contract weaknesses auditors identified.

## ***Summary of Management's Response***

The Agency generally agreed with the findings and recommendations in this report. The Agency's detailed management responses are presented immediately following each set of recommendations in the Detailed Results section of this report.

## ***Summary of Information Technology Review***

The Agency should improve access controls over the information technology systems related to the student assessment contract. The vendor built, administers access to, and maintains three information systems to assist the Agency in creating and administering statewide tests. Although the vendor is responsible for administering access and maintaining the systems, the Agency should review access levels for those systems to ensure that only appropriate individuals can access those systems.

During fieldwork, the Agency identified 16 active user accounts that needed to be deleted in the system used to create statewide tests. Seven of those user accounts belonged to former Agency employees who left between August 2008 and September 2012.

The Agency does not monitor access to the information systems used to help administer statewide tests. In addition to agency employees, school district personnel such as district coordinators, principals, and other administrators have access to those systems. Users with certain permissions have the capability to grant user roles and access levels to other individuals.

## ***Summary of Objectives, Scope, and Methodology***

The objectives of this audit were to determine whether the Agency:

- Procured selected contracts for goods and services in accordance with applicable statutes, rules, Office of the Comptroller of Public Accounts (Comptroller) requirements, and state entity policies and procedures to help ensure that the State's interests were protected.
- Managed and monitored selected contracts for goods and services to help ensure that contractors performed according to the terms of the contracts and that contractor billings were valid and supported, in accordance with applicable statutes, rules, Comptroller requirements, and state entity policy and procedures.

The scope of this audit covered Agency contracts that were active between September 1, 2010, and December 31, 2012. Specifically, auditors selected the Agency's contract with the vendor to provide student assessments for Texas public education students. The audit concentrated on all phases of the contracting processes (planning, procurement, contract formation and rate/price establishment, and contract oversight).

The audit methodology consisted of collecting and reviewing procurement documentation and contracts; conducting interviews with Agency staff; reviewing statutes, rules, Comptroller requirements, and Agency policies and procedures;

identifying and collecting information on other reports; and performing selected tests and other procedures.

Auditors used expenditure information in the Legislative Budget Board's State Contracts Database, the Comptroller's Texas Transparency Web site, and the Agency's Integrated Statewide Administrative System to identify contracts and performed an analysis of risk factors including dollar value, procurement date, vendor performance information, and recent audit coverage to select the contract for audit.

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# Detailed Results

## Chapter 1

### ***The Agency Should Improve Its Processes and Develop Comprehensive Written Policies and Procedures to Appropriately Monitor the Student Assessment Contract***

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#### **Statewide Tests Administered Under the Student Assessment Contract**

According to the vendor's year-end review for the 2011-2012 school year, more than 11.5 million tests were administered to Texas public education students in grades 2 through 12. Tests administered included the State of Texas Assessments of Academic Readiness (STAAR), the Texas Assessment of Knowledge and Skills (TAKS), the Texas English Language Proficiency Assessment System (TELPAS), and variants of those tests.

Source: *2011-2012 Year-End Review of the Texas Assessment Program*, NCS Pearson, Inc.

The Texas Education Agency (Agency) should improve its processes to monitor its \$462 million contract with NCS Pearson, Inc. (vendor) to provide student assessments for Texas public education students (see Appendix 2 for a background on the student assessments contract). Those assessments include the statewide required State of Texas Assessments of Academic Readiness (STAAR) tests, the Texas Assessment of Knowledge and Skills (TAKS) tests, and the Texas English Language Proficiency Assessment System (TELPAS).

The Agency does not independently verify that changes in the dollar amount of the contract are reasonable. In addition, the Agency should improve its oversight of the contract by developing comprehensive written policies and procedures for managing the contract, executing amendments in a timely manner, and providing training to key personnel.

In May 2011, the Agency removed a requirement that the vendor disclose its intention to employ former and/or retired Agency employees and prohibit employees who were previously employed by the Agency from working on the student assessment contract within the first 12 months after leaving the Agency. In addition, the Agency did not ensure that all individuals who scored the written contract proposals had completed and submitted a conflict of interest statement to the Agency.

#### Chapter 1-A

### **The Agency Should Independently Review Information on Contract Changes and Completion of Deliverables, and It Should Properly Report Vendor Performance to the Office of the Comptroller of Public Accounts**

The Agency lacks the information necessary to determine the reasonableness of changes in the price of the contract because the contract does not sufficiently itemize the costs of services provided.

The contract includes a schedule of tasks completed that lists the payment amounts due to the vendor on a monthly basis. However, the contract does



not itemize the price per test subject<sup>1</sup> and grade level. In addition, the schedule of tasks completed does not include interim deliverables or itemize the prices to prepare interim deliverables related to the development of the final tests (see Appendix 3 for a summary of how statewide tests are created). As a result, the Agency relies on the vendor to determine the fiscal effect of contract changes.

The contract for student assessments had been amended five times as of December 31, 2012, with a net dollar decrease of \$6.1 million. Changes to the contract have included eliminating optional student tests, translating current tests to Spanish instead of creating Spanish tests, implementing efficiencies in creating tests, providing an image of students' essays to aid in reviewing and analyzing essays, and creating different forms of test questions. Itemizing the costs in the contract by testing subject, grade level, and interim deliverable would give the Agency more information to assess the fiscal effect of changes. In addition, without that information, the Agency's ability to reasonably assess the fiscal effect of changes in statewide testing requirements is significantly limited (see Appendix 5 for changes to statewide testing requirements approved by the 83rd Legislature).

As of December 31, 2012, the Agency notified the vendor of four incidents in which the vendor failed to meet the requirements in the contract. Those four incidents resulted in "reductions in contract" (formerly called "liquidated damages," see text box) totaling \$816,774.

**"Liquidated Damages" versus  
"Reductions in Contract"**

A contract amendment signed on January 18, 2012, and effective on August 18, 2011, removed all references to "liquidated damages" from the service level agreement (SLA). After the amendment, any notifications of the vendor's failure to meet the SLA or failure to meet other contract requirements may result in "reductions in contract." The amendment did not change the dollar amounts for "liquidated damages" in the SLA.

The Agency relies on the vendor to calculate the amounts of the reductions in contract. Although the Agency asserts that it discussed the reductions in contract amounts with the vendor, it could not provide documentation showing that it independently calculated those amounts, or that the Agency negotiated the amounts with the vendor. In addition, the Agency provided documentation of the calculation for reductions in contract amounts for only three of the four incidents, and that documentation was electronic files that originated from the vendor. If the Agency does not independently calculate or verify the amounts, there is a risk that the Agency will not receive the

appropriate reductions in contract.

Three of the incidents were related to interruptions in online student assessments on May 17, 2011; March 26, 2012; and December 3, 2012, which reduced the contract by \$355,000. The Agency relied on the school districts and/or the vendor to communicate to the Agency when service was interrupted and restored for the three incidents related to interruptions in online student assessments. The Agency does not independently verify whether the length of interruptions is accurate by obtaining documentation

<sup>1</sup> Test subjects include math, reading, writing, science, social studies, and other subjects. See Appendix 4 for a full list of subjects for the STAAR and TAKS tests.

from the vendor regarding system downtime. As a result, the Agency may not receive appropriate reductions in contract.

The fourth incident resulted from the vendor failing to meet contractually required reporting deadlines, which reduced the contract by \$461,774. For that incident, the vendor calculated the reductions in contract as a percentage of the budget for the type of tests affected plus an estimated dollar amount for the burden placed on the Agency, which the vendor calculated as the estimated number of extra hours that Agency employees worked times an estimated hourly rate. The Agency did not submit to the Office of the Comptroller of Public Accounts (Comptroller) any performance issues related to the incidents described above. The Comptroller's *Vendor Guide* requires state agencies to report vendor performance to the Comptroller for each purchase order processed during a contract's term.<sup>2</sup> However, as of April 2013, the Agency submitted only one performance report on August 31, 2012, and that report stated there were no performance issues with the vendor.

## Recommendations

The Agency should:

- Independently review proposed contract changes, including those that change the dollar amount of the contract, to determine whether they are reasonable and accurate.
- Restructure the contract's schedule of tasks completed so that it itemizes costs by testing subject, grade level, and interim deliverable.
- Independently determine future reductions in contract amounts that result from the vendor's failure to meet the agreed-upon level of service.
- Complete and submit accurate vendor performance reports for all past and future purchase orders processed during the student assessment contract's term.

## Management's Response

*The Agency agrees with the audit findings. Specifically, the following actions have been taken or will be implemented in response to the recent audit.*

- *Contract amendments are initiated by TEA and reviewed by Student Assessment staff for reasonableness and accuracy prior to finalizing the content and any attendant dollar amounts. The Agency will, to the extent practicable, require the contractor to provide greater cost details when the contract is amended to reflect the changes made to the program by*

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<sup>2</sup> The Agency processes a purchase order for each fiscal year during the contract's term.

*House Bill 5 to enable the Agency to determine more exactly that the associated dollar amounts represent fair market value and accurately reflect any changes to the scope of work of the contract.*

***Implementation Date: July 2013 – August 2013***

***Responsible Person: Director, Student Assessment***

- *The Agency will restructure the Schedule of Tasks Completed so that sufficient detail is provided to ensure that contract invoices can be more precisely evaluated by the Agency before payment is processed. Some interim deliverables are tied to individual tests at the subject and grade level, while other tasks and deliverables span multiple tests and programs, and costs are not incurred at a test or program level. When the Schedule of Tasks Completed has been restructured, an amendment to the contract will be executed to include the revised schedule.*

***Implementation Date: January 2014***

***Responsible Person: Director, Student Assessment***

- *Although the Agency initiates the process to reduce the contract for contractor violations of the Service Level Agreement and has made initial determinations in the past relative to penalty amounts, Student Assessment staff will develop standard procedures for documenting the length and severity of any service outages that could result in a fine against the contractor. For example, assessment staff will develop “scripts” for monitoring the contractor’s website used for delivery of online assessments to independently determine when outages occur. This will provide detailed documentation for the contract reductions.*

***Implementation Date: January 2014***

***Responsible Person: Director, Student Assessment***

- *The contracts staff will ensure the Contractor Performance Evaluation form is completed and submitted at the end of each fiscal year in accordance with the Agency’s Contract Manual contract close-out procedures.*

***Implementation Date: July 2013 – September 2013***

***Responsible Person: Director, Purchasing and Contracts***

## **The Agency Should Develop Comprehensive Written Policies and Procedures for the Student Assessment Division's Oversight of the Contract, Retain Testing Documentation, and Execute Contract Amendments in a Timely Manner**

The vendor administered and graded statewide tests in a timely manner according to the terms of the contract. However, the Agency's Student Assessment Division does not have comprehensive written policies and procedures to manage the contract, which contributed to inconsistencies in the approvals of key deliverables. In addition, the Agency did not execute contract amendments in a timely manner and key personnel at the Agency had not received required internal and external contract management training.

The Student Assessment Division does not have comprehensive written policies and procedures for monitoring the student assessment contract. Although the Purchasing and Contracts Division worked with the Student Assessment Division to procure the contract, the Student Assessment Division is responsible for managing the contract, including determining reductions in contract amounts and developing contract amendments. The Purchasing and Contracts Division has written procedures related to contracting. However, the Student Assessment Division does not follow the Purchasing and Contracts Division's procedures and has not developed its own comprehensive written policies and procedures to monitor the contract.

As a result, the Student Assessment Division does not have a standard method for documenting approvals of key deliverables, which may increase the risk that approvals could be altered or not completed. Auditors identified key contract deliverables related to (1) creating testing questions (test items), (2) creating and finalizing statewide tests (testing files), and (3) grading statewide tests (graded tests) (see Appendix 3 for a summary of the test creation process). Specifically:

- Of the 25 test items available for auditor review, 9 (36 percent) included documented approvals. Approvals were documented in emailed statements from the Agency to the vendor.
- Of the 30 completed testing files available for auditor review, 23 (77 percent) included documented approvals. Approvals consisted of a signed senior review log and completed review checklists or a signed note taped to files.
- All 11 files containing graded tests reviewed by auditors appropriately included documented reviews. Approvals were documented in emailed statements from the Agency to the vendor.

The Agency did not retain key deliverable documents in compliance with its record retention policies. The Agency's record retention policies state that files associated with the student assessment contract should be retained through the

completion of the contract plus four years. However, the Agency did not properly retain all documents related to key deliverables. Specifically:

- Twenty-five (81 percent) of 31 test items sampled by auditors could be reviewed. The Agency misplaced 1 file and discarded 5 files after 2 years.
- Thirty (59 percent) of 51 testing files sampled by auditors could be reviewed. The Agency had discarded the remaining 21 testing files after 2 years.

The Agency did not execute contract amendments in a timely manner. Approvals for all 5 contract amendments were executed from 14 days to 5 months after the amendments' effective dates. As a result, invoices were not adjusted for the contract amendments as much as 5 months after the execution dates. Auditors determined that from September 1, 2010, through December 31, 2012, the Agency paid the appropriate amounts to the vendor, including adjustments related to amendments (see Chapter 2 for more information on contract payments).

Key personnel in the Agency's Student Assessment Division did not complete required contract management training. The Student Assessment Division's director and six subdivision directors function as contract managers based on their functional responsibilities according to the *State of Texas Contract Management Guide*. However, as of March 2013, the director and the subdivision directors had not completed the required contract management training available through the Comptroller's Texas Procurement and Support Services (TPASS) Division or the Agency's required internal contract management training. That training provides guidance on appropriately managing contracts.

The Agency did not identify inaccuracies in vendor-provided historically underutilized business (HUB) program reports. The Agency should review the HUB reports it receives from the vendor for accuracy. The Agency receives a detailed report and a summary report related to HUBs each month. Auditors identified inconsistencies between the amounts in those two reports for the same month for each of the three months tested. Specifically, the two monthly reports differed on the reported amounts the vendor paid to HUBs for September 2011, August 2012, and December 2012. The amounts in the overall monthly reports were \$1.4 million less than the amounts in the detailed monthly reports.

The HUB reports and other vendor-provided reports serve to aid the Agency in monitoring the contract. The Agency should review those reports to verify that they are accurate and provide the expected information based on the contract.

## Recommendations

The Agency should:

- Develop and implement comprehensive written policies and procedures within the Student Assessment Division to monitor the contract, including procedures to:
  - ♦ Consistently document approvals for all deliverables.
  - ♦ Execute contract amendments prior to the amendments' effective date.
- Retain documents related to the student assessment contract according to its record retention policies, which is the length of the contract plus four years.
- Ensure that Student Assessment Division employees with contract management responsibilities for the contract complete required Comptroller and Agency contract management training.
- Review HUB and any vendor-provided reports for accuracy.

## Management's Response

*The Agency generally agrees with the audit findings. Specifically, the following actions have been taken or will be implemented in response to the recent audit.*

- *The Student Assessment Division has developed numerous policies and procedures to monitor all aspects of the assessment contract. Each team within the division has detailed procedures and checklists that are used to ensure that deadlines are met and deliverables are provided to all stakeholders according to a schedule that is jointly developed by Agency and contractor staff at the beginning of each contract year. However, the Agency acknowledges that procedures have not been consistently implemented across all teams in the division. The contract manager will be responsible for compiling all documents used to monitor various aspects of the assessment contract and developing a procedures manual that will help ensure that procedures are followed consistently. For example, procedures related to the review of test questions and test construction have been updated to require all final approvals of questions and tests to be documented and filed with the appropriate division copy in the designated area of the division. All content teams involved in test-question reviews and test construction will be trained on these procedures.*

***Implementation Date: January 2014***

***Responsible Person: Director, Student Assessment***

- *The Agency will work with the Purchasing and Contracts Division and the contractor to ensure that, to the extent practicable, future contract amendments are executed prior to the amendment's effective date.*

***Implementation Date: August 2014***

***Responsible Person: Director, Student Assessment***

- *Space constraints within the Student Assessment Division preclude the retention of numerous years of division copies of test questions and test-construction files on site. However, hard-copy files of all final approvals of questions and tests are retained by the contractor and are readily available to Agency staff. The Agency will implement procedures to ensure that all documents are retained for the length of the contract plus an additional four years.*

***Implementation Date: January 2014***

***Responsible Person: Director, Student Assessment***

- *The director of the Student Assessment Division is in the process of completing the Agency's contract management training. Other division staff with responsibility for overseeing aspects of the assessment contract will complete Agency training in fiscal year 2014. Additionally, all applicable staff will complete the Comptroller's Contract Manager Training as classes become available in fiscal year 2014. Contract Management & Source Selection (24 hrs), Project Management (16 hrs), and Negotiation Techniques (16 hrs).*

***Implementation Date: September 2013 – August 2014***

***Responsible Person: Director, Student Assessment***

- *The Agency's HUB Office will ensure both the monthly HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report dollar amounts reported and the Pearson Monthly HUB Report dollar amounts are the same.*

***Implementation Date: July 2013***

***Responsible Person: Director, Purchasing and Contracts***

## The Agency Should Follow Regulations Related to the Vendor's Employment of Former or Retired Agency Employees and Requiring Signed Conflict of Interest Statements

The Agency amended the contract to eliminate requirements that the vendor (1) disclose its intention to employ former and/or retired Agency employees and (2) prohibit employees who were previously employed by the Agency from working on the student assessment contract within the first 12 months after leaving the Agency. In addition, the Agency did not ensure that all reviewers who scored the written contract proposals had completed and submitted to the agency a conflict of interest statement.

The Agency is not complying with statutory requirements related to the vendor's employment of former Agency employees and associated disclosure requirements.

### Contracts with Former or Retired Agency Employees

Texas Government Code, Section 2252.901(a), does not prohibit an agency from entering into a professional services contract with a corporation, firm, or other business entity that employs a former or retired employee of the agency within one year of the employee's leaving the agency, provided that the former or retired employee does not perform services on projects for the corporation, firm, or other business entity that the employee worked on while employed by the agency.

Texas Government Code, Section 2252.901, states that a contractor can employ an agency's former employee or retiree; however, for one year after leaving the agency's employment, the employee/retiree must be restricted from performing services for the contractor on projects that the employee worked on while employed by the agency (see text box). In addition, the *State of Texas Contract Management Guide* requires state agencies to require vendors to disclose all current or former employees who, within the previous 12 months, were employees or retirees of the State. However, the Agency amended the contract in May 2011 to remove those requirements; as a result, the amended contract does not comply with the Texas Government Code and the *State of Texas Contract Management Guide* provisions.

An April 2011 memo approved by the Agency's deputy commissioner for finance and administration for the Student Assessment Division stated that the deletion of those requirements "...would allow the state's assessment contractor more flexibility in meeting future staffing needs and would help to ensure that the most qualified individuals would be eligible to work on the Texas contract." (See Appendix 6 on page 33 for a copy of the memo and the contract amendment.) At auditors' request, the Agency identified 11 former employees who worked on student assessments for the Agency and later worked for the vendor as temporary or permanent employees. The Agency and the vendor asserted that nine of those individuals do not work on the Texas student assessment contract. However, the other two individuals were temporary employees who worked on the Texas student assessment contract for the vendor for a time period that did not exceed seven months.

The external reviewers of the responses to the contract's solicitation signed a nondisclosure form; however, the nondisclosure form did not include a conflict of interest statement as required by the *State of Texas Contract Management Guide*. Fifteen individuals evaluated the written responses to the request for proposals (see Appendix 7 on page 37 for a list of individuals who evaluated the written responses). Eight of those reviewers were external to the Agency and



represented school districts, a charter school, and the Higher Education Coordinating Board. While all eight of those reviewers completed a nondisclosure form, that nondisclosure form did not include a conflict of interest statement. Conflict of interest statements help the Agency ensure that external reviewers are independent from the bidders. The seven Agency employees involved in rating the responses signed conflict of interest statements. According to the Agency and the vendor, they did not know whether any of the external reviewers had prior financial relationships with the vendor.

## Recommendations

The Agency should:

- Amend the contract to comply with the Texas Government Code and the *State of Texas Contract Management Guide* to:
  - ♦ Restrict individuals who are former employees/retirees of the Agency from working on services or projects for the vendor that the employees/retirees worked on while employed by the Agency.
  - ♦ Require the vendor to disclose its intention to employ former Agency employees or retirees.
- Ensure that external reviewers submit a signed conflict of interest statement when reviewing solicitation responses.

## Management's Response

*The Agency agrees with the audit findings. Specifically, the following actions have been taken or will be implemented in response to the recent audit.*

- *The Agency will amend the assessment contract to comply with the Texas Government Code and the State of Texas Contract Management Guide. The contract will be changed to incorporate the original language that prevented the contractor from hiring former employees/retirees of the Agency from working on services or projects for the vendor that the employees/retirees worked on while employed by the Agency and that required the vendor to disclose its intention to employ former Agency employees or retirees.*

***Implementation Date: August 2013***

***Responsible Person: Director, Student Assessment***

- *The Agency revised the Non-Disclosure and Conflict of Interest Agreement in September 2010. All reviewers (external and internal) will complete the same document to ensure any conflicts of interest are vetted.*

***Implementation Date: July 2013 – September 2013***

***Responsible Person: Director, Purchasing and Contracts***

## ***The Agency Completed All But One Contract Payment to the Vendor in a Timely Manner; However, the Agency Should Develop Procedures to Verify That Deliverables Are Completed Prior to Paying the Vendor***

The Agency has controls and processes in place related to payments for the student assessment contract; however, it should improve the processes used to monitor the contract to verify that tasks and deliverables have been completed prior to paying the vendor.

The Agency processed contract payments in a timely manner, had appropriate segregation of duties for approving payments, and had processes in place to detect double billing. All 29 payments tested totaling \$199,454,415 were properly authorized and reflected the amounts documented in the contract's schedule of tasks completed, including amendments. The Agency made 28 (96.6 percent) of the 29 payments on time; the remaining payment was 2 days late, resulting in an overdue interest payment of \$771.

Table 1 lists the amounts of the contract and the amounts spent for the contract from September 1, 2010, through December 31, 2012.

Table 1

Amounts the Agency Paid to the Vendor From September 1, 2010, through December 31, 2012		
Fiscal Year	Amount Spent	Contracted Amount (including amendments)
2011	\$90,665,041	\$90,665,041
2012	\$88,332,805	\$88,332,805
2013	\$20,456,569 <sup>a</sup>	\$92,892,657
<sup>a</sup> Amount spent through December 31, 2012.		

The Agency cannot verify that tasks and deliverables are completed prior to payment because the contract does not detail the work that should be completed during a pay period. The contract requires that payments be made after the completion of scheduled tasks and deliverables. The items in the 29 invoices tested mirrored the contract's schedule of tasks completed. However, as discussed in Chapter 1-A, the monthly schedule of tasks completed in the contract does not include interim deliverables or itemize the price to prepare interim deliverables related to the development of the final tests. For example, one invoice listed a billing amount for the STAAR tests for grades 3-8 and one amount for all work that had been completed for those tests during that month.

The Agency's Student Assessment Division monitors tasks and deliverables necessary to administer statewide tests through the vendor's *Production Status Report*. For example, a *Production Status Report* will identify a third grade

math test and show when the test questions are to be completed, reviewed, approved, and other related work information. However, because the contract does not itemize the price to prepare interim deliverables, it is not possible to use the *Production Status Report* as a tool to verify that tasks and deliverables are completed prior to payment.

The Agency does not provide a written approval for completed *Production Status Reports*. As discussed above, the vendor creates and provides the Agency's Student Assessment Division a weekly *Production Status Report* that lists the tasks necessary to create, grade, and report on student assessments. The Agency and the vendor collaborate and verbally approve the dates on which tasks were completed or expected to be completed. The vendor then revises the *Production Status Report* as necessary. However, there is a risk of misinterpretation or miscommunication because Agency management does not document that it has reviewed and approved the information in the *Production Status Reports* before the reports are distributed to Agency and vendor employees.

## Recommendations

The Agency should:

- Develop a method to verify whether tasks and deliverables are complete prior to paying the vendor by amending the schedule of task and deliverables in the contract to itemize the price to prepare interim deliverables related to the development of final tests.
- Document management's reviews and approvals for each completed *Production Status Report*.

## Management's Response

*The Agency agrees with the audit findings. Specifically, the following actions have been taken or will be implemented in response to the recent audit.*

- *As was previously stated, the Agency will restructure the Schedule of Tasks Completed so that additional detail is provided to ensure that contract invoices can be more precisely evaluated by the Agency before payment is processed. Specifically, the Agency will modify the Schedule of Tasks Completed in accordance with reasonable standards (per the contract) to include monthly milestone deliverables so that the agency can verify completion in greater detail prior to making payments.*

***Implementation Date: January 2014***

***Responsible Person: Director, Student Assessment***

- *As part of its comprehensive policies and procedures manual, the Student Assessment Division will develop standard procedures for documenting management's reviews and approvals for each completed Production Status Report. In addition, Student Assessment Division staff will ensure that all key deliverables, including those not tracked via the Production Status Report, are identified in the procedures manual.*

***Implementation Date: May 2014***

***Responsible Person: Director, Student Assessment***

## ***The Contract Contained All Required Essential Contract Terms; However, the Agency Should Ensure That It Completes and Documents Requirements Related to Planning and Procurement***

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The Agency's contract with the vendor for student assessments contained the essential contract terms required by the *State of Texas Contract Management Guide*. Those terms serve to protect the State's interests when entering into contracts.

When planning for procuring a contract, there are several planning steps required by the *State of Texas Contract Management Guide* to help state agencies be more successful in their contracting processes. While the Agency followed some of those planning steps, it did not implement some key recommendations that the State's Contract Advisory Team made to include more specific information in the request for proposals. That is important because the weaknesses in the request for proposals have been incorporated into the contract. In addition, the Agency did not complete or retain all of the planning documents.

### Chapter 3-A

#### **The Contract Contained All Required, Essential Contract Terms**

The contract contained all essential contract terms required by the *State of Texas Contract Management Guide*.<sup>3</sup> The required, essential terms help to protect the State's interests. However, as discussed in Chapter 1, the contract does not break down the costs by testing subject, grade level, and interim deliverable.

The contract includes appendices, attachments, and exhibits. The request for proposals, the vendor's response to the request for proposals, and the list of negotiated contract items were also incorporated into the contract.

### Chapter 3-B

#### **The Agency Partially Complied with Planning Requirements; However, It Should Ensure That It Completes and Documents Significant Steps in Contract Planning**

There are several steps in planning a procurement that are identified by the *State of Texas Contract Management Guide* to help agencies be more successful in their contracting processes. The Agency had a formal business planning process in place, appropriately selected a request for proposals method of procurement, selected appropriate contract sponsors, and

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<sup>3</sup> Auditors used the *State of Texas Contract Management Guide*, Version 1.6, released in February 2009 to test for essential contract terms.

appropriately submitted its request for proposals to the State's Contract Advisory Team for review.

However, the Agency did not implement some key recommendations that the Contract Advisory Team made to include more specific information in the request for proposals. While agencies are not required to implement Contract Advisory Team recommendations, if the Agency had implemented the recommendations, it may have addressed some of the contract weaknesses auditors identified. The Contract Advisory Team recommended that the Agency modify the request for proposals to:

- Include specific, objective criteria for determining when a modification to the contract may be invoked.
- Address how additional costs will be handled if the scope of work changes significantly.
- Establish specific minimum qualifications for the bidders and bidders' personnel.
- Determine how the Agency will be compensated for liquidated damages, rather than allowing the vendor to make that determination.
- Add how the Agency project manager will verify that vendor-provided reports are valid.

Also, the Agency did not complete or did not retain the following contract planning documents required by the *State of Texas Contract Management Guide*:

- **Cost Estimate.** The Agency could not provide documentation showing that it had completed a cost estimate or a price analysis for the contract.
- **Needs Assessment.** The Agency did not conduct a formal needs assessment prior to issuing the request for proposals. Although the request for proposals identified the Agency's need for the contract, an assessment was not documented before the request for proposals was issued. A needs assessment should be done to help ensure that the contracting team plans for the correct contracting objectives.
- **Risk Assessment.** The Agency did not conduct a preliminary risk assessment to determine an appropriate level of contract management and oversight.
- **Communications Plan.** The Agency could not provide a documented communications plan to manage and control internal and external communications.

The Agency also did not include minimum qualifications for potential bidders in its request for proposals, as required by the *State of Texas Contract*

*Management Guide*. Minimum qualifications could have been used to evaluate and score bidders.

In addition, the Agency did not complete a formal contract closeout after completing the previous student assessment contract. Both the previous student assessment contract and the current student assessment contract were with the vendor. A formal contract closeout, required by the *State of Texas Contract Management Guide* and the Agency's policies and procedures, would have provided information related to lessons learned from the previous contract, verified that the Agency and the vendor fulfilled their contract obligations, and identified process efficiencies that could have been valuable to the Agency in planning the current contract.

### Recommendations

The Agency should:

- Complete necessary planning documents and retain those documents for future contracts.
- Ensure that all required elements, such as minimum qualifications for potential bidders, are included in a request for proposals.
- Complete the required formal contract closeout when planning future contracts to ensure that information related to lessons learned from the ending contract is available and ensure that the Agency and the vendor fulfilled their contract obligations.

### Management's Response

*The Agency agrees with the audit findings. Specifically, the following actions have been taken or will be implemented in response to the recent audit.*

- *One of the responsibilities of the contract manager will be to maintain all required documentation associated with the current and future contracts. Before the assessment contract is rebid, all necessary planning documents will be completed prior to drafting the Request for Proposals.*

***Implementation Date: September 2014***

***Responsible Persons: Director, Student Assessment***

***Director, Purchasing and Contracts***



- *The agency will ensure that relevant staffing certifications, licenses, project management experience, and other desired contractor qualifications are included in the future requests for proposal.*

***Implementation Date: July 2013 – end of the contract term***

***Responsible Persons: Director, Student Assessment***

***Director, Purchasing and Contracts***

- *The contract staff will work with the program staff to ensure all the agency required documentation is completed and submitted upon the contract close-out process. This includes the following forms:*
  - ♦ *Appendix 29: Contract Close-Out Checklist*
  - ♦ *Appendix 30: Contractor Performance Evaluation Form*
  - ♦ *Appendix 31: Lessons Learned Form*

***Implementation Date: Upon the termination of the contract***

***Responsible Person: Director, Purchasing and Contracts***

## ***The Agency Should Improve Access Controls Over the Information Technology Systems Related to the Contract***

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The Agency should review access to the information technology systems used to create student assessments to verify that user accounts and access levels are appropriate. In addition, the Agency should improve its review of access controls over the information technology system that schools and school districts use to administer student assessments.

The Agency should periodically review access to the system used to create test questions and tests. While user roles are adequately assigned in the Item Tracker Test Builder (ITTB) system, the Agency does not regularly review access to that information technology system (see text box for more information about the

### **Systems Used to Create and Administer Student Tests**

The vendor built, administers access to, and maintains the following information technology systems to create and administer student assessments:

- **Item Tracker Test Builder (ITTB)** is a repository for approved test questions. The Agency and vendor use that system to create tests administered to students.
- **Texas Assessment Management System (TAMS)** is a system that district coordinators, principals, and other administrators use to set up information for tests, post results, and provide information to students and parents. The vendor sets up access, which is based on a user's position, for individuals in school districts.
- **TestNav™** is a browser-based test delivery system. Students use that system to take online tests.

information technology systems). Although the vendor is the administrator for ITTB and grants all user access, the Agency still should verify that user accounts and access levels are appropriate. The Agency had not reviewed access to that system until March 2013, during audit fieldwork. During that review of employee access:

- The Agency identified 16 (27 percent) of 60 active user accounts for which access needed to be deleted.
- Of the 16 user accounts discussed above, 7 belonged to former employees who had left the Agency between August 2008 and September 2012.

The Agency has documented procedures for adding user accounts, setting up user roles, and deleting user accounts. However, the Agency does not ensure that those procedures are consistently followed. Title 1, Texas Administrative Code, Section 202.25(1), requires state agencies to manage access to information resources to ensure authorized use.

The Agency should improve its review of access controls over the information technology system that schools and school districts use to administer student assessments. The Agency does not monitor access to verify that only appropriate individuals are granted access or that users are granted the appropriate level of access for the Texas Assessment Management System (TAMS) or for TestNav™.

The vendor is the administrator for TAMS and TestNav™. The Agency has some access controls over those two systems, such as requiring password changes and annual email verification. Auditors determined that Agency employees' access to TAMS and TestNav™ was appropriate.

However, in addition to Agency employees, school district personnel, such as district coordinators, campus testing coordinators, and other administrators,

have access to TAMS and TestNav™. The vendor grants user roles and access levels on a hierarchical basis in TAMS based on school district contact information in a database the Agency maintains. School districts are responsible for updating their contact information in that database; however, the Agency does not review the accuracy of school districts' contact information. The Agency has not reviewed user accounts for TAMS and TestNav™ to determine whether they are appropriate.

In addition, the contract gives the Agency the right to audit the general and application controls for the systems used in online testing. However, the Agency asserted that it has not identified the need for an audit of the systems to date.

If the Agency does not sufficiently monitor access to the systems used for student assessments, there is an increased risk that the systems and data could be compromised.

## Recommendations

The Agency should:

- Complete regular reviews of access to ITTB to verify that user accounts and access levels are appropriate.
- Request and review access information from the vendor related to TAMS and TestNav™ to verify that user accounts and access levels are appropriate.
- Ensure that the Agency database used to grant access in TAMS is accurate.
- Request that the vendor perform a general and application control audit of the systems used in online testing.
- Ensure that inactive user accounts are deleted.

## Management's Response

*The Agency agrees with the audit findings. Specifically, the following actions have been taken or will be implemented in response to the recent audit.*

- *The Student Assessment Division is implementing new procedures relative to ITTB. Access rights to ITTB will be reviewed each quarter by a member of the online team to ensure that user accounts and access levels are appropriate and up-to-date.*

***Implementation Date: August 2013***

***Responsible Person: Director, Student Assessment***

- *The Student Assessment Division will request that the vendor update certain Agency user accounts in TAMS to enable administrative capabilities that will allow individuals in the division to review access information related to the 92,659 user accounts currently in TAMS and TestNav (which is launched from TAMS).*

***Implementation Date: August 2013***

***Responsible Person: Director, Student Assessment***

- *Like much of the administrative data TEA collects and maintains, data in the organizational and personnel database, AskTED, are self-reported. This directory information is entered and updated by designated district employees through a secure connection via the web. Information entered by agency staff upon district request, such as superintendent updates, are verified by external documentation, e.g., district board meeting minutes, prior to making changes. Directory information for charter schools is entered by agency charter school staff following verification with agency-approved applications and amendments. The Research and Analysis division will develop a process by which district employees attest to the veracity and accuracy of the data they are entering when they make changes in AskTED. In addition, explicit instructions on maintaining accurate data will be added to the procedures designated district employees follow when entering data in AskTED.*

***Implementation Date: September 2013 – August 2014***

***Responsible Person: Director, Research and Analysis***

- *The assessment vendor currently provides TEA with ‘Functional’ and ‘Site Visit Readiness’ reports related to the performance of TAMS, TestNav, and the online training centers – per the Service Level Agreement between TEA and the assessment vendor. These system audits are performed by the assessment vendor. On January 23, 2013, the assessment vendor requested approval from TEA for a scope of work related to an external third party audit of the systems used for online testing. The results of that audit will be provided to TEA upon completion. External third party audits of the technology components of the program will be conducted annually for the remainder of the contract.*

***Implementation Date: August 2013***

***Responsible Person: Director, Student Assessment***

- *The Student Assessment Division has instituted new procedures when a staff member leaves employment with the Agency. As part of a formal exit*

*process, user accounts will be made inactive and subsequently deleted from the database.*

***Implementation Date: August 2013***

***Responsible Person: Director, Student Assessment***

# Appendices

Appendix 1

## **Objectives, Scope, and Methodology**

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### **Objectives**

The objectives of this audit were to determine whether the Texas Education Agency (Agency):

- Procured selected contracts for goods and services in accordance with applicable statutes, rules, Office of the Comptroller of Public Accounts (Comptroller) requirements, and state entity policies and procedures to help ensure that the State's interests were protected.
- Managed and monitored selected contracts for goods and services to help ensure that contractors performed according to the terms of the contracts and that contractor billings were valid and supported, in accordance with applicable statutes, rules, Comptroller requirements, and state entity policies and procedures.

### **Scope**

The scope of this audit covered Agency contracts that were active between September 1, 2010, and December 31, 2012. Specifically, auditors selected the Agency's contract with NCS Pearson, Inc. (vendor) to provide student assessments for Texas public education students. The audit concentrated on all phases of the contracting process (planning, procurement, contract formation and rate/price establishment, and contract oversight).

### **Methodology**

The audit methodology consisted of collecting and reviewing procurement documentation and contracts; conducting interviews with Agency staff; reviewing statutes, rules, Comptroller requirements, and Agency policies and procedures; identifying and collecting information on other reports; and performing selected tests and other procedures.

Auditors used expenditure information in the Legislative Budget Board's (LBB) State Contracts Database, the Comptroller's Texas Transparency Web site, and the Agency's Integrated Statewide Administrative System (ISAS) to identify contracts and performed an analysis of risk factors including dollar value, procurement date, vendor performance information, and recent audit coverage to select the student assessment contract for audit.

Auditors determined that the Agency's ISAS database was sufficiently reliable for testing expenditures related to the contract.

Sampling methodology:

Auditors selected non-statistical samples primarily through random selection designed to be representative of the population. In those cases, results may be extrapolated to the population but the accuracy of the extrapolation cannot be measured. In some cases, auditors used professional judgment to select additional items for testing. Those sample items generally are not representative of the population and, therefore, it would not be appropriate to extrapolate those results to the population.

Information collected and reviewed included the following:

- Contract with NCS Pearson, Inc. including request for proposals, service level agreements, and amendments.
- Agency procurement files, including planning documentation, bidder proposals, purchase orders, approvals, invoices, and other supporting documentation.
- Agency test construction files, draft test questions, and scoring and reporting deliverables.
- Agency personnel training and certification records and conflict of interest statements.
- Emails and other documentation that supported information provided in interviews with Agency personnel.
- Historically underutilized business (HUB) reports from the vendor.
- The Agency's Purchasing and Contracts Division's *Contract Development and Administration Manual*.
- User access lists and related manuals or policies and procedures for the Texas Assessment Management System, TestNav7, the Item Tracker Test Builder database, and the Ask TED database.
- *Report on the Texas Education Agency*, Sunset Advisory Commission, October 2012.

Procedures and tests conducted included the following:

- Interviewed Agency personnel.
- Tested whether Agency purchasing staff met the Comptroller's training and certification requirements.
- Tested whether Agency contract managers completed the Comptroller's training and the Agency's internal contract management training.

- Reviewed test construction files, draft test questions, and scoring and reporting deliverables for appropriate support and approvals.
- Tested whether the Agency followed applicable planning guidelines in the *State of Texas Contract Management Guide*.
- Reviewed contracts to determine whether they included selected contract terms listed in the *State of Texas Contract Management Guide*.
- Reviewed contracts and amendments for appropriate authorizations.
- Reviewed reductions in contract related to the vendor's failure to meet contractually agreed-upon levels of service.
- Reviewed contract purchase orders and payments for appropriate support and approvals.
- Reviewed Agency monitoring activities, including *Production Status Reports* that the Agency received from the vendor.
- Reviewed the HUB reports the vendor provided to the Agency.
- Reviewed access to the Texas Assessment Management System, TestNav7, the Item Tracker Test Builder database, and the AskTED database.

Criteria used included the following:

- Texas Government Code.
- *Texas State Records Retention Schedule*, Fourth Edition.
- Title 34, Texas Administrative Code, Chapter 20 (Texas Procurement and Support Services).
- Title 1, Texas Administrative Code, Chapter 202 (Information Security Standards).
- *State of Texas Contract Management Guide*, Versions 1.6 (February 2009) and 1.9 (December 2011).
- *Contract Development and Administration Manual*, Texas Education Agency Purchasing and Contracts Division, preliminary release on September 2010 (no formal release date).



## Project Information

Audit fieldwork was conducted from January 2013 through April 2013. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The following members of the State Auditor's staff performed the audit:

- Arby J. Gonzales, CFE (Project Manager)
- Ann E. Karnes, CPA (Assistant Project Manager)
- Carl Ela, CFE, CGAP, CIDA
- Robert G. Kiker, CGAP
- Scott Labbe
- Eric Ladejo, MPA
- Julia Youssefnia, CPA
- Dana Musgrave, MBA (Quality Control Reviewer)
- John Young, MPAff (Audit Manager)

## ***Background on the Student Assessment Contract***

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In 2007, the 80th Legislature enacted Senate Bill 1031, which phased out the high school Texas Assessment of Knowledge and Skills (TAKS) tests and replaced them with the State of Texas Assessments of Academic Readiness (STAAR) tests. Senate Bill 1031 also required the development of high school-level tests for six additional subjects: Algebra II, world geography, world history, English I, English II, and English III.

In 2009, the 81st Legislature (Regular Session) enacted House Bill 3. According to the Texas Education Agency (Agency), that bill, in conjunction with Senate Bill 1031:

- Increased the rigor and relevance of both standards and assessments.
- Created and assessed post-secondary readiness standards.
- Established campus and district accountability based on higher college- and career-ready performance standards in STAAR.
- Established new time lines for interventions and sanctions while also expanding school closure and alternative management options.

The Agency issued a request for proposals for new contracted services for student assessment on September 8, 2009. Vendors could bid on separate sections of the contract including the student assessment contract portion and the data portal contract portion. The Agency received proposals by the November 13, 2009, due date from three vendors for the data portal section of the contract and from two vendors for the student assessment portion of the contract. All bids were subject to evaluation by internal and external evaluators. Each bidder also made an oral presentation.

The Agency selected NCS Pearson, Inc. as the vendor for both student assessment and data portal services in March 2010. Although NCS Pearson was not the lowest bidder, the Agency determined that NCS Pearson more appropriately addressed all aspects of the request for proposals. The Agency signed a contract with NCS Pearson in June 2010 for a start date of September 1, 2010. The contract required NCS Pearson to provide the following: item development, test materials, packaging and shipping, test scoring and equating, standards setting, and information technology systems.

In addition to phasing out the TAKS assessments and setting up the STAAR program, the contract included the development and administration of Texas English Language Proficiency Assessment System (TELPAS) tests. TELPAS tests are designed to assess the progress that limited English proficient students make in learning the English language.

According to the Agency Web site, STAAR emphasizes “readiness” standards, which are the knowledge and skills that are considered most important for success in the grade or course subject that follows and for college and career. STAAR test subjects include mathematics, reading, writing, science, and social studies assessments in grades 3 through 8, and 15 high school-level, end-of-course tests in mathematics, English, science, and social studies. In addition to the standard STAAR assessments, the following STAAR assessments are offered:

- STAAR Spanish is provided for English language learners in grades 3 through 5 who meet specific participation requirements for a Spanish-version assessment.
- STAAR L is an online linguistically accommodated English version of the standard STAAR assessments for grades 3 through 8 and high school-level, end-of-course tests in mathematics, science, and social studies for English language learners who meet participation requirements for particular types of linguistic accommodations.
- STAAR Modified is an alternate assessment based on modified academic achievement standards and is intended for a small number of students receiving special education services who meet specific participation requirements.
- STAAR Alternate is an alternate assessment based on alternate academic achievement standards and is designed for students receiving special education services who meet specific participation requirements. STAAR Alternate is provided to meet the diverse needs of students with significant cognitive disabilities enrolled in grades 3 through high school.

## Test Creation Process

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The Texas Education Agency (Agency) and NCS Pearson, Inc. (vendor) create statewide assessment tests for Texas public education students using the following process:

- The vendor develops test questions and sends them to the Agency for review (see Chapter 1-B for more information).
- The Agency reviews the questions for compliance with curriculum requirements, accuracy, and compliance with other guidelines.
- The Agency submits the questions, as revised by the vendor, to an external educator review committee.
- The Agency, the vendor, and the educator review committee meet to review and accept or modify the questions.
- The Agency conducts field tests of some questions with a large representative sample of Texas students. The vendor analyzes field test results for reliability, validity, and possible bias. If the results satisfy specific criteria, the question will be added to the vendor's Item Tracker Test Builder Database.
- The Agency selects questions for a test based on a test blueprint that establishes the number of questions, the type of questions, and the subjects of the questions that should be selected.
- The Agency reviews and approves the final version of the tests (see Chapter 1-B for more information).
- The vendor prints the tests and sets up online testing.
- School districts administer the tests.
- The vendor grades the tests (see Chapter 1-B for more information).

## State Versus Federal Testing Requirements

Table 2 shows the state and federal requirements for student testing and how those requirements are met by the State of Texas Assessments of Academic Readiness (STAAR) and Texas Assessment of Knowledge and Skills (TAKS) tests for the 2011-2012 and 2012-2013 school years.

Governor Rick Perry signed House Bill 5 (83rd Legislature, Regular Session) on June 10, 2013, which limits high-school level, end-of-course tests to five subjects: Algebra I, Biology, English I, English II, and U. S. History starting in the 2014-2015 school year (see Appendix 5 for more detail related to House Bill 5).

Table 2

State and Federal Requirements for Student Testing		
Grade	State Required Only	State and Federally Required
<b>STAAR Tests Grades 3 through 8</b>		
Grade 3		Math, Reading
Grade 4	Writing	Math, Reading
Grade 5		Math, Reading, Science
Grade 6		Math, Reading
Grade 7	Writing	Math, Reading
Grade 8	Social Studies	Math, Reading, Science
<b>STAAR End-of-course Tests</b>		
End-of-course Tests for the 2011-2012 School Year	Algebra I, Algebra II, Geometry, English Reading I, English Reading II, English Reading III, English Writing I, English Writing II, English Writing III <sup>a</sup> , Biology, Chemistry, Physics, World Geography, World History, U.S. History	
End-of-course Tests for the 2012-2013 School Year	English Writing I, English Writing II, English Writing III, World Geography, World History, U. S. History, Chemistry, Physics	Algebra I, Algebra II, English Reading I, English Reading II, English Reading III, Biology, Geometry
<b>TAKS Tests</b>		
Grade 10 <sup>b</sup>	Social Studies, Writing <sup>c</sup>	Math, English Language Arts (Reading) <sup>c</sup> , Science
Grade 11	Math, English Language Arts, Science, Social Studies	
<sup>a</sup> English end-of-course tests included separate tests for reading and writing. <sup>b</sup> The federal Elementary and Secondary Education Act (ESEA) requires the assessment of mathematics, reading, and science in at least one high school grade. <sup>c</sup> English Language Arts includes reading, which is required by ESEA and by the State, and writing, which is required only by the State.		

Source: The Texas Education Agency's Web site at <http://www.tea.state.tx.us/student.assessment/required/>.

## ***Changes in Student Assessment Testing from the 83rd Legislative Session***

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The 83rd Legislature, whose regular session ran from January 2013 through May 2013, approved several important changes to the State's public education student testing requirements that will affect the Texas Education Agency's (Agency) contract with NCS Pearson, Inc. for student assessment services. Those changes are summarized below.

### **House Bill 5**

Governor Rick Perry signed House Bill 5 (83rd Legislature, Regular Session) on June 10, 2013, making major changes that affect the student assessment contract. The bill limits high-school level, end-of-course tests to five subjects: Algebra I, Biology, English I, English II, and U. S. History. The English I and English II end-of-course tests would assess both reading and writing in the same assessment. Prior to that bill, students were required to take 15 end-of-course tests (see Appendix 4). House Bill 5 also eliminated the requirement that a student's performance on an end-of-course test account for 15 percent of the student's final grade for a course.

Other changes the bill made include:

- Creating the Foundation High School Program and eliminating the minimum, recommended, and advanced high school graduation programs.
- Creating endorsements on a student's diploma and transcript if the student completes certain courses. The endorsements include science, technology, engineering, and mathematics; business and industry; public services; arts and humanities; and multidisciplinary studies. The bill requires four credits in mathematics to earn any endorsement and requires each student to identify an endorsement the student intends to earn upon entering the ninth grade.
- Requiring the Commissioner of Education to develop a transition plan to implement the bill beginning with the 2014-2015 school year.
- Requiring the Agency to redevelop assessment instruments administered to students with significant cognitive disabilities in alignment with federal law.
- Requiring the Agency to administer post-secondary readiness assessment instruments for Algebra II and English III at a school district's option.
- Requiring the release of questions and answer keys to certain assessment instruments during the 2014-2015 and 2015-2016 school years.
- Modifying the terms of payment for the instructional materials allotment.


- Excluding a student who drops out, re-enrolls, and drops out again from computation of dropout and completion rates.
- Requiring the Agency to develop and maintain a Web site known as the Texas School Accountability Dashboard, which provides performance indexes on certain criteria for each campus.
- Requiring the Agency, in collaboration with the Higher Education Coordinating Board and the Texas Workforce Commission, to evaluate, through an external evaluator, the implementation of the changes to the curriculum requirements for high school graduation that would be required by House Bill 5.

## Memo Regarding Amendment Related to the Vendor's Employment of Former Agency Employees

Figure 1 presents the April 2011 memo approved by the Texas Education Agency's (Agency) Deputy Commissioner for Finance and Administration for the Student Assessment Division related to the contract amendment to delete language regarding the appropriateness of NCS Pearson, Inc. (vendor) hiring former Agency employees.

Figure 1

**Memo Related to Vendor Employing Former Agency Workers**

  
**TEXAS EDUCATION AGENCY**  
1701 North Congress Ave. • Austin, Texas 78701-1494 • 512 463-9738 • 512 463-9838 FAX • www.tea.state.tx.us

**MEMORANDUM**

**TO:** Adam Jones

**FROM:** Criss Cloud *CC*  
Gloria Zyskowski *GZ*

**DATE:** April 8, 2011

**SUBJECT:** Amendment to Standard Contract #2527  
Contracted Services for Student Assessment

The Student Assessment Division requests approval to amend contract #2527 with Pearson, "Contracted Services for Student Assessment 2010-2015." Specifically, the requested amendment would eliminate Paragraph 3 under Article V. General and Special Provisions of Contract, which states:

Contractor must make full disclosure of intent to employ or subcontract with an individual who is a former employee/retiree of TEA. Within the first twelve months of leaving employment at TEA, a former employee/retiree selected by the Contractor for employment or subcontracting, shall not perform services on a project or fill a position that the former employee/retiree worked on while employed with TEA."

In light of recent and anticipated further reductions in force at TEA, this amendment would allow the state's assessment contractor more flexibility in meeting future staffing needs, and would help to ensure that the most qualified individuals would be eligible to work on the Texas contract. This is a no cost amendment.

**Approval of amending the Texas Education Agency's Standard Contract**

Given the situation described above, I approve amending the TEA's Standard Contract.

*[Signature]*  
Adam Jones  
Deputy Commissioner for Finance and Administration  
Texas Education Agency

*05/01/2011*  
Date



# Amendment No. 2

STATE OF TEXAS §

COUNTY OF TRAVIS §

Amendment No. 2

Division Number: 212	Program Name: Contracted Services for Student Assessment, 2010-2015
Org. Code: _____	Legal/Funding Authority: TEC Chapter 39, Sub B
Speed Chart: _____	
Payee Name: NCS Pearson Inc.	Payee ID: 14108505273
ISAS Contract #: 2547	PO #: 701-0000028975

**AMENDMENT TO  
STANDARD CONTRACT  
BETWEEN  
TEXAS EDUCATION AGENCY  
AND**

Pearson Educational Measurement / NCS Pearson, Inc.  
NAME OF CONTRACTOR

P. O. Box 30, Iowa City, Iowa 52245  
MAILING ADDRESS INCLUDING ZIP CODE

It is mutually understood and agreed by and between the undersigned contracting parties of the above numbered contract to amend said contract effective 04/01/2011 as follows:

This amendment eliminates Paragraph 3 under Article V. General and Special Provisions of the Contract, which states:

Contractor must make full disclosure of intent to employ or subcontract with an individual who is a former employee/retiree of TEA. Within the first twelve months of leaving employment at TEA, a former employee/retiree selected by the Contractor for employment or subcontracting, shall not perform services on a project or fill a position that the former employee/retiree worked on while employed at TEA.

The contract amount remains the same.

Pursuant to Section 2252.901 of the Texas Government Code, Contractor certifies that it is not a former employee of TEA or that Contractor has not been an employee of TEA for twelve (12) months prior to the beginning date of this contract.

Excluded Parties List System: The Texas Education Agency is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's Excluded Parties List System (EPLS, <http://www.epls.gov>), which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list. Contractor certifies that Contractor is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>. This clause is applicable to all contract renewals.

All other terms and conditions of the original contract remain the same and are incorporated herein as if specifically written.

It is agreed and accepted by a person authorized to bind Contractor that all terms and conditions of this amendment are effective commencing on the above date.

Typed Name: Paul Matzen  
Typed Title: Vrc President

Paul Matzen  
Authorized Signature

**This section reserved for Agency use.**  
I, an authorized official of Agency, hereby certify that this contract is in compliance with the authorizing program statute and applicable regulations and authorize the services to be performed as written above.  
AGREED and accepted on behalf of Agency this 27<sup>th</sup> day of May 2011 (month/year) by a person authorized to bind Agency.

Return three (3) copies with original signature to:  
  
Norma Barrera, Purchasing and Contracts  
Texas Education Agency  
1701 North Congress Avenue, Room 2-125  
Austin, Texas 78701-1494

Shirley Beaulieu  
Shirley Beaulieu, Associate Commissioner  
Finance/ CFO

## ***Reviewers Who Scored the Written Proposals for the Student Assessment Contract***

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The reviewers whose scores for the written proposals were included in the final tabulation for the student assessment contract awarded to NCS Pearson, Inc. held the following positions in November 2009. Some individuals who scored the written proposals may no longer hold these positions:

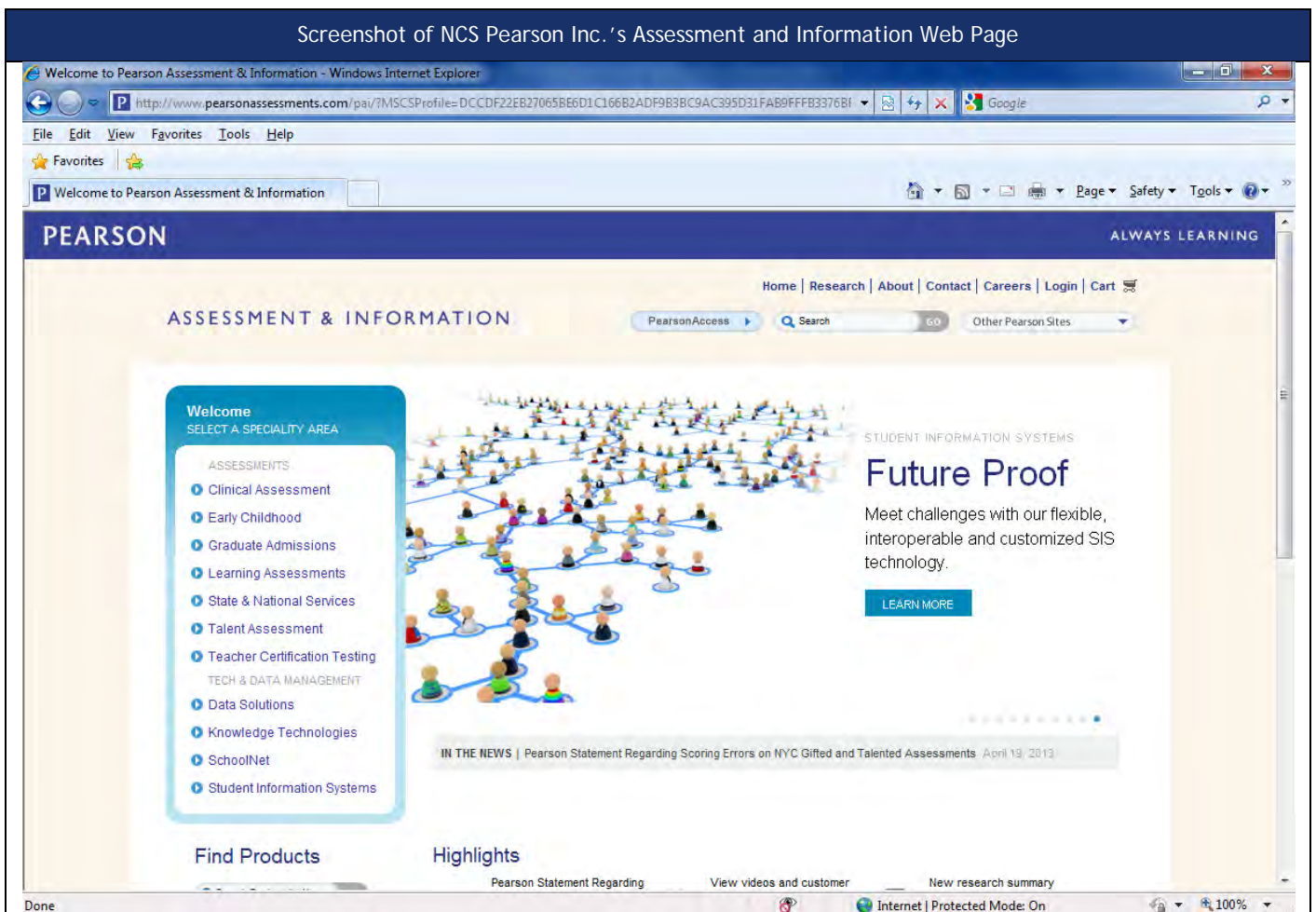
- Director of Planning, Evaluation, and Research, Irving Independent School District.
- Director of Testing and Evaluation, Northside Independent School District.
- Director of Testing and Program Evaluation, Pearland Independent School District.
- District Testing Coordinator, Amigos Por Vida Charter School.
- Data Analyst Technology, Pflugerville Independent School District.
- Research Specialist, Texas Higher Education Coordinating Board.
- Director, Assessment, Research, Evaluation and Accountability, Ysleta Independent School District.
- Executive Director, Accountability and Data Quality, Fort Worth Independent School District.
- General counsel personnel, Texas Education Agency.
- Director, Student Assessment Division, Texas Education Agency.
- Director, Performance Reporting, Texas Education Agency.
- Director of English Language Learners Assessments, Student Assessment Division, Texas Education Agency.
- Director of Reading, Writing, and Social Studies Assessments, Student Assessment Division, Texas Education Agency.
- Director of Test Administration, Student Assessment Division, Texas Education Agency.
- Director of Analysis and Reporting, Student Assessment Division, Texas Education Agency.

## Homepage for NCS Pearson, Inc.'s Assessment Branch

Figure 2 shows a screenshot of NCS Pearson, Inc.'s assessment and information Web page.

NCS Pearson, Inc.'s assessment and information group is a division of Pearson Education. Its mission is "...to improve teaching and life-long learning . . . [and] help students, families, educators and professionals use assessment, information, research, and innovation to promote learning and personal development, advance academic achievement, improve instructional productivity, and transform educational communities."

Figure 2



Source: <http://pearsonassessments.com>.

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