

PUERTO RICO DEPARTMENT OF EDUCATION

REQUEST FOR PROPOSALS FOR THIRD-PARTY FIDUCIARY AGENT SERVICES

PRDE-OCCOA-2020-001

OCTOBER, 2019

Table of Contents

SECTION I: INTRODUCTION	6
INTENTION	6
PROCUREMENT SCHEDULE AND MILESTONES	7
PRDE CONTRACTING OFFICER	8
RFP ORGANIZATION	8
SECTION II: ABOUT PUERTO RICO AND PRDE	10
GENERAL	10
USDE GRANTS	10
SECTION III: STATEMENT OF WORK	12
BACKGROUND	12
SOW ITEM #1: TPFA SERVICE INITIATION AND TRANSITION PLAN	13
SOW ITEM #2: TPFA SERVICES	14
• TPFA Subservice #1: Work Plans	14
• TPFA Subservice #2: Procurement	14
• TPFA Subservice #3: Disbursements	14
• TPFA Subservice #4: Time Distribution and Payroll Accounting	15
• TPFA Subservice #5: Fixed Assets	15
• TPFA Subservice #6: Bookkeeping and Financial Reporting	15
SOW ITEM #3: PROCESS ASSESSMENTS, MODELS AND IMPLEMENTATION PLANS	15
• Current Process Assessment	16
• Recommended Process Model	17
• Process Implementation Plan	18
SOW ITEM #4: CCAP SUPPORT	19
• Regarding the PSC, ProSC and Work Plan Issues	19
• Regarding the Overall CCAP	20
SOW ITEM #5: TPFA SUBSERVICE TERMINATION AND TRANSITION PLANS	20
OTHER SOW AND SERVICE DELIVERY CONSIDERATIONS	21
ESTIMATED SOW DELIVERY SCHEDULE	22
SECTION IV: PROCUREMENT GUIDELINES, TERMS AND CONDITIONS	24
GENERAL PROCUREMENT GUIDELINES	24
PROPOSER MINIMUM QUALIFICATIONS AND REQUIREMENTS (PRIOR TO PRESENTING A PROPOSAL)	24
MANDATORY PROPOSER QUALIFICATIONS AND REQUIREMENTS (PRIOR TO CONTRACT SIGNATURE)	26
GENERAL RULES OF ENGAGEMENT	26
• Cone of Silence	27
• PRDE Rights	28
• Use of Subcontractors	29
• Proposal Preparation Costs	30

PROPOSAL PROCESS DESCRIPTION 30

- **Pre-Proposal Conference** 30
- **Formal Questions**..... 31
- **Letter of Intent** 31
- **Amendments to the RFP** 32
- **Cancellation of the RFP**..... 32
- **Proposal Submission** 32
- **Proposal Clarifications** 32
- **Finalist Selection**..... 33
- **Proposer Selection and USDE Approval** 33
- **Final Compliance Validation and Contract Negotiation and Signature**..... 33

GENERAL TERMS AND CONDITIONS 34

- **Use of Ideas and Resulting Products** 34
- **Best and Final Offers and Negotiations**..... 34
- **Service Quality** 35
- **Contract Requirement** 35
- **Access to Records and Reports; Audits** 36
- **Proposer Guarantees – Proposal (Bid) Bond**..... 37
- **Proposer Guarantees – Performance Bond** 37
- **Proposer Compensation** 37
- **Contract Price Adjustments**..... 38
- **Contract Termination; Events of Default** 38
- **PRDE Remedies** 39
- **No Waiver**..... 40
- **Turnover of Documents and Records**..... 40
- **Confidential Information, Dissemination of Information, Ownership, Survival**..... 41
- **Financial Solvency**..... 42
- **Minimum Contract Requirements; Conditions Required Under Federal and Puerto Rico Laws**..... 43
- **No Other Rights Limited**..... 43
- **Gifts and Gratuities Prohibited**..... 43
- **Independent Contractor** 44
- **Indemnification**..... 44
- **Non-Liability of PRDE Officials**..... 45
- **Insurance Requirements** 46
- **Non-Discrimination** 52
- **Entire Agreement; Amendments** 52
- **Continuing Obligation to Perform** 52
- **Survival/Severability** 53
- **Governing Law** 53
- **Conflict of Interest – Proposer**..... 53
- **Conflict of Interest – TPFA**..... 55
- **Tax Obligations** 56
- **Non-Appropriation** 57
- **Force Majeure**..... 57
- **Limited Proposer Confidentiality Rights** 57
- **Proposer Disqualification Due to Evidence of Collusion** 58

- **TPFA Invoicing Warranties** 58
- **Exclusion of Liability** 58
- **Key Personnel and Subcontractors** 59
- **Small and Minority-Owned Businesses, Women’s Businesses** 60

SECTION V: PROPOSAL SUBMITTAL REQUIREMENTS..... 61

PROPOSAL PREPARATION GUIDELINES..... 61

PROPOSAL SUBMISSION PACKAGES..... 61

PROPOSAL TRANSMITTAL PACKAGE 61

- **Submittal P1: Cover Letter** 62
- **Submittal P2: Proposal Signature Page** 62
- **Submittal P3: Copy of Filed Letter of Intent** 62
- **Submittal P4: Acknowledgement of Receipt of Addenda**..... 62
- **Submittal P5: Non-Collusion Affidavit** 62
- **Submittal P6: Proposal (Bid) Bond** 62
- **Submittal P7: Disclosure of Recent Legal Actions**..... 63
- **Submittal P8: Hold Harmless and Indemnification Agreement**..... 63
- **Submittal P9: Financial Statements** 64
- **Submittal P10: Resolution**..... 64
- **Submittal P11: W-9 Taxpayer Identification Number and Certification (IRS)** 65
- **Submittal P12: Lobbying Certification** 65
- **Submittal P13: Puerto Rico Department of State – Certificate of Good Standing** 65

TECHNICAL PROPOSAL PACKAGE 65

- **Submittal T1: Executive Summary** 65
- **Submittal T2: Proposer Profile and Experiences**..... 66
- **Submittal T3: Execution of the TPFA Service Initiation and Transition Plan** 67
- **Submittal T4: Delivery of TPFA Services**..... 68
- **Submittal T5: Approach to Process Assessments, Models and Implementation Plans** .. 69
- **Submittal T6: Approach to Provide CCAP Support**..... 69
- **Submittal T7: Execution of the TPFA Subservice Termination and Transition Plans** 70

PRICE PROPOSAL PACKAGE 71

- **Submittal C1: Price Proposal**..... 71

PROPOSAL FORMAT, PRODUCTION AND SUBMISSION..... 72

- **Proposal Format**..... 72
- **Proposal Production** 73
- **Proposal Submission** 74

SECTION VI: PROPOSAL EVALUATION 75

EVALUATION COMMITTEE..... 75

PROPOSAL EVALUATION 75

EVALUATION CRITERIA 75

PROPOSAL SELECTION 76

REQUESTS FOR REVIEW..... 77

SECTION VII: APPENDIX..... 78

APPENDIX A: USDE SPECIFIC CONDITIONS LETTER 78

APPENDIX B: PRDE RESPONSIBILITIES AND REQUIREMENTS (PER USDE SPECIFIC CONDITIONS LETTER) 104

APPENDIX C: TPFA RESPONSIBILITIES AND REQUIREMENTS (PER USDE SPECIFIC CONDITIONS LETTER) . 109

APPENDIX D: SIGNATURE PAGE 114

APPENDIX E: NON-COLLUSION AFFIDAVIT 116

APPENDIX F: LOBBYING CERTIFICATION 117

APPENDIX G: PRICE PROPOSAL SAMPLE..... 118

SECTION I: INTRODUCTION

INTENTION

The Commonwealth of Puerto Rico Department of Education (PRDE) herein issues this *Request for Proposals for Third-Party Fiduciary Agent Services, Oficina Central de Compras, Obligaciones y Adjudicaciones de Fondos, Number PRDE-OCOA-2020-001* (the RFP). Its aim is to elicit proposals from qualified business organizations with proven experience providing independent fiscal management and oversight services in the public sector, to perform third-party fiduciary oversight, management and administration of United States Department of Education (USDE) grant funds services to PRDE, in accordance with applicable federal requirements. PRDE's engagement of a third-party fiduciary agent (TPFA) is a specific condition established by USDE for the receipt of USDE grant funds, as stated in its *Commonwealth of Puerto Rico Department of Education FFY 2019 Departmental Specific Conditions letter* (the USDE Specific Conditions Letter) dated June 28, 2019, as may be amended. The services being procured herein include the following processes:

- Executing pre-award planning, grant application, evaluation, approval and work plan approval procedures, in alignment with PRDE's programmatic priorities and consistent with USDE program requirements (e.g. Work Plans)
- Instituting and applying procurement procedures that comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) at 2 CFR §§ 200.318-200.326, including with respect to personal service contracts (PSCs) and professional services contracts (ProSCs) (e.g. Procurement)
- Processing payments and disbursements in accordance with applicable federal requirements, including the Uniform Guidance (e.g. Disbursements)
- Instituting and applying procedures for properly charging salary costs to USDE programs, in compliance with USDE program requirements and the Uniform Guidance at 2 CFR Part 200, Subpart E (e.g. Time Distribution and Payroll Accounting)
- Instituting and applying inventory procedures for managing all property acquired with USDE funds, as described in the USDE Specific Conditions letter, in compliance with the Uniform Guidance at 2 CFR §§ 200.313(a) and (c)-(e) (e.g. Fixed Assets)
- Maintaining financial records and issuing all necessary and required financial reports (e.g. Bookkeeping and Financial Reporting)

These duties are currently performed by PRDE and the Puerto Rico Treasury Department (“Hacienda,”) but shall be performed by the TPFA, working with PRDE and Hacienda, per the USDE Specific Conditions Letter.

In addition to the fiduciary services stated above, by way of this RFP, PRDE is also seeking the TPFA to deliver the following services:

- An assessment of the current state of PRDE’s core administrative processes related to USDE grants, a recommended (new) process model, and the corresponding implementation plan
- Support to PRDE in the development and implementation of a Comprehensive Corrective Action Plan (CCAP), per the USDE Specific Conditions Letter, and in ensuring sustained progress and compliance with USDE requirements

PRDE anticipates that a contract for the services described above will be in place by February 24, 2020, with services to begin within the next 45 calendar days. The contract period for the required services is expected to begin on such date, and be renewed on an annual basis (starting July 1st of each year, the date when the government of Puerto Rico’s fiscal year begins), until PRDE is deemed in full compliance with applicable federal requirements and able to regain responsibility for the financial management of USDE grant funds.

PROCUREMENT SCHEDULE AND MILESTONES

PRDE has established that it intends to abide by the following schedule throughout the procurement process. However, these dates are subject to change due to Puerto Rico legal and regulatory requirements, such as award reconsideration processes:

Activity	Date(s)
Issuance of the RFP	October 11, 2019
Pre-Proposal Conference	October 18, 2019
Deadline for submittal of formal RFP questions	October 23, 2019
Date of PRDE response to formal RFP questions	October 30, 2019
Deadline for submittal of a Letter of Intent	November 8, 2019
Deadline to submit proposals to PRDE	December 6, 2019, by 4:00 p.m. EST
Proposal evaluation period	December 6, 2019 – January 17, 2020
Selection of winning proposal (with USDE approval)	January 31, 2020
Notification of PRDE’s decision	February 3, 2020
Contract signed	February 24, 2020

Table 1: Procurement Schedule and Milestones**PRDE CONTRACTING OFFICER**

Throughout the procurement process, as established above, and only except when explicitly established within this RFP, the designated PRDE Contracting Officer shall be the sole point of contact between proposers and PRDE. Proposers are warned that any contacts or attempts to contact an officer or employee of PRDE (other than the PRDE Contracting Officer) regarding this procurement process shall be deemed a violation of the conditions established herein, which will subject the proposer to immediate disqualification. Relevant PRDE officers and personnel have been made aware of this condition, and are prepared to notify the PRDE Contracting Officer, should such a situation arise. Proposers are advised to ensure that all their personnel are made aware of this condition, as PRDE will act upon the stated circumstances without warning.

All RFP-related communications, questions and requests for clarification are to be directed to the PRDE Contracting Officer named below:

Norma Rolón Barada, Esq.
Director, Central Purchasing Office
Puerto Rico Department of Education
PO Box 190759
San Juan, Puerto Rico 00919
rfp-tpfa@de.pr.gov
(787) 773-2481

RFP ORGANIZATION

This RFP is organized in terms of the following sections:

- **Section I: Introduction**

This section provides background and general information related to the RFP process. It identifies PRDE as the issuing agency, provides a procurement schedule, and defines the official communications channel to be used by PRDE throughout the procurement process.

- **Section II: About Puerto Rico and PRDE**

This section provides a high-level profile of Puerto Rico and PRDE that should help interested proposers in preparing and dimensioning their proposals. It provides general background information about Puerto Rico, a description of PRDE as an educational agency, recent grants and transactional volumes.

- **Section III: Statement of Work**

This section describes the items (SOW items) sought by the PRDE within this procurement process. It establishes the reasons and objectives behind the procurement, defines each SOW item in terms of specific requirements and deliverables sought by PRDE, and presents a high-level expected timeline.

- **Section IV: Procurement Guidelines, Terms and Conditions**

This section provides RFP respondents (“proposers”), with detailed relevant information on the conditions and procedures to be heeded and followed within this procurement. Proposers are advised to follow and comply with all of the guidelines, terms and conditions established in this section.

- **Section V: Proposal Submittal Requirements**

This section provides specific instructions that proposers must follow in order to prepare and submit their proposals, in line with the expectations and requirements of the PRDE. Proposers are advised to follow and comply with all of the requirements established in this section.

- **Section VI: Proposal Evaluation**

At a high level, this section describes the selection criteria and approach that PRDE will follow throughout the proposal evaluation and selection process, and the remedies conceded therein by PRDE.

The last section, the Appendix, includes numerous documents related to the procurement process that must be referenced and utilized by proposers.

SECTION II: ABOUT PUERTO RICO AND PRDE

GENERAL

The Commonwealth of Puerto Rico is an unincorporated territory of the United States, with approximately 3.4 million US citizens residing on the island. While its official languages are Spanish and English, Spanish is, by far, the main language used by Puerto Ricans and Puerto Rican government agencies on a daily basis. Over the last few years, the island has faced a number of challenges that have had an impact on many aspects of society, resulting in, among other trends, population loss due to relocation to the mainland.

PRDE is the government agency that directly runs and operates Puerto Rico's public school system. Unlike most US states, PRDE acts both as a State Educational Agency (SEA), and as a single Local Educational Agency (LEA). Information concerning the approximate size of the PRDE school system is provided below:

PRDE Information	2018-2019	2019-2020
Number of students enrolled in PRDE schools	307,282	303,955
Number of educational regions comprising PRDE	7	7
Total number of schools run by PRDE	857	858
Total number of educators employed by PRDE	29,664	
Total number of PRDE employees	43,134	
Total number of irregular PRDE employees	5,073	

Table 2: PRDE Profile Information

As it tries to improve educational services and outcomes while addressing its numerous challenges, PRDE has taken several systemic measures, such as decentralizing its governance into seven semiautonomous regions, consolidating schools (and services provided therein), allowing charter schools, and others. The agency deems USDE grant funds to be a critical resource in order to supplement the accomplishment of its goals, and it is taking steps to ensure compliance with the USDE Specific Conditions Letter.

USDE GRANTS

USDE awards several recurring and nonrecurring grants to PRDE, with the final objective of supplementing the educational services that delivers to Puerto Rico's students. The following table presents approximate dollar and transactional volumes related to the USDE grants managed by PRDE for the fiscal year that ended on June 30, 2019:

Approximate Yearly PRDE Figures	
	FY2018-19
Number of USDE grants typically awarded (excludes grants awarded by other agencies)	16
Dollar amount of grants awarded to PRDE by USDE	\$ 672,466,442
Dollar amount of grant funds disbursed by PRDE through payroll processes (includes expenditures of Consolidated Administrative Funds and the Schoolwide Fund; Schoolwide Fund is comprised of nearly 30% in federal funds, the rest being state funds; the amount stated is the funding total)	\$ 904,744,794
Number of employees paid with grant funds (includes employees funded by Consolidated Administrative Funds and the Schoolwide Fund)	28,465
Dollar amount of grant funds disbursed by PRDE through procurement processes (amount in Purchase Orders generated thru the USDE GAN, including Consolidated Administrative Funds and Schoolwide Fund)	\$ 295,651,966
Number of procurement processes paid with grant funds (amount in Purchase Orders generated thru the USDE GAN, including Consolidated Administrative Funds and Schoolwide Fund)	26,127
Dollar amount of PRDE budget, excluding USDE grants (includes State funds, other internal revenue funds, and USDA and State library grants)	\$ 1,710,645,435

Table 3: Approximate PRDE USDE Grant Volumes, FY 2018-2019

Special Grants Hurricane Relief- Immediate Aid to Restart School Operations	
Number of USDE grants awarded	6
Emergency Assistance to Institutions of Higher Education Program	\$ 3,802,000
Elementary and Secondary Education Hurricane Relief- Immediate Aid to Restart School Operations	\$ 589,170,000
Dollar amount of grant funds disbursed by PRDE	\$ 74,170,779

To support all financial management processes related to these grants, PRDE uses the SIFDE (Sistema de Información Financiera del Departamento de Educación) system (an implementation of Oracle's PeopleSoft Enterprise Grants Management application software, version 9.1), which integrates to the state financial accounting system, PRIFAS (Puerto Rico Integrated Financial Accounting System, also PeopleSoft, version 8.1).

SECTION III: STATEMENT OF WORK

BACKGROUND

On June 28, 2019, USDE delivered to PRDE the USDE Specific Conditions Letter. Among other specific conditions, essentially, the letter requires PRDE to seek assistance from a TPFA in order to carry out the following:

- Financial management services for all grant funds awarded to PRDE by USDE
- Improvement of processes and systems related to the agency's procurement, award and administration of contracts with USDE funds, including PSCs and ProSCs
- Improvement of the agency's grants management system, and related processes and controls
- Development and implementation of a CCAP
- Assessment of PRDE's progress in meeting the objectives of its CCAP

PRDE considers the issuance of this RFP to be the first significant step that it formally takes to address the contents of the USDE Specific Conditions Letter. Hence, the agency's main objectives sought by way of this RFP process are the following:

- Comply with the USDE Specific Conditions Letter
- Achieve sustained fiscal and administrative regulatory compliance
- Implement and ensure process effectiveness (e.g. internal controls), efficiency and transparency
- Promote and ensure proper reporting and availability of USDE grant funds information
- Complete the transition of fiscal management responsibilities back to PRDE as soon as possible, dependent on the progress made implementing a Comprehensive Corrective Action Plan and other corrective actions

This RFP establishes that PRDE seeks to acquire five distinct Statement of Work (SOW) items, as described in detail in the remainder of this section.

SOW ITEM #1: TPFA SERVICE INITIATION AND TRANSITION PLAN

This first SOW item concerns the development and implementation of a *TPFA Service Initiation and Transition Plan*. Its aim is to establish a structured process whereby the TPFA establishes the steps that need to be taken by the parties in order to transfer responsibilities covered by the agreement from PRDE to the TPFA within an expected maximum timeframe of 45 calendar days after contract signing. The main activities that the TPFA is expected to carry out to achieve are the following:

- Conduct an initial review of current PRDE financial processes, controls, systems and reporting requirements, as they relate to grants awarded by USDE, in order to determine steps to be taken to enable a transfer of responsibilities from PRDE to the TPFA
- Formalize a *TPFA Service Initiation and Transition Plan* document identifying the following:
 - Specific conditions that need to be satisfied prior to transfer of responsibilities from PRDE to the TPFA
 - Specific steps required to complete the transfer of responsibilities from PRDE to the TPFA
 - Parties (PRDE, TPFA or other) responsible for completing each specific step
 - Date(s) by which the responsible parties must complete each specific step, in order to fulfill the required transfer of responsibilities from PRDE to the TPFA within the allotted timeframe
- Discuss and agree to the *TPFA Service Initiation and Transition Plan* with PRDE management
- Upon approval, execute the *TPFA Service Initiation and Transition Plan* within the established timeframe of 45 calendar days, and ensure that the TPFA's and PRDE's responsibilities, as stated in the therein, are indeed completed on time

This SOW Item #1 would culminate once the entire *TPFA Service Initiation and Transition Plan* is executed to the parties' satisfaction, and the third-party fiduciary activities begin.

SOW ITEM #2: TPFA SERVICES

This second SOW item is concerned with carrying out the third-party fiduciary services required by PRDE and USDE. More specifically, the TPFA's responsibility will be that of performing all financial management duties for all grants awarded by USDE to PRDE on or after June 28, 2019, and for all such grants previously awarded that are available for obligation or liquidation as of June 28, 2019 (TPFA Services). TPFA Services shall be delivered as per Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 75 and 76, and in line with the Uniform Guidance requirements, 2 CFR Part 200.

The TPFA shall perform the financial management of grants from USDE to PRDE, by executing the following "TPFA Subservices," also noted in Section I:

- **TPFA Subservice #1: Work Plans**

This subservice consists of executing USDE grant pre-award planning, grant application, evaluation, approval, and work plan approval procedures, in alignment with PRDE's programmatic priorities. The subservice will terminate once PRDE is compliance with the conditions established by USDE, and USDE approves termination.

- **TPFA Subservice #2: Procurement**

This subservice is concerned with instituting and applying PRDE procurement procedures, in compliance with federal requirements, including PSCs and ProSCs. The subservice will terminate once PRDE is compliance with the conditions established by USDE, and USDE approves termination.

- **TPFA Subservice #3: Disbursements**

This subservice includes all tasks and duties related to processing payments and disbursements at PRDE, including interacting with PRDE personnel in order to carry out drawdown processes. The subservice will terminate once PRDE is compliance with the conditions established by USDE, and USDE approves termination.

- **TPFA Subservice #4: Time Distribution and Payroll Accounting**

This subservice includes all processes related to PRDE employee time distribution (in order to correctly distribute payroll costs between state funds and federal grants within 10 calendar days of PRDE's delivery of the corresponding payroll distribution information, and to attribute federal payroll costs to specific USDE grants), and instituting and applying payroll accounting procedures in compliance with federal requirements. The subservice will terminate once PRDE is compliance with the conditions established by USDE, and USDE approves termination.

- **TPFA Subservice #5: Fixed Assets**

As part of this subservice, the TPFA is expected to institute and apply inventory (fixed asset) administration procedures in compliance with federal requirements. The subservice will terminate once PRDE is compliance with the conditions established by USDE, and USDE approves termination.

- **TPFA Subservice #6: Bookkeeping and Financial Reporting**

This last subservice is concerned with duly and accurately maintaining PRDE's financial records for all USDE grants and issuing any necessary and required financial reports. The subservice will terminate once PRDE is compliance with the conditions established by USDE, and USDE approves termination.

For a more detailed explanation of the responsibilities to be borne by the TPFA for this SOW Item #2, refer to Appendix A: USDE Specific Conditions Letter and Appendix C: TPFA Responsibilities and Requirements (per USDE Specific Conditions Letter).

This SOW Item #2 would culminate once all other SOW items detailed in the RFP have been successfully executed, and USDE determines that PRDE is ready to assume financial management responsibilities back from the TPFA.

SOW ITEM #3: PROCESS ASSESSMENTS, MODELS AND IMPLEMENTATION PLANS

This third SOW item consists of carrying out a comprehensive assessment of several of PRDE's fiscal and administrative processes that are related to the administration of grants awarded by USDE, defining a recommended (new) process model, and delivering the corresponding (detailed) implementation plan. The PRDE processes for which such services shall be delivered are the following:

- Grant planning, application, evaluation, approval and work plan approval process, and extending to work plan effectiveness monitoring, work plan performance analysis, and evaluation of work plan results alignment with initially stated goals
- Goods and services “procure-to-pay” process (including processes and systems related to the agency’s procurement, award and administration of PSCs and ProSCs, as well as any other procurements)
- Employee “hire-to-retire” process (particularly including employee time distribution and payroll accounting procedures)
- Fixed asset “acquire-to-retire” process
- Grant management, accounting and reporting process

Proposers must assume that each process, as stated above, encompasses several related processes and sub-processes (for example, the “acquire-to-retire” process, aside from fixed asset purchases, registration, tracking and eventual disposition, also implies related sub-processes, such as asset transfers, physical inventories, depreciation, asset permutations, and others). Hence, going forward in this RFP, any reference to the above processes shall automatically imply the stated processes, as well as all the logically related processes and sub-processes that are germane to a government educational agency like PRDE.

For each process specified above, the TPFA shall carry out whichever methodologies and activities it deems necessary in order to capably and completely produce the following deliverables for PRDE:

- **Current Process Assessment**

This would be the “as is” process deliverable. At a minimum, for each process and sub-process, it should include the following deliverable components:

- A detailed process flowchart illustrating the tasks (conditional or otherwise) currently performed by each process actor, the related inputs and outputs, and revealing implicit decision points, controls, regulatory and policy issues, and others. PRDE expectations are that any PRDE resource should be able to easily analyze the document and fathom the stated process issues.

- A detailed inventory of the issues, observations or exceptions found within the process that may have an adversary impact on its effectiveness, efficiency, controls, systems, regulatory compliance, or alignment to established best practices. For each such issue, observation or exception, the document should include one or more recommendations of any feasible nature (e.g. organizational, regulatory, procedural, systemic, human resource, external, others).

The TPFA is encouraged to include any narratives it deems necessary to complement the deliverable components identified above, and provide additional insight (e.g. process volumes, potentially hidden bottlenecks, other items).

- **Recommended Process Model**

This would be the “to be” process deliverable. Based on the contents of the *Current Process Assessment*, at a minimum, for each process and sub-process, it should include the following deliverable components:

- A flowchart illustrating the steps comprising the new process or sub-process, identifying the corresponding actors and the related inputs and outputs, and implicit decision points, controls, systems, regulatory and policy issues, and others. PRDE expectations are for any PRDE resource to be able to analyze the document and easily fathom any related issues.
- A detailed inventory of the implications, requirements and assumptions related to the flowchart, which could be of an organizational, regulatory, procedural, systemic, human resource, external, or other nature. The inventory should include a narrative of the target objectives of the flowcharted process, and a description of how the related implications, requirements and assumptions guarantee their accomplishment.

PRDE recognizes that the *Recommended Process Model* could potentially require the implementation, consolidation or elimination of one or more of its current information systems. PRDE is open to such requirement, yet such a recommendation should be discussed and agreed upon between the parties as the *Recommended Process Model* deliverable is being developed.

PRDE currently uses the SIFDE system to facilitate all of its financial and grants management operations. Implemented software functionality includes General Ledger (and financial statements), Accounts Receivable, Billing, Accounts Payable, Purchasing (Requisitions, Request for Quotations, Purchase Orders, Receipts, Procurement Contracts), eSettlement (vendor online invoicing), Security, Query Manager and Reporting Tools (Crystal & BI Publisher). PRDE's "going-in position" regarding SIFDE is that it sufficiently supports its needs with regards to grants management, financial management, and related functions, albeit with areas in which more sophisticated implementation may be of benefit. As such, PRDE is open to a *Recommended Process Model* that may require further SIFDE implementation, yet it would not necessarily be open to replacing SIFDE altogether. Any minor differences or deviations from this position may be discussed and agreed to between the parties as the *Recommended Process Model* deliverable is being developed.

The TPFA is encouraged to include any narratives it deems necessary to complement the deliverable components identified above, and provide additional insight to PRDE.

- **Process Implementation Plan**

This deliverable would identify, outline and describe the specific initiatives that PRDE would need to carry out in order to implement the *Recommended Process Model*, in terms of objectives, scope, main activities and tasks, responsible party, estimated elapsed time, estimated resource and cost considerations. Of particular importance for the *Process Implementation Plan* is the following:

- The *Process Implementation Plan* must include, in detail, initiatives aimed at building PRDE capacity in order to be able to eventually transfer TPFA process functions (at the TPFA Subservice level) back under its control, upon culmination of the implementation.
- Each such capacity-building initiative in the *Process Implementation Plan* shall include documentation of required roles, key capabilities per role, professional qualifications, initial training requirements, talent acquisition and retention implications and strategies, on-the-job training strategies, and other related measures.

The TPFA is encouraged to include any additional narratives it deems necessary to complement the above, and provide additional insight to PRDE.

All deliverables comprising this SOW Item #3 shall be discussed in detail with PRDE management, agreed-upon between the parties, and finalized by the TPFA accordingly. They shall be approved following the deliverable acceptance procedure that shall be established between the parties. Such acceptance would signal the culmination of this SOW Item #3.

Upon final acceptance of SOW Item #3 by PRDE, it will be a PRDE responsibility and prerogative to immediately structure and execute an initiative aimed at executing each *Process Implementation Plan*. Whichever means and mechanisms PRDE uses to accomplish this would be defined and pursued at such point, based on prevailing realities, except in those instances in which the successful completion and implementation of a process is necessary before the reconsideration and potential removal of the third party fiduciary requirement, as specified in the USDE Specific Conditions Letter, Section IV.C.

SOW ITEM #4: CCAP SUPPORT

This fourth SOW item requires the TPFA to support PRDE's efforts to develop and implement a Comprehensive Corrective Action Plan (CCAP), as required by the USDE Specific Conditions Letter, that incorporates specific action steps, measurable objectives, and completion dates to address 1) PRDE's significant need for improvement in managing USDE grant funds, based on all the *Current Process Assessments*, *Recommended Process Models*, and *Process Implementation Plans* developed under SOW Item #3; 2) PRDE's continued efforts to improve accountability with respect to the use of funds for PSCs and ProSCs; and, 3) PRDE's continued efforts to improve its grants management system and the work plan process. The specific support services to be provided by the TPFA are the following:

- **Regarding the PSC, ProSC and Work Plan Issues**
 - Assist PRDE in the identification of corrective actions and steps required to specifically address currently the remaining areas for improvement, as described in the USDE Specific Conditions Letter)
 - Assist PRDE in structuring the corresponding corrective actions and steps needed to continue to make improvements in each process (PSCs, ProSCs and work plans) and in incorporating these corrective actions and steps into the CCAP
 - Assist PRDE in managing these corrective actions and steps, in order to improve and sustain progress with respect to the PSC, ProSC, and work plan processes

- **Regarding the Overall CCAP**

- Assist PRDE in the initial structuring of the CCAP, based on the *Current Process Assessments, Recommended Process Models, and Process Implementation Plans* developed under SOW Item #3
- Support PRDE's efforts in discussing and agreeing to the CCAP with USDE
- Assist PRDE in the management of the plans and actions established in the CCAP (the CCAP program), in order to warrant implementation progress and success
- On a quarterly basis, assist PRDE to assess progress made by PRDE towards CCAP compliance, and assist in the issuance of a *CCAP Compliance Report*
- Periodically, support PRDE in the update and maintenance of the CCAP, including each *Process Implementation Plan* initiative aimed at building PRDE capacity (in order to be able to revert process functions back under PRDE control, at the TPFA Subservice level)
- Continuously support PRDE and USDE discussions regarding CCAP status

The TPFA shall continue providing the services described herein until the CCAP is fulfilled to USDE's and PRDE's satisfaction. At such time, this SOW Item #4 would be deemed to have completed.

SOW ITEM #5: TPFA SUBSERVICE TERMINATION AND TRANSITION PLANS

This last SOW item concerns the transfer of financial management responsibilities back from the TPFA to PRDE. Such a process can only begin to take place once USDE has determined that PRDE has resolved the issues and related tasks within the CCAP and the Process Implementation Plan necessary for reconsideration and modification of the conditions specified in the USDE Specific Conditions Letter. Hence, on a yearly basis, for as long as the TPFA is providing any TPFA Subservices (as specified in SOW Item #2, TPFA Services), and independently for each TPFA Subservice, upon initial agreement with PRDE, the activities that the TPFA is expected to carry out as part of this SOW item are the following:

- Assess then-prevailing processes, controls and systems, and PRDE's capacity and readiness to assume control

- Discuss such assessment with USDE and PRDE, in order to jointly determine the feasibility and approval of a transfer of each TPFA Subservice back to PRDE
- Formalize a *TPFA Subservice Termination and Transition Plan* document, identifying required steps, dates and responsibilities between the parties, exclusively focusing on transferring responsibilities back to PRDE (identifying and specifying conditions that need to be satisfied prior to cutover of responsibilities from the TPFA back to PRDE)
- Discuss the *TPFA Subservice Termination and Transition Plan* with USDE and PRDE and reach final agreement
- Upon final agreement, oversee, secure and complete the implementation the *TPFA Subservice Termination and Transition Plan*

For each TPFA Subservice, as described in SOW #2, this SOW Item #5 would culminate once the entire *TPFA Subservice Initiation and Transition Plan* is executed to the parties' satisfaction. Once all TPFA Subservices are transferred back to PRDE, this SOW Item #5 and the TPFA Services relationship between PRDE and the TPFA would conclude.

OTHER SOW AND SERVICE DELIVERY CONSIDERATIONS

Throughout the execution and delivery of the stated SOW items, PRDE and the TPFA will need to establish a number of mechanisms in order to effectively manage and administer the ongoing relationship between the parties. At a minimum, PRDE herein states the mechanisms that it expects to be implemented between the parties:

- PRDE will assign a full-time TPFA Program Manager with the capacity and authority to interact with the TPFA and manage all issues arising therein. PRDE may also assign or contract additional resources in order to support the TPFA Program Manager role: that of proactively managing all aspects of the relationship between PRDE and the TPFA.
- The TPFA will assign a PRDE Program Manager with the capacity and authority to interact with PRDE and manage all issues arising therein. It is a TPFA prerogative to determine whether and how many additional personnel will be assigned to this role.
- Both PRDE and the TPFA will formally define and implement all of the necessary relationship management procedures. As a starting point, the parties will agree to define the following:
 - Project change control procedure

- Deliverable submittal procedure
- Deliverable acceptance procedure
- Invoice acceptance procedure
- Issue escalation procedure
- Dispute management and resolution procedure (including billing disputes)

Particularly regarding dispute management and resolution, the procedure must be entirely compliant with the PRDE responsibilities established in Attachment A of the USDE Specific Conditions Letter, which is included in this RFP in Appendix B: PRDE Responsibilities and Requirements (specifically referring to item #3).

Both PRDE and the TPFA shall recognize that other mechanisms may need to be implemented between the parties, and shall agree to work in good faith to define them at the earliest possible time.

ESTIMATED SOW DELIVERY SCHEDULE

PRDE herein provides a Gantt chart that establishes agency estimates and expectations regarding when each SOW item (and related activities) should take place (the exact dates may vary, and PRDE recognizes that, prior to initiating execution of SOW Item #5: TPFA Subservice Termination and Transition Plans, related items in SOW Item #4: CCAP Support must have culminated):

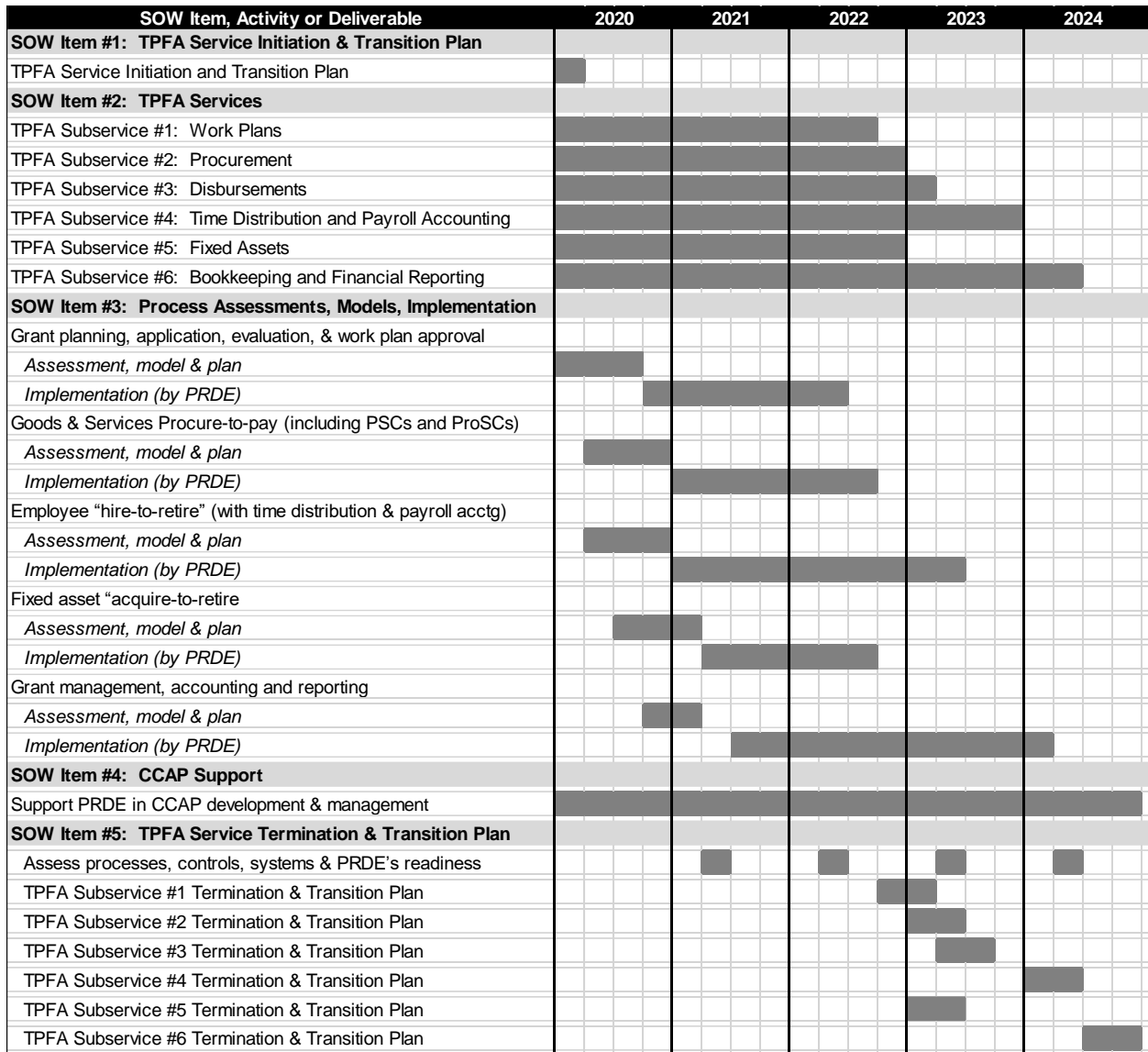


Figure 1: TPFA Services Gantt Chart

SECTION IV: PROCUREMENT GUIDELINES, TERMS AND CONDITIONS

GENERAL PROCUREMENT GUIDELINES

This RFP and this procurement process subscribe to PRDE's established procurement procedure, *Procedimiento de Solicitud de Propuestas bajo las Disposiciones del Reglamento para la Adquisición, Ventas y Subastas de Bienes, Obras y Servicios No Personales y para la Adquisición de Servicios Profesionales por Método Competitivo del Departamento de Educación de Puerto Rico, según enmendado* (PRDE's Procedure for Requests for Proposals under its Regulation for the Acquisition, Sales and Bids of Goods, Work, and Non-Personal Services and for the Acquisition of Professional by means of a Competitive Process, as amended). A copy of this procedure is available in the PRDE website, www.de.pr.gov. As well, and per USDE requirements, this procurement process will be conducted in alignment and compliance with 2 CFR 200.318-326, accessible through www.ed.gov. It is PRDE's intention to ensure that the entire RFP and procurement process follow generally accepted best procurement and contracting practices.

PROPOSER MINIMUM QUALIFICATIONS AND REQUIREMENTS (PRIOR TO PRESENTING A PROPOSAL)

Given the nature of the services to be provided by the TPFA, and in line with USDE Specific Conditions Letter expectations, PRDE has established that the organizations that shall participate in this procurement shall meet all of the following (mandatory) minimum qualifications and requirements:

- The organization must not be named or related in any way to any organization or individual who has been indicted for any potential felonies or found guilty of committing any felonies against the government of Puerto Rico and/or its related agencies. This also applies to subcontractors with which the organization intends to engage with the objective of preparing a proposal and/or delivering the requested services. The organization must be aware that the contract with PRDE will specify 2 CFR 200.326 – Contract Provisions, as described in Appendix II to Part 200 – Contract Provisions for non-Federal Entity Contracts Under Federal Awards.
- The organization must not have been involved with any initiative aimed at evaluating, reevaluating or restructuring PRDE as an agency during the last 10 years, directly or indirectly. The organization must not possess, have, or have had access to any PRDE financial or operational information that could be deemed to provide an “unfair advantage” over other potential proposing organizations.

- The organization has demonstrable and referable experience successfully performing grants management or similar services for entities that receive federal grants, or similar expertise providing fiduciary services for public or private entities, with minimum grant awards of \$100MM per year.
- The organization has demonstrable and referable experience successfully performing financial business process assessment and modeling/reengineering services, like those specified in SOW Item #3, for the processes identified therein, and for a public or private entity.
- The organization has demonstrable and referable experience successfully performing program and project management services like those specified in SOW Item #4, for a public or private entity.
- The organization is not involved in any litigation processes with USDE and the government of Puerto Rico, and is free of any other potential conflicts of interest.
- The organization has booked minimum revenues of \$25MM per year over the last three years.
- The organization employs a minimum of 30 professionals with demonstrable and referable experience providing grant management or related services.
- The organization possesses and intends to deploy at PRDE a team that would include a sufficient number of professionals, proficient in Spanish and English (both), including oral, reading and writing skills, in order to effectively communicate and interact with PRDE and other Puerto Rico government staff.
- The organization possesses, and will submit, as part of its proposal, audited financial statements, corresponding to the last three fiscal years.
- The organization must be authorized to do business in Puerto Rico by the Puerto Rico Department of State.

The qualifications and requirements specified above shall apply to the proposer that aims to become the TPFA. Should a proposer intend to use subcontractors, noncompliance by the proposer with any of the stated minimum qualifications and requirements shall automatically preclude proposer from participating in the procurement process. PRDE will not consider any proposals from organizations that do not comply with all of the stated minimum qualifications and requirements.

MANDATORY PROPOSER QUALIFICATIONS AND REQUIREMENTS (PRIOR TO CONTRACT SIGNATURE)

Given the nature of the services to be provided by the TPFA, in line with the USDE Specific Conditions Letter and expectations, and in compliance with the contents of this RFP, the organization that ends up winning this procurement process shall comply with all of the following (mandatory) qualifications and requirements, prior to contract signature:

- The organization must be approved by USDE as the selected TPFA for PRDE.
- Prior to signature of any contract, the chosen organization must register with Puerto Rico's *Administración de Servicios Generales* (ASG) as a vendor qualified to do business with the government of Puerto Rico (the *Registro Único de Licitadores*).
- The organization must present the professional qualifications of all members of the services team (including subcontractors), including Spanish language qualifications, which will be subject to PRDE approval.
- The organization must commit to deploying its full-time services team at facilities provided by PRDE. In cases of full-time personnel that the organization wishes to deploy at any other facility (including remote personnel), the organization must commit to doing so only with prior and formal PRDE approval.

Noncompliance with any of the stated contract signature qualifications and requirements will automatically afford PRDE the option of negotiating a different contract (including fee adjustments), selecting another TPFA, or other discretionary alternatives it may deem necessary.

GENERAL RULES OF ENGAGEMENT

As this procurement process progresses, up to its eventual culmination, proposers shall recognize the following general rules of engagement:

- **Cone of Silence**

During the RFP process, all communications, questions, discussions or exchange of information to be had between proposers and PRDE shall be conducted exclusively as indicated in this RFP, and entirely through the person designated as the PRDE Contracting Officer. Any *ex parte* communications between a proposer and a PRDE employee other than the PRDE Contracting Officer will be considered grounds for immediate disqualification of the proposal (refer to Section I of this RFP). Communications related to this RFP process between the persons indicated below are prohibited:

- A proposer, proposer subcontractor, proposer lobbyist, or proposer consultant (or any other party related to the proposer) and PRDE personnel
- A proposer, proposer subcontractor, proposer lobbyist, or proposer consultant (or any other party related to the proposer) and any member of the Evaluation Committee designated to conduct the selection process for this RFP

As an exception to this rule, unless specifically disallowed otherwise in this RFP, the cone of silence does not apply to the following:

- During contract negotiations with the selected proposer, communications between a proposer, proposer subcontractor, proposer lobbyist, or proposer consultant (or any other party related to the proposer) and the Director of the PRDE Legal Division, as previously identified and referred by the PRDE Contracting Officer
- Submittal of formal questions as permitted under this RFP
- Oral communications at the Pre-Proposal Conference
- Oral presentations by the proposing team before the Evaluation Committee designated to conduct the selection process for this RFP

PRDE will keep records of all permitted communications, as established above. Proposers are warned that any other communications or attempts to initiate communication not identified above regarding this RFP and the ensuing procurement process will be deemed in violation of the conditions established herein, and will render the proposer subject to immediate disqualification (proposers are advised to refer to Section I of this RFP).

- **PRDE Rights**

Throughout the procurement process and in consultation with USDE PRDE reserves, at its sole discretion and for its sole convenience, the following rights with regard to this RFP, without limitation:

- Reject any or all proposals
- Amend this RFP
- Correct errors in this RFP
- Cancel the entire RFP or reduce the scope of services
- Extend the deadline for submitting proposals
- Issue one or more subsequent RFPs for the same services
- Appoint an Evaluation Committee to review proposals and make proposer selections
- Seek the assistance of technical experts to review proposals and make recommendations
- Invite one or more proposers for presentations and negotiations after review of proposals
- Negotiate with any, all, or none of the proposers
- Solicit best and final offers from all, some or none of the proposers
- Award a contract to one or more proposers
- Award a contract without discussions or negotiations
- Investigate the qualifications of any proposer under consideration
- Investigate the qualifications of proposers and any subcontractors declared by proposers
- Require additional information or confirmation of information furnished by a proposer, and/or require additional evidence of qualifications to perform the services described in this RFP

- Waive informalities and irregularities in proposals
- Disqualify proposers for non-responsiveness or proposal deficiencies
- Award a contract for longer or shorter terms than originally envisioned, and/or with options to renew
- Renegotiate or revise the contract based upon rule changes prior to and/or after the signature of the contract
- Disqualify proposals if there is evidence of collusion with intent to defraud or other illegal practices on the part of any proposer
- Acquire the services, as may be required by PRDE
- Exercise any other right or take any other action allowed by law or regulation

PRDE shall not be considered obligated upon an award, until after execution of a contract. The proposer selected for award shall enter into contractual negotiations with PRDE, which would also explicitly reference the contents of the proposal submitted by the selected proposer and the requirements established in this RFP. Proposers shall accept that the contract will incorporate the selected proposal, and any other written representations submitted with the proposal or during the proposal evaluation process.

No proposer shall have any rights against PRDE arising at any stage of the solicitation from any negotiations that take place, or from the fact that PRDE does not select a proposer for negotiations.

- **Use of Subcontractors**

To deliver the services specified in this RFP, proposers may engage and the use subcontractors. However, subcontracting proposers shall comply with the following:

- In their proposals, proposers shall furnish a list of the subcontractors that they intend to utilize in order to deliver the proposed services, if any, and the specific services that they would be delivering
- The proposer, not the subcontractor, shall be the party delivering the services specified in SOW Item #2: TPFSA Services
- The proposer shall be the party delivering at least 51% of the services specified in this RFP (in terms of dollars invoiced)

- Subcontracting proposers are expected by PRDE to implement, at a minimum, the affirmative steps listed in 2 CFR 200.321 to use small and minority businesses, and women's business enterprises as subcontractors, where possible (proposer plans to implement the affirmative steps must be included with the proposal)
- Proposers will require, from all subcontractors compliance, with all applicable federal and local laws and regulations and submittal of all certificates and certifications required under federal and Puerto Rico laws and regulations

- **Proposal Preparation Costs**

The entire cost of preparation of proposals will be independently borne by each proposer. Under no circumstances may proposers collect proposal preparation charges from PRDE (even in the case of a cancellation of this RFP).

PROPOSAL PROCESS DESCRIPTION

As established in the procurement schedule (Table 1), once PRDE issues this RFP, the procurement process to be carried out shall include the following activities:

- **Pre-Proposal Conference**

A Pre-Proposal Conference will be held on the date specified in Table 1 to discuss the initial issues raised by potential proposers and gather questions that at the time may arise. This conference will be held in the **"Sala de los Secretarios" of the Puerto Rico Department of Education, Federico Costas #150, Hato Rey, Puerto Rico**. Potential proposers who may be unable to travel to Puerto Rico may also participate via conference line, which will be provided to all proposers ahead of the Conference. The language of preference will be in English.

Participants are encouraged to submit questions in writing (via email) to the PRDE Contracting Officer, prior to the Pre-Proposal Conference. Questions received prior to the Pre-Proposal Conference will be addressed orally at the Pre-Proposal Conference, to the extent possible. Conference participants are cautioned that oral responses are not binding on PRDE until they are put in writing (via email) and equally published to all participants.

Pre-Proposal Conference participants shall be independently responsible for all of their costs associated with attendance.

Participation in the Pre-Proposal Conference is strongly suggested, though not mandatory, as a means of assisting potential proposers in preparing their proposals.

- **Formal Questions**

Questions or clarifications desired by potential proposers regarding the meaning or interpretation of any of the items and provisions of this RFP must be submitted in writing (via email) to the PRDE Contracting Officer. The deadline for submittal of such questions is referenced in Table 1.

Answers to submitted questions will be simultaneously provided to all potential proposers by the date established in Table 1. Only those explanations, clarifications or instructions formally provided by the PRDE Contracting Officer will be binding upon PRDE. Answers to questions will be provided in PRDE's official website, on the same place this RFP is published.

- **Letter of Intent**

Proposers that attend the Pre-Proposal Conference and plan to submit a proposal in response to this RFP are required to submit a Letter of Intent by the date cited in Table 1. Only those proposers that submit a Letter of Intent by the established date will continue to receive formal communications from the PRDE Contracting Officer (e.g. RFP amendments). The submission of a Letter of Intent is a mandatory prerequisite to the submission of a proposal, yet it is not binding on the proposer.

The Letter of Intent must unequivocally state the proposer's intention to participate in the procurement process and submit a proposal.

The Letter of Intent must also affirm that the proposer meets all of the requirements established in the section titled "Proposer Minimum Qualifications and Requirements (Prior to Presenting a Proposal)," and that the proposer anticipates full compliance with the requirements established in the section titled "Mandatory Proposer Qualifications and Requirements (Prior to Contract Signature)."

Finally, the Letter of Intent must provide name and contact information of the individual that will be thereafter be solely interacting with the RFP Contracting Officer on the proposer's behalf, regarding the RFP process.

- **Amendments to the RFP**

At any point in time before the date when proposals are due, PRDE may deem it convenient or necessary to issue one or more addenda to this RFP. In such circumstance, a formal RFP amendment document will be provided through the PRDE website. In their proposals, proposers will be required to identify and acknowledge each amendment.

- **Cancellation of the RFP**

This RFP does not commit PRDE to award a contract. PRDE may cancel this RFP, in whole or in part, at any time, or reject all proposals submitted in response, when this action is determined to be financially advantageous to PRDE, or otherwise in its best interest.

- **Proposal Submission**

PRDE has established that all proposals are to be delivered by the date and time established in Table 1, as specified elsewhere in this RFP. After the established proposal deadline, PRDE will not accept any additional submissions from proposers, regardless of whether proposers deem such submissions to be essential (e.g. an error correction), nonessential, or mere complementary information pertaining to the proposal. Proposers are not allowed to perfect their offering. Furthermore, PRDE will not be obligated to return any detailed inquiries made by proposers regarding the status of the evaluation process. PRDE will only furnish detailed information once an award is made.

- **Proposal Clarifications**

Throughout the proposal evaluation process, the PRDE Contracting Officer may contact a proposer with questions specific to the submitted proposal, exclusively for clarification purposes. Proposers are expected to provide documented replies to said questions and clarification requests, and are advised that such replies shall become binding on their offer.

- **Finalist Selection**

At PRDE's sole option, and based on the submitted proposal, one or more proposers may be selected as a "Finalist" of the procurement process. Mainly, Finalist status implies that PRDE will require the proposer to prepare and deliver a formal presentation regarding the proposal and the corresponding SOW items. Upon notification of Finalist status, proposers will receive specific instructions regarding the presentations. However, proposers are advised to prepare to cover all of the topics and SOW items offered in their proposal.

Should a proposer be identified as a Finalist, the corresponding formal presentation may be virtual or in person, at PRDE's sole discretion. Presentations will be held at a mutually agreeable date and time, within seven days of PRDE's requested presentation date. Presentations (in person) would be held in San Juan, Puerto Rico. The presentations shall address the SOW items offered in the proposal, and may not be used to change or alter the proposal at all. Failure of a proposer to commit to a satisfactory date for the formal presentation may result in disqualification of the proposer as a Finalist. PRDE's decision in this matter shall be final. All costs related to the presentations will be exclusively borne by the proposer.

PRDE reserves the right to establish which additional Finalist activities may be required, when they will be required, and with which Finalist proposer(s).

- **Proposer Selection and USDE Approval**

Upon culmination of the proposal evaluation process, PRDE will communicate its decision to relevant USDE officers and seek final approval. Upon USDE approval, PRDE will notify all proposers of the results of the proposal selection process, and initiate a contract negotiation and signing process with the selected proposer.

- **Final Compliance Validation and Contract Negotiation and Signature**

As part of the contract negotiation and signature process, PRDE will be engaging with the selected proposer. One essential step of said process is the validation of the mandatory proposer qualifications and requirements (prior to contract signature) stated above. Upon successful validation of such qualifications and requirements and a successful contract negotiation process, and compliance with all applicable Puerto Rico rules and regulations, PRDE and the winning proposer would execute a contract.

GENERAL TERMS AND CONDITIONS

Other terms and conditions that apply to this procurement are presented herein:

- **Use of Ideas and Resulting Products**

PRDE has the right to use any or all ideas and concepts presented in any proposal received in response to this RFP unless a proposer presents a specific statement of objection in the proposal. In no event will PRDE be precluded from the use of ideas that are not the proprietary information of the proposer and so designated in the proposal, or which:

- Were known to PRDE before submission of such proposal; or,
- Properly become known to PRDE thereafter, through other sources or through acceptance of the proposer's proposal.

All products resulting from the execution of the contract resulting from this procurement shall be the sole property of PRDE.

- **Best and Final Offers and Negotiations**

PRDE may request the submission of best and final offers from the Finalists. The request for best and final offers shall be in writing and shall establish a common date and time for the submission. Proposers shall be informed that if they do not submit a best and final offer or a notice of withdrawal, their immediate previous offer will be construed as their best and final offer. Best and final offers shall be evaluated by the Evaluation Committee, provided, however, that the Evaluation Committee makes a written determination that it is in PRDE's best interest to conduct additional negotiations with one or more of the Finalists for purposes of determining their final offer. An invitation to one or more proposers to enter into negotiations or submit a best and final offer or further negotiations is not a guarantee any of the proposers will be awarded a contract.

- **Service Quality**

The winning proposer (the TPFA) will be required to represent and warrant in the contract that it can and will perform, or cause the services to be performed, in strict accordance with the provisions and requirements of the contract. The services will be performed in a timely, professional and competent manner, in accordance with all applicable industry and professional standards. Such services shall be compliant with all applicable local and federal laws, rules, regulations or orders. If PRDE notifies the TPFA, or if the TPFA becomes aware of any non-performance, error or negligence covered by the foregoing warranties, the TPFA shall, at its own expense, promptly (but in no event later than 30 days after written notification by PRDE) correct such non-performance, error or negligence.

The TPFA is responsible for the quality of the work and activities of each of its staff and subcontractors, including without limitation, compliance with the terms of the contract. The TPFA shall retain and utilize sufficient resources to assure the most effective and efficient performance of services and shall utilize professionals licensed to practice the applicable profession, as required by law or by the contract. The TPFA shall use efficient business administration methods and perform the services in the best way and in the most expeditious and economical manner consistent with the best interests of PRDE, so as to ensure, among other things, that the services are performed at a reasonable cost to PRDE and that the services performed by other entities or persons in connection with the contract are also efficiently and cost-effectively delivered.

- **Contract Requirement**

PRDE intends to award a fixed price contract for the services requested in this RFP (based on the firm fixed price provided for each SOW item by the proposer in its proposal). The term of the contract is expected to commence as soon as the contract is executed by PRDE and the selected proposer (the TPFA), and extend for two years, subject to annual budget appropriations by PRDE, with two one-year optional extensions, unless terminated earlier. PRDE reserves the right to award a shorter-term agreement and/or to include additional voluntary contract renewal options. In addition to the provisions of this RFP, any additional clauses or provisions required by federal or Puerto Rico laws or regulations in effect at the time of execution of the contract will be included within the scope of the contract.

Each proposer agrees that if selected as the TPFA under this RFP, it will enter into a written contract with PRDE pertaining thereto. The contract will contain, among other terms, the general and specific terms and conditions contained in this RFP. All general and specific terms and conditions are subject to change by PRDE's legal counsel. In the event PRDE and the proposer fail to enter into a contract, the proposer's approval for award will be revoked by PRDE.

- **Access to Records and Reports; Audits**

The following access to records requirements apply to this RFP and any resulting contract:

- The TPFA agrees to provide PRDE, the Government of Puerto Rico, the USDE, the Comptroller General of the United States, and any of their authorized representatives, access to any books, documents, papers, and records of the TPFA, that are directly pertinent to this RFP or the resulting contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- The TPFA agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

Furthermore, PRDE and/or USDE shall have the right to conduct audits in order to establish if the TPFA is abiding to the terms and conditions contained in the contract. PRDE and/or USDE have the right to conduct or commence to conduct said audits throughout the duration of the contract and within 10 years after the termination date of the contract. The TPFA shall provide all reasonable required assistance to conduct said audits. The auditing party will conduct these audits at its own cost unless the audits disclose that the TPFA has incurred in a breach of the terms and conditions contained in this contract, in which case the TPFA will afford the expenses generated by these audits. The audits will be conducted during normal business hours and upon previous written notification ten calendar days in advance. The written notice shall contain a list of documents that will be required during the audit. However, during the audit, the auditing party may request to examine additional documents.

- **Proposer Guarantees – Proposal (Bid) Bond**

Proposer must provide a proposal (bid) bond in an amount equal to 15% of the contract total. The bond may be issued by a surety company authorized to do business in Puerto Rico and included in the latest Federal Register (Circular 570) as accepted by the Federal Government. The bond may also be in the form of an irrevocable letter of credit issued by a financial institution authorized to do business in Puerto Rico, or a money order, cashier's or certified check issued to the Puerto Rico Secretary of the Treasury.

If the proposer selected for award refuses to accept the award within five calendar days of the award date, or if such proposer refuses to execute the contract arising from this RFP, PRDE shall have the right to execute the bond. Such execution would cover the difference between the proposer's price and the price proposed by the next qualified proposer, as well as other PRDE damages and direct expenses. If the amount of the bond is insufficient, PRDE may file suit against the proposer directly in order to recover the difference.

- **Proposer Guarantees – Performance Bond**

The proposer that is awarded a contract pursuant to this RFP shall be required to submit a performance bond issued by a surety company authorized to do business in Puerto Rico for an amount equal to 100% of the contract total for each contract year, and for any contract renewal period.

- **Proposer Compensation**

Compensation for services performed under the contract shall not exceed the maximum compensation authorized by PRDE therein or applicable federal regulation. PRDE will agree to pay the TPFA the contract compensation for the services delivered during the term of the contract.

Payment of compensation shall be based on actual services delivered during the term of the contract. PRDE shall not be obligated to pay for any services not delivered in compliance with the contract. In the event of early termination of the contract, PRDE shall only be obligated to pay the compensation due up to the date of termination, unless otherwise agreed by PRDE as specified in the immediately preceding paragraph. In no event shall PRDE be liable for any costs incurred or services delivered after the effective date of termination, as provided herein.

- **Contract Price Adjustments**

It is expected that the prices submitted (and negotiated thereafter) shall remain firm for the entire contract term and all extension periods (if any), as stated above.

PRDE shall have the authority to order minor changes in the work not involving adjustment in the contract price or an extension to the contract term and not inconsistent with the contract. Such changes shall be made by written order, or as otherwise established in writing by the parties.

- **Contract Termination; Events of Default**

- **Termination for Convenience or to Protect the Public Interest**

If at any time during the term of the contract, PRDE determines, at its sole discretion, that the services provided by TPFA are no longer in its best interest, PRDE may terminate the contract upon 30-calendar day's written notice to the TPFA. Furthermore, PRDE may terminate the contract if PRDE determines that the termination is necessary for the protection of the public interest. In either instance, PRDE will only pay for services delivered until termination date and will not pay any early termination charges under the contract.

- **Suspension of Services**

Upon 10 days prior written notice from PRDE to the TPFA, PRDE may request that TPFA suspend services in whole or part. The TPFA shall promptly resume performance of services upon written notice from PRDE.

- **Proposer Events of Default**

Events of default ("Events of Default") include, but are not limited to, the following:

- Any material misrepresentation by TPFA in its response to the RFP or the contract
- Breach of any material agreement, representation or warranty made by TPFA in its proposal or the awarded contract
- Failure of TPFA to perform in accordance with or comply with the terms and conditions of the contract

- Default by TPFA under any other agreement TPFA may have with PRDE
- The directors or officers of the TPFA are indicted for the commission of any felony or any misdemeanor that implies corruption or moral depravation, or for any crime against the public treasury, faith or function or that involves public property or funds
- If any license, permit, franchise or authorization needed by the TPFA to carry out its obligations under the contract is suspended, revoked or expired
- Failure to maintain insurance (or required bonds) as required under this RFP and the contract
- An assignment by the TPFA for the benefit of creditors or consent by TPFA to the appointment of a trustee or receiver or the filing by or against TPFA of any petition or proceeding under any bankruptcy, insolvency or similar law

- **PRDE Remedies**

The occurrence of any Event of Default which the TPFA fails to cure, or cause to be cured, within 30 calendar days after receipt of written notice given in accordance with the terms of the contract specifying the Event of Default, or if such Event of Default cannot be reasonably cured within 30 calendar days after notice, the TPFA fails to commence, or cause to be commenced, and continue diligent efforts to cure or cause said Event of Default to be cured, in the sole opinion of PRDE, PRDE may declare the TPFA in default, and give the TPFA written notice of PRDE'S intent to terminate the contract, effective as of the date specified in the notice. After giving written notice to the TPFA, PRDE may invoke any or all of the following remedies:

- Take over and complete the services or any part thereof, either directly or through others (the TPFA shall be liable to PRDE for any excess costs incurred by PRDE; any amount due the TPFA under the contract or any other agreement the TPFA may have with PRDE may be offset against amounts claimed due by PRDE in exercising this remedy)
- Terminate the contract, effective at a time specified by PRDE, in whole or in part, as to any or all of the services yet to be performed and/or if required

- Suspend services during the 30-day cure period if the default results from an action or failure to act by the TPFA which affects the safety or welfare of students or PRDE staff
- Seek specific performance, an injunction or any other appropriate equitable remedy
- Receive from the TPFA any and all damages, including money damages, incurred as a result or in consequence of an Event of Default
- Withhold all or part of the TPFA's compensation under the contract
- Any other legal remedy available to PRDE

- **No Waiver**

No delay or omission, or series of delays or omissions, by PRDE to exercise any right under the contract shall be construed as any type of waiver of any right of PRDE under the contract or the right to declare an Event of Default in the future. The remedies under the terms of the contract are not intended to be exclusive of any other remedies provided, and each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. The parties acknowledge that this right is solely for the benefit of PRDE and if PRDE permits the TPFA or any of its subcontractors to continue to provide services despite one or more Events of Default, the TPFA is not relieved of any responsibilities, duties or obligations under the contract.

- **Turnover of Documents and Records**

Upon demand by PRDE following termination of the contract for any reason, or following the expiration of the contract by its terms, the TPFA shall turn over to PRDE or its designee within ten business days of demand, all materials, supplies, equipment owned, or purchased by PRDE, completed or partially completed work, analyses, data, metadata, electronic documents including but not limited to files in pdf format, Excel, Word and others, computer disks, documents, reports and any other information pertaining to the contract or the performance or furnishing of services, whether prepared by the TPFA or its subcontractors. The TPFA shall cause its subcontractors to undertake the same obligations agreed to by proposer under the contract.

- **Confidential Information, Dissemination of Information, Ownership, Survival**

- **Paragraph A: Confidential Information**

During the performance or delivery of services to PRDE, the TPFA may have access to or receive certain information that is not generally known to others (“Confidential Information”). The TPFA will not use or disclose any Confidential Information or any finished or unfinished originals, documents, screens, reports, writings, procedural manuals, forms, source codes, object codes, work flow charts, methods, construction documents, processes, data, data studies, briefs, drawings, maps, files, records, computer printouts, papers, notes, designs, equipment descriptions, or other materials prepared or generated as a result of the contract (“Work Product”) without the prior written consent of PRDE. The TPFA shall use at least the same standard of care in the protection of the Confidential Information of PRDE as the TPFA uses to protect its own confidential information, but in any event such Confidential Information shall be protected in at least a commercially reasonable manner.

- **Paragraph B: Dissemination of Information**

The TPFA shall not disseminate any information obtained in the performance or delivery of services for PRDE to a third party without the prior written consent of PRDE. The TPFA shall not issue publicity news releases or grant press interviews during or after the performance or delivery of the services without the prior written consent of PRDE. If the TPFA is presented with a request for documents by any administrative agency or with a *subpoena duces tecum* regarding any Confidential Information or Work Product which may be in the TPFA’s possession, the TPFA shall immediately give notice to PRDE and its legal counsel, with the understanding that PRDE shall have the opportunity to contest such process by any means available to it prior to submission of any documents to a court or other third party. The TPFA will not be obligated to withhold delivery of documents beyond the time ordered by a court of law or administrative agency, unless the request for production or subpoena is quashed or withdrawn, or the time to produce is otherwise extended. The TPFA will cause its personnel and subcontractors to undertake the same obligations of confidentiality agreed to by the TPFA under contract.

- **Paragraph C: Ownership**

The TPFA agrees that, to the extent permitted by law, any Work Product created specifically for PRDE under the contract, including any written procedures, rules, regulations or such similar documents, drafted by the TPFA for the performance of work pursuant to this RFP, shall exclusively be deemed “works for hire” within the meaning and purview of the United States Copyright Act, 17 U.S.C. 101§ et seq. All Work Product and Confidential Information shall at all times be and remain the property of PRDE. The proposer will execute all documents and perform all acts that PRDE may request in order to assist PRDE in perfecting or protecting its rights in and to the Work Product and all intellectual property rights relating to the Work Product. All of the foregoing items shall be delivered to PRDE upon demand at any time and in any event, shall be promptly delivered to PRDE upon expiration or termination of the contract within ten business days of demand. In addition, the proposer shall return PRDE’s data in the format requested by PRDE.

- **Paragraph D: Injunctive Relief**

In the event of a breach or threatened breach of paragraphs A, B, and/or C above, the TPFA acknowledges and agrees that PRDE would suffer irreparable injury not compensable by money damages and would not have an adequate remedy at law. Accordingly, the TPFA agrees that PRDE shall be entitled to immediate injunctive relief to prevent or curtail any such breach, threatened or actual. The foregoing shall be in addition to and without prejudice to such rights that PRDE may have in equity, or by law or statute.

- **Paragraph E: Survival**

The provisions of the contract pertaining to Confidential Information, dissemination of information and ownership shall survive the termination or expiration of the contract.

- **Financial Solvency**

The TPFA must represent and warrant, as of the date of submittal of its proposal, and during the term of the ensuing contract, that the TPFA and its subcontractors are financially solvent, are able to pay all debts as they mature, and are possessed of sufficient working capital to complete all services and perform all obligations under the proposal. The TPFA shall also warrant that neither it nor any of its subcontractors owe any non-tax debt to the Puerto Rico or Federal Government.

The TPFA should expect to be paid upon invoice acceptance. For these reasons, the TPFA should demonstrate in its proposal that it has sufficient financial capacity to continue to pay all staff and subcontractors in a timely manner and continue to perform under any eventual contract with PRDE without interruption or delay for at least 90 days.

The TPFA must include copies of its and its subcontractors' audited financial statements as indicated elsewhere in this RFP, along with a summary as to why the TPFA believes that they and any other relevant information provided demonstrate the TPFA's financial capacity to pay employees and subcontractors even when awaiting payment of invoices under this engagement. When awarded the RFP, the TPFA will certify in writing that the TPFA will pay its employees without regard to the timing of payment by PRDE.

- **Minimum Contract Requirements; Conditions Required Under Federal and Puerto Rico Laws**

By submitting a proposal under this RFP, proposers acknowledge and represent that they are or will be able to comply with the minimum requirements in Appendix C: TPFA Conditions and Requirements (per USDE Specific Conditions Letter). In addition, by submitting a proposal under this RFP, proposers acknowledge and represent that they are aware of 2 CFR 200.318–200.326, and local requirements regarding government RFP proceedings.

- **No Other Rights Limited**

Nothing in the foregoing representations and warranties will be construed to limit any other rights or remedies available to PRDE under the law and the contract.

- **Gifts and Gratuities Prohibited**

No gift, gratuity, offer of employment or other item of value was offered or made by the proposer or to the best of proposer's knowledge, by or to any subcontractors, or any of its employees, agents or subcontractors as an inducement for the award of the contract.

- **Independent Contractor**

It is understood and agreed that the relationship of the TPFA to PRDE is and shall continue to be that of an independent contractor. Neither the TPFA nor any of the TPFA's staff, agents, employees or subcontractors shall be entitled to receive PRDE employee benefits. It is further understood and agreed that PRDE shall not be responsible for, nor incur any liability for, any state or federal withholding or other taxes, nor for FICA or state unemployment insurance for the TPFA, its agents, employees or subcontractors, and the payment of any such taxes incurred or due by the TPFA shall be the sole responsibility of the TPFA. The TPFA shall provide PRDE with a valid taxpayer identification number as defined by the United States Internal Revenue Code, including, but not limited to, a social security number or a federal employer identification number.

- **Indemnification**

The TPFA agrees to defend, indemnify and hold harmless PRDE, and its respective members, employees, agents, officers and officials from and against liabilities, losses, penalties, damages and, expenses, including costs and attorney fees, arising out of all claims, liens, damages, obligations, actions, suits, judgments or settlements, or causes of action, of every kind, nature and character arising or alleged to arise out any of the following:

- Negligent or willful acts or omissions of the TPFA, its officials, agents, employees and/or subcontractors in the performance of the contract
- Failure of the TPFA or its subcontractors to comply with applicable law
- Actual or asserted violation or infringement of any domestic or foreign patents, copyrights or trademarks or other intellectual property, or any improper use of confidential information or other proprietary rights that may be attributable to the TPFA or any subcontractor in connection with the services
- Claims by any government agency as a result of a failure by the TPFA or any subcontractor to pay taxes
- Failure of the TPFA to make payments to any subcontractor in accordance with the respective subcontract

- Personal injury to, illness or death of any person, or damage to or destruction of property of any person in any way arising out of or resulting from or related to the services to the extent caused by the TPFA or any subcontractor or anyone directly or indirectly employed by them or anyone for whose acts they may be liable

The TPFA shall, at its own cost and expense, appear, defend and pay all attorney fees and other costs and expenses arising from the indemnification provisions of the contract. In addition, if any judgment shall be rendered against PRDE in any such action, the TPFA shall, at its own expense, satisfy and discharge such obligation of PRDE. PRDE shall have the right, at its own expense, to participate in the defense of any suit, without relieving the selected TPFA of any of its obligations under the indemnification provisions of the contract. PRDE retains final approval of any and all settlements or legal strategies, which involve the interest of PRDE.

If the TPFA, after receiving notice of any such proceeding, fails to immediately begin the defense of such claim or action, PRDE may (without further notice to the TPFA) retain counsel and undertake the defense, compromise, or settlement of such claim or action at the expense of the TPFA, subject to the right of the TPFA to assume the defense of such claim or action at any time prior to settlement, compromise or final determination thereof. The cost and expense of counsel retained by PRDE in these circumstances shall be borne by the TPFA and the TPFA shall be bound by, and shall pay the amount of, any settlement, compromise, final determination or judgment reached while PRDE was represented by counsel retained by PRDE pursuant to this paragraph, or while the TPFA was conducting the defense.

The indemnifications set forth herein shall survive the expiration or termination of the contract.

- **Non-Liability of PRDE Officials**

The TPFA agrees that no PRDE member, employee, agent, contractor, officer or official shall be charged by the TPFA or any of its subcontractors with any liability or expense under the contract, or be held personally liable under the contract to the TPFA or any of its subcontractors.

- **Insurance Requirements**

The TPFA, at its own expense, shall procure and maintain insurance for all operations under the contract, whether performed by the TPFA or by subcontractors. Within 30 days of award notification, the TPFA shall submit to PRDE satisfactory evidence of insurance coverage in the form of a Certificate of Insurance and within 60 days of award notification, the TPFA shall submit to PRDE a certified copy of any insurance policy required under this RFP. The minimum insurance requirements are as follows:

- **Workers' Compensation and Employers' Liability Insurance**

Evidence of compliance with the requirements established by the *Fondo del Seguro del Estado* (Puerto Rico's worker's compensation insurance agency). For any contractors domiciled outside of Puerto Rico, evidence of worker's compensation insurance from the corresponding state will also be required. Workers compensation insurance should be compliant with the Workers Compensation law of the state of the contractor's headquarters and the Commonwealth of Puerto Rico. Employer liability should be included with a minimum limit of \$1,000,000 per accident/per disease/per employee. The policy shall be for the duration of the contract from inception to date of final payment.

The workers compensation policy shall be endorsed with a Waiver of Subrogation in favor of the Commonwealth of Puerto Rico, Puerto Rico Department of Education, all State Departments, Municipalities, Agencies, Boards and Commissions, its officers, agents, servants, employees and volunteers, for all work performed by the TPFA, its employees, agents and subcontractors.

- **Commercial General Liability Insurance**

The TPFA must purchase and maintain without interruption, for the duration of the contract, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work by the TPFA, its agents, representatives, employees or subcontractors, or anyone employed directly or indirectly by any of them. The duration of the contract should be from the inception of the contract until the date of final payment. This insurance shall be endorsed to include the following policy forms:

Coverage	Limits
Commercial General Liability	\$1,000,000.00
General Aggregate	\$2,000,000.00
Products & Complete Operations	\$1,000,000.00
Personal Injury & Advertising	\$1,000,000.00
Each Occurrence	\$1,000,000.00
Fire Damage	\$100,000.00 (Any one fire)
Medical Expense	\$10,000.00 (Any one person)
Employer's Liability Stop Gap:	
Bodily Injury by Accident Each Employee	\$1,000,000.00
Each Accident	\$1,000,000.00
Bodily Injury by Disease Each Employee	\$1,000,000.00
Each Accident	\$1,000,000.00
Personal Property under care, custody and control	\$1,000,000.00
Garage Liability & Garage Keepers-Legal Liability Forms	\$1,000,000.00 (occ. agg)

Commercial General Liability Insurance must include limits of not less than \$3,000,000 per occurrence and \$6,000,000 in the aggregate for this coverage. Coverage shall be for each occurrence and shall include, but not be limited to all operations, contractual liability, independent contractors, products/completed operations. Defense and legal costs shall not erode the Per Occurrence or Aggregate Limits. Claims-made policy form is unacceptable.

○ **Automobile Liability Insurance**

Automobile Liability Insurance when any motor vehicle (whether owned, non-owned or hired) is used in connection with any contract, with limits of not less than \$2,000,000 per occurrence for bodily injury and property damage. This insurance shall include third-party bodily injury and property damage liability for owned, hired and non-owned automobiles and shall be endorsed to include Code 1 "Any Auto". If the contractor does not own any automobiles, the insurance shall be endorsed to include Code 8 "Hired Auto" and Code 9 "Non-Owned Auto".

- **Additional Insured**

All insurance policies with the exception of Workers Compensation and Professional Liability shall include the, the Commonwealth of Puerto Rico, the Puerto Rico Department of Education, all Commonwealth Departments, Agencies, Municipalities, Boards and Commissions, its officers, agents, servants, employees and volunteers as an additional insured.

- **Additional Provisions**

The following additional provisions are required:

- Waiver of Subrogation on all policies, except Workers Compensation and Professional Liability
- Additional Insured Clause
- For any claims related to this project, the proposer's insurance shall be primary
- Proposer agrees to have and maintain the policies as set forth and described herein
- The insurance obligations under the contract shall be 1) all insurance coverage and/or limits carried by the proposer or 2) the minimum coverage required, whichever is greater
- Hold Harmless and Indemnification Agreement
- 90 Days' Notice of Cancellation, of Material Change or Non-renewal, including Non-Payment of Premium
- Cancellation of coverage for any reason does not release the proposer from fulfilling its obligations under the contract.
- Neither the acceptance of the completed work nor the payment thereof shall release the awarded proposer from the obligations of the insurance requirements or indemnification agreement
- The insurance companies issuing the policies shall have no recourse against the Commonwealth of Puerto Rico, the Puerto Rico Department of Education, all State Agencies, Municipalities, Boards and Commissions, its officers, agents, servants, employees and volunteers

- **Certificate of Insurance and Certified Copy of Each Policy**

The insurance company, or its representative, shall submit a Certificate of Insurance within 30 days of notification of the award and within 60 days of notification of the award shall provide a Certified Copy of each policy providing coverage for the scope of work being performed, evidencing all coverage as required under contract and indicating the Additional Insured status as required therein. PRDE will not pay the awarded proposer for any services if satisfactory proof of insurance is not provided prior to the commencement of services.

- **Professional Liability**

Evidence of Professional Liability with minimum limits of \$2,000,000 per occurrence and \$4,000,000 aggregate. A claims-made policy is acceptable. A policy period inception date of no later than the first day of anticipated work under the contract and an expiration date of no earlier than 30 days after anticipated completion of all work under the contract shall be provided. For claims-made coverage, there shall be an extended reporting period of at least 60 months, with full reinstatement of limits, from the expiration date of the policy if policy is not renewed. The policy shall not be cancelled for any reason, except non-payment of premium but said cancellation does not release the proposer from the fulfillment of its obligations under the contract.

- **Excess Umbrella**

Excess Umbrella insurance may be used to meet the minimum requirements for Commercial General Liability including Products and Completed Operations, and Automobile Liability only.

- **General**

TPFA shall furnish the PRDE with Certificates of Insurance reflecting proof of required coverage. The Certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Certificates are to be received and approved by the PRDE before work commences and upon any contract renewal or insurance policy renewal thereafter. The Certificate Holder should be listed as follows:

**Commonwealth of Puerto Rico, Puerto Rico Department of Education
150 Federico Costa
Urb. Industrial Tres Monjitas
San Juan, Puerto Rico
RFP PRDE-OCCOA-2020-001
Project or Contract #**

In addition to the Certificates, the TPFA shall submit the declarations page and the cancellation provision for each insurance policy. PRDE reserves the right to request complete certified copies of all required insurance policies at any time.

If the TPFA does not meet the insurance requirements at policy renewal, at the option of the PRDE, payment to the TPFA may be withheld until the requirements have been met, OR the Agency may pay the renewal premium and withhold such payment from any monies due the TPFA, OR the contract may be suspended or terminated for cause. Failure of the TPFA to purchase and/or maintain any required insurance shall not relieve the TPFA from any liability or indemnification under the contract.

All insurance policies must be issued by insurance companies authorized to do business in Puerto Rico, must have a solid financial position and be classified as "A-" or better and a financial strength of VII or higher by the latest version of the Best Key Rating Guide or be accepted by PRDE after proper evaluation.

Any failure of PRDE to demand or receive proof of insurance coverage shall not constitute a waiver of the TPFA's obligation to obtain the required insurance. The receipt of any certificate does not constitute an agreement by PRDE that the insurance requirements in the contract have been fully met or that the insurance policies indicated on the certificate are in compliance with all contract requirements.

The TPFA's failure to carry or document required insurance shall constitute a breach of the TPFA's agreement with PRDE. Non-fulfillment of the insurance conditions may constitute a violation of the contract, and PRDE retains the right to stop services until proper evidence of insurance is provided, or the contract may be terminated. PRDE will not pay the awarded proposer for any services if satisfactory proof of insurance is not provided before the commencement of services.

Any deductibles or self-insured retentions on referenced insurance coverage must be borne by the TPFA. Any insurance or self-insurance programs maintained by PRDE do not contribute with insurance provided by the TPFA under the contract.

The TPFA shall require any subcontractors under the contract to maintain comparable insurance naming the TPFA, PRDE inclusive of its members, employees and agents, and any other entity designated by PRDE, as Additional Insureds. The TPFA will maintain a file of subcontractor's insurance certificates evidencing compliance with these requirements.

The coverage and limits furnished by the TPFA in no way limit the TPFA's liabilities and responsibilities specified within the contract or by law. The required insurance is not limited by any limitations expressed in the indemnification language in the contract or any limitation placed on the indemnity in the contract given as a matter of law.

The TPFA agrees that insurers waive their rights of subrogation against PRDE.

Prior to signature of the contract, the TPFA and/or its subcontractors shall promptly provide a certified copy of any applicable policy of insurance. PRDE reserves the right to modify, delete, alter or change insurance requirements at any time.

- **Non-Discrimination**

During the term of the contract and any extension or renewal thereof, the TPFA shall not fail or refuse to hire or discharge any individual, or otherwise to discriminate against any individual with respect to compensation, or other terms, conditions, or privileges of employment, because of such individual's race, color, ancestry, religion, sex, sexual orientation, age, handicap, marital status, parental status, military discharge status, or national origin; or to limit, segregate, or classify employees or applicants for employment from equal employment opportunities or otherwise adversely affect an individual's status as an employee because of such individual's race, color, ancestry, religion, sex, sexual orientation, age, handicap, marital status, parental status, military discharge status, or national origin. It is also an unlawful employment practice for the TPFA or any of its subcontractors to subject any PRDE employee, applicant for services, participant, student or volunteer to unwelcome sexual advances, requests for sexual favors or conduct of a sexual nature when submission to or rejection of such conduct is: (i) made either explicitly or implicitly a term or condition of such person's employment, participation or receipt of services; (ii) is used as a basis for a decision affecting the individual's employment, participation or receipt of services; or (iii) has the purpose of creating an intimidating, hostile, or offensive working or learning environment.

- **Entire Agreement; Amendments**

The contract, including all attachments and referenced documents, will constitute the entire agreement of the parties with respect to the matters contained therein. No modification of or amendment to the contract shall be effective unless such modification or amendment is in writing and signed by both parties.

- **Continuing Obligation to Perform**

In the event of any dispute between the TPFA and PRDE, the TPFA shall expeditiously and diligently proceed with the performance of all of its obligations under the contract with a reservation of all rights and remedies it may have under or pursuant to the contract at law or in equity.

- **Survival/Severability**

All express representations and warranties made or given in the contract shall survive the completion of services by the TPFA or its subcontractors, or the termination of the contract for any reason. If any provision or part of the contract is held to be unenforceable, the contract shall be considered divisible and such provision shall be deemed inoperative to the extent it is deemed unenforceable, and in all other respects the contract shall remain in full force and effect; provided, however, that if any such provision may be made enforceable by limitation thereof, then such provision shall be deemed to be so limited and shall be enforceable to the maximum extent permitted by applicable law.

- **Governing Law**

The contract shall be construed in accordance with the laws and regulations of Puerto Rico and the United States of America, and any actions related to the contract shall be hosted solely in the local courts of Puerto Rico, in San Juan, Puerto Rico, and the parties hereby irrevocably submit to the jurisdiction of its corresponding forum.

- **Conflict of Interest – Proposer**

By the submission of a proposal, the proposer represents and warrants, for itself and each of its subcontractors (each, individually, a “Proposer Representative”), that:

- No Proposer Representative, nor any of its partners, officers or employees is or has been an employee or assembly member of the PRDE within two years prior to the deadline to submit proposals to PRDE (as per Table 1)
- No officer, employee, assembly member of the PRDE nor any member of their respective family units, has any direct or indirect economic interest in this procurement or any contract therefore, and that no PRDE officer, employee, advisor or consultant nor any member of their respective family units has any interest or participation in the economic benefits or earnings related to this procurement
- No Proposer Representative, nor any of its partners, officers, employees, directors, associates, advisors or consultants nor any member of their respective family units has any conflict of interest related to the provisions and obligations arising from this procurement

- No Proposer Representative, nor any of its partners, officers, employees or directors has been convicted of or has pleaded guilty to any crime involving fraud, or misuse or misappropriation of public funds
- No Proposer Representative currently employs, or intends to employ, a public official or any member of his or her immediate family
- No Proposer Representative has achieved or may achieve an unfair competitive advantage in the procurement due to other activities or relationships with PRDE or other persons or entities
- By the submission of its proposal, for itself and its respective employees, officers, board members and agents, its participation in the RFP process and, if selected, its engagement by PRDE to perform the obligations under a contract would not result in violation of the applicable provisions of Puerto Rico's Government Ethics Law or in either a personal or an organizational conflict of interest

Any contract awarded under this RFP will preclude the selected proposer from representing before PRDE any bidder, proposer or vendor other than those bidders, proposers, vendors or grantees who may be assigned under the contract during the period the contract is in effect.

Proposers are required to detail any current or former contracts it has/had with any entity of the government of Puerto Rico, or which bear any direct or indirect relation to the activities of the government of Puerto Rico. Furthermore, proposers must provide a description of any recent historical or ongoing legal proceedings, interviews, or investigations being conducted by any Puerto Rico or US law Enforcement agencies involving the proposer's firm or team that are related to transactions executed in or on behalf of Puerto Rico, its state agencies, and/or its public corporations. In addition, proposers must provide a brief description of any work performed for any creditors or guarantors of the government of Puerto Rico, a state agency, and/or a public corporation debt about their positions in Puerto Rico debt obligations, and indicate whether this activity is ongoing, and if not, when the prior assignment concluded.

At some point in the procurement process, PRDE may request information on any perceived conflict of interest. Additionally, PRDE may in the future request a list of direct or indirect relationships the proposer or its professionals have to PRDE officials or executives of state agencies or public corporations. In the event of real or apparent conflicts of interest, PRDE reserves the right, in PRDE's or the government of Puerto Rico's best interest and at its sole discretion, to reject a proposal outright or to impose additional conditions upon respondents. PRDE reserves the right to cancel any contract awarded pursuant to this RFP with 30 days of notice in the event that an actual conflict of interest, or the appearance of such conflict, is not cured to PRDE's satisfaction.

If any question of real or apparent conflict of interest should arise, the determination of PRDE as to such question shall be final and binding. PRDE reserves the right, in the event it determines that a conflict of interest would arise, to reject all or any portion of any proposal based on such conflict of interest.

- **Conflict of Interest – TPFA**

In the performance of its services under the contract, the TPFA agrees to act in a professional and ethical manner, which includes neither having nor representing any adverse interests to PRDE. "Adverse Interests" include the representation of clients that may have or could have interests contrary to PRDE or contrary to the public policy of PRDE. This duty includes the continuous obligation of disclosing to PRDE any relationship of the TPFA with clients or third persons that may constitute a conflict of interest. It shall be understood that there exists a conflict of interests when, in the compliance of any duty to third parties, the TPFA would have to undertake any acts detrimental to the best interests of PRDE, or when for the benefit of another prior, present or potential client, the TPFA would have to promote something to which it would otherwise have to be opposed, in favor of PRDE. Conflict of interest shall also consist of any conduct, which is described or recognized as such in the laws and regulations of Puerto Rico. In any case that PRDE determines that the TPFA has a conflict of interest, it will give written notice to the TPFA of such conflict and will give the TPFA 30 days to resolve the same. Failure to resolve such conflict will result in the termination of the contract.

- **Tax Obligations**

The TPFA shall be responsible for complying with applicable federal and local tax laws and regulations. The TPFA shall pay all required taxes on amounts paid to the TPFA under the contract and indemnify and hold PRDE harmless from any and all taxes, assessments, penalties, and interest asserted against PRDE by reason of the TPFA's relationship, as an independent contractor, created by the contract. The TPFA proposer shall fully comply with the workers' compensation law regarding the TPFA and the TPFA's employees. The TPFA shall indemnify and hold PRDE harmless from any failure of proposer to comply with applicable workers' compensation laws or applicable federal and local tax laws and regulations. PRDE may offset against the amount of any fees due to the TPFA under the contract any amount due to PRDE from the TPFA as a result of proposer's failure to promptly pay to PRDE any reimbursement or indemnification arising under this paragraph.

The TPFA shall bear all taxes and duties levied or imposed on the TPFA under the contract due to services rendered and payments received from PRDE under the contract.

The TPFA will certify in the contract that it has complied with its federal and Puerto Rico tax obligations during the previous five years, including filing income tax returns on earnings or extensions thereof. The TPFA will further certify that it does not have any debt with the government of Puerto Rico, nor for personal or real estate taxes or excise taxes. The TPFA will specifically represent and warrant that all Puerto Rico and federal tax returns have been filed and all obligations have been paid or the TPFA has a valid payment plan with which it is complying.

It is explicitly recognized by proposers that this is an essential pre-condition to any contract or agreement and if the above certification should prove not to be truthful in all or in part, it will be sufficient cause for the PRDE to not engage the services of the proposer or to cancel any agreement entered into immediately without any further obligation and proposer will have to reimburse PRDE any and all monies paid under the contract.

- **Non-Appropriation**

Expenditures not appropriated by PRDE in its current fiscal year budget are deemed unrecognized expenditures and therefore unallowable expenses. In the event sufficient funds are not appropriated in a subsequent fiscal year by PRDE for performance under the contract, PRDE shall notify the TPFA and the contract shall terminate on the last day for the fiscal period for which funds were appropriated. In no event shall PRDE be liable to the TPFA for any amount in excess of the then current appropriated amount.

- **Force Majeure**

Neither the TPFA nor PRDE shall be responsible for any failure to perform due to causes beyond either's respective reasonable control (each a "Force Majeure"), including but not limited to, acts of God, riots, embargoes, terrorist acts, acts of civil or military authorities, disruptions in the flow of data to or from networks, denial of or delays in processing of export license applications, accidents, strikes, fuel crises or power outages.

- **Limited Proposer Confidentiality Rights**

The following materials shall be collectively referred to as "Proposer Documents:" (i) proposals, (ii) pricing, (iii) correspondence (including letters, notices and emails), (iv) and any other documentation or information not clearly marked as confidential or proprietary. All Proposer Documents shall become the exclusive property of PRDE. For those documents or information marked as confidential or proprietary, they must be placed them in a clearly marked envelope within the proposal.

Proposers shall be instructed that they may only mark or classify trade secrets and proposer's corporate or personal financial information in their proposals (not including their price proposals) as confidential or proprietary, and that any portion of their Proposer Documents marked as confidential or proprietary that do not fall within these exceptions shall be subject to the following:

- Disclosure, duplication, publication, and transmission deemed by PRDE as necessary or appropriate to comply with document requests from U.S. Department of Justice, the Puerto Rico Department of Justice, any state or federal court with jurisdiction over any matter pertaining to the RFPs or proposer proposals, any Puerto Rico legal requirement or upon request of any other governmental or administrative agency

- Posting on the PRDE website and/or made available for inspection by participating proposers

Proposers shall also be advised that PRDE may seek indemnification from proposers for any liability, loss, damage, expense, penalty, or cost, including any and all legal fees, sought in every claim or suit of any kind arising out of confidentiality markings or conditions in proposals.

- **Proposer Disqualification Due to Evidence of Collusion**

The Evaluation Committee shall have the ability to disqualify any proposer in instances where there is proof of collusion or other misconduct with respect to the RFP process.

- **TPFA Invoicing Warranties**

The TPFA shall represent and warrant that it shall provide PRDE with truthful and accurate information about its invoices promptly, upon request by PRDE. The TPFA shall also represent and warrant that it has carefully identified components of the services. Further, through internal audit and review of the services rendered during the term of the contract, the TPFA shall represent and warrant that it will ensure that the services being provided to PRDE are limited to the services requested and authorized under the contract and the RFP.

- **Exclusion of Liability**

PRDE shall have no liability for the payment of invoices, costs, charges or fees billed by the TPFA or its subcontractor(s) for:

- Costs of services not authorized in writing by PRDE
- Costs related to upgrading, maintaining or programming billing systems to meet PRDE requirements
- Costs related to reimbursement of legal expenses in order to provide the services to PRDE
- Expenses related to office supplies, photocopies, stamps, telecommunications, messenger services, clerical work, and other related expenses
- Other expenses not specifically authorized for reimbursement in the contract

- **Key Personnel and Subcontractors**

Any key TPFA personnel or any of its subcontractors assigned to provide services to PRDE and who are listed in the contract (“Key Personnel”) will continue to provide services to PRDE for the term of the contract, unless PRDE requests that the Key Personnel be removed or if the Key Personnel resigns or is dismissed, or upon loss/removal of a Key Personnel due to illness, disability or death. The TPFA shall notify PRDE promptly when any Key Personnel resigns or is dismissed, or upon loss or removal of any Key Personnel due to illness, disability or death. Before the assignment of any Key Personnel or the replacement of any Key Personnel, the TPFA will provide PRDE, upon PRDE’s written request, with the résumé of the prospective Key Personnel, an opportunity to interview such individual or individuals, and will obtain the written consent of PRDE’s authorized representative to the assignment of such individual as a Key Personnel.

PRDE encourages proposers to engage local subcontractors, professionals and relevant service providers headquartered in Puerto Rico (“Local Parties”) as team members and Key Personnel to the greatest extent possible. Proposers are strongly encouraged as part of this RFP to provide descriptions of their current and/or anticipated business arrangements with Local Parties and, in particular, Local Parties who are team members and Key Personnel for work under this RFP, as applicable.

Key Personnel assigned to perform the TPFA’s obligations under the contract shall have experience, training, and expertise equal to personnel with similar responsibilities in the business in which proposer is engaged and shall have sufficient knowledge of PRDE’s practices and areas of expertise, to enable them to perform their duties and responsibilities under the contract. If PRDE requests that the TPFA remove any Key Personnel assigned to PRDE’s account, the parties will attempt to resolve PRDE’s concerns on a mutually agreeable basis. If the parties have not been able to resolve PRDE’s concerns within 15 business days of receipt of written notice of requested removal from PRDE, the TPFA will remove such Key Personnel from the PRDE service team and provide a replacement in a timely manner.

The TPFA shall not allow any of its employees or subcontractors to have direct regular contact with a PRDE student until the TPFA shall have obtained certifications of good conduct and negative certifications from the sexual offenders’ registry for said employees or subcontractors. If requested, the TPFA shall also, at its own cost and expense, conduct fingerprint-based criminal history records check on any and all employees, agents and subcontractors who may have direct, regular contact with a student under the contract.

The TPFA shall furnish PRDE with a copy of all subcontracts within five days after PRDE's request.

- **Small and Minority-Owned Businesses, Women's Businesses**

In accordance with 2 CFR, §200.321, it is the policy of the government of Puerto Rico and PRDE to stimulate growth of local minority and women-owned business enterprises (M/WBE) by encouraging their participation in all phases of its contract and procurement activities and by affording them the opportunity to compete for PRDE contracts. The purpose and objectives of this article are to:

- Increase the capacity of local M/WBE firms to provide products and services,
- Increase the opportunities for local M/WBE firms to expand their business with PRDE and other public and private sector business entities,

provided, however, that nothing herein shall require PRDE to award contracts for services or procurements to a M/WBE which is not also the most responsive and responsible proposer and otherwise qualified.

SECTION V: PROPOSAL SUBMITTAL REQUIREMENTS**PROPOSAL PREPARATION GUIDELINES**

Proposals are to be prepared in conformance with all the instructions, guidelines, conditions and requirements stated in this RFP. Proposers are expected to examine all documents, schedules and requirements (explicit and implicit) in their entirety and respond to them completely and accurately. Failure to conform to any RFP condition will be entirely at the proposer's risk and may render the corresponding proposal non-responsive.

Proposers that file a Letter of Intent on time (see Table 1) are eligible to submit proposals in response to this RFP. Proposals must be submitted by the deadlines established in the RFP. The Evaluation Committee will not consider any proposals from proposers that did not submit a Letter of Intent on time nor will it consider proposals received after the deadline.

PROPOSAL SUBMISSION PACKAGES

Three individually sealed proposal packages shall be submitted by proposers as part of this procurement process. The individually sealed proposal packages shall be the following:

- Proposal Transmittal Package
- Technical Proposal Package
- Price Proposal Package

Within each sealed package, proposers are expected to submit a jump drive with the contents of the corresponding proposal package. Proposers should verify that, indeed, the contents of the jump drive exactly correspond to the contents of the rest of the package. Any differences may constitute grounds for disqualification. Files included in the jump drive must be fully searchable, in PDF format.

PROPOSAL TRANSMITTAL PACKAGE

The Proposal Transmittal Package shall include the submittals outlined in this section. Proposers that fail to include in their proposal any of the submittals stated below shall be deemed nonresponsive and automatically disqualified from consideration for a contract award. Such failures cannot be cured. The Proposal Transmittal Package shall include all of the following submittals:

- **Submittal P1: Cover Letter**

Proposers shall include a cover letter signed by an authorized representative of the proposer. The cover letter must indicate a commitment to provide the services described in the proposer's proposal, and a written acknowledgement to agree to enter into a written contract with PRDE for the proposed services, if selected. The letter may include a brief narrative description of the proposer, the proposal, and its service offerings.

- **Submittal P2: Proposal Signature Page**

Each proposer shall execute and deliver the Proposal Signature Page attached to this RFP as Appendix D: Proposal Signature Page, acknowledging receipt of this RFP, and stating that the proposer has reviewed and agreed to abide by the terms and conditions set forth therein, and in such other materials as shall be posted on PRDE's website, or as otherwise specified by PRDE.

- **Submittal P3: Copy of Filed Letter of Intent**

Each proposer shall include a copy of the executed Letter of Intent filed by proposer on or before the filing deadline set forth in Table 1 of this RFP.

- **Submittal P4: Acknowledgement of Receipt of Addenda**

Should PRDE deem it convenient or necessary to issue one or more addenda to this RFP, proposers are required to state in this submittal their acknowledgement of receipt of each RFP addendum (by addendum number and title), if any. If PRDE does not issue any RFP addendum, proposers shall state it in this submittal.

- **Submittal P5: Non-Collusion Affidavit**

Proposers must include the Non-Collusion Affidavit included in Appendix E: Non-Collusion Affidavit. Such affidavit would be certifying, among other things, that the proposer has not directly or indirectly induced or solicited any other proposer to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any other proposer or anyone else to put in a sham proposal.

- **Submittal P6: Proposal (Bid) Bond**

Proposers shall include the proposal (bid) bond, in compliance with the requirements stated in Section IV of this RFP.

- **Submittal P7: Disclosure of Recent Legal Actions**

Each proposer must list and briefly describe any and all legal actions and any judgments entered in the past three years in which the proposer has been a debtor in bankruptcy, a defendant in a lawsuit for deficient performance under a contract or agreement; a party in an administrative action for deficient performance; or, a defendant in a criminal action. Each proposer must also identify any lawsuits or other legal proceedings and any judgments against it, which directly or indirectly relate to any of the services included in the corresponding proposal over the past five years. A proposer must submit a certification if the proposer has not been involved in any legal actions described above.

The proposer disclosure statement should be dated and signed by an authorized proposer representative, and include the following representation:

*The undersigned, after reasonable inquiry and investigation, has no knowledge of any action, suit, proceeding, or material claim or investigation pending or threatened against **[name of proposer]** in any court, or by or before any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, or before any arbitrator of any kind, that, if adversely determined, would materially affect **[name of proposer]**'s ability, or the ability of its subcontractor(s), to perform the services described in its proposal at the prices set forth in its price proposal.*

- **Submittal P8: Hold Harmless and Indemnification Agreement**

Each proposer must include a Hold Harmless and Indemnification Agreement in the proposal. The Agreement should be dated and signed by an authorized proposer representative, and include the following representation:

[Name of proposer] agrees to protect, defend, indemnify, save, and hold harmless, the Government of Puerto Rico, the Puerto Rico Department of Education, all State Departments, Municipalities, Agencies, Boards and Commissions, its officers, agents, servants, employees, and volunteers, from and against any and all claims, damages, expenses, and liability arising out of injury or death to any person or the damage, loss or destruction of any property which may occur, or in any way grow out of, any act or omission of [name of proposer], its agents, servants, and employees, or any and all costs, expenses and/or attorney fees incurred by [name of proposer] as a result of any claims, demands, suits or causes of action, except those claims, demands, suits, or causes of action arising out of the negligence of the Government of Puerto Rico, the Puerto Rico Department of Education, all State Departments, Municipalities, Agencies, Boards and Commissions, its officers, agents, servants, employees, and volunteers.

[Name of proposer] agrees to investigate, handle, respond to, provide defense for and defend any such claims, demands, suits, or causes of action at its sole expense and agrees to bear all other costs and expenses related thereto, even if the claims, demands, suits, or causes of action are groundless, false or fraudulent. The Government of Puerto Rico and/or the Puerto Rico Department of Education may, but is not required to, consult with the Contractor in the defense of claims, but this shall not affect the Contractor's responsibility for the handling of and expenses for all claims.

- **Submittal P9: Financial Statements**

Proposers must include a copy of their (and their subcontractors') audited financial statements or tax returns signed by the preparer for the three previous fiscal years, and the most recent quarterly report shall be provided. Financial statements shall include auditor's letter of opinion, auditor's notes, balance sheet, and statement of profit/loss. PRDE reserves the right to accept alternative information and/or documentation submitted by proposers.

- **Submittal P10: Resolution**

If the proposer is a corporation, the proposal must be signed by an officer of the corporation and be accompanied by a corporate resolution authorizing the individual to sign the proposal and to enter into a contractual agreement on behalf of the corporation. The corporate resolution must also specify the jurisdiction (country, state) of incorporation.

If the proposer is a partnership, the proposal must be signed by an officer of the partnership and be accompanied by a resolution authorizing the individual to sign the proposal and to enter into a contractual agreement on behalf of the partnership. The resolution must also specify the jurisdiction (country, state) where the partnership is registered.

- **Submittal P11: W-9 Taxpayer Identification Number and Certification (IRS)**

Proposers must include a properly completed IRS W-9 form.

- **Submittal P12: Lobbying Certification**

Each proposer must submit a Lobbying Certification for Contracts, Grants, Loans, and Cooperative Agreements, per Appendix F: Lobbying Certification. The document must be signed by an authorized representative of the proposer.

- **Submittal P13: Puerto Rico Department of State – Certificate of Good Standing**

Each proposer must submit a Puerto Rico Certificate of Good Standing issued by the Puerto Rico Department of State.

TECHNICAL PROPOSAL PACKAGE

The Technical Proposal Package shall include the submittals outlined in this section. Proposers that fail to include in their proposal any one of the submittals required below shall be deemed nonresponsive and automatically disqualified from consideration for a contract award. Such failures cannot be cured. The Technical Proposal Package shall include all of the following submittals:

- **Submittal T1: Executive Summary**

This submittal shall be used freely by the proposer in order to summarize the overall technical proposal. It should condense and highlight the contents of the proposal in such a way as to provide the reader with a concise yet ample understanding of the entire offering. At a summarized level, it may include topics such as the following:

- Overall presentation and/or discussion of the proposed services and how the proposer may fulfill them
- Proposer (and subcontractor) service team qualifications, and experiences performing similar services for similar client organizations

- Service approach to be followed in order to deliver each SOW item, identifying any particularities of note
- Feedback and additional perspective on USDE and PRDE expectations, as established in the RFP
- Service management, risk management and quality management approach
- Any other service-related issues and implications

Proposers are not required to adhere to a specific document organization standard within this submittal.

- **Submittal T2: Proposer Profile and Experiences**

This submittal should provide the following information regarding the proposer (and subcontractors) presenting the proposal:

- General proposer information, such as contact, type of organization (public, private, NGO) years in the business, offices and number of employees
- Proposer background information, including topics such as mission and overall direction, relevant historical background, size and market presence and position, industries served and relevant lines of business, served customers, relevant alliances and partnerships, and proposer resources and technology
- Details of proposer experiences (going back five years or less) delivering services similar to those being procured by way of this RFP, specifically as follows:
 - At least two engagements delivering services like those described under SOW Item #2 (TPFA Services)
 - At least two engagements delivering services like those described under SOW Item #3 (Process Assessments, New Process Models and Implementation Plans)
 - At least two engagement delivering program management services similar to those described under SOW Item #4 (CCAP Support)

Proposers can include additional related experiences, as desired. Each experience included by the proposer must include details describing the exact nature of the services provided, the challenges addressed, and the results obtained.

Proposers must include contact information for each experience described in the proposal, including organization name, address and website, contact officer's name and title, and contact information (address, telephone, email). The Evaluation Committee will contact the references. Proposers are advised that it is their responsibility to ensure that contact information is accurate, and that references are willing to collaborate with the Evaluation Committee.

The purpose of this submittal is to provide PRDE with a basis for fathoming proposer capability to perform the procured services. Hence, PRDE is not interested in excessively voluminous descriptions of items such as contracts or irrelevant projects. A concise but thorough description of relevant experience, as specified above, is what interests PRDE.

- **Submittal T3: Execution of the TPFA Service Initiation and Transition Plan**

In this submittal, proposers shall present their approach to carry out the activities established under SOW Item #1: TPFA Service Initiation and Transition Plan. PRDE expects proposers to include the following in their submittal:

- An initial detailed work plan satisfying the requirements established by PRDE under SOW Item #1, including main tasks, dependencies, responsible parties, timelines and due dates
- Detailed staffing assignments to be made by the proposer in order to carry out the work plan, in terms of roles and number of professionals per role
- A list of work plan assumptions, risks and issues that deserve managerial attention, and the related measures and strategies that each party shall implement in order to address them
- Any necessary narrative supporting the above

Proposers are expected to affirm their commitment and readiness to engage in this SOW Item #1 and confirm their commitment to ensure that PRDE's 45-day expectation will indeed be fulfilled.

- **Submittal T4: Delivery of TPFA Services**

In this submittal, proposers shall present their approach to carry out the activities established under SOW Item #2: TPFA Services. PRDE expects proposers to include the following in their submittal:

- An organizational structure diagram showing the functional areas that would, altogether, comprise the TPFA service team (that is, for SOW Item #2 services), including specific roles and identifying the main tasks to be performed by each role, for each stated TPFA subservice
- Detailed headcount estimates and potential staffing assignments to be made by the proposer in order to fill each stated role and perform the required services
- Professional profile of the known key personnel that the proposer plans to include in each functional area (including Spanish language qualifications)
- An inventory of the application systems and technology tools that the proposer deems necessary in order to deliver TPFA Services, if any
- A list of assumptions, risks and issues for managerial attention as the proposed organizational structure diagram is put in place, and the related measures and strategies that each party shall consider in order to facilitate TPFA Services
- A statement affirming the proposer's commitment to correctly distribute payroll costs between state funds and federal grants within 10 calendar days of receipt of PRDE's delivery of the corresponding payroll distribution information, and to attribute federal payroll costs to specific USDE grants
- Any necessary narrative supporting the above

While structuring the team and developing the organizational structure diagram and the related items, proposers are advised to consider the TPFA responsibilities established in Appendix C: TPFA Responsibilities and Requirements (per USDE Specific Conditions Letter).

- **Submittal T5: Approach to Process Assessments, Models and Implementation Plans**

In this submittal, proposers shall present their approach to carry out the activities established under SOW Item #3: Process Assessments, Models and Implementation Plans. PRDE expects proposers to include the following in their submittal:

- A detailed description of the methodology to be followed in order to effectively produce the deliverables corresponding to this SOW item
- A work plan establishing how the proposer intends to carry out the activities and tasks required for this SOW item, and produce the established deliverables in compliance with the SOW delivery schedule included in Section III of this RFP, including main tasks, dependencies, responsible parties, timelines and due dates
- Detailed staffing assignments to be made by the proposer in order to carry out the work plan, in terms of roles and number of professionals per role
- A list of work plan assumptions, risks and issues that deserve managerial attention, and the related measures and strategies that each party shall implement
- Professional profile of the known key personnel that the proposer plans to include in this SOW #3 (including Spanish language qualifications)
- Any necessary narrative supporting the above

While preparing this submittal (and delivering the above services), proposers are advised to consider the TPFA responsibilities established in Appendix C: TPFA Responsibilities and Requirements (per USDE Specific Conditions Letter). Proposers are also encouraged to include detailed samples of deliverables that they have produced in the past (corresponding to those required by way of this RFP).

- **Submittal T6: Approach to Provide CCAP Support**

In this submittal, proposers shall present their approach to carry out the activities established under SOW Item #4: CCAP Support. PRDE expects proposers to include the following in their submittal:

- A description of the methodology to be followed by the proposer in order to effectively carry out the CCAP program management duties corresponding to this SOW item
- Detailed staffing assignments to be made by the proposer in order to carry out the service, in terms of roles and number of professionals per role
- Professional profile of the known key personnel that the proposer plans to include in this SOW item (including Spanish language qualifications)
- A list of assumptions, risks and issues that deserve managerial attention, and the related measures and strategies that each party shall implement in order to fulfill the proposed CCAP support services
- Any necessary narrative supporting the above

While preparing this submittal (and delivering the above services), proposers are advised to consider the TPFA responsibilities established in Appendix C: TPFA Responsibilities and Requirements (per USDE Specific Conditions Letter).

- **Submittal T7: Execution of the TPFA Subservice Termination and Transition Plans**

In this submittal, proposers shall present their approach to carry out the activities established under SOW Item #5: TPFA Subservice Termination and Transition Plans. PRDE expects proposers to include the following in their submittal:

- An initial version of the work plan that would be followed by the parties in order to develop and execute a *TPFA Subservice Termination and Transition Plan* for each of the established TPFA Subservices, including main tasks, dependencies, responsible parties and timelines (durations)
- A list of work plan assumptions, risks and issues that deserve managerial attention, and the related measures and strategies that each party shall implement in order to address them
- Any necessary narrative supporting the above

PRICE PROPOSAL PACKAGE

The Price Proposal Package shall include the submittals outlined in this section. Proposers that fail to include in their proposal any one of the submittals required below shall be deemed nonresponsive and automatically disqualified from consideration for a contract award. Such failures cannot be cured. The Price Proposal Package shall include all of the following submittals:

- **Submittal C1: Price Proposal**

Proposers shall submit a Price Proposal, following the sample form included in Appendix G: Price Proposal Sample. For each SOW item, proposers are to submit a fixed price, per the following instructions.

- Proposers shall not submit a price for SOW Item #1 (TPFA Service Initiation and Transition Plan) at all. As SOW Item #1 will precede the TPFA Services specified in SOW Item #2, PRDE will not assign it any monetary value of its own.
- Proposers shall submit a fixed yearly price to perform each TPFA Subservice included in SOW Item #2 (TPFA Services).
- For SOW Item #3 (Process Assessments, Models and Implementation Plans), proposers shall submit a one-time price for each deliverable within each process, per the Price Proposal Sample in Appendix G.
- Proposers shall submit a fixed yearly price for all requested services regarding SOW Item #4 (CCAP support).
- As is the case for SOW Item #1, proposers shall not submit a price for SOW Item #5 (TPFA Subservice Termination and Transition Plans) at all. As SOW Item #5 will succeed the TPFA Services specified in SOW Item #2 for each TPFA Subservice, PRDE will not assign it any monetary value of its own.

Proposers shall separately identify all federal and state taxes, fees and surcharges that may apply to the proposed services. If a tax or charge is based on a specific percentage, include an estimate of the total charges based on the applicable percentage. PRDE will not reimburse the TPFA for costs related to office materials, photocopies, scanners, stamps, messengers, fax transmissions, telephone calls or similar items. Proposer pricing shall be subject to the following terms and conditions:

- **Best proposer Rates**

Proposers are expected to propose their very best prices and to the extent possible, reflect any anticipated price reductions from technology advancements and/or market place efficiencies in their pricing.

- **Firm Price Commitment**

Each proposer agrees that its pricing shall remain firm and effective for 180 days from the date of submission.

- **Discounts**

Proposers should clearly identify any education or other discounts being offered to PRDE and are required to apply said discount before entering line item pricing on the price proposal.

- **No Minimum Service Commitment**

Proposer pricing may not be subject to, or contingent upon, a minimum service commitment by PRDE.

PROPOSAL FORMAT, PRODUCTION AND SUBMISSION

All proposals must be developed, produced and submitted in compliance with the directives established below:

- **Proposal Format**

- Proposers must develop their proposals in English, including Letters of Intent and related submittals
- Proposers must format their proposals in compliance with the following standards:
 - Font: Arial, 10 point (smaller fonts can be used for charts and graphics only)
 - Paragraph line spacing: 1.5 lines
 - Page margins: one-inch in every page

- using single-spaced paragraphs, with one-inch margins in every page, and using the Arial 10-point font (smaller fonts can be used for charts and graphics only)
- Document format: Microsoft Word or Word-compatible
- Tables: All must be compatible and transferable to Microsoft Excel

- **Proposal Production**

- Proposers shall produce physical proposals, per the proposal packages and submittals specified above
- Proposers must produce each proposal package as follows:
 - One original three-ring binder for the Proposal Transmittal Package
 - Including a jump drive containing all documents included in the three proposal packages (Transmittal, Technical, Cost), in a format through which PRDE may perform text searches (e.g. PDF files; proposers are advised to confirm that, indeed, all files are included, and that they are searchable; this last requirement is waived for documents provided by third parties, like audited financial statements and bid bonds)
 - Two identical three-ring binders for the Technical Proposal Packages
 - Two identical three-ring binders for the Price Proposal Packages
- Each binder shall include a pocket for a cover sheet and separate tabs for each submittal specified in this RFP
- Each binder shall have a front cover sheet containing the following information:

RFP Number and Name: **PRDE-OCCOA-2020-001**

 - Proposer name and address
 - Proposer contact person (name, title, email, office and cell phone)
 - Identification of the proposal package (Transmittal, Technical or Cost)

- Two-sided copying and the use of recycled paper are strongly encouraged

- **Proposal Submission**

- Proposers must hand-deliver their proposals either in person or by courier, in a sealed package labeled and addressed as follows:

RFP#: PRDE-OCCOA-2020-001

Due Date: December 6, 2019, by 4:00 p.m. EST

Departamento de Educación de Puerto Rico

(att: Lic. Norma Rolón Barada)

División de Correspondencia y Archivo - Edificio Anexo A

Calle Calaf, Urb. Industrial Tres Monjitas

Hato Rey, Puerto Rico, 00919-0759

(787) 773-6226

- Proposals must be received by the due date and time established in Table 1
- Any proposer failing to comply with the requirements established herein may result in said proposer being deemed non-responsive

SECTION VI: PROPOSAL EVALUATION

EVALUATION COMMITTEE

An Evaluation Committee has been appointed by the Secretary of Education to review all proposals and select a winning proposal. Although such Evaluation Committee shall possess the technical, administrative, legal, procurement, process, finance and academic expertise required to conduct the evaluation process, and to its sole discretion, its members may be assisted by a team of technical advisers and such other resources that the Committee deems helpful and/or appropriate at any time.

PROPOSAL EVALUATION

PRDE will review proposals and select the proposal that offers the best value, and reserves the right to award the contract to other than the lowest priced offer. Should PRDE decide that oral presentations of Finalist proposals would assist the selection process, PRDE will notify all proposers invited to make such presentations. Final determination of the winning proposer will be made by the PRDE Central Purchasing Office. All proposers will be notified of PRDE’s selection as soon as is practicable. Upon the selection of the winning proposer, a services contract will begin to be formalized and eventually executed between the winning proposer and the PRDE Secretary.

EVALUATION CRITERIA

The evaluation of proposals will be conducted in conformance with pre-established criteria. The evaluation criteria are as follows:

Criterion	Percent Weight
SOW Item #1	5%
Initial detailed work plan and staffing assignments	
Assumptions, risks and issues, and related measures	
Readiness and commitment with 45-day expectation	
SOW Item #2	50%
Previous experience providing TPFA Services	
Similarity of previous TPFA engagements to PRDE	
Team structure, profiles of key personnel and service team	
Tools, assumptions, risks and issues, and related measures	
Price	

Criterion	Percent Weight
SOW Item #3	25%
Previous experience providing the requested services	
Methodology	
Proposed work plan and staffing assignments	
Profiles of key personnel and service team	
Tools, assumptions, risks and issues, and related measures	
Price	
SOW Item #4	15%
Previous experience providing the requested services	
Methodology	
Profiles of key personnel and service team	
Tools, assumptions, risks and issues, and related measures	
Price	
SOW Item #5	5%
Initial work plan	
Tools, assumptions, risks and issues, and related measures	

PROPOSAL SELECTION

PRDE intends to enter into a multiyear contract (subject to annual appropriations) with the qualified and responsible proposer that submits a proposal for the most responsive solution that meets PRDE’s needs. A Notice of Award shall be sent to such winning proposer. The Notice of Award may include a summary of all proposer pricing, the Evaluation Committee voting record, the reasons why the winning proposer was selected, the reasons why other proposals were not selected (including any proposer disqualifications), and such other information as shall be deemed necessary or appropriate by the Evaluation Committee. Copies of the Notice of Award shall also be mailed to all other proposers that submitted proposals in response to this RFP. The selected proposer must, within three business days, return a signed copy of the Notice of Award to PRDE indicating acceptance of the selection.

Award revisions will be governed by the dispositions of the Law of Uniform Administrative Procedures of the Puerto Rico Government (Law 38 of June 30, 2017, as amended, (3 L.P.R.A 9601-9683).

REQUESTS FOR REVIEW

A copy of the notice of award will be sent by certified mail to all proposers, including those that did not win an award, in accordance with the terms of the RFP. Award revisions will be governed by the dispositions of the Law of Uniform Administrative Procedures (Act 38 of June 30, 2017, as amended). Any proposer adversely affected by PRDE's decision may file a request for reconsideration or review within 20 days of notification. An original of the request for reconsideration or review must be filed with PRDE's Administrative Revision Board (*Junta de Revisión Administrativa del Departamento de Educación de Puerto Rico*) located at Annex Building, Calaf Street, Urb. Industrial Tres Monjitas, Hato Rey, Puerto Rico (*Edificio Anexo, Calle Calaf, Urbanización Industrial Tres Monjitas, Hato Rey, Puerto Rico*). The party requesting revision must notify all other proposers, including awardees, with a copy of its request. A digitalized copy must be sent on the same date to: fp-tpfa@de.pr.gov. The PRDE Administrative Revision Board must consider the request for reconsideration or review within thirty (30) days of its filing date. If the PRDE Administrative Revision Board does not answer the request for reconsideration within such period, it will be deemed to have been rejected.

The proposer may file an appeal brief for judicial review of PRDE's final decision with the Puerto Rico Appellate Court within 20 days from the earlier of: (i) the date of the notification of the postmark on the envelope containing PRDE's final decision on the proposer's request for reconsideration, or (ii) the date that the request for reconsideration is deemed to have been rejected. Proposers who fail to file a request for reconsideration or for judicial review within the periods indicated herein waive their right to contest an award.

The filing of an appeal before the Appellate Court will not stay the award proceedings. The judicial review is the exclusive or sole remedy for a review on its merit regarding the agency's administrative decision regardless if it is an adjudicative or informal decision.

The Notice of Award is subject to execution of a written contract and, as a result, such Notice of Award does not constitute the formation of a contract between PRDE and the winning proposer. The proposer shall not acquire any legal or equitable rights relative to the contract services until a contract containing terms and conditions acceptable to PRDE is executed. If the successful proposer fails to negotiate and execute a contract with PRDE, PRDE may revoke the award and award the contract to the next highest ranked proposer or withdraw the RFP. PRDE further reserves the right to cancel the Notice of Award at any time prior to the execution of a written contract.

SECTION VII: APPENDIX

APPENDIX A: USDE SPECIFIC CONDITIONS LETTER



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF FINANCE AND OPERATIONS
OFFICE OF GRANTS ADMINISTRATION

June 28, 2019

Honorable Ricardo Rosselló
Governor
Commonwealth of Puerto Rico
PO Box 9020082
San Juan, Puerto Rico 00902-0082

Honorable Eligio Hernández Pérez
Secretary of Education
Puerto Rico Department of Education
PO Box 190759
San Juan, Puerto Rico 00919-0759

Dear Governor Rosselló and Secretary Hernández Pérez:

Thank you very much for your continued partnership in supporting Puerto Rico's educational programs, especially in the wake of two national disasters. We know what you have faced and overcome in recent years is truly unprecedented. Your continued support in developing our children for future opportunities is most appreciated by the Department of Education. We also appreciate your honest assessment of your current capacity and desire to work cooperatively with us in support of Puerto Rico's students. To support your goals of developing the educational capabilities within the Commonwealth of Puerto Rico, enclosed are specific conditions that the U.S. Department of Education (Department) is imposing on all grants awarded to the Puerto Rico Department of Education (PRDE) for Federal fiscal year (FFY) 2019, as well as on all grants previously awarded by the Department to PRDE that are still available for obligation or liquidation on the date of these specific conditions.

We are imposing the enclosed specific conditions based on information provided to the Department by the PRDE Internal Audit Office through the specific conditions, audits and investigations conducted by the Department's Office of the Inspector General, and evidence collected by the Department's Risk Management Services Division during its provision of technical assistance. This information demonstrates that PRDE has failed to maintain improvements accomplished under the 2004 Compliance Agreement among Puerto Rico, PRDE, and the Department; the 2007 Memorandum of Agreement among Puerto Rico, PRDE, and the Department; and the 2007 Compliance Agreement among Puerto Rico, PRDE, and the Department. Therefore, in accordance with regulations

400 MARYLAND AVE., S.W., WASHINGTON, DC 20202
www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

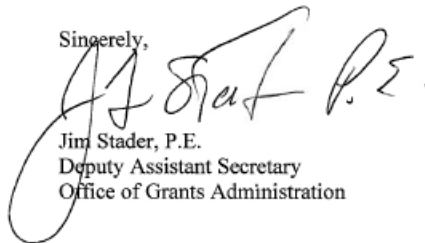
governing specific conditions in 2 CFR § 200.207 in the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) and Section III.A of the FFY 2018 PRDE Departmental Specific Conditions, the Department is imposing additional specific conditions, which include the requirement that PRDE must procure the services of a third-party fiduciary agent, acceptable to the Department, to perform the financial management duties required under Federal laws and regulations for all Department grant awards made to PRDE by the Department. The intent of these specific conditions is to ensure effective implementation of Department programs in Puerto Rico through appropriate fiscal management and accountability. The Department appreciates your support in using a third-party fiduciary agent which will align to your goal of assisting PRDE in building its capacity to implement proper internal controls and management practices that will ensure compliance with Department grant requirements regarding the administration and management of Federal education funds.

The Department will continue to work with your staff to support your goal of ultimately having PRDE regain fiscal management responsibilities for, and effectively management of Department grant programs in the future.

Please also note that the specific conditions maintain, with appropriate changes, certain provisions from the FFY 2018 Departmental Specific Conditions with respect to PRDE's implementation of Part B of the Individuals with Disabilities Education Act, full implementation of the Internal Audit Office and Audit Oversight Committee, and other matters.

We look forward to continuing to work with you and other Puerto Rico officials to improve the delivery of Federal education services for the students throughout the Commonwealth.

Sincerely,



Jim Stader, P.E.
Deputy Assistant Secretary
Office of Grants Administration

cc: Yanin M. Dieppa Perea, Director of the PRDE Office of Federal Affairs
Eliezer Ramos Pares, PRDE Associate Secretary for Special Education
Glanidsa Castro, Director of the Internal Audit Office

Commonwealth of Puerto Rico Department of Education
FFY 2019 Departmental Specific Conditions

PREAMBLE: These specific conditions¹ are imposed on the Puerto Rico Department of Education's (PRDE's) Federal fiscal year (FFY) 2019 grants awarded by the U.S. Department of Education (Department) on or after the date of these specific conditions, and are also imposed on all grants previously awarded by the Department that are still available for obligation or liquidation by PRDE on the date of these specific conditions.

Under Section III.A of the FFY 2018 Departmental Specific Conditions, as well as previous annual Departmental Special Conditions, the Department has the authority to take appropriate enforcement action at any time if PRDE fails to meet the specific conditions imposed. The Department has determined that PRDE has not made substantial progress towards meeting the specific conditions, and it has not maintained the improvements instituted under the October 25, 2004 Compliance Agreement among the Commonwealth of Puerto Rico (Puerto Rico), PRDE, and the Department (2004 Agreement); the December 17, 2007, Memorandum of Agreement among Puerto Rico, PRDE, and the Department (2007 MOA); and the December 17, 2007 Compliance Agreement among Puerto Rico, PRDE, and the Department (2007 Agreement). As a result, PRDE has not been able to demonstrate that it has the capacity to ensure fiscal management of Department grant funds to ensure compliance with Federal grant requirements and fiscal accountability without the use of a third-party fiduciary agent.

Therefore, in accordance with regulations governing specific conditions in 2 CFR § 200.207 in the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) and Section III.A of the FFY 2018 Departmental Specific Conditions, as well as previous annual Departmental Special Conditions, these specific conditions are imposed to help ensure that grant funds awarded by the Department to Puerto Rico and PRDE are expended in accordance with applicable legal requirements and the appropriate fiscal accountability measures and management practices and controls.

I. BACKGROUND

A. In 2002, the Department designated PRDE a "high-risk" grantee, under the Education Department General Administrative Regulations (EDGAR) (at former 34 CFR § 80.12). At that time, special conditions were placed on all Department grants awarded to PRDE because of its history of unsatisfactory performance, as uncovered by audits dating back to 1994. The Department's 2002 special conditions were intended to bring about necessary changes to Federal program administration and appropriate fiscal oversight in Puerto Rico that would

¹ Consistent with 2 CFR §§ 200.207 and 3474.10, the term "specific" conditions replaces the previously used term "special" conditions." In this document, the term "Special Conditions" is used when referencing grant awards and required reporting associated with the receipt of those funds for years prior to FFY 2018.

ultimately bring it into compliance with all Federal education program requirements.

B. As a result of PRDE's demonstrated initiative and commitment to resolving the problems that led to the 2002 "high-risk" designation, and in recognition of PRDE's progress in that regard, the Department removed PRDE's "high-risk" grantee designation, on a probationary basis, upon the October 25, 2004 signing of a Compliance Agreement among Puerto Rico, PRDE, and the Department (2004 Agreement).

C. Starting in September 2003, the Department and PRDE worked together in a collaborative effort under the Cooperative Audit Resolution and Oversight Initiative (CAROI) process, to jointly resolve the backlog of unresolved PRDE audits, which contained over six hundred audit findings dating back to 1994.

D. The 2004 Agreement primarily addressed systemic problems in PRDE's program administration and management of Federal education funds. At that time, PRDE began to implement several new grants management, administrative, and fiscal processes. At the conclusion of the 2004 Agreement, the Department determined that these new processes would satisfy requirements in the 2004 Agreement if 1) the processes were implemented fully and effectively, as approved by the Department, throughout Puerto Rico's school system, and 2) PRDE implemented the 2004 corrective action plans developed in conjunction with the 2004 Agreement (2004 CAPs) in the areas of grants management, payroll, and procurement. Accordingly, on December 17, 2007, Puerto Rico and PRDE entered into a Memorandum of Agreement (2007 MOA) with the Department that governed the implementation, review, and oversight of certain activities that Puerto Rico and PRDE committed to conducting, in compliance with, and in follow up to, certain terms and conditions of the 2004 Agreement. The 2007 MOA expired on April 30, 2009. The Department determined that Puerto Rico and PRDE had substantially satisfied requirements in the 2004 Agreement and had substantially completed the action steps under the 2007 MOA in the areas of grants management, payroll, and procurement. PRDE had proposed a reorganization, which would impact how it continues implementation of action steps in the areas of program implementation, monitoring and technical assistance, and schoolwide programs, under the Office of Federal Affairs (OFA) Grants Management section of the MOA.

E. As a result of the monitoring of PRDE's Federal programs, the Department identified issues in several programs that required corrective action by PRDE. These programs included Titles I, II, and IV of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act, Title IV of the Higher Education Act of 1965, and the Individuals with Disabilities Education Act (IDEA) (covered Federal programs). The Department determined that it would take more than one year for PRDE to completely address the identified program compliance issues under those covered Federal programs and to establish

the continued cooperation of other parts of the Puerto Rico government in this effort, such as the Puerto Rico Department of the Treasury and Puerto Rico's Office of Management and Budget. Therefore, on December 17, 2007, under the authority of section 457 of the General Education Provisions Act (GEPA), the Department entered into a comprehensive, three-year Compliance Agreement (2007 Agreement) with Puerto Rico and PRDE.

F. In addition to programmatic issues, the 2007 Agreement also addressed the progress and effectiveness of the PRDE Internal Audit Office (IAO) and the independent Audit Oversight Committee (Audit Committee), both of which were considered to be critical in assuring the Department that grant funds it awards to PRDE are being spent in accordance with Federal program requirements. Accordingly, Task 16 of the 2007 Agreement required the full implementation of PRDE's IAO and Audit Committee.

G. At the end of the three-year period, PRDE was to be in full compliance with all applicable program requirements in order to continue to receive Federal education funds under the covered Federal programs. During the week of February 14, 2011, the Department conducted a site visit to Puerto Rico and PRDE to gather further information to determine whether Puerto Rico and PRDE were in compliance with the requirements in the 2007 Agreement. Based on the information received during the site visit, along with other information and reports provided to Department program offices before and during the visit, and in the quarterly status reports required by the 2007 Agreement, the Department determined on June 14, 2011 that Puerto Rico and PRDE were in compliance with the requirements in the 2007 Agreement. While there were still remaining issues to be resolved with the IDEA Part B program, the Department's Office of Special Education Programs (OSEP) determined that it would address PRDE's progress on these requirements through the IDEA Part B State Performance Plan and Annual Performance Report (APR) processes and, if necessary, through other grant-specific actions.

H. While actions taken by Puerto Rico and PRDE during the term of the 2007 Agreement resulted in significant improvements in PRDE's program performance and implementation, which are fundamental to ensuring PRDE's compliance with Federal program and fiscal management requirements applicable to the Department grants that it receives, continued work was required by PRDE to improve the effectiveness and outcomes of its Federal education programs. In support of this objective, the Department continued to follow up with PRDE annually from 2011 until the present time on its ongoing improvement efforts and remained committed to providing ongoing and robust technical assistance as required. At this time, based on its regular monitoring of PRDE's administration of Department programs and funds, the Department has concluded that the improvements that PRDE had made in response to the 2004 Agreement, the 2007 MOA, and the 2007 Agreement have not been sustained and have significantly eroded. While some of this can be attributed to the impact of the 2017 hurricanes,

the root causes and reasons for this erosion were present and known for many years and were the primary impetus behind the signing into law on June 30, 2016 of the Puerto Rico Oversight, Management, and Economic Stability Act of 2016 (PROMESA) followed by Puerto Rico filing for bankruptcy relief in federal court on May 3, 2017.

I. Puerto Rico has had longstanding challenges implementing Federal education programs consistent with the requirements of law, regulation, and financial and administrative guidelines. Moreover, these challenges are paired with the continuing poor educational outcomes demonstrated by PRDE over many decades. Based on review of documentation submitted by PRDE, as well as Department monitoring and site visits to PRDE, it appears that structural issues lie at the core of PRDE's administrative and educational underperformance, including insufficient numbers of experienced and trained staff charged with administering state and local programs and funding and the near-absence of rigorous procurement practices and staffing based on best practices. The procurement practices and controls, in particular, have caused significant problems for PRDE and have resulted in numerous findings in the annual OMB A-133 Single Audit, reports from the Department's Office of the Inspector General (OIG), and reports from PRDE's Internal Audit Office. Several recent high visibility federal indictments of PRDE contracting staff, and other staff from agencies within the Commonwealth for improper use of federal education funds, also indicate potential major weaknesses in PRDE's overall fiscal management.

J. The Department recognizes the risk associated with PRDE's current fiscal management of federal funds and the impact this is having on effective federal education program implementation. Based on information gathered during site visits to Puerto Rico since 2011, our evaluation of PRDE's ongoing improvement progress, reports issued by PRDE's Internal Audit Office, the Department's review of certain findings by the Department's OIG, recent high visibility federal indictments of PRDE contracting staff, and major weaknesses in PRDE's fiscal management controls, the Department is very concerned about PRDE's ability to effectively manage the significant amounts of funds that have been awarded in recent years including new federal funds for disaster recovery. The Department considered the history of PRDE's fiscal management challenges and our efforts over many years to address them. For the last two decades, the Department has worked closely with the PRDE to resolve and stabilize respectively the fiscal management issues and environment. However at this time, to provide reasonable assurance that federal education funds are managed and accounted for properly, the Department is imposing these specific conditions that, among other things, require PRDE to procure the services of a third-party fiduciary agent, acceptable to the Department, to perform the financial management duties required under federal regulations for all Department grant awards made to PRDE. These conditions are set forth in further detail below. Because PRDE has not met the requirements in the Uniform Guidance at 2 CFR Part 200, regarding the management of Department funds by States, these specific conditions require

PRDE to comply with the provisions of the Uniform Guidance in 2 CFR Part 200 that apply to grantees other than States.

II. SPECIFIC CONDITIONS

A. Requirement for PRDE to Use a Third-Party Fiduciary Agent

PRDE must enter into a contract with a third-party fiduciary agent (Agent) that meets the qualifications below. The Agent will perform financial management duties currently performed by PRDE, and required under EDGAR at 34 CFR Parts 75 and 76, and the Uniform Guidance at 2 CFR Part 200, for all Department grants awarded by the Department to PRDE on or after the date of these specific conditions, and for all grants previously awarded by the Department to PRDE that are still available for obligation or liquidation on the date of these specific conditions. PRDE agrees that by accepting grant awards subject to the terms of these specific conditions, it will draw down funds and charge costs against its grant awards only in accordance with the first in-first out (FIFO) accounting procedure, therefore charging costs first against its FY 2017 grant awards, then against FY 2018 grant awards, and then against FY 2019 grant awards, at least until it has procured the services of an Agent that is under contract to carry out the duties and responsibilities described in Attachment B to these specific conditions.

B. Qualifications of Third-Party Fiduciary Agent

The entity that PRDE selects to serve as the Agent must:

1. Have a demonstrated, track record in successfully performing the types of financial management services required for Department grants awarded to PRDE;
2. Have a sufficient number of personnel available with the skills and expertise in financial management functions necessary to perform the required financial management services for Department grants awarded to PRDE;
3. Be able to, and agree to, increase operational capacity to accommodate increases in workload as a result of the contract with PRDE; and
4. Be approved by the Department before PRDE enters into a contract with the entity.

C. Responsibilities of PRDE and the Third-Party Fiduciary Agent Concerning Administration of Grant Funds

The responsibilities and requirements of PRDE in working with the Agent are set forth in Attachment A to these specific conditions. The responsibilities and requirements of the Agent in carrying out the financial management duties for

PRDE's Department grants are set forth in Attachment B to these specific conditions. Any request for proposals, statement of work, or other related documents used in PRDE's procurement process, and any contract between PRDE and the Agent, must comply with the procurement provisions in 2 CFR §§ 200.318-200.326 and must include the provisions set forth in Attachments A and B.

D. Approval of Contract with Third-Party Fiduciary Agent

As stated in section II.B.4 of these specific conditions, the Agent selected by PRDE must be approved by the Department. Prior to entering into the contract for financial management services, PRDE must submit to the Department for approval: 1) evidence that it followed applicable procurement procedures; 2) the name of the proposed Agent; 3) the fee or rate that the proposed Agent will charge for the third-party fiduciary services; and 4) the proposed contract provisions, which must be consistent with the responsibilities of PRDE and the Agent in Attachments A and B.

E. Continued Work on Enhancing and Developing a System or Systems to Capture Information on Personal Services Contracts (PSC) and Professional Services Contracts (ProSCs) in Order to Better Account for and Reconcile Federal Expenditures

This section outlines the status of PRDE's efforts to improve its PSC and ProSC systems pursuant to previous specific conditions and the work that remains to be performed. To improve and sustain its progress in this area, PRDE must obtain assistance from the Agent whose services it procures as required by section II.A of these specific conditions.

1. The FY 2011 U.S. Department of Education-Office of the Inspector General (ED-OIG) audit, *Puerto Rico Department of Education's Award and Administration of Personal Services Contracts* (ED-OIG/A04J0005) and Alert Memo, *Insufficient Controls for the Puerto Rico Department of Education's Use of Education Funds for Personal Services Contracts* (ED-OIG/L04K0018), identified weaknesses in PRDE's controls over expenditures for PSCs. The Department is aware that PRDE has attempted to implement an electronic system to capture PSC information known as the Part Time and Irregular Employees System (SEPI). PRDE has indicated previously that it planned to enhance the system or implement a new one that would have the ability to upload supporting documentation such as attendance sheets, signed contracts, and other documents.

The SEPI is the system used to manage the process of contracting for irregular and part-time personnel services in PRDE. The system contains data including contract control numbers, a code that identifies the place where the services are going to be provided, and other useful information. However,

because of concerns that insufficient information was being captured and stored for review, either in SEPI or some other system, to assist PRDE and the Department in properly monitoring and auditing PSCs, and to address the ED-OIG findings regarding PSCs in the ED-OIG audit and alert memo, the Department required PRDE, by September 30, 2012, to either enhance the existing SEPI system, or implement another solution if warranted, to capture at a minimum the information listed below and any other information deemed appropriate to facilitate proper accounting for, and reconciliation of Department grant funds for PSCs:

- a. Contract approval dates.
- b. Obligation number and/or Purchase Order number.
- c. Vendor name, address and vendor ID number.
- d. Name of the PRDE program/unit that requested the services and the name of the PRDE unit that received the services.
- e. Grant award number and account number (in some cases PRDE uses consolidated Federal funds accounts. In those cases, the system should be able to account for each funding source and the amount provided by each).
- f. Registration form numbers, attendance sheet numbers, etc.
- g. Contract amendment numbers.
- h. Amount of hours contracted.
- i. Number of training sessions to be provided or number of teachers or students to be served.
- j. The name of the final approving authority in the Central Procurement Office and Budget Office.
- k. Description of services to be provided.
- l. The expected dates of the deliverables.
- m. Modifications to the original contracts, dates of modification, description of the modification, and names of approving official(s).
- n. Names of all persons/contracting officers responsible for monitoring the PSC and the results to be delivered (outcomes).
- o. Contract number or Registration Form Number.
- p. Award amount.
- q. Award date.
- r. ED grant award(s) to which the PSC is charged.
- s. Name of Person or Location receiving the services (school or office name, location).

During the May 2014 site visit to PRDE, the Department observed a live, step-by-step demonstration of the capacity and functionality of the SEPI system and concluded that PRDE has enhanced the system capability.

During the March 2015 site visit to PRDE, the Department observed a demonstration of continued enhancements made to the SEPI system. This represented PRDE's commitment to ensure adequacy of internal controls over the administration of PSC contracts. However, the Department required

PRDE to ensure that policies and procedures governing SEPI reflect any updated changes made to the system.

In subsequent site visits, the Department will verify that policies and procedures reflect the enhancements made to the SEPI system.

The Department will continue to monitor proper implementation and progress related to the administration of PSC contracts through subsequent site visits and in coordination with the IAO.

Improvement of Pre-SEPI Process

During the demonstration of the SEPI system functionalities in March 2015, the Department identified weak internal controls over the administration and management of the pre-SEPI planning process. Specifically, weak internal controls in the pre-SEPI planning process prevent the timely delivery of services and the proper, timely and effective disbursement of Federal funds.

In October 2015 PRDE submitted a plan to improve the pre-SEPI process to maximize the capability of the SEPI system by eliminating the current manual process. During the April 2016 site visit to PRDE, the Department was presented with a plan and design process for pre-SEPI.

As required by the FY 2016 special conditions, on October 31, 2016, PRDE submitted a status report on its progress in developing and implementing the pre-SEPI process. The status report identified challenges for implementation of the pre-SEPI system. On July 25, 2016, the Puerto Rico Legislature had approved Law Number 89 of 2016, known as "Temporary Employment in Public Service Law." As reported by PRDE, this law prohibited the hiring of temporary employees in the government, with certain exceptions. In addition, it eliminated the nomenclature of "irregular" employees as well as "part-time-employees" in the language of the law. PRDE stated that Law 89 had a direct impact on the hiring of irregular and part-time employees. As stated previously, the SEPI is the system used to manage the process of contracting for irregular and part-time personnel services in PRDE. This law could have effectively shut down the entire SEPI system. PRDE requested time to consult with Puerto Rico government agencies in charge of overseeing the implementation of Law 89. In March 2017, after the new administration received clarification regarding implementation of Law 89, it concluded that PRDE implements personal service contracts under Law 49-1999, which allows for the contracting of personnel outside of the regular service hours and during their vacation periods. PRDE will contract personal services contracts under exceptional situations and for special programs that could not be implemented during the regular program hours. Therefore, PRDE has determined that it can continue with the development and implementation of

the pre-SEPI system. PRDE has evaluated the implementation process and has created a plan to deploy and fully execute the pre-SEPI system.

In April 2017, PRDE implemented a pilot project of the pre-SEPI system with a selected number of programs. PRDE has indicated that once adjustments and modifications are completed, it will expand implementation to other programs. The improvements to the pre-SEPI process aim to maximize the capability of the SEPI system by eliminating the current manual process.

In the February 22, 2019 status report to the Department, PRDE stated its commitment to develop, implement and expand the capabilities of the pre-SEPI system to all education programs. PRDE indicated that it recognizes the benefits of the pre-SEPI capabilities identified as a result of the 2017 pilot project and stated that it will extend the capabilities to other programs in 2019. Based on this report and information collected during the January 2019 RMSD visit to PRDE, the Department has determined that PRDE has not made substantial progress in the implementation of the pre-SEPI system.

By January 31, 2020, PRDE must provide to the Department a corrective action plan design to assist PRDE rollout implementation of the pre-SEPI system. At a minimum, the corrective action plan must include the following:

- Clearly define each phase needed for implementation
- Define deadlines for each phase
- Identify individuals and areas who will be accountable for implementation and results
- Identify and allocate resources necessary to achieve desired results
- Development of policies and procedures
- Development of training tools and deployment to users
- Measures to track and monitor progress

The Department will monitor expansion in the development and execution of the process during subsequent site visits.

2. In the FFY 2013 special conditions, the Department noted that ED-OIG had forwarded to the Department's Risk Management Service (RMS) a complaint that it received regarding possible control weaknesses concerning Professional Services contracts (ProSCs) in PRDE's Institute for the Teachers' Professional Development. The Department is aware that PRDE does have a centralized registry for ProSCs, required by the Puerto Rico Comptroller's office. However, it is unclear whether or not the registry is adequate to capture sufficient information on ProSCs, whether the data is maintained in electronic or another format, or whether the data elements in the registry are those necessary to ensure sufficient controls and accountability for Department grant funds used for ProSCs. Given the concerns raised by the complaint, RMS required the IAO to conduct a review to audit internal

controls governing ProSCs and submit findings and recommendations to the Department by December 1, 2011. The review disclosed issues with the internal control environment within the Institute and control weaknesses over the professional development services procurement award and contract processes. The report included 29 recommendations for improving the effectiveness and adequacy of the controls and procedures for ProSCs.

As a result of these concerns, the Department required that, by September 30, 2012, PRDE must either enhance the existing centralized registry for ProSCs as necessary, or implement another solution if warranted, to ensure that all data required by the Puerto Rico Comptroller's office is being captured, as well as any other information deemed appropriate to facilitate proper accounting for, and reconciliation of, Department grant funds for ProSCs. PRDE could utilize a set of data elements similar to those listed in Section II.B.1. Further, PRDE could elect to develop separate systems or an integrated single system to capture all contracts or registration forms related to both personal and professional services and all necessary data, including the data elements listed above in Section II.B.1, and must make this information available to PRDE's IAO for bi-annual inspection and audit, as well as to the Department on an as requested basis.

Prior to the May 2014 site visit, the Department had concluded that PRDE had fully implemented 22 of the 29 recommendations. During the May 2014 site visit, PRDE provided evidence of the progress made under the remaining seven recommendations issued by the IAO. The Department determined that PRDE had made further progress, fully implementing another four recommendations. PRDE presented a step-by-step execution of a new system developed as part of the IAO recommendations. The system called "Electronic Platform for Professional Development" captures the registration process of professional development activities. Although, progress had been made, three recommendations remained to be fully implemented. In March 2015, PRDE provided evidence that it had completed recommendations # 6 and #26. PRDE has made progress towards completing recommendation #5, which requires the development and implementation of a mechanism to measure the effectiveness of the professional development activities. However, the fully operational platform to capture specific professional development activities was not expected to be fully operational until July 2016. To date, the Department has not seen sufficient evidence to determine that this recommendation has been fully implemented. The Department will assess evidence of a fully operational platform in subsequent visits to PRDE and in coordination with the IAO.

In January 2017 RMS discussed with PRDE leadership and members of the Puerto Rico government the importance of having strong internal controls in the contracting and procurement process to reduce vulnerabilities that can lead to fraud, waste and abuse of Federal education funds.

In March of 2017, PRDE initiated the assessment and evaluation of the ProSCs overall process. The assessment includes the overall contracting and procurement process in PRDE.

The February 22, 2019 status report to the Department states that PRDE is going through a re-organization of its operations and organizational structure. It states that part of this process will be the creation of a contract office expected to be operational during the 2019-2020 fiscal year. In addition, PRDE states that it is in the process of assessing the effectiveness of the professional development services. Through technical assistance site visits, the Department has been working with PRDE to address deficiencies identified in the processes established for ProSCs.

PRDE must obtain assistance from the Agent whose services it procures as required by section II.A of these specific conditions.

F. Continued Work Regarding Grants Management System

This section outlines the status of PRDE's efforts to complete remaining actions to improve its grants management system pursuant to the 2004 Agreement.

Evidence shows that internal controls processes developed under the 2004 Agreement Task 1.0, "Improving PRDE General Grants Management," and implemented under the MOA are still weak. PRDE must ensure that adequate controls are in place to fully implement its grants management system. Specifically, weak internal controls in the pre-award planning process and in the grant application, evaluation, and approval process prevent the timely approval of work plans, further preventing PRDE from commencing implementation of Federal programs upon receipt of grant award notification and from allocating funds in a timely and effective manner.

During the May 2014 site visit to PRDE, PRDE provided an overview of its grants management operations. PRDE provided evidence of steps taken to strengthen its pre-award planning process and its application, evaluation and approval process. In 2017, PRDE started the process of reviewing and evaluating policies and procedures related to work plans.

In a May 1, 2018 report, PRDE stated that, during the process of reviewing and evaluating the work plan policies and procedures, it identified other weaknesses in the work plan platform.

In the April 30, 2019 status report to the Department, PRDE stated that in the process of evaluating grants management policies and procedures it identified

areas that require modifications to strengthen the cycle of the pre-award planning process.

Based on these reports and information collected during the January 2018-19 RMSD visits to PRDE, the Department has determined that PRDE has not maintained adequate internal controls in the pre-award planning process, grant application, evaluation, and approval process through workplans.

The Department will continue to work with PRDE to identify weaknesses in the process. In addition, to improve and sustain its progress in this area, PRDE must obtain assistance from the Agent whose services it procures as required by section II.A of these specific conditions.

By February 2020, PRDE must submit a corrective action plan to the Department establishing adequate controls in all steps of the workplan process. This must include grants management steps for the internal and external entities involved in the workplan process.

G. Compliance with Regulations Enforcement

PRDE must ensure that it complies with the regulations enforced by the Department's Office for Civil Rights (OCR) and cooperates with OCR's investigations including: responding to requests for data in a timely manner; addressing compliance concerns cited by OCR in a timely manner; and submitting complete and timely monitoring reports. Specifically, PRDE must respond to data requests, including scheduling staff interviews, within 15 days of receiving OCR's request. PRDE will also take the appropriate actions specified by OCR to address all compliance concerns cited by OCR and resulting from a complaint or compliance review investigation, within the timeframes specified by OCR. PRDE will also provide documentation in its monitoring reports demonstrating that actions have been taken within the timeframes specified by OCR. PRDE will also provide periodic training to staff regarding the requirements of Section 504 of the Rehabilitation Act of 1973 as they pertain to the provision of a free appropriate public education, related aids and services, and transportation services to students with disabilities. PRDE will also provide OCR with documentation demonstrating that the training has been conducted during FY 2018.

H. Continued Reporting on Implementation of Activities under the 2007 Agreement

Special Education and Related Services

The June 30, 2018 Department-wide Specific Conditions noted that additional reporting was required by the Special Conditions addressed in the 2007 Agreement in the form of Corrective Action Plan (CAP) and CAP Progress Reports. Through those processes, PRDE reported the following data and information:

Requirements and Data

1. *Timely Due Process Hearing Decision Requirement:* A final due process hearing decision must be reached no later than 45 days after the expiration of the 30 day period under §300.510(b), or the adjusted time periods described in §300.510(c), or a timeline that is properly extended by the hearing officer at the request of either party. See 34 CFR §300.515(a) and (c).

Data: PRDE's FFY 2017 reported data under section 618 of the IDEA show that 99.82% (547/548) of due process hearing decisions were issued in a timely manner. In its May 1, 2019 CAP Progress Report, PRDE reported data for the period of July 1, 2018 through March 31, 2019. Specifically, PRDE reported that, as of April 16, 2019, 95.59% (412/431) of due process hearing decisions that were fully adjudicated were issued within the required timeline, or a timeline that was properly extended by the hearing officer at the request of either party.

PRDE attributes its progress in issuing timely due process hearing decisions to the immediate actions the PRDE Office of Special Education (SAEE is the Spanish acronym) leadership took to address the causes attributing to noncompliance in this area. Such actions include encouraging the use of resolution and mediation options available to parents under IDEA. In addition, PRDE implemented the Information System of the Special Education Due Process Hearing (SiPAEE by its Spanish acronym) which allows Conciliators (State educational agency staff assigned to represent PRDE in resolution cases), hearing officers and administrative judges direct access to case information, including timelines. PRDE further reported the SiPAEE produces automatic alerts to staff regarding approaching deadlines to ensure decision timelines are met in accordance with IDEA. In addition, PRDE attributes regular meetings among Conciliators, legal teams and other staff; training; survey feedback; and improved relationships with parents to the improvement in meeting due process hearing timelines.

As noted above, PRDE has continued to report data showing significant progress in meeting the due process hearing decision timeline requirements of the IDEA over time. In addition to the above reported data, PRDE's FFY 2015 SPP/APR data for this indicator was 96.03%. Based on these data, OSEP has determined that PRDE has satisfied the IDEA Part B specific condition related to timely due process hearing decisions, and the Department is removing this specific condition. We appreciate the steps PRDE has taken to correct noncompliance related to this IDEA requirement and expect that PRDE will continue to monitor this area to ensure a high degree of compliance is sustained.

2. *Assistive Technology (AT) Requirement:* Each public agency must ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as part of the child's IEP.

PRDE must provide needed assistive technology devices and services in a timely manner, and eliminate the backlog, if any, of students needing such devices and services who have not received them. See IDEA section 612(a)(1) and 34 CFR §300.105.

Data: In its May 1, 2019 CAP Progress Report, PRDE reported that as of April 25, 2019, for the period of July 1, 2017 through June 30, 2018, 100% (1723/1723) of requests for assistive technology devices and services have been verified as delivered. In the same report, PRDE also reported that for the period of July 1, 2017 through March 31, 2018, 34.33% (287/836) of requests for assistive technology devices and services have been verified as delivered.

In presenting its data, PRDE indicated the improvement in timeliness of the delivery of assistive technology devices for the period of July 1, 2017 through June 30, 2018 was the result of its improved reporting methodology implemented in 2017 and the “Guide for the Provision of Assistive Technology Experiment and Services,” issued in 2017. In addition, PRDE reported that it provides regular training and reinforcement to school personnel regarding their roles and responsibilities in requesting AT equipment; and conducts regular follow-up and monitoring activities to ensure timely delivery and proper use of AT devices in the Commonwealth’s schools. PRDE also reported that a dedicated e-mail address was established to receive and respond to correspondence regarding AT services and devices including purchase requests, delivery status, evaluations, referrals and other specifically related communication. Further, PRDE noted in its 2018-2019 CAP² that specific actions (e.g., follow-up status reports to the CSEEs regarding pending delivery cases; reports to CSSEs regarding compliance with AT requirements; letters to vendors regarding pending delivery of equipment, etc.) had been completed to address the specific condition; however, none of those items were included with PRDE’s May 1, 2019 CAP Report. In addition, PRDE indicated that a supplier bidding process was implemented to allow more efficiency in purchasing frequently requested equipment which helped improve delivery timelines of AT equipment.

At the beginning of each school year, in accordance with 34 CFR §300.323(a) and (c)(2), respectively, each public agency must have in effect, for each child with a disability within its jurisdiction, an Individualized Education Program (IEP), as defined in 34 CFR §300.320; and each public agency must ensure that, as soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child’s IEP. In developing each child’s IEP, the IEP Team must consider whether the child needs assistive technology devices and services in accordance with 34 CFR §300.324(a)(2)(v).

While PRDE’s FFY 2017 data show improvement in the delivery of AT equipment, OSEP is concerned that PRDE is only able to validate that 86.10%

² In addition to the May 1, 2019 Corrective Action Progress (CAP) Report, PRDE included a copy of its 2018-2019 CAP in its response to OSEP.

of the assistive technology and services ordered have been received at a period of time so close to the end of the school year. In addition, based on the reported data, OSEP can only determine what percentage of AT required in students' IEPs has been delivered, not whether or not it has been provided in a timely manner.³

Therefore, OSEP cannot determine that PRDE achieved compliance with the assistive technology requirements in IDEA section 612(a)(1) and 34 CFR §300.105.

3. *Financial Management Requirements:* PRDE must resolve financial management issues in accordance with the fiscal requirements in 34 CFR §§76.530, 300.162(a), 300.202(a)(1) and Subpart E of the Office of Management and Budget (OMB) Uniform Guidance, codified in 2 CFR Part 200. In addition, OSEP notes that in light of major weaknesses in PRDE's overall fiscal management identified in the background section above, the specific conditions related to financial management must stay in place until such time as these weaknesses are corrected.

- a. *Financial Management Generally*

OSEP's FFY 2018 Required Actions: PRDE reported in the May 1, 2018 CAP Progress Report that a new portal had been developed in Mi Portal Especial (MiPE), PRDE's special education electronic data platform, designated specifically for use by service providers and full implementation was expected by fiscal year 2018-2019 in which 100% of the service providers would bill for their services through MiPE. OSEP required PRDE to report on its progress in the December 1, 2018 and May 1, 2019 progress reports, and provide evidence that: a) fiscal management procedures and monitoring processes were implemented during the reporting period; and b) implementation of the new portal in the MiPE invoicing system occurred during the same reporting periods.

Data: In its May 1, 2019 CAP Progress Reports, PRDE reported effective with the 2018-2019 school year, 100% of service providers for children with disabilities are documenting their services through the Mi Portal Especial (MiPE), PRDE's special education electronic data platform. In addition, PRDE reported that 100% of the providers also bill electronically through MiPE for services provided to children with disabilities. PRDE indicated that each service provider is required to record in detail each intervention/service with students with disabilities and upload all supporting documentation into MiPE; PRDE is then able to verify the services were provided through the students' electronic IEP.

PRDE also reported that, as of April 25, 2019, 80% (867/1088) of the bills submitted through MiPE were paid. Internal controls have also been

³ OSEP notes that beginning with its May 2, 2017 CAP Progress Report, PRDE reported the AT data using a methodology that started from the date the IEP team determines that the student needs the AT.

implemented to ensure funds are used to pay for the appropriate services as assigned in students' IEPs. Additionally, PRDE reported that it continues to enhance the system and present new features; and a help desk was set-up to provide technical assistance to users.

Additionally, PRDE reported that it conducted monitoring visits to Special Education Service Centers (CSEE is the Spanish acronym) to review and verify compliance with the procedures established in the SAEE Manual of Policies and Procedures. While monitoring visits to the CSEEs of Ponce, Humacao, Fajado, Arecibo, Caguas, Morovis, Mayaguez and Aguada have been completed, visits to San Germán, San Juan and Bayamón were scheduled for June 2019. PRDE also noted in its May 1, 2019 CAP that samples of the visit reports were available, however, PRDE did not provide evidence that fiscal management procedures and monitoring processes were implemented during the reporting period.

OSEP recognizes that, while PRDE has demonstrated improvements in achieving proper fiscal control, PRDE has not provided the appropriate evidence to demonstrate it has fully resolved its financial management issues related to ensuring that IDEA Part B funds are expended in accordance with IDEA Part B requirements and Subpart E of the OMB Uniform Guidance, codified in 2 CFR Part 200.

b. Transportation Contracts

OSEP's FFY 2018 Required Actions: In the FFY 2018 Specific Conditions, OSEP required PRDE to provide evidence that the formal monitoring related to the Transportation Management System referenced in its May 1, 2017 and May 1, 2018 CAP was conducted, and to provide the results of that monitoring, during the reporting periods specified above.

Data: In the May 1, 2018 Progress Report, PRDE reported that significant changes and improvements have been implemented over the years to improve the management and control of its overall transportation system. Specifically, PRDE reported in its CAP that the SAEE Administration Unit conducted monitoring visits to each educational region to follow-up on actions taken in 2017-2018. As of this reporting period, PRDE had completed monitoring visits to the regions of Bayamón, San Juan, Humacao and Caguas. Visits to three remaining regions were scheduled for May and June 2019. However, PRDE did not provide OSEP with a copy of any of the monitoring reports demonstrating the results from the visits conducted during the specified reporting period.

c. Transportation for Students with Disabilities in Bayamon

OSEP's FFY 2018 Required Actions: In the FFY 2018 Specific Conditions, OSEP specified that, before Puerto Rico can use IDEA Part B

funds for transportation in the Bayamon Region, PRDE must submit to OSEP an audit report clearly demonstrating that PRDE is in full compliance with the requirements of 34 CFR §76.702 and 2 CFR §§200.302(a); 200.302(b)(3); 200.302(b)(4); 200.303; and 200.317 for all transportation costs of students with disabilities in the Bayamón Region. OSEP further indicated that PRDE must also comply with all other requirements listed in its FFY 2017 IDEA Part B grant award letter prior to using IDEA Part B funds for transportation in the Bayamon Region.

Data:

- 1) On August 15, 2018, PRDE's Internal Audit Office (IAO) submitted an audit report to OSEP in response to the required corrective action. The audit report reflected the review of the Transportation Services for students' administration process. Specifically, the report was an evaluation of "the adequacy and effectiveness of the internal controls over the management of school transportation to determine compliance with fiscal control and fund allocation accounting procedures to ensure proper disbursement and accounting" for all educational regions throughout the Commonwealth. Therefore, of the numerous findings made by the IAO, OSEP could not determine which findings were specific to children with disabilities receiving special education and related services under the IDEA Part B program in the Bayamón region. Furthermore, although PRDE ensured that the required audit was conducted, they did not clearly demonstrate that PRDE is in full compliance with the requirements of 34 CFR §76.702 and 2 CFR §§200.302(a); 200.302(b)(3); 200.302(b)(4); 200.303; and 200.317 for all transportation costs of students with disabilities in the Bayamón Region. However, PRDE reported in its May 1, 2019 CAP and Progress Report that it is collaborating with other offices, including its Purchasing Unit, to address the 31 recommendations and observations identified in the IAO audit. OSEP looks forward to updates on PRDE's progress in addressing the related findings.
- 2) With its May 16, 2019 IDEA Part B grant award application submission, PRDE provided a specific assurance that Puerto Rico would not use IDEA funds for transportation costs for students with disabilities in the Bayamón Region until the Commonwealth submits an audit report that clearly demonstrates full compliance with the requirements of 34 CFR §76.702 and 2 CFR §§200.302(a); 200.302(b)(3); 200.302(b)(4); 200.303; and 200.317 for all transportation costs of students with disabilities in the Bayamón Region.

Nature of FFY 2019 Specific Conditions

1. Corrective Action Plan (CAP):

Within 60 days from the date of this letter, PRDE must develop, and submit to OSEP, a CAP that addresses the actions it will take to demonstrate compliance with the three remaining areas of longstanding noncompliance noted in H.2 and H.3, above, that were previously identified in the 2007 Agreement. In the CAP, PRDE must include a description of: (1) the activities to be completed for each item in H.2 and H.3, above; (2) a timeline for each of the activities; (3) persons responsible for completing each of the activities; (4) the supporting evidence which may be referenced regarding each of the activities; and (5) any other pertinent information to track progress on the actions PRDE will take to be in compliance with these requirements.

2. Progress Reports

Additionally, PRDE must submit two CAP progress reports noting the progress on the activities detailed in the CAP in accordance with the schedule specified below:

	Progress Report Due Date	Reporting Period
First Progress Report	December 1, 2019	July 1, 2019–October 31, 2019
Second Progress Report	May 1, 2020	November 1, 2019–March 31, 2020

- a. *Required Reporting on Assistive Technology Requirement:* In its first CAP Progress Report, PRDE must:
 - i. report data on the percentage of requests for assistive technology devices and services that have been verified as completed for the FFY 2018 APR reporting period (July 1, 2018 through June 30, 2019);
 - ii. report updated data on the percentage of requests for assistive technology devices and services that have been verified as completed from the reporting periods specified above in each CAP Progress Report;
 - iii. in order to ensure compliance with the assistive technology requirement under IDEA that AT devices and services are received by children with disabilities in a timely manner PRDE must also report the following data: For each reporting period specified above, in each CAP Progress Report, report the percentage of students whose IEPs require AT devices and services who: (i) received the AT within 30 days of the implementation of the IEP;

- (ii) received the AT more than 30 days after implementation of the IEP; (iii) have not yet received AT;
 - iv. for each reporting period specified above, in each CAP Progress Report for those cases where AT was received more than 30 days after implementation of the IEP or for those that have not yet received AT, report the actual number of days beyond the date of implementation of the IEP and the reason for the delay. In addition, describe the barriers to timely delivery and how PRDE is addressing those barriers; and
 - v. provide copies of summary reports of monitored CSEEs that demonstrate compliance with the processes established in PRDE's Assistive Technology Guide and address pending AT delivery cases.
- b. *Required Reporting on Financial Management Requirements:*
- i. *Fiscal Management Generally:* In each CAP Progress Report, PRDE must report on the activities it conducted during the reporting period to implement the fiscal management procedures and monitoring processes it has developed to ensure IDEA Part B funds are spent in accordance with IDEA Part B requirements and Subpart E of the OMB Uniform Guidance. With its first CAP progress report, due December 1, 2019, and the second CAP progress report, due May 1, 2020, PRDE must provide evidence that the fiscal management procedures and monitoring processes were implemented during the reporting period. PRDE must also provide a summary of any fiscal monitoring findings and the actions taken to ensure compliance.
 - ii. *Automation of special education invoicing:* PRDE must provide evidence of implementation of the new portal in the MiPE invoicing system during the reporting periods specified above in each CAP Progress Report.
 - iii. *Transportation Contracts:* PRDE must provide evidence that the formal monitoring related to the Transportation Management System referenced in its May 1, 2018 and May 1, 2019 CAP has been conducted and the results of that monitoring during the reporting periods specified above in each CAP Progress Report. To satisfy this specific condition PRDE must provide OSEP with a copy of any of the monitoring reports demonstrating the results from the visits conducted during the specified reporting period.
 - iv. *Transportation for Students with Disabilities in Bayamon:* Before Puerto Rico can use IDEA Part B funds for transportation in the Bayamon Region, PRDE must submit to OSEP an audit report clearly demonstrating that PRDE is in full compliance with the

requirements of 34 CFR §76.702 and 2 CFR §§200.302(a); 200.302(b)(3); 200.302(b)(4); 200.303; and 200.317 for all transportation costs of students with disabilities in the Bayamon Region. PRDE must also comply with all other requirements listed in its FFY 2017 IDEA Part B grant award letter prior to using IDEA Part B funds for transportation in the Bayamon Region.

I. Internal Audit Office and Audit Oversight Committee

Full implementation of the IAO organizational structure and the Audit Oversight Committee (AOC) will ensure independence, objectivity and transparency of the IAO operations. The Department recognizes the commitment of the Puerto Rico Government by issuing Executive Order No. 2013-067, which established the AOC. Successful implementation of this action requires an active engagement of the Puerto Rico Governor's Office as mandated by the Executive Order. During the March 2015 site visit, the IAO provided evidence of a fully staffed and operational AOC composed of 3 members appointed by the Governor. Charters for the IAO and AOC have been adopted and approved. The Charters define the purpose and authority of the IAO and the AOC.

In the November 2015 status report, the IAO reported challenges in achieving a fully staffed office due to staff turnover. The IAO took measures to address recruitment efforts to fill vacant positions. The April 2016 semiannual report indicated that the IAO continues the process of filling the vacancy positions. This process has been affected by the July 20, 2015 OMB Circular Letter 125-15, which establishes that resources to fill vacancies for all the Commonwealth of Puerto Rico government agencies will first be evaluated to establish the feasibility of filling positions with candidates transferred from other government agencies.

In the April 30, 2018 semiannual report, IAO reported challenges in retaining a fully staffed IAO. The Puerto Rico Fiscal Agency and Financial Advisory and Authority (FAFAA), the entity in charge of collaboration, communication and cooperation efforts between the Government of Puerto Rico and the Fiscal Oversight Board, created under the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), established a program called "Transicion Voluntaria". This program promotes the voluntary resignation of government employees to seek work in the private sector. In February 2018, three IAO staff auditors took advantage of the Transicion Voluntaria program. The IAO stated that it is working with the Office of Human Resources to address the challenge and identify potential resources to fill the vacancies.

In the October 31, 2018 status report to the Department, the IAO reported that it had obtained approval to begin a new process of recruiting auditors. The report states that in August 2018, the IAO requested 10 internal auditors that included Levels I, II, and III. The IAO considers the recruitment and retention of Level III

auditors with the authority to supervise junior auditors crucial to its operations. However, in the April 30, 2019 status report, the IAO stated that no candidates were available through the August 17, 2018 process. In March of 2019, the IAO started another recruitment process and it is currently reviewing application to identify potential candidates.

The Department is concerned with the challenges the IAO has faced to achieve a fully staffed IAO. A fully staffed IAO is essential to continue successful operations and accountability requirement associated with audits, evaluations and investigations.

PRDE shall work with the IAO Director to address and take corrective actions to ensure adequate resources are allocated to the IAO to attract and retain the qualified staff needed to successfully implement all the functions of the IAO.

By November 11, 2019, PRDE must submit a status report on the corrective actions it has taken to address the IAO staffing needs.

The Department will monitor recruitment efforts through the IAO reporting requirements and subsequent site visits.

In April 2017, the IAO informed the Department of two new Puerto Rico laws that could impact recruitment efforts and organizational structure of the IAO.

- 1) Law 8, "Empleador Unico" signed into law February 4, 2017--it creates a concept for inter-agency personnel movement to fulfill the needs and vacancies of government agencies. This law has the potential to support IAO efforts in recruiting Level III auditors.
- 2) Law 15, "Oficina del Inspector General de Puerto Rico" signed into law February 28, 2017--it creates the Government of Puerto Rico-Office of Inspector General (PROIG)

In the April 30, 2018 semiannual report, IAO stated that it had not been notified of any changes related to Law 15. On April 30, 2019 the IAO reported that the Puerto Rico Inspector General was confirmed by the Puerto Rico Senate on February 2019. However, no agenda has yet been established between the PROIG and the IAO that would alter the responsibilities of the IAO as it is currently implemented. The IAO will notify the Department of the transition process and any changes as a result of the implementation of Law 15.

The IAO will continue to submit a work plan that addresses management implementation and follow up on outstanding IAO evaluations, audits and investigations, including:

- For the semiannual reporting period October 1st to March 31st – due April 30th

- For the semiannual reporting period April 1st to September 30th – due October 31st
1. Reports on in-progress audits and investigations;
 2. Summary reports detailing status of the implementation and execution of recommendations issued by the IAO, specifically concerning:
 - a. Personal Service Contracts (PSCs);
 - b. Professional Service Contracts (ProSCs);
 - c. Reassessment of completed recommendations of the 2004 Compliance Agreement and the 2007 Memorandum of Agreement
 - d. Independent Audit Review to determine the effectiveness and adequacy of the controls and procedures over the Transportation Services for students, including the School Transportation Management System (STMS)

J. Comprehensive Corrective Action Plan (CCAP)

1. PRDE and the Department must work together to develop a CCAP designed to address the fiscal deficiencies in administering Department grant awards that led to the requirement for PRDE to procure the services of an Agent. The CCAP will contain tasks with measurable objectives and completion dates and must address specific deficiencies, which will be determined in accordance with the third-party fiduciary agent's assessment, and incorporate the status and next steps for addressing the issues outlined in sections II.E, II.F, and II.I of these specific conditions.
2. Upon the Department's approval of the CCAP, PRDE will be required to provide quarterly reports to the Department on its progress in implementing measures required under the CCAP. PRDE agrees that the Agent will play a critical role in assessing PRDE's progress in meeting the objectives of the CCAP and also agrees that it will obtain the assistance of the PRDE internal auditor in reviewing and validating the quarterly reports for accuracy prior to their submission.

K. Prompt Response to Request for Records

PRDE shall promptly provide the Department or its representatives any requested records and information related to funds made available to PRDE.

L. Program-Specific Conditions

Additional specific conditions may be imposed on FFY 2019 grant awards made under one or more Department programs, in addition to the specific conditions that are contained in this document. Each such program-specific condition will be contained in an attachment to the final grant award notification document that is provided by the Department to PRDE.

III. FAILURE TO COMPLY WITH SPECIFIC CONDITIONS:

A. Enforcement Action Steps or Additional Conditions

If a plan, report or documentation under Section II above is not provided by PRDE on a timely basis or is not considered acceptable, the Department may consider it a failure to comply with the specific conditions contained in Section II above, and such a failure may be subject to the remedies outlined below or to the terms in Section IV.A below. If the Department determines that PRDE has not made substantial progress in meeting program objectives, or has not met program requirements or the specific conditions contained in Section II above, the Department may consider not continuing PRDE's grants, taking further enforcement action steps, or applying additional conditions, including:

1. Conditions under which PRDE would receive no further funds under one or more grant awards or would receive funds only on a reimbursement basis;
2. Conditions providing for the Department's recovery of misspent funds from PRDE; or
3. Conditions reinstating PRDE's "high-risk" status as described below.

B. Reinstatement of "High-Risk" Status Under 2 CFR §§ 200.207 and 3474.10

In the event that PRDE fails to comply with these specific conditions, as described above in section III.A, the Department retains the authority to reinstate the "high-risk" designation that it removed from PRDE and Puerto Rico in 2004. The Department will evaluate PRDE's progress annually to determine whether it is necessary to reinstate the "high-risk" designation. If the Department determines that such reinstatement becomes necessary, additional specific conditions or restrictions may include, but will not necessarily be limited to: (1) payment of Federal funds on a reimbursement basis; (2) withholding authority to proceed to next phase until receipt of evidence of acceptable performance within a given funding period; (3) requiring additional, more detailed financial reports; (4) requiring additional project monitoring; (5) requiring PRDE to obtain further technical or management assistance; (6) establishing additional prior approvals; or (7) recovery of misspent funds. The use of a condition for one covered Federal program does not require or preclude its use for a different covered Federal program.

These terms and conditions do not preclude the Department from taking any otherwise authorized enforcement or other actions at any time.

IV. OTHER TERMS

A. Severability

The Department intends that if any provision or requirement of this document is later found to be invalid or unenforceable, it will not affect the validity or enforceability of the entire document or of the remaining provisions and requirements.

B. Submission of Reports

All reports that are required to be submitted by PRDE to the Department under these specific conditions shall be submitted to:

Lorena Dickerson
Risk Management Services Division
Office of Finance and Operations
Office of Grants Administration
U.S. Department of Education
550 12th Street, S.W.
PCP, Room 6053
Washington, D.C. 20202

C. Reconsideration and Modifications

At any time, PRDE may request reconsideration of one or more of the above specific conditions contained in Section II above by contacting the Department and providing in writing the reasons why PRDE believes one or more particular conditions are no longer needed. Additionally, the Department may impose additional specific conditions or modify these specific conditions, as appropriate. The Department will remove one or more of the specific conditions contained in Section II above at such time as PRDE meets, to the Department's satisfaction, these conditions and other applicable requirements.

Dated: June 28, 2019

APPENDIX B: PRDE RESPONSIBILITIES AND REQUIREMENTS (PER USDE SPECIFIC CONDITIONS LETTER)

Attachment A to the PRDE FFY 2019 Departmental Specific Conditions

Responsibilities and Requirements of PRDE

The responsibilities and requirements of PRDE in working with the TPFA (hereinafter “Agent”) under these PRSE FFY 2019 specific conditions are as follows:

1. PRDE must work cooperatively and in a timely manner with the Agent to implement the activities and responsibilities described in these specific conditions and must ensure that the Puerto Rico Department of Treasury (Hacienda) also works cooperatively with PRDE and the Agent. PRDE acknowledges that regular communication among PRDE, the Department, and the Agent is necessary to ensure proper financial management of grant funds, consistent with approved grant applications, budgets, and applicable program statutes, regulations and the cost principles in 2 CFR Part 200, Subpart E. Therefore, PRDE agrees that, as the Department deems necessary and appropriate, the Department shall include the Agent in communications, both written and oral, between PRDE and the Department.
2. PRDE, working with Hacienda, as appropriate, must permit, in a timely manner, the Agent’s personnel to have access to all financial books, records, and reports related to funds made available to PRDE by the Department, or used to meet matching requirements, and access to PRDE and Hacienda personnel for discussion regarding the services the Agent must perform under these specific conditions, as provided for in the contract between PRDE and the Agent.
3. PRDE must notify the Department when any dispute arises and remains unresolved between the Agent and PRDE concerning the implementation or continuation of the contract with the Agent, or the implementation of activities supported by Department grants, including the financial management of grant funds. PRDE agrees to the Department’s assistance in the resolution of any such unresolved dispute and agrees that this assistance may require compliance with the Department’s request for additional information from PRDE and Hacienda, as appropriate, and from the Agent, conference calls among representatives from these entities, and decisions or advice from the Department in resolution of the unresolved dispute. This does not preclude PRDE and the Agent from including formal dispute resolution mechanisms in their contract.

4. PRDE, working with Hacienda, as appropriate, must comply with all Federal laws and regulations that apply to the receipt and use of funds awarded under Department grants, including requirements that apply under the Uniform Guidance at 2 CFR Part 200, 75 and 76 of EDGAR, and applicable Federal program statutes and regulations.
5. PRDE must approve of the change of bank routing and account number information in the Department's G5 grants management system from the PRDE bank routing and account number(s) to the Agent's bank non-interest bearing account number(s) established by the Agent to receive Department grant funds drawn down by PRDE.
6. PRDE remains responsible for the provision of program services under the respective grants, including the review and approval (where applicable) of local educational agency (LEA) or other subgrantee applications for subgrants under State formula grant programs, determination of LEA or other subgrantee allocations, and notification to the LEAs or other subgrantees regarding their allocations under the grants.
7. PRDE, prior to any drawdowns or disbursements, in a timely manner, must provide the Agent with a line item budget for the total amount of each grant and subgrant, if applicable, that has been approved and verified by the Department. The line item budget must include amounts for State administration, State-level program activities, and LEA program activities.
8. PRDE is responsible for: (i) executing drawdowns of funds under the grants from the Department's Grants Management System (G5) so that funds are deposited into the separate bank account established and maintained by the Agent; and (ii) providing to the Agent, for deposit into the separate bank account established by the Agent, any matching funds required for the grants. PRDE understands and agrees that it must draw down funds and provide any applicable matching funds to the Agent within 24 hours of receipt of the written notice from the Agent. Failure by PRDE to comply with this condition concerning the time within which it must draw down funds may result in the Department requiring the transfer of drawdown authority to the Agent. In the event of PRDE's failure to draw down funds in accordance with this condition, the Agent must notify the Department, and the Department will determine whether drawdown authority must be transferred to the Agent. If so, then immediately upon written notice of this decision from Department, PRDE must take all steps necessary to provide the Agent with full authority to perform drawdowns, including providing any information and authorization that the Department needs to recognize the Agent as the entity with drawdown authority.

9. PRDE must coordinate with the Agent the timing of drawdowns and disbursements to ensure that payments to staff, vendors and providers are prompt and timely. To the greatest extent feasible, PRDE must draw down funds in a timely manner so that funds under the grants are deposited to the separate bank account(s) maintained by the Agent on the same day that funds are drawn from the accounts(s) to liquidate obligations under the grants. PRDE, as appropriate and at the Agent's direction, must draw down sufficient funds under a grant to cover each approved request for payment.
10. PRDE must use fiscal control and accounting procedures that ensure proper disbursement of, and accounting for, Federal funds, in accordance with 34 CFR § 75.702 (discretionary grants) and § 76.702 (formula grants), and that meet the requirements imposed on non-Federal entity grantees in 2 CFR §§ 200.302, 200.303, and 200.305 (b).
11. PRDE must expend Federal and matching funds only for costs that are allowable under the respective grant programs, in accordance with the regulations and cost principles in 2 CFR Part 200, Subpart E. PRDE acknowledges that the Agent also has the duty to ensure that Department funds are used only for allowable costs, including costs that are necessary, reasonable, and allocable to the respective grants as required by 2 CFR Part 200, Subpart E, and that are procured in accordance with applicable procurement requirements in 2 CFR §§ 200.318-200.326. Where there is a question as to whether a cost is allowable, the Agent must raise this question with PRDE and, if the Agent deems it necessary, may also request assistance from the Department in determining the allowability of any expenditure.
12. PRDE must charge grants only for costs resulting from obligations that were properly made during the period of availability for the funds, including any carryover period. To ensure against the lapsing of Department funds, PRDE must provide the Agent with the amount and nature of all obligations in a timely manner to ensure that the obligations are liquidated no later than 90 days after the end of the funding period or during any extension of that period authorized by the Department, in accordance with 2 CFR § 200.343(b).

13. PRDE must establish and maintain an effective and accurate process for tracking and reporting time and effort spent by all employees whose salaries are paid under Department grants, including, but not limited to, maintaining accurate and up-to-date employee staffing lists and notices of personnel actions, distributing time among different funding sources for split-time employees, and properly allocating salary costs among Department grants, based on records that accurately and properly record the distribution of each employee's work on multiple cost objectives, the time the employee attends work, and, for those employees who work on a single cost objective, semiannual certifications. PRDE must carry out these responsibilities consistent with Federal requirements in 2 CFR Part 200, Subpart E, and more specifically, 2 CFR §§ 200.430 and 200.431.
14. PRDE must work with the Agent to ensure that the charging of direct and indirect costs against the respective Department grants is consistent with the applicable restricted and unrestricted indirect cost rates negotiated with, and approved by, the U.S. Department of Interior (Puerto Rico's cognizant Federal agency), and that copies of any indirect cost rate proposals or agreements are provided to the Agent and comply with the applicable requirements of 2 CFR Part 200, Subpart E, and 34 CFR §§ 75.560-564 (discretionary grants) and 34 CFR §§ 76.560-569 (formula grants).
15. When necessary, PRDE, working with Hacienda, as appropriate, must grant the Agent authority to enter into contracts with vendors on behalf of PRDE, and in doing so, PRDE must comply with the provisions for procurement set forth in 2 CFR §§ 200.318-200.326.
16. PRDE, working with Hacienda, as appropriate, must provide effective oversight for proposed procurements, including, but not limited to, training all staff on, and reviewing all requisitions against, local and Department requirements for procuring goods and services, to facilitate the review and approval by the Agent in a timely manner of purchase orders and to reduce the number of requisitions that are disallowed by the Agent for not meeting these requirements.
17. PRDE must ensure that within 24 hours of receipt of a vendor's invoice from the Agent, staff must (i) accept or reject the goods or services, and, if accepted, (ii) draw down funds for the vendor payment for deposit into the separate bank account(s) maintained by the Agent.

18. PRDE must work with the Agent to ensure that all tangible personal property procured under Department grants is managed in accordance with the requirements of 2 CFR §§ 200.313(a) and (c)-(e) to ensure that such property with a purchase price meeting the thresholds as agreed between PRDE and Hacienda is properly inventoried, maintained, and stored to prevent loss, damage, or theft of such property. PRDE, or another agency designated by the Governor, must conduct a physical inventory of its equipment (as defined in 2 CFR § 200.33) with a purchase price meeting the thresholds as agreed between PRDE and Hacienda that was acquired with Department grant funds at any time and provide a copy of the inventory to the Agent upon completion. A copy of the inventory report shall be provided to the Department upon request.
19. All transactions under the contract between PRDE and the Agent must be consistent with all applicable Federal requirements, including those in the Uniform Guidance at 2 CFR Part 200 and EDGAR at 34 CFR 75 or 76, as appropriate.
20. PRDE, working with Hacienda, as appropriate, shall avoid any actions that may impact the Agent's role and responsibilities under these specific conditions, which do not include oversight of any current and/or proposed fiscal initiatives of Puerto Rico. The Agent may assist PRDE and Hacienda with financial management capacity building efforts, to the extent that this assistance does not compromise the autonomous execution of its responsibilities under these specific conditions.
21. Except as noted herein, PRDE, working with Hacienda, as appropriate, shall comply with all applicable provisions of EDGAR.
22. PRDE may include any other terms in the contract with the Agent, consistent with those above, as are necessary to ensure timely liquidation of all Department funds, timely payment to staff, providers and vendors, and general financial management consistent with applicable Federal regulations, under the Department's grants.

APPENDIX C: TPFAR RESPONSIBILITIES AND REQUIREMENTS (PER USDE SPECIFIC CONDITIONS LETTER)

Attachment B to the PRDE FFY 2019 Departmental Specific Conditions

Responsibilities and Requirements of the Third-Party Fiduciary Agent

The responsibilities and requirements for the TPFA (hereinafter "Agent") under these specific conditions are as follows:

1. The Agent must work cooperatively and in a timely manner with PRDE to implement the activities and responsibilities described in these specific conditions. The Agent acknowledges that regular communication among PRDE, the Department, and the Agent is necessary to ensure proper financial management of grant funds, consistent with approved grant applications, budgets, and applicable program statutes, regulations and the cost principles in 2 CFR Part 200, Subpart E. Therefore, the Agent understands and agrees that, as the Department deems necessary and appropriate, the Department shall include the Agent in communications, both written and oral, between PRDE, and the Department.
2. The Agent's role encompasses financial management responsibilities concerning the grants, including, but not limited to, processing payments and disbursements, maintaining financial records, financial reporting, instituting and applying procurement, inventory, and payroll procedures that comply with applicable Federal requirements, and other duties as more fully described below.
3. PRDE, prior to any drawdowns or disbursements, in a timely manner, must provide the Agent with a line item budget for the total amount of each grant or subgrant, if applicable, that has been approved and verified by the Department. The line item budget must include amounts for State administration, State-level program activities, and LEA program activities. The Agent must use these line item budgets to track projected and actual expenditures for the programs under the grants. The Agent must ensure that the expenditures proposed are only for allowable costs under each grant. The Agent will also receive from the Department copies of the applications, budgets, and budget narratives that the Department has approved for PRDE's grant awards to ensure that the Agent has these documents for purposes of executing its financial management responsibilities on behalf of PRDE under these grants.
4. The Agent must establish, maintain, and manage a separate bank account for all of the funds under the grants from the Department. The Agent must provide PRDE with written notice (e.g., copy of invoice) of when funds are needed for a disbursement under a particular grant.

5. The Agent must acknowledge that PRDE has drawdown authority and that PRDE understand and agrees that is must draw down funds and provide any applicable matching funds to the Agent within 24 hours of receipt of the written notice from the Agent. Failure by PRDE to comply with this condition concerning the time within which it must draw down funds may result in the Department requiring the transfer of drawdown authority to the Agent. In the event of PRDE's failure to draw down funds in accordance with this condition, the Agent must notify the Department, and the Department will determine whether drawdown authority must be transferred to the Agent. If so, then immediately upon written notice of this decision from the Department, PRDE must take all steps necessary to provide the Agent with full authority to perform drawdowns, including providing any information and authorization that the Department needs to recognize the Agent as the entity with drawdown authority.
6. The Agent must use fiscal control and accounting procedures that meet the requirements imposed on non-Federal entity grantees in accordance with 2 CFR §§ 200.302, 200.303, and 200.305(b).
7. The Agent must expend funds only for costs that are allowable under the respective grant programs, in accordance with 2 CFR Part 200, Subpart E. If the Agent questions whether an expenditure is allowable, the Agent must raise this question with PRDE. If the Agent deems it necessary, the Agent may also request assistance from the Department in determining the allowability of any expenditure.
8. The Agent must determine the value of any in-kind property or services donated to or provided by PRDE that are used to meet cost sharing or matching requirements as required by 2 CFR § 200.306 and must maintain records sufficient to document the bases for those valuations.

9. The Agent must take steps to prevent the lapsing of funds available under the grants, including ensuring timely disbursement of funds through the use of methods and procedures for payment that minimize the time elapsing between the transfer of funds and disbursement of those funds as specified in PRDE's Treasury-State agreement, as required under the Cash Management Improvement Act and Treasury regulations at 31 CFR Part 205. For grant funds not included in the PRDE's Treasury-State agreement, the Agent must meet the requirements in 2 CFR § 200.305(b). PRDE and the Agent must coordinate the timing of drawdowns and disbursement to ensure that payments to staff, vendors, and providers are prompt and timely. To the greatest extent feasible, PRDE, or the Agent, if it has undertaken drawdown responsibility, must draw down funds in a timely manner so that funds under the grants are deposited to the separate bank account maintained by the Agent on the same day that funds are drawn from the account to liquidate obligations under the grants. The Agent must ensure that any interest earned on grant funds not subject to the Treasury-State agreement is repaid annually, as required by 2 CFR § 200.305(b)(9).
10. The Agent must charge Department grants only for costs resulting from obligations that were properly made during the period of availability for the funds, including any carryover period. To ensure against the lapsing of Department funds, the Agent must liquidate obligations no later than 90 days after the end of the funding period or during any extension of that period authorized by the Department, in accordance with 2 CFR § 200.343(b).
11. The Agent must establish and maintain a process for tracking and reporting time and effort spent by all employees whose salaries are paid under Department grants, including distribution of time among different funding sources for split-time employees, and properly allocating salary costs among Department grants, based on records that accurately and properly record the distribution of each employee's work on multiple cost objectives, the time the employee attends work, and, for those employees who work on a single cost objective, semiannual certifications. The Agent must carry out these responsibilities consistent with Federal requirements in 2 CFR Part 200, Subpart E, and more specifically, 2 CFR §§ 200.430 and 200.431.

12. In disbursing funds for allowable cost under the grants, the Agent must distinguish between direct and indirect costs and use accurate methods to allocate funds correctly between these two cost categories. The Agent must ensure that the charging of direct and indirect costs against the respective Department grants is consistent with the applicable restricted and unrestricted indirect cost rates negotiated with, and approved by, the U.S. Department of Interior (Puerto Rico's cognizant Federal agency), and that copies of any indirect cost rate proposals or agreements comply with the applicable requirements of 2 CFR Part 200, Subpart E, and 34 CFR §§ 75.560-564 (discretionary grants) and 34 CFR §§ 76.560-569 (formula grants).
13. The Agent must establish contacts and working relationships with prospective vendors that can provide goods and services that PRDE needs under the grants. PRDE must give the Agent authority to enter into contracts with vendors on its behalf and in doing so, must comply with the provisions for procurement set forth in 2 CFR §§ 200.318-200.326.
14. Within 24 hours of the Agent's receipt of a vendor invoice, the Agent must provide copy of the invoice to PRDE and ensure that the goods or services delivered are available for inspection and acceptance or rejection by the appropriate PRDE staff requesting the goods and services. The Agent must pay vendors for the delivered goods or services and must, to the extent reasonably possible, disburse funds to the vendors on the same day that funds are deposited into the separate bank account(s) maintained by the Agent. The Agent must make payments by electronic funds transfer (EFT) or by paper draft only if EFT is not available or possible for a particular vendor.
15. The Agent must manage all tangible personal property procured under the grants, with a purchase price meeting the thresholds as agreed between PRDE and Hacienda, in accordance with the requirements of 2 CFR §§ 200.313(a) and (c)-(e). In particular, the Agent must establish and maintain a process for managing such property consistent with the requirements of 2 CFR § 200.313(d), including reconciling the inventory conducted by PRDE under paragraph 18 in Attachment A to these specific conditions with existing property records; developing a system for maintaining property records and for identifying property acquired with Department grant funds; and establishing a control system to prevent loss, damage, or theft of the property.

16. The Agent must maintain records that fully show the amount of funds made available under each of the grants; how PRDE uses the funds; the total cost of each project; the share of that cost provided from other sources; and other records to facilitate an effective audit, in accordance with 34 CFR § 75.730 (discretionary grants) and § 76.730 (formula grants). The Agent, acting on behalf of PRDE must retain records in accordance with the provisions of 2 CFR § 200.333.
17. In general, the Agent must use fiscal control and fund accounting procedures that ensure proper disbursement of, and accounting for, Federal funds, in accordance with 34 CFR § 75.702 (discretionary grants), § 76:702 (formula grants), and 2 CFR §§ 200.302, 200.303, and 200.305(b).
18. The Agent must maintain insurance as required under the terms of the contract.
19. All transactions under the contract between PRDE and the Agent must be consistent with all applicable Federal requirements, including the Uniform Guidance at 2 CFR Part 200 and EDGAR at 34 CFR Parts 75 or 76, as appropriate.
20. The Agent must comply generally with the requirements of 2 CFR § 200.327. More specifically, the Agent should produce quarterly reports concerning financial transactions of PRDE for submission to PRDE and the Department, detailing for each grant awarded to PRDE: a) the date of receipt, and the amount, of each approved payment request; b) the date and amount of each draw down deposit; c) the date and amount of each payment or disbursement by the Agent; and d) any interest or other funds remaining in the account at the end of the quarter. These amounts must also be grouped by and comparable with the projections in the line item budgets described in paragraph 7 in Attachment A to these specific conditions and must be reconciled with the Department's G5 system. This reconciliation must include drawdown dates, drawdown amounts and available balances, by award. These reports shall be due within 10 working days after the end of each quarter.
21. The Agent recognizes that, except as noted herein, PRDE must comply with all applicable provisions of EDGAR, and all actions that the Agent takes on their behalf in accordance with services provided under these specific conditions, must be in compliance with all applicable provisions of EDGAR.

APPENDIX D: SIGNATURE PAGE

Each proposer is required to submit a Proposal Signature Page with its proposal. Any proposer that fails to deliver the proposal signature page shall automatically be disqualified from consideration for an award.

PROPOSER NAME:

ADDRESS:

PHONE:

EMAIL:

The undersigned, doing business under the full and complete legal name as set forth above, proposes to provide the services described in the proposal to the Puerto Rico Department of Education (the Department), for the prices set forth in the Price Proposal Package. The undersigned makes the following certifications with regard to its service and pricing proposals:

1. Proposer is presenting its proposal for RFP# PRDE-OCCOA-2020-001.
2. Proposer certifies that it has filed all its income tax forms and paid all its taxes (including property taxes), unemployment insurance, disability, and chauffeurs social security, in all applicable cases; or, that it has a payment plan for payment of those obligations and is complying with such plan.
3. Proposer certifies that there is no conflict of interest in the contract and provisioning of the proposed services and items to the PRDE.
4. Proposer agrees that its service proposal and price proposal shall remain valid for 180 days from the date of submission.
5. Proposer certifies that none of the employees of the Department or any of its sub-departments or agencies has a pecuniary interest in their offer.
6. Proposer certifies that its proposal has been prepared and developed without collusion with any of the Department's officials or other proposers and without effort to preclude the Department from obtaining the best competitive proposal.

- 7. Proposer certifies the proposer nor any person or entity associated who is collaborating with the proposer has been the subject of any adverse findings that would prevent PRDE from selecting the respondent. Such adverse findings include but are not limited to the following:
 - a. Negative findings from a federal Inspector General or from the US Government
 - b. Accountability Office (GAO), or from an Inspector General in another state;
 - c. Pending or unresolved legal action from the US Attorney General or from an Attorney General in Puerto Rico or another state;
 - d. Pending litigation with the Government of Puerto Rico, or any other state;
 - e. Arson conviction or pending case;
 - f. Harassment conviction or pending case;
 - g. Puerto Rico, federal, or private mortgage in arrears, default, or foreclosure proceedings;
 - h. In rem foreclosure;
 - i. Sales tax lien or substantial tax arrears;
 - j. Fair Housing violations or current litigation;
 - k. Defaults under any federal or Puerto Rico sponsored program;
 - l. A record of substantial building code violations or litigation against properties owned and/or managed by respondent or by any entity or individual that compromises the respondent;
 - m. Past or pending voluntary or involuntary bankruptcy proceedings; or
 - n. Conviction for fraud, bribery, or grand larceny or any felony listed in the PR Anticorruption Code of 2017.

The undersigned hereby acknowledges receipt of RFP# PRDE-OCCOA-2020-001 and including all appendices. The undersigned also hereby certifies that the proposer has read and agrees to abide by the terms and conditions of the RFP including all appendices and addenda.

Signature: _____

Name: _____

Title: _____

Date: _____

APPENDIX E: NON-COLLUSION AFFIDAVIT

Each proposer is required to submit a Non-Collusion Affidavit with its proposal. Any proposer that fails to deliver the Non-Collusion Affidavit shall automatically be disqualified from consideration for an award.

I, the undersigned, am the ____ of ____ (the "Proposer"), and being duly sworn, declare that the proposal submitted by the Proposer in response to RFP# PRDE-OCCOA-2020-001 is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the proposer has not directly or indirectly induced or solicited any other proposer to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any proposer or anyone else to put in a sham proposal; that the proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the proposer or any other proposer, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other proposer, or to secure any advantage against the Government of Puerto Rico or the Puerto Rico Department of Education; that all statements contained in the proposal are true; and, further, that the Proposer has not, directly or indirectly, submitted its proposal price or any breakdown thereof,, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

I certify (or declare) under penalty of perjury under the laws of Puerto Rico that the foregoing is true and correct.

NAME OF PROPOSER: _____
Signature: _____
Name: _____
Title: _____
Date: _____

NOTARY PUBLIC SEAL

Sworn to and subscribed before me on this _____ day of _____, 2019, proved to me on the basis of satisfactory evident to be the person who appeared before me and signed this Affidavit.

APPENDIX F: LOBBYING CERTIFICATION

LOBBYING CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
5. The proposer, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the proposer understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

Signature of Proposer's Authorized Official

Name and Title of Proposer's Authorized Official

Date

APPENDIX G: PRICE PROPOSAL SAMPLE

Proposers are so submit their prices in a table like the sample provided herein. For SOW Item #2, proposers must submit a yearly price for each TPFA Subservice. For SOW Item #3, proposers must submit a one-time price for each deliverable of each PRDE process, as specified elsewhere in this RFP. For SOW Item #4, proposers must submit a yearly price. No prices shall be submitted for SOW Item #1 and SOW Item #5.

SOW Item/Component	One-Time Price	Yearly Price
SOW Item #2: TPFA Services		
TPFA Subservice #1: Work Plans		
TPFA Subservice #2: Procurement		
TPFA Subservice #3: Disbursements		
TPFA Subservice #4: Time Distribution and Payroll Accounting		
TPFA Subservice #5: Fixed Assets		
TPFA Subservice #6: Bookkeeping and Financial Reporting		
SOW Item #3: Process Assessments, Models & Implementation Plans		
<i>Grants & work plans process</i>		
Current Process Assessment		
Recommended Process Model		
Implementation Plan		
<i>Goods and services “procure-to-pay” process</i>		
Current Process Assessment		
Recommended Process Model		
Implementation Plan		
<i>Employee “hire-to-retire” process</i>		
Current Process Assessment		
Recommended Process Model		
Implementation Plan		
<i>Fixed asset “acquire-to-retire” process</i>		
Current Process Assessment		
Recommended Process Model		
Implementation Plan		
<i>Grant management, accounting & reporting process</i>		
Current Process Assessment		
Recommended Process Model		
Implementation Plan		
SOW Item #4: CCAP Support		