

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

imab-adad-nov23item02

# California State Board of Education November 2023 Agenda Item #13

## Subject

California Assessment of Student Performance and Progress and English Language Proficiency Assessments for California: Determination of the Release of the 10 Percent Withheld from the Educational Testing Service Contract for Fiscal Year 2022–23.

## Type of Action

Action, Information, Consent

## Summary of the Issue(s)

The state’s current California Assessment System contract with Educational Testing Service (ETS), covering the California Assessment of Student Performance and Progress (CAASPP) and the English Language Proficiency Assessments for California (ELPAC) overlaps with the previous contract in 2022–23. The California State Board of Education (SBE) approved Contract Number (CN)150012 on November 9, 2018, and CN220002 on November 3, 2021. Both contracts specify that on or before the annual November SBE meeting, the California Department of Education (CDE) shall present to the SBE a recommendation regarding ETS’s performance as to its compliance with the terms and conditions of the contract for the prior fiscal year (FY) for each test administration cycle. Contracted work completed for a test administration cycle spans multiple fiscal years; therefore, this item will present the work completed in FY 2022–23, which includes work that ETS completed for the 2022, 2023 and 2024 test administration cycles.

Per California *Education Code* Section 60643, the CDE must withhold 10 percent from progress payments invoiced for each component task. The California Assessment System contract establishes the process and criteria by which the CDE recommends, and the SBE approves, the annual release of the 10 percent withheld from progress payments.

The contractual California Assessment System completion criteria for component tasks are provided in Attachment 1.

## Recommendation

The CDE recommends releasing $9,202,319.07 to ETS from funds withheld during FY 2022–23 for the successful completion of component tasks as stated within the contract scopes of work (SOW) under contract CN150012 and CN220002 collectively. The details of the amount per task, by administration, for FY 2022–23 is listed in Attachment 2.

## Brief History of Key Issues

The SOW encompasses both the CAASPP and the ELPAC. The SOW describes the activities, assumptions, and requirements to manage and administer the California assessment system for the 2021–22 school year under CN150012 and for 2022–23, 2023–24, 2024–25, and 2026–27 school years under contract CN220002.

The CDE has reviewed the performance of ETS in complying with the California Assessment System contract and determined that ETS has satisfactorily performed contract component tasks 1, 2, 3, 4, 5, 6, 8, and 9 of the SOW during the 2022–23 test administration to date, pending completion of all contract requirements through December 2027. Therefore, the CDE is recommending approval of the 10 percent release for those tasks. Descriptions of the contract tasks are in Attachment 2.

However, in the CDE’s review of ETS’s compliance with California Assessment System contract component Task 7 activities, the CDE determined that ETS did not satisfactorily perform all portions of those contract components included in the outline below. The CDE and ETS have met to resolve errors in the 2022–23 test administration and activities continuing into FY 2023–24. ETS has put into action corrections intended to ensure success in the future.

### Task 7: Test Administration

The criteria for successful completion of Task 7 requires the contractor to produce all test materials on time and ensure that all test materials were delivered to and retrieved from local educational agencies as specified in the SOW.

The CDE recommends the release of $1,691,678.87 of the 10 percent withhold for Task 7 related to 2022–23 assessment development that the CDE requires for the CAASPP and ELPAC, as specified in the SOW.

The CDE also recommends the non-release of $89,035.73 of the 10 percent withhold for Task 7 for the 2022–23 administration. This is because the contractor did not provide accurate test materials as specified in the SOW.

* The answer recording sheet at the back of the 2022–23 Summative Alternate ELPAC grade span six through eight Form 2 Directions for Administration incorrectly indicated that test question 25 requires second scoring when it did not and that test questions 21 and 26 did not require second scoring when they did. Though the other indicators were correct, this may have caused confusion for some test examiners using the answer recording sheet.

## Summary of Previous State Board of Education Discussion and Action

In November 2022, the SBE approved the release of the 10 percent withheld for the 2020–21 ETS contract (<https://www.cde.ca.gov/be/ag/ag/yr22/documents/nov22item06.docx>).

In November 2021, the SBE approved the release of the 10 percent withheld for the 2020–21 ETS contract (<https://www.cde.ca.gov/be/ag/ag/yr21/documents/nov21item11.docx>).

In November 2020, the SBE approved the release of the 10 percent withheld for the 2019–20 ETS contract, less $119,807.41 (<https://www.cde.ca.gov/be/ag/ag/yr20/documents/nov20item06.docx>).

In September 2019, the SBE approved the release of the 10 percent withheld for the 2018–19 ETS contract, less $176,207.10 (<https://www.cde.ca.gov/be/ag/ag/yr19/documents/sep19item06.docx>).

In November 2018, the SBE approved the release of the 10 percent withheld for the 2017–18 ETS contract, less $21,587.00 (<https://www.cde.ca.gov/be/ag/ag/yr18/documents/nov18item15.docx>).

In July 2018, the SBE approved a request for authority to enter into negotiations to amend ETS’s CAASPP contract to include the integration of the ELPAC assessments and enter into negotiations with the University of California, Santa Cruz for an interagency agreement to provide an educator reporting system (<https://www.cde.ca.gov/be/ag/ag/yr18/documents/jul18item03.docx>).

In January 2018, the SBE approved the proposed contract renewal with ETS for the CAASPP (<https://www.cde.ca.gov/be/ag/ag/yr18/documents/jan18item07.docx>).

In July 2017, the SBE gave the CDE the authority to begin the process of approving a renewal of ETS’s administration contract for an additional two years (<https://www.cde.ca.gov/be/ag/ag/yr17/documents/jul17item04.doc>).

In May 2017, the SBE approved the proposed contract amendment with ETS for the CAASPP contract (<https://www.cde.ca.gov/be/ag/ag/yr17/documents/may17item02.doc>).

In March 2017, the SBE gave the CDE the authority to begin negotiations with ETS to amend the existing SOW for the CAASPP contract (<https://www.cde.ca.gov/be/ag/ag/yr17/documents/mar17item06.doc>).

## Fiscal Analysis (as appropriate)

The funds to be released were withheld during 2022–23 from invoices paid with existing California Assessment System contract funding, as shown in Attachment 2. The CDE recommends the release of $9,202,319.07. The amounts per task are listed in Attachment 2.

## Attachment(s)

* Attachment 1: Educational Testing Service, CDE Agreement #CN220002, Exhibit E: California Assessment System for the California Assessment of Student Performance and Progress (CAASPP) and the English Language Proficiency Assessments for California (ELPAC) Completion Criteria (5 pages)
* Attachment 2: California Assessment System Contract for Fiscal Year 2022–23 by Test Administration Year and Component Task Budget (4 pages)

**Educational Testing Service**

**CDE Agreement # 220002**

**Exhibit E**

**California Assessment System  
for the California Assessment of Student Performance and Progress (CAASPP)   
and the English Language Proficiency Assessments for California (ELPAC) Completion Criteria**

The criteria by which the CDE will recommend and the SBE will determine the successful completion of each separate and distinct component task for payment of the final 10 percent is set forth in the following table for each test administration covered in Exhibit A, Scope of Work of the Agreement.

If it is determined by the CDE that a certified deliverable submitted to the CDE by the contractor does not meet all of the criteria in Exhibit E, the CDE reserves the right to use this information as part of the criteria by which the CDE will recommend, and the SBE will determine, successful completion of each separate and distinct component task for payment of the final 10 percent for each applicable test administration as set forth in the attached California Assessment System completion criteria.

**CRITERIA FOR SUCCESSFUL COMPLETION OF COMPONENT TASKS**

| **Component Task** | **Criteria** |
| --- | --- |
| Task 1: Comprehensive Plan and Schedule of Deliverables | * The contractor provided all reports, plans and schedules required in the task as specified in the Scope of Work. * All materials, documents, and/or deliverables developed in conjunction with this contract were submitted to the CDE for approval. * The contractor provided the LEA Coordinators with all data, forms, and agreements as outlined in the Scope of Work. * The contractor provided and maintained a secure web-based project management system as specified in the Scope of Work. * The contractor delivered all electronic data files and documentation as specified in the Scope of Work. * At the end of the contract, ETS will develop and implement a plan and schedule for transition to another vendor, including the delivery of all California-owned materials, developed specifically for California Assessment System. This will not include any third party or previously developed, proprietary software embedded in the System. |
| Task 2: Program Support Services | * The contractor provided all trainings, focus groups, workshops, and webcasts as specified in the Scope of Work. * The California Technical Assistance Center (CalTAC) provided assistance to local educational agencies as specified, and within the response times specified, in the Scope of Work. * The CDE and LEAs received electronic files and other reports as specified in the Scope of Work. |
| Task 3:  Technology Services | * The Assessment Technology Platform meets all system requirements as specified in the Scope of Work. * The contractor provided an access management system as detailed in the Scope of Work. * Contractor provided and maintained a Project Management Plan as detailed in the Scope of Work. * The Assessment Technology Platform supported up to 2 million concurrent users as specified in the Scope of Work. * The Assessment Technology Platform system supported at least 99.982 percent availability as specified in the Scope of Work. |
| Task 4: Test Security | * All test items, test materials, electronic files, data, (including student-identifiable data) were developed, used, transferred, delivered, and maintained in a secure manner as specified in the Scope of Work. * The contractor completed all monitoring (including but not limited to on-site visits, social media monitoring, inventorying of materials) of schools before, during, and after testing as specified in the Scope of Work. * The contractor conducted security breach investigations as specified in the Scope of Work. * The contractor provided the CDE with summary reports of the results of each security breach investigation. |
| Task 5: Accessibility and Accommodations | * The contractor provided all universal tools, designated supports, and accommodations as required in the Scope of Work. * All items developed (as specified in Task 6) include all the embedded accessibility supports, functionality, and render within the test delivery system as specified in the Scope of Work. |
| Task 6: Assessment Development | * The contractor developed for all grades and subjects the number and types of items specified in the Scope of Work. * The contractor pilot tested or field tested the minimum required number of items as specified in the Scope of Work. * The contractor provided and followed high-level test design and blueprints for assessments as specified in the Scope of Work. * A review of the scaling and equating processes showed items to meet or exceed industry standard. * The performance and achievement level settings generated results for all content areas and performance levels were reported to local educational agencies and the CDE. * The contractor provided all documentation and supported submissions of federal assessment peer review, where applicable. |
| Task 7: Test Administration | * All test materials required in the Scope of Work were produced on time and in sufficient quantities. * All test materials were delivered to and retrieved from local educational agencies as specified in the Scope of Work. * The contractor hosted the Assessment Delivery System as specified in the Scope of Work. * The hosting systems (TOMS, Appeals, and Assessment Delivery System) were operational and functioned as specified in the Scope of Work, including the authentication of users. * Smarter Balanced Interim Assessments were hosted and scoring provided as specified in the Scope of Work. |
| Task 8: Scoring and Analysis | * All tests were correctly processed and scored within timelines specified in the Scope of Work. * All data analyses were completed as specified in the Scope of Work. * The contractor delivered all electronic data files and documentation as specified in the Scope of Work. |
| Task 9: Reporting Results | * The contractor provided accurate and complete reports of test results to local educational agencies that met all reporting requirements as specified in the Scope of Work. * The contractor provided accurate and complete data to the designated CDE vendor for the California Educator Reporting System that met all requirements as specified in the Scope of Work. * The contractor provided accurate and complete reports of test results for the public reporting websites that met all reporting requirements as specified in the Scope of Work. * The contractor met all reporting requirements to the CDE as specified in the Scope of Work. * The annual technical reports were received by the CDE as specified in the Scope of Work. * The contractor will propose and execute special studies as described in the Scope of Work. |

**Attachment 2: California Assessment System Contract for Fiscal Year 2022–23, by Test Administration Year and Component Task Budget**

For fiscal year (FY) 2022–23 the California Department of Education (CDE) received invoices from Educational Testing Service (ETS) for two contracts, Contract Number (CN)150012 and CN220002. The CDE recommends releasing $9,202,319.07 to ETS from funds withheld from these two contracts during FY 2022–23.

The three tables below provide the amounts withheld for FY 2022–23 by contract and administration. Table 1 displays the invoice and withhold totals by task from CN150012 for the 2022 administration. Tables 2 and 3 display the invoice totals by task for CN220002. Table 2 displays the cost associated with the 2023 administration and Table 3 displays the cost incurred in FY 2022–23 to prepare for the 2024 administration.

For the 2022 administration of the California Assessment System, the CDE endorses releasing $524,528.70, to close out the CN150012 (see Table 1). For the CN220002, ETS performed work in FY 2022–23 for two administration years 2023 and 2024. The CDE proposes withholding $89,035.73 from the withhold amount for the 2023 administration and releasing $8,619,693.27 for the 2023 California Assessment System test administration cycle (see Table 2), and $57,797.10 for the 2024 California Assessment System test administration cycle (see Table 3), for a total of $9,202,319.07 to ETS from funds withheld during FY 2022–23.

## Table 1. Recommended Release of Amounts to Educational Testing Service for Contract Number 150012 from Funds Withheld in Fiscal Year 2022–23 for the 2022 California Assessment System Administration

| **Component Task Scope of Work** | **2022 Test Administration Budget for FY 22–23** | **Amount Paid from Progress Payments** | **10 Percent Withheld (Pending Release)** | **Recommended Release** | **Recommended Withhold (Nonrelease)** |
| --- | --- | --- | --- | --- | --- |
| Task 1: Comprehensive Plan and Schedule of Deliverables | $806,956.56 | $726,260.90 | $80,695.66 | $80,695.66 | $0.00 |
| Task 2: Program Support Services | $553,533.00 | $498,179.70 | $55,353.30 | $55,353.30 | $0.00 |
| Task 3: Technology Services | $473,208.00 | $425,887.20 | $47,320.80 | $47,320.80 | $0.00 |
| Task 4: Test Security | $5,374.00 | $4,836.60 | $537.40 | $537.40 | $0.00 |
| Task 5: Accessibility and Accommodations | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| Task 6: Assessment Development | $694,365.00 | $624,928.50 | $69,436.50 | $69,436.50 | $0.00 |
| Task 7: Test Administration | $398,379.00 | $358,541.10 | $39,837.90 | $39,837.90 | $0.00 |
| Task 8: Scoring and Analysis | $1,168,181.00 | $1,051,362.90 | $116,818.10 | $116,818.10 | $0.00 |
| Task 9: Reporting | $1,145,290.44 | $1,030,761.40 | $114,529.04 | $114,529.04 | $0.00 |
| **Totals** | **$5,245,287.00** | **$4,720,758.30** | **$524,528.70** | **$524,528.70** | **$0.00** |

## Table 2. Recommended Release of Amounts to Educational Testing Service for Contract Number 220002 from Funds Withheld in Fiscal Year 2022–23 for the 2023 California Assessment System Administration

| **Component Task Scope of Work** | **2023 Test Administration Budget for FY 22–23** | **Amount Paid from Progress Payments** | **10 Percent Withheld (Pending Release)** | **Recommended Release** | **Recommended Withhold (Nonrelease)** |
| --- | --- | --- | --- | --- | --- |
| Task 1: Comprehensive Plan and Schedule of Deliverables | $6,180,393.00 | $5,562,353.70 | $618,039.30 | $618,039.30 | $0.00 |
| Task 2: Program Support Services | $13,525,865.00 | $12,173,278.50 | $1,352,586.50 | $1,352,586.50 | $0.00 |
| Task 3: Technology Services | $14,202,185.00 | $12,781,966.50 | $1,420,218.50 | $1,420,218.50 | $0.00 |
| Task 4: Test Security | $580,248.00 | $522,223.20 | $58,024.80 | $58,024.80 | $0.00 |
| Task 5: Accessibility and Accommodations | $2,238,880.00 | $2,014,992.00 | $223,888.00 | $223,888.00 | $0.00 |
| Task 6: Assessment Development | $9,111,403.00 | $8,200,262.70 | $911,140.30 | $911,140.30 | $0.00 |
| Task 7: Test Administration | $17,807,146.00 | $16,026,431.40 | $1,780,714.60 | $1,691,678.87 | $89,035.73 |
| Task 8: Scoring and Analysis | $16,693,597.00 | $15,024,237.30 | $1,669,359.70 | $1,669,359.70 | $0.00 |
| Task 9: Reporting | $6,747,573.00 | $6,072,815.70 | $674,757.30 | $674,757.30 | $0.00 |
| **Totals** | **$87,087,290.00** | **$78,378,561.00** | **$8,708,729.00** | **$8,619,693.27** | **$89,035.73** |

## Table 3. Recommended Release of Amounts to Educational Testing Service for Contract Number 220002 from Funds Withheld in Fiscal Year 2022–23 for the 2024 California Assessment System Administration

| **Component Task Scope of Work** | **2024 Test Administration Budget for FY 22–23** | **Amount Paid Progress Payments** | **10 Percent Withheld (Pending Release)** | **Recommended Release** | **Recommended Withhold (Nonrelease)** |
| --- | --- | --- | --- | --- | --- |
| Task 1: Comprehensive Plan and Schedule of Deliverables | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| Task 2: Program Support Services | $165,089.00 | $148,580.10 | $16,508.90 | $16,508.90 | $0.00 |
| Task 3: Technology Services | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| Task 4: Test Security | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| Task 5: Accessibility and Accommodations | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| Task 6: Assessment Development | $403,571.00 | $363,213.90 | $40,357.10 | $40,357.10 | $0.00 |
| Task 7: Test Administration | $9,311.00 | $8,379.90 | $931.10 | $931.10 | $0.00 |
| Task 8: Scoring and Analysis | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| Task 9: Reporting | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| **Totals** | **$577,971.00** | **$520,173.90** | **$57,797.10** | **$57,797.10** | **$0.00** |