

**STATE OF WASHINGTON
OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION
OLYMPIA, WASHINGTON**

REQUEST FOR QUALIFICATIONS AND QUOTATIONS (RFQQ)

RFQQ NO. 2020-01

PROJECT TITLE: Inclusionary Practices Project Leader

PROPOSAL DUE DATE: 3:00 p.m., Pacific Time (PDT) on July 30, 2019

ESTIMATED CONTRACT PERIOD: August 19, 2019-June 30, 2021. Amendments extending the period of performance, if any, shall be at the sole discretion of OSPI.

CONSULTANT ELIGIBILITY: This solicitation is open to those Consultants that satisfy the minimum qualifications stated herein and that are available for work in Washington State.

SUBMIT PROPOSAL TO: **Proposal Delivered by Email:**
contracts@k12.wa.us

FAXED PROPOSALS WILL NOT BE ACCEPTED.

All communications concerning this RFQQ must be directed only to the RFQQ Coordinator via email. Any other communication will be considered unofficial and non-binding on OSPI. Consultants are to rely on written statements issued by the RFQQ Coordinator. Communication directed to parties other than the RFQQ Coordinator may result in disqualification of the Consultant.

This RFQQ is available at the Office of Superintendent of Public Instruction (OSPI) website located at [OSPI's website](#) and at the Department of Enterprise Services, [Washington Electronic Business Solution \(WEBS\) Procurement website](#). All RFQQ amendments or Consultant questions and OSPI answers will be posted to these sites. All interested Consultants must be registered with WEBS under the following commodity codes in order to receive notifications: 918-38: Education and Training Consulting; 924-74: Special Education; 958-77: Project Management Services.

OSPI, and its contractors and subcontractors, must not discriminate in any programs or services based on sex, race, creed, religion, color, national origin, age, marital status, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, disability, or the use of a trained dog guide or service animal by a person with a disability, and must comply with state and federal nondiscrimination laws, including Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Americans with Disabilities Act, and Title VI of the Civil Rights Act of 1964. Questions and complaints of alleged discrimination should be directed to the Equity and Civil Rights Director at 360-725-6162/TTY: 360-664-3631; or P.O. Box 47200, Olympia, WA 98504-7200; or equity@k12.wa.us.

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Section A. INTRODUCTION

1. DEFINITIONS

Definitions for the purposes of this RFQQ include:

Agency or OSPI – The Washington State Office of Superintendent of Public Instruction and the entity issuing this RFQQ.

Amendment – A unilateral change to the Solicitation that is issued by OSPI at its sole discretion and posted on WEBS and OSPI's website.

Apparent Successful Bidder (ASB) – A Bidder submitting a response to this Solicitation that is evaluated and is identified and announced by OSPI as providing the best value to the Agency. Upon execution of a Contract, the ASB is referred to as the successful Bidder or the Contractor.

Bid – An offer, proposal, or quote for goods or services submitted in response to this RFQQ.

Bidder – Individual organization, public or private agency submitting a proposal in order to attain a contract with OSPI. For purposes of this Solicitation, the terms Bidder, Consultant, and Vendor are interchangeable.

Competitive Solicitation – A documented formal process providing an equal and open opportunity to Bidders or Consultants culminating in a selection based on predetermined criteria.

Complaint – A process that may be followed by a Consultant prior to the deadline for bid submission to alert OSPI of certain types of asserted deficiencies in the Solicitation.

Consultant – Individual submitting a proposal in order to attain a contract with OSPI. For purposes of this Solicitation, the terms Bidder, Consultant, and Vendor are interchangeable.

Contractor – Individual or company whose proposal has been accepted by OSPI and is awarded a fully executed, written contract.

Debriefing – A short meeting an unsuccessful Bidder may request with the Coordinator following the announcement of the Apparent Successful Bidder for the purpose of receiving information regarding the review and evaluation of that Bidder's Response.

Proposal – A formal offer submitted in response to this RFQQ.

Proprietary Information – Information such as patents, technological information or other related information that the Bidder or Consultant does not want released or shared with the public.

Protest – A process that may be followed by a Bidder after the announcement of the Apparent Successful Bidder to alert OSPI to certain types of alleged errors in the evaluation of the Solicitation.

Request for Qualifications and Quotations (RFQQ) – Formal procurement document in which services needed are identified, and Consultants are invited to provide their qualifications and quotation to provide the services.

RCW – The Revised Code of Washington.

Responsible Bidder – An individual, organization, public or private agency, or other entity that has demonstrated the capability to meet all the requirements of the Solicitation and meets the elements of responsibility. (See [RCW 39.26.160 \(2\)](#))

Responsive Bidder – An individual, organization, public or private agency, or other entity who has submitted a Bid that fully conforms in all material respects to the Solicitation and all its requirements, in both form and substance.

RFQQ Coordinator – An individual or designee who is employed by OSPI and who is responsible for conducting this Solicitation.

Solicitation– A formal process providing an equal and open opportunity for bidders culminating in a selection based upon predetermined criteria.

Subcontractor – An individual or other entity contracted by a Consultant to perform part of the services or to provide goods under the Contract resulting from this Solicitation. Subcontractors, if allowed, are subject to the advance approval of OSPI.

Vendor – Individual organization, public or private agency submitting a proposal in order to attain a contract with OSPI. For purposes of this Solicitation, the terms Bidder, Consultant, and Vendor are interchangeable.

WEBS – Washington’s Electronic Business Solution, the Consultant notification system found at [Washington Electronic Business Solution \(WEBS\) Procurement website](#) and maintained by the Washington State Department of Enterprise Services.

2. PURPOSE OF REQUEST FOR QUALIFICATIONS

The Office of Superintendent of Public Instruction (OSPI) is initiating this Request for Qualifications and Quotations (RFQQ) to solicit proposals from Consultants interested in participating on a two- (2-) year project to oversee the planning, implementation, and evaluation of a state inclusion project, which will include budgeting, data collection, and supporting activities for district and school leaders, classroom teachers (general education and special education), paraeducators, and families. The project will require extensive partnering within OSPI and with professional organizations across the state which support educational leaders, educators, parents, and school directors, including institutes of higher education educator and leader preparation programs. This initiative will support comprehensive and coordinated activities designed to increase access to grade level core instruction through the inclusion of students eligible for special education services in general education classrooms, and result in improved Least Restrictive Environment (LRE) data, as described by Indicator 5 in the Annual Performance Report (APR)¹, and improved outcomes as measured by the Washington School Improvement Framework (WSIF), specifically in graduation rates, English Language Arts and math proficiency and growth, and school quality or student success indicators (SQSS).

¹ <http://www.k12.wa.us/SpecialEd/Data/default.aspx>

3. BACKGROUND

OSPI is the primary agency charged with overseeing K-12 public education in Washington State. Led by State School Superintendent Chris Reykdal, OSPI works with the State's two hundred and ninety-five (295) school districts to administer basic education programs and implement education reform on behalf of more than one million public school students. OSPI is housed in the Old Capitol Building in Olympia.

During the 2019 Washington Legislative session, [Engrossed Substitute House Bill 1109](#) (ESHB 1109) passed, which included \$25,000,000 to OSPI over fiscal years 2020 and 2021 to support professional development and mentors for inclusionary practices. These funds will be used by OSPI to provide additional, and coordinate existing, activities through OSPI, Educational Service Districts (ESDs), the Association of ESDs (AESD), school districts, and state professional organizations, including Washington Education Association (WEA), Association of Washington School Principals (AWSP), Parent Teacher Association (PTA), Washington Association of School Administrators (WASA), Center for Strengthening the Teaching Profession (CSTP), Collaboration for Effective Educator Development, Accountability, and Reform (CEEDAR), Washington state Teacher Leader Fellows, and Institutes of Higher Education (IHE) Educator and Leader Preparation Programs, Washington State School Directors' Association (WSSDA), Open Doors for Families, State Special Education Advisory Council (SEAC) Inclusion Committee, Partnerships for Action, Voices for Empowerment (PAVE), Inclusion for ALL, and Roots of Inclusion, at a minimum. Washington is also part of a technical assistance (TA) program through the National Center for Intensive Interventions (NCII), and has applied for TA from the TIES Center for inclusive practices for students with significant cognitive disabilities.

Following a data analysis, including the Washington School Improvement Framework (WSIF), and state Annual Performance report data (i.e., Indicator 5 data (least restrictive environment), Indicator 1 (graduation rates), Indicator 3 (participation and performance), and Indicator 14 (post-school outcomes)), a Theory of Action will be designed and implemented, with participation of representatives of the organizations listed above. It is anticipated that funds will be used for a combination of scalable activities, including demonstration sites, school/district grants, mentors with expertise in inclusive education, and professional development that addresses the six (6) priorities of OSPI in special education, master scheduling of schools to provide opportunities for tiered instruction and intervention (including multi-tiered system of support (MTSS) and specially designed instruction (SDI)), research supporting inclusion and effective instruction of students with disabilities, High Leverage Practices in Special Education, Washington K-12 Learning Standards, and growth-focused IEP development designed to support access and progress in general education classrooms and standards.

4. OBJECTIVE AND SCOPE OF WORK

- A. Objective** Remotely coordinate and support the activities funded under ESHB 1109 for fiscal years 2020 and 2021, to improve both inclusion of students with disabilities ages 6-21 in Washington state, and outcomes (e.g., graduation and post-school). Ensure that activities are aligned with division and agency objectives as determined to be appropriate and in consultation with state Special Education leadership.

B. Scope of Work

- Schedule and lead an in-person data analysis, using data aligned with Student Information, including the WSIF, and state Annual Performance report data (i.e., Indicator 5 data (least restrictive environment), Indicator 1 (graduation rates), Indicator 3 (participation and performance), and Indicator 14 (post-school outcomes)).
- With OSPI Special Education leadership as an advisor, design, refine, and implement a written, multi-year, scalable Theory of Action and implementation plan, with participation of representatives of state and community organizations including OSPI, Educational Service Districts (ESDs), AESD, school districts, and state professional organizations, including Washington Educators Association (WEA), Association of Washington School Principals (AWSP), Parent Teacher Association (PTA), Fellows, Washington Association of School Administrators (WASA), Center for Strengthening the Teaching Profession (CSTP), Collaboration for Effective Educator Development, Accountability, and Reform (CEEDAR) and Institutes of Higher Education (IHE) Educator and Leader Preparation Programs, Washington State School Directors' Association (WSSDA), Open Doors for Multicultural Families, Partnerships for Action, Voices for Empowerment (PAVE), State Special Education Advisory Council (SEAC) Inclusion Committee, Inclusion for ALL, and Roots of Inclusion, at a minimum.
- Following review of data and receipt of stakeholder input, recommend funding amounts to be used for a combination of scalable activities, (as described within the implementation plan described above) including demonstration sites, school/district grants, mentors with expertise in inclusive education, and professional development that addresses the six (6) priorities of OSPI in special education, master scheduling of schools to provide opportunities for tiered instruction and intervention (including MTSS and specially designed instruction), research supporting inclusion and effective instruction of students with disabilities, High Leverage Practices in Special Education, Washington K-12 Learning Standards, and IEP development to support access and progress in general education classrooms and standards. Activities should align with or build upon related agency work, when possible.
- Schedule and lead weekly meetings (in person or online) with OSPI Assistant Superintendent of Special Education, or designee(s) to provide status updates, plan, and implement activities.
- Convene special committees to build/develop specific activities, as needed.
- Schedule and lead in-person quarterly meetings of professional organizations and OSPI staff to develop plans, review actions and activities, and identify supports and outcomes.
- Identify additional supports needed for implementation and coordination of activities, whether at the state, district, or local level and actively participate in the design of contracts and scope of work for additional personnel, upon request.
- Coordinate two-way communication between organizations involved, to include development and implementation of the implementation plan, as well as regular and ongoing progress reports, while soliciting and responding to feedback. Activities should provide additional value, rather than duplicate services already in place in ESDs, districts, schools, and across the state, including those through OSPI divisions.

- Provide an annual written report for OSPI, summarizing activities, evaluation components, and results.
- Present at state conferences and meetings on plans, activities, and results, targeting audiences of school and district leaders and educators, as well as families. Family presentations should include community organizations, when possible, and contain information relevant to families.
- Provide regular (i.e., quarterly) and ongoing written deliverables (e.g., progress reports, PD opportunities, information to support inclusion) to OSPI divisions for dissemination through monthly newsletters and social media.
- Work with OSPI staff to design a webpage and identify resources to be added to the OSPI website to support inclusive practices, including plans and activities.

5. CONSULTANT QUALIFICATIONS

Minimum Qualifications:

- Licensed to do business in the State of Washington. If not licensed, provide a written intent to become licensed in Washington within thirty (30) calendar days of being selected as the Apparent Successful Bidder.
- Knowledge and successful experience in leading and supporting general education and special education teachers.
- Knowledge of the Individuals with Disabilities Education Act (IDEA), Washington Administrative Code (WAC) 392-172A, Washington K-12 Learning Standards.
- Successful experience in school improvement planning, including data analysis, of at least three (3) years, with verified improved outcomes, resulting from those activities.
- Experience in convening heterogeneous groups of Washington education professionals and families, to identify growth opportunities, develop a change plan, and implementation of a plan.
- A master's degree in education, public policy, or a related field.
- Demonstrated successful experience utilizing project management principles and coordinating a budget of at least \$500,000 when successfully implementing complex projects for students, leaders, or educators.

Consultants who do not meet these minimum qualifications will be rejected as non-responsive and will not receive further consideration. Any proposal that is rejected as non-responsive will not be evaluated or scored.

Desirable Qualifications:

- Examples of experience in providing effective and engaging professional development to adult learners at a district, state, or national level.
- Examples of experience in conducting action research and presenting findings.
- Demonstrated ability to communicate clearly and accurately verbally and in writing, and manage multiple projects, while ensuring timelines are met and goals are achieved.
- Examples of successful experience building relationships and communicating effectively with diverse stakeholder groups.

6. PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFQQ is tentatively scheduled to begin on or August 19, 2019, and end on or about June 30, 2021. The option to extend any contract resulting from this procurement shall be at the sole discretion of OSPI.

As such, OSPI reserves the right to amend to extend the contract for three (3) additional contract years through 2024. Decision to amend shall be based on sustained satisfactory performance as decided by the Superintendent's designee, successful completion of project objectives, and availability of state funding. If OSPI provides a renewal notice to the Contractor, the Contractor shall be obligated to enter into a contract with the same fiscal obligations as the previous Contract year, provided that OSPI and Contractor shall negotiate any revision of additional services or goals beyond those encompassed in the previous Contract.

Additional services that are appropriate to the scope of this RFQQ, as determined by OSPI, may be added to the resulting contract by a written amendment mutually agreed to and executed by both parties.

7. FUNDING

The successful Contractor resulting from this RFQQ shall be compensated a maximum of three hundred twenty-five thousand dollars (\$325,000) for the initial term of this project, which includes travel, supplies, and materials.

Contractor may also be reimbursed for mileage, meals, lodging, and other travel-related expenses in accordance with [Washington State travel regulations](#) established by the Office of Financial Management.

Any contract awarded as a result of this procurement is contingent upon the availability of funding.

8. INDIRECT COSTS

Per OSPI's indirect costs policy, the maximum amount that may be charged or included in grants and contracts is the following:

| Entity | State Grants and Contracts | Federal Grants and Contracts |
|---|---|--|
| School Districts | State recovery rate | Federal indirect rates, per OSPI's agreement with the U.S. Department of Education |
| Educational Service Districts | Per annual letter of agreement by K-12 Financial Resources Division | Per annual letter of agreement by K-12 Financial Resources Division |
| All other entities (including higher education, non-profits, independent consultants, etc.) | 10% | 10% |

9. AMERICANS WITH DISABILITIES ACT (ADA)

OSPI complies with the Americans with Disabilities Act (ADA). Consultants may contact the RFQQ Coordinator to receive this Request for Qualifications in an alternative format. Materials created by the contractor must meet Section 508 accessibility requirements.

Section B. GENERAL INFORMATION FOR CONSULTANTS

1. RFQQ COORDINATOR

The RFQQ Coordinator is the sole point of contact in OSPI for this procurement. All communication between the Consultant and OSPI upon receipt of this RFQQ shall be with the RFQQ Coordinator, as follows:

| | |
|-----------------------|---|
| Name: | Kyla Moore |
| Address: | 600 Washington Street South P.O. Box 47200 Olympia, WA 98504-7200 |
| Email Address: | contracts@k12.wa.us |

All communications concerning this RFQQ must be directed only to the RFQQ Coordinator via email. Any other communication will be considered unofficial and non-binding on OSPI. Consultants are to rely on written statements issued by the RFQQ Coordinator. Communication directed to parties other than the RFQQ Coordinator may result in disqualification of the Consultant.

2. ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

| Item | Action | Date |
|-------------|--|---|
| 1. | OSPI issues RFQQ | July 1, 2019 |
| 2. | Question and Answer period | July 1-22, 2019 |
| 3. | Last date for questions regarding RFQQ | July 22, 2019 |
| 4. | Complaints due | July 23, 2019 |
| 5. | OSPI posts final Question and Answer Addendum or Amendment (if necessary) | July 24, 2019 |
| 6. | Proposals due | July 30, 2019 |
| 7. | OSPI conducts evaluation of proposals | August 5, 2019 |
| 8. | OSPI announces "Apparent Successful Bidder" and sends notification to unsuccessful Bidder(s) | August 6, 2019 |
| 9. | OSPI conducts debriefing conferences (if requested) | As requested, per debriefing instructions |
| 10. | Contract negotiation begins | August 6, 2019 |
| 11. | Anticipated contract start date | August 19, 2019 |

OSPI reserves the right to revise the above schedule.

3. COMPLAINT PROCEDURE

The complaint process is available to Consultants interested in this RFQQ. The complaint process allows Consultants to focus on the Solicitation requirements and evaluation process and raise issues with these processes early enough in the process to allow OSPI to correct a problem before proposals are submitted and time expended on evaluations.

A Consultant may submit a complaint based on any of the following:

- The Solicitation unnecessarily restricts competition;
- The Solicitation evaluation or scoring process is unfair or flawed; or
- The Solicitation requirements are inadequate or insufficient to prepare a proposal.

Consultants may submit complaints up to five (5) business days prior to the proposal due date noted in the Estimated Schedule of Procurement Activities. However, Consultants are encouraged to submit complaints as soon as possible so OSPI can rectify the issue(s) early in the process. Complaints must be submitted to the RFQQ Coordinator. In order to be considered a valid complaint, the complaint must meet the following requirements:

- Must be in writing.
- Should clearly articulate the basis for the complaint.
- Should include a proposed remedy.

Complaints not received by the deadline noted in the Estimated Schedule of Procurement Activities will not be reviewed by OSPI. Failure by the Bidder to raise a complaint at this stage may waive its right for later consideration.

The OSPI Contracts Administrator or an employee delegated by the Contracts Administrator will review valid complaints and respond to the submitter in writing. OSPI will consider all complaints but is not required to adopt a complaint, in part or in full. OSPI's response to the complaint is final and not subject to administrative appeal. The response, and any changes to the RFQQ, will be posted to WEBS prior to the proposal due date. Any complaint addressed during the complaint process cannot be raised during the protest process.

4. SUBMISSION OF PROPOSALS

Consultants shall submit proposals as an attachment to an email to the RFQQ Coordinator listed above in Section B.1. ***Proposals must arrive by 3:00 p.m. in Olympia, WA, on July 30, 2019.*** (Please note RFQQ No. 2020-01 in the email subject line.) Attachments to the email shall be Microsoft Word format or in Portable Document Format (PDF). Zipped files may be received by OSPI and can be used for submission of proposals. OSPI does not assume responsibility for any problems with the electronic delivery of materials.

Proposals not received by the deadline will not be reviewed. Late proposals will not be accepted and will be automatically disqualified from further consideration. Proposals must respond to the procurement requirements. Do not respond by referring to material presented elsewhere. The proposal must be complete and must stand on its own merits.

Failure to respond to any portion of the procurement document may result in rejection of the proposal as non-responsive. All proposals and any accompanying documentation become the property of OSPI and will not be returned.

5. PROPRIETARY INFORMATION/PUBLIC DISCLOSURE

Your entire response to this RFQQ is a public record and will be disclosed consistent with the Public Records Act, Chapter 42.56 RCW.

A. CONFIDENTIAL DOCUMENTS

For the purposes of this RFQQ, do not include confidential or proprietary information unless specifically requested by OSPI.

If OSPI requests confidential or proprietary information, you must clearly print the word “Confidential” on the lower right-hand corner of each page containing the confidential or proprietary information.

B. PUBLIC RECORDS REQUESTS

If a public records request seeks your proposal and the proposal contains pages clearly marked “Confidential”, OSPI will take the following steps:

- i. We will notify you. We will identify the requestor and the date that OSPI will disclose the requested records.
- ii. We will give you an opportunity to seek a court order to stop OSPI from disclosing the records.
- iii. We will not evaluate or defend your claim of confidentiality. We will not withhold or redact your documents without a court order.

If you have any questions, refer to the [OSPI Public Records Office](#).

6. ADDENDUMS AND AMENDMENTS TO THE RFQQ

In the event it becomes necessary to revise any part of this RFQQ, an addendum or an amendment will be published on the [OSPI website](#). For this purpose, the published Consultant questions and Agency answers, and any other pertinent information, shall be considered an addendum to the RFQQ. Additionally, all addenda referred to above will be released on WEBS under the commodity code(s) listed on the cover page of this RFQQ. It will be the responsibility of interested Consultants to check the website periodically for addenda and amendments to the RFQQ.

7. SMALL BUSINESS, MINORITY & WOMEN’S BUSINESS ENTERPRISES (MWBE), AND VETERAN-OWNED BUSINESS PARTICIPATION

In accordance with the legislative findings and policies set forth in chapter [39.19 RCW](#), the State of Washington encourages participation in all of its contracts by firms certified by the Office of Minority and Women’s Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this RFQQ or on a subcontractor basis. For more information on certification, contact the [Washington Office of Minority and Women’s Business Enterprises](#).

43.60A.200 encourages the participation of Veteran and Service Member Owned Businesses certified by the Washington State Department of Veterans Affairs RCW [43.60A.195](#). For more information on certification, contact [Washington State Department of Veteran Affairs](#).

Additionally, per Department of Enterprise policy, agencies are encouraged to buy from in-state small business, including microbusinesses and minibusinesses.

However, no preference will be included in the evaluation of proposals, no minimum level of MWBE participation shall be required as a condition for receiving an award, and proposals will not be rejected or considered non-responsive on that basis. Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the contract documents will apply.

Self-Certification should be submitted with the Contractor Intake Form (Exhibit D).

8. ACCEPTANCE PERIOD

Proposals must provide sixty (60) days for acceptance by OSPI from the due date for receipt of proposals.

9. RESPONSIVENESS

All proposals will be reviewed by the RFQQ Coordinator to determine compliance with administrative and minimum requirements and instructions specified in this RFQQ. OSPI may reject a Proposal as nonresponsive at any time for any of the following reasons:

- Incomplete Proposal
- Failure to meet the minimum Bidder qualifications or to comply with any requirement set forth in this RFQQ, including Attachments
- Submission of incorrect, misleading or false information
- History of prior unsatisfactory contractual performance

The RFQQ Coordinator may contact any Bidder for clarification of the proposal. If a proposal is deemed non-responsive, it shall be removed from further consideration. Bidders whose proposals are found to be non-responsive shall be disqualified from further evaluation and shall be notified in writing. Within three business days following such notification, Bidder may request a Debriefing Conference that shall be limited to the reasons Bidder was found to be non-responsive. Refer to Debriefing of Unsuccessful Proposers procedure in Section D.

If a proposal meets all administrative and Bidder qualification requirements and submittal instructions, OSPI shall continue with the written evaluation and, if applicable, the oral evaluation.

OSPI reserves the right at its sole discretion to waive minor administrative irregularities.

10. MOST FAVORABLE TERMS

OSPI reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially on the most favorable terms which the Bidder can propose. There will be no best and final offer procedure. OSPI does reserve the right to contact a Bidder for clarification of its proposal.

The Bidder should be prepared to accept this RFQQ for incorporation into a contract resulting from this RFQQ. Contract negotiations may incorporate some or all of the Bidder's proposal. It

is understood that the proposal will become a part of the official procurement file on this matter without obligation to OSPI.

11. CONTRACT AND GENERAL TERMS & CONDITIONS

The Apparent Successful Bidder will be expected to enter into a contract which is substantially the same as the sample contract and its General Terms and Conditions. In no event is a Bidder to submit its own standard contract terms and conditions in response to this solicitation. The Bidder may submit exceptions as allowed in the Certifications and Assurances section. OSPI will review requested exceptions and accept or reject the same at its sole discretion.

Should contract negotiations fail to be completed within two (2) weeks after initiation, the State may immediately cease contract negotiations, declare the Vendor with the second highest score as the new Apparent Successful Bidder, and enter into contract negotiations with that Bidder. This process will continue until the Contracts are signed or no qualified Bidders remain.

12. COSTS TO PROPOSE

OSPI will not be liable for any costs incurred by the Consultant in preparation of a proposal submitted in response to this RFQQ, in conduct of a presentation, or any other activities related to responding to this RFQQ.

13. NO OBLIGATION TO CONTRACT

This RFQQ does not obligate the State of Washington or OSPI to contract for services specified herein. OSPI also reserves the right to cancel or to reissue the RFQQ in whole or in part, prior to execution of a contract without penalty.

14. REJECTION OF PROPOSALS

OSPI reserves the right at its sole discretion to reject any and all proposals received without penalty and not to issue a contract as a result of this RFQQ.

15. COMMITMENT OF FUNDS

Only an authorized representative of OSPI may legally commit OSPI to the expenditures of funds for a contract resulting from this RFQQ. No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

16. STATEWIDE VENDOR PAYMENT REGISTRATION

Consultants awarded contracts as a result of this RFQQ will be required to register as a Statewide Vendor (SWV). The SWV file is a central vendor file maintained by the Office of Financial Management for use by Washington State agencies in processing vendor payments. This allows you, as a vendor, to receive payments from all participating state agencies by direct deposit, the State's preferred method of payment. Effective April 30, 2011, all OSPI contractors are required to register as a Statewide Vendor. Participation in direct deposit is optional. For online registration, visit the [Department of Enterprise Services' website](#).

17. INSURANCE COVERAGE

The Apparent Successful Bidder must comply with the insurance requirements identified in the General Terms and Conditions.

The Contractor shall, at its own expense, obtain and keep in force insurance coverage which shall be maintained in full force and effect during the term of the contract. The Contractor shall furnish evidence in the form of a Certificate of Insurance that insurance shall be provided, and a copy shall be forwarded to OSPI within fifteen (15) days of the contract effective date.

Section C. PROPOSAL CONTENTS

Electronic submission only:

Proposals must be formatted to print on eight and one-half by eleven (8 ½ x 11) inch paper size with individual sections clearly identified. The Letter of Submittal, excluding the signed Certifications and Assurances and Contractor Intake Form, shall be a maximum of one (1) page. The two (2) major sections of the proposal are to be submitted in the order noted below:

1. Letter of Submittal including signed:
 - a. Certifications and Assurances
 - b. Contractor Intake Form
2. Management Proposal
3. Cost Proposal

Proposals must provide information in the same order as presented in this document with the same headings. This will not only be helpful to the evaluators of the proposal, but should assist the Consultant in preparing a thorough response.

Items in this section marked “mandatory” must be included as part of the proposal for the proposal to be considered responsive; however, these items are not scored. Items marked “scored” are those that are awarded points as part of the evaluation conducted by the evaluation team.

1. LETTER OF SUBMITTAL (MANDATORY)

The Letter of Submittal, the attached Certifications and Assurances, and attached Contractor Intake Form must be signed and dated by a person authorized to legally bind the Consultant to a contractual relationship, (e.g., the President or Executive Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship).

Along with introductory remarks, please attach to the Letter of Submittal the following information about the Consultant and any proposed subcontractors:

- A. Name, address, and telephone number of each principal officer (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.);
- B. Location of the facility from which the Consultant would operate; and
- C. A detailed list of all materials and enclosures included in the Proposal.

2. MANAGEMENT PROPOSAL

A. Project Management (SCORED)

1. **Project Team Structure/Internal Controls** – Provide a description of the proposed project team structure and internal controls to be used during the course of the project, including any subcontractors. Provide an organizational chart of your firm indicating lines of authority for personnel involved in performance of this potential contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of management. Include who within the firm will have prime responsibility and final authority for the work.

2. **Staff Qualifications/Experience** – Identify staff, including subcontractors, who will be assigned to the potential contract, indicating the responsibilities and qualifications of such personnel, and include the amount of time each will be assigned to the project. Provide résumés for the named staff, which include information on the individual's particular skills related to this project, education, experience, significant accomplishments and any other pertinent information. The Consultant must commit that staff identified in its proposal will actually perform the assigned work. Any staff substitution must have the prior approval of OSPI.

B. Experience of the Consultant (SCORED)

1. Include other relevant experience that indicates the qualifications of the Consultant, and any subcontractors, for the performance of the potential contract.
2. Include a list of contracts the Consultant has had during the last five years that relate to the Consultant's ability to perform the services needed under this RFQQ. List contract reference numbers, contract period of performance, contact persons, telephone numbers, and fax numbers/e-mail addresses.

C. References (SCORED)

List names, addresses, telephone numbers, and fax numbers/email addresses of three (3) business references for whom comparable work has been accomplished and briefly describe the type of service provided for them. By submitting a proposal in response to this RFQQ, the vendor and team members grant permission to OSPI to contact these references and others, who from OSPI's perspective, may have pertinent information. OSPI may or may not, at OSPI's discretion, contact these references or others. Do not include current OSPI staff as references.

D. Past Performance

Provide information regarding past performance by indicating if the Consultant has received notification of contract breach in the past five (5) years. This does not lead to automatic disqualification. However, OSPI reserves the right to disqualify Consultant proposals based on the Consultant's historical performance as outlined above in Section B. General Information for Consultants, 11. Responsiveness.

3. COST PROPOSAL

The evaluation process is designed to award this procurement not necessarily to the Consultant of least cost, but rather to the Consultant whose proposal best meets the requirements of this RFQQ. However, Consultants are encouraged to submit proposals that are consistent with state government efforts to conserve state resources.

Identification of Costs (SCORED) – Identify all costs including expenses to be charged for performing the services necessary to accomplish the objectives of the Contract. The Consultant is to submit a fully detailed budget including staff costs, administrative costs, travel costs, and any other expenses necessary to accomplish the tasks and to produce the deliverables under the Contract. Consultants are required to collect and pay Washington State sales tax, if applicable.

Travel Costs: If the Consultant’s proposal includes any travel-related expenses as a line item, they are to be broken out separately. Any applicable mileage, meals, lodging, or other travel-related expenses, will be reimbursed in accordance with [Washington State travel regulations](#) established by the Office of Financial Management.

Subcontractor Costs: Costs for subcontractors are to be broken out separately. Please note if any subcontractors are certified by the Office of Minority and Women’s Business Enterprises.

Per OSPI’s indirect costs policy, the maximum amount that may be charged or included in grants and contracts is the following:

| Entity | State Grants and Contracts | Federal Grants and Contracts |
|---|---|--|
| School Districts | State recovery rate | Federal indirect rates, per OSPI’s agreement with the U.S. Department of Education |
| Educational Service Districts | Per annual letter of agreement by K-12 Financial Resources Division | Per annual letter of agreement by K-12 Financial Resources Division |
| All other entities (including higher education, non-profits, independent consultants, etc.) | 10% | 10% |

Section D. EVALUATION AND CONTRACT AWARD

1. EVALUATION PROCEDURE

Responsive proposals will be evaluated strictly in accordance with the requirements stated in this RFQQ and any addenda issued. The evaluation of proposals shall be accomplished by an evaluation team, to be designated by OSPI, which will determine the ranking of the proposals.

2. EVALUATION WEIGHTING AND SCORING

The following points will be assigned to the proposals for evaluation purposes:

| | | |
|--|---------------------|-------------------|
| Management Proposal | | 60 points |
| Project Team Structure/Internal Controls | 15 points (maximum) | |
| Staff Qualifications/Experience | 15 points (maximum) | |
| Experience of the Consultant | 30 points (maximum) | |
| Cost Proposal | | 70 points |
| Subtotal | | 130 points |
| Oral Presentations (if determined necessary by OSPI) | | 10 points |
| Reference Checks (if determined necessary by OSPI) | | 10 points |
| GRAND TOTAL FOR PROPOSAL | | 150 points |

References may be contacted for the top-scoring Bidder(s) only and will then be scored and added to the total score.

3. ORAL PRESENTATIONS MAY BE REQUIRED

OSPI, at its sole discretion, may elect to select the top scoring finalists from the written evaluation for an oral presentation and final determination of contract award. Should OSPI elect to hold oral presentations, it will contact the top-scoring firm(s) to schedule a date, time, and location. Commitments made by the Bidder at the oral interview, if any, will be considered binding.

The scores from the written evaluation and the oral presentation combined together will determine the Apparent Successful Bidder.

4. SELECTION OF APPARENT SUCCESSFUL BIDDER

The Consultant submitting the Bid most advantageous to the State will be declared the Apparent Successful Bidder (ASB). The date of announcement of the ASB will be the date the announcement letter is postmarked or, if emailed, the date the email is sent. The State will enter into contract negotiations with the ASB. Should contract negotiations fail to be completed within two (2) weeks after initiation, the State may immediately cease contract negotiations, declare the Vendor with the second highest score as the new ASB, and enter into contract negotiations with

that Vendor. This process will continue until the Contracts are signed or no qualified Vendors remain.

5. NOTIFICATION TO PROPOSERS

Proposals that have not been selected for further negotiation or award will be notified via email by the RFQQ Coordinator.

6. DEBRIEFING OF UNSUCCESSFUL PROPOSERS

Upon request, an individual debriefing conference will be scheduled with an unsuccessful Bidder. The request for a debriefing conference must be received by the RFQQ Coordinator within three (3) business days after the Notification of Unsuccessful Bidder letter or e-mail is sent to the Consultant. The debriefing must be held within three (3) business days of the request, unless otherwise agreed upon by the RFQQ Coordinator and Bidder.

Discussion will be limited to a critique of the requesting Consultant's proposal. Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of thirty (30) minutes.

Please note, because the debrief process must occur before making an award, OSPI likely will schedule the Debrief Conference shortly after the announcement of the ASB and the Bidder's request for a Debrief Conference. OSPI will not allow the debrief process to delay the award. Therefore, Bidders should plan for contingencies and alternate representatives; Bidders who are unwilling or unable to attend the Debrief Conference will lose the opportunity to protest.

7. PROTEST PROCEDURE

This protest procedure is available to Consultants who submitted a response to this RFQQ document and who have participated in a debriefing conference. Upon completion of the debriefing conference, the Consultant is allowed five (5) business days to file a protest of the acquisition with the RFQQ Coordinator. Protests may be submitted by fax or email, and must be followed by an original, signed document.

Consultants protesting this procurement shall follow the procedures described below. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Consultants under this procurement.

All protests must be in writing and signed by the protesting party or an authorized Agent. The protest must state the grounds for the protest including specific facts and complete statements of the action(s) being protested. The protesting party may submit with the protest any documents or information deemed relevant. A description of the relief or corrective action being requested should also be included. All protests shall be addressed to the RFQQ Coordinator.

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A matter of bias, discrimination or conflict of interest on the part of the evaluator/evaluation team;
- Errors in computing the score; and/or

- Non-compliance with procedures described in the procurement document or OSPI policy.

Protests not based on procedural matters will not be considered. Protests will be rejected as without merit if they address issues such as: 1) an evaluator's professional judgment on the quality of a proposal, 2) OSPI's assessment of its own and/or other agencies needs or requirements, or 3) a complaint raised during the Complaint Procedure.

Upon receipt of a protest, a protest review will be held by OSPI. OSPI Contracts Administrator or an employee delegated by the Contracts Administrator who was not involved in the procurement will consider the record and all available facts and issue a decision within ten (10) business days of receipt of the protest. If additional time is required, the protesting party will be notified.

In the event a protest may affect the interest of another Consultant that submitted a proposal, such Consultant will be given an opportunity to submit its views and any relevant information on the protest to the RFQQ Coordinator.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold OSPI's action; or
- Find only technical or harmless errors in OSPI's procurement process and determine OSPI to be in substantial compliance and reject the protest; or
- Find merit in the protest and provide OSPI options which may include:
 - Correct the errors and re-evaluate all proposals, and/or
 - Reissue the RFQQ document and begin a new process, or
 - Make other findings and determine other courses of action as appropriate.

If OSPI determines that the protest is without merit, OSPI will enter into a contract with the Apparent Successful Bidder. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

Section E. RFQQ EXHIBITS

- Exhibit A Certifications and Assurances
- Exhibit B Sample Contract
- Exhibit C General Terms and Conditions
- Exhibit D Sample Datashare Agreement
- Exhibit E Contractor Intake Form
- Exhibit F Proposal Checklist

EXHIBIT A CERTIFICATION AND ASSURANCES

Bidder must sign and include the full text of this Exhibit A with their proposal.

Bidder makes the following certifications and assurances as a required element of the proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract(s):

1. Bidder declares that all answers and statements made in the proposal are true and correct.
2. The prices and/or cost data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, Bidder may freely join with other persons or organizations for the purpose of presenting a single proposal.
3. The attached proposal is a firm offer for a period of sixty (60) days following receipt, and it may be accepted by OSPI without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the sixty- (60-) day period.
4. In preparing this proposal, Bidder has not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this proposal or prospective contract, and who was assisting in other than his or her official, public capacity. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)
5. Bidder understands that OSPI will not reimburse Bidder for any costs incurred in the preparation of this proposal. All proposals become the property of OSPI, and Bidder claims no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
6. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor.
7. Bidder agrees that submission of the attached proposal constitutes acceptance of the solicitation contents and the attached sample contract and general terms and conditions. If there are any exceptions to these terms, Bidder has described those exceptions in detail on a page attached to this document.
8. No attempt has been made or will be made by the Bidder to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.
9. Bidder grants OSPI the right to contact references and others, who may have pertinent information regarding the Bidder's prior experience and ability to perform the services contemplated in this procurement.
10. Bidder acknowledges that if awarded a contract with OSPI, Bidder is required to comply with all applicable state and federal civil rights and other laws. Failure to comply may result in

Contract termination. Bidder agrees to submit additional information about its nondiscrimination policies, at any time, if requested by OSPI.

11. Bidder certifies that Bidder has not, within the three-year period immediately preceding the date of release of this competitive solicitation, been determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment to have willfully violated state minimum wage laws (RCW 49.38.082; Chapters 49.46 RCW, 49.48 RCW, or 49.52 RCW).
12. Bidder has not been debarred or otherwise restricted from participating in any public contracts.
13. Bidder certifies that Bidder has not willfully violated Washington State's wage payment laws within the last three years.
14. Bidder acknowledges its obligation to notify OSPI of any changes in the certifications and assurances above.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

| | | |
|----------------------------|-------------|-----------------------------------|
| Signature of Bidder | Date | Place Signed (City, State) |
|----------------------------|-------------|-----------------------------------|

| | | |
|-------------------|--------------|--------------------------|
| Print Name | Title | Organization Name |
|-------------------|--------------|--------------------------|

EXHIBIT B
SAMPLE CONTRACT

Contract No. _____

between

**SUPERINTENDENT OF PUBLIC INSTRUCTION,
STATE OF WASHINGTON**

(hereinafter referred to as Superintendent)
Old Capitol Building, P.O. Box 47200
Olympia, WA 98504-7200

and

[CONTRACTOR NAME]

(hereinafter referred to as Contractor)

[Contractor Address]

Federal Identification # -

Unified Business Identifier # - -

In consideration of the promises and conditions contained herein, Superintendent and Contractor do mutually agree as follows:

I. DUTIES OF THE CONTRACTOR

A. The general objective(s) of this contract is/are as follows:

[A brief description of the agreed upon services will be included here.]

B. In order to accomplish the general objective(s) of this contract, Contractor shall perform the following specific duties to the satisfaction of the Superintendent's designee, [name of Contract Manager]:

[A description of the work to be performed by Contractor in detail, including a breakdown of the quantifiable steps or components of what the Contractor is to do will be included here.]

C. The Contractor shall produce the following written reports or other written documents (deliverables) by the dates indicated below:

[Deliverables may be listed here.]

All written reports/documents required under this contract must be delivered to the Superintendent's designee in accordance with the schedule above.

**II. CONDITIONS OF COMMENCEMENT OF PERFORMANCE
AND
SCHEDULE OF PERFORMANCE**

No costs shall be incurred under this Contract until fully executed and subsequent to the termination date.

The schedule of performance of Contractor's duties is as follows:

[start date], or date of execution, whichever is later, through [end date].

III. DUTIES OF THE SUPERINTENDENT

- A. In consideration of Contractor's satisfactory performance of the duties set forth herein, Superintendent shall compensate Contractor at a rate not to exceed a total of \$. Payment for satisfactory performance shall not exceed this amount unless the parties mutually agree to a higher amount prior to the commencement of any work, which will cause the maximum payment to be increased.

[Optional clause] In addition, Contractor shall be entitled to reimbursement in accordance with the terms set forth in Section III.C. below.

Funds for the payment of this contract are provided by federal program(s) [program title], Catalog of Federal Domestic Assistance #(s) [CFDA#].

- B. Payment shall be made to the Contractor as follows:

Periodically in the form of progress payments in the amounts and for the stages of partial performance set forth below:

[Schedule of payments may be included here.] *or*

Periodically based on invoices submitted by the Contractor for actual costs incurred to date based on receipts or other documentation.

Invoice(s) will be paid only after approval by the Superintendent's designee and Agency Financial Services, OSPI. The invoice shall include an original signature, the contract number, and document to the Superintendent's designee's satisfaction a description of the work performed and payment requested. Within approximately thirty (30) working days of the Superintendent's designee receiving and approving the invoice, payment will be mailed or electronically transferred to the Contractor by Agency Financial Services, OSPI.

C. Contractor shall be entitled to reimbursement for expenses incurred, as follows:

1. Travel and per diem expenses for [#] person(s) in the amounts and for the purposes otherwise established for state employees at the time of incurrence by the rules and regulatory policies of the Office of Financial Management (OFM) not to exceed \$. Contractor's "official duty station" (i.e., the origin of reimbursable travel and/or per diem) shall be [official duty station].

and/or

2. Expenses incurred for the following specified purposes not to exceed a total of \$. Contractor must submit receipts or other documentation.

D. Final payment shall be made after acceptance by the Superintendent's Contract Manager or Designee if received by the Superintendent within ninety (90) days after the contract expiration date, unless negotiated with the Contract Manager or Designee and the Fiscal Budget Analyst.

Maximum consideration for this entire contract shall not exceed \$.

IV. RENEWAL (OPTIONAL CLAUSE)

Superintendent has the right to renew this contract in whole or in part for the year(s) [renewal year(s)] by giving notice on or before [date] to the Contractor. If Superintendent provides such notice to the Contractor, the Contractor shall be obligated to enter into a contract with the same fiscal obligations as the previous contract year, provided that Superintendent and Contractor shall negotiate any revision of additional services or goals beyond those encompassed in the previous contract.

V. CONTRACT MANAGEMENT

The following Contract Manager for each of the parties shall be the contact person for all communications and billings regarding the performance of this contract.

| Contractor | Superintendent |
|------------------------|--|
| [Name] | [Name] |
| [Title] | [Title] |
| [Address] | Old Capitol Building, P.O. Box 47200 Olympia, WA 98504-7200 |
| Phone: () - | Phone: () - |
| Fax: () - | Fax: () - |
| Email: [Email Address] | Email: [Email Address] |

VI. INCORPORATION OF ATTACHMENTS AND ORDER OF PRECEDENCE

Each of the attachments listed below is by this reference hereby incorporated into this Contract. In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable Federal and state of Washington statutes and regulations
- Special Terms and Conditions as contained in this basic contract instrument
- Attachment A – Contract for Services, General Terms and Conditions
- Attachment B – Request for Qualifications and Quotations with any formal RFQQ amendments that change scope of work, etc.
- Attachment C – Contractor’s Proposal
- Any other provision, term or material incorporated herein by reference or otherwise incorporated.

VII. APPROVAL

This Contract shall be subject to the written approval of the Superintendent’s authorized representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

We the undersigned agree to the terms of the foregoing Contract.

[Contractor Name]

Superintendent of Public Instruction
State of Washington

Signature Title

OSPI Contracts Administrator

Print Name Date

Date

Who certifies that he/she is the Contractor identified herein, OR a person duly qualified and authorized to bind the Contractor so identified to the foregoing Agreement.

Approved as to FORM ONLY
by the Assistant Attorney General

Non-profit organization? yes* no
*If yes, under what IRS section? Please attach a copy.

EXHIBIT C GENERAL TERMS AND CONDITIONS

1. **Access to Data.** In compliance with Chapter 39.26 RCW, the Contractor shall provide access to data generated under this Contract to the Superintendent, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.
2. **Alterations and Amendments.** This Contract may be amended only by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.
3. **Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, also referred to as the "ADA" 28 CFR Part 35.** The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.
4. **Assignment.** Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of the Superintendent.
5. **Assurances.** The Superintendent and the Contractor agree that all activity pursuant to this Contract will be in accordance with all applicable current federal, state and local laws, rules and regulations.
6. **Attorney's Fees.** In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney's fees and costs.
7. **Audit Requirements.** If the Contractor is a Subrecipient of federal awards as defined by the Office of Management and Budget (OMB) CFR, Part 200, Subpart F, and expends seven hundred and fifty thousand dollars (\$750,000) or more in federal awards (does not apply to contracts for goods and services) from all federal sources in any fiscal year beginning on or after December 26, 2014, the Contractor shall procure at their expense a single or program-specific audit for that year. The Contractor shall incorporate OMB CFR, Part 200, Subpart F audit requirements into all contracts between the Contractor and its Subcontractors who are Subrecipients of federal awards. The Contractor shall comply with any future amendments to OMB and any successor or replacement Circular or regulation.
8. **Budget Revisions.** Any monetary amount budgeted by the terms of this Contract for various activities and line item objects of expenditure may be revised without prior written approval of Superintendent, so long as the revision is no more than ten percent (10%) of the original line item amount and the increase in an amount is offset by a decrease in one or more other amounts equal to or greater than the increase. All other budget revisions exceeding ten percent (10%) shall only be made with the prior written approval of the Superintendent.
9. **Certification Regarding Debarment, Suspension, and Ineligibility.** The Contractor certifies that neither it nor its principals are debarred, suspended, proposed for debarment, or voluntarily excluded from participation in transactions by any federal department or agency. The Contractor further certifies that they will ensure that potential subcontractors or any of their principals are not debarred, suspended, proposed for debarment, or voluntarily

excluded from participation in covered transactions by any federal department or agency. "Covered transactions" include procurement contracts for goods that are expected to equal or exceed twenty-five thousand dollars (\$25,000). Contractor may do so by obtaining a certification statement from the potential subcontractor or subrecipient or by checking online at the System for Award Management (SAM), Excluded Parties List. The Contractor shall immediately notify the Superintendent if, during the term of this contract, Contractor becomes debarred. The Superintendent may immediately terminate this Contract by providing Contractor written notice if Contractor becomes debarred during the term of this Contract.

The Contractor also certifies that neither it nor its principals are debarred, suspended, or proposed for debarment from participation in transactions by any state department or agency. The Contractor further certifies that they will ensure that potential subcontractors or any of their principals are not debarred, suspended, or proposed for debarment from participation in covered transactions by any state department or agency.

10. Certification Regarding Lobbying. The Contractor certifies that Federal-appropriated funds will not be used to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress or an employee of a member of Congress in obtaining any Federal contract, grant or any other award covered by 31 USC 1352. Contractor must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Contractor shall require its subcontractors to certify compliance with this provision.

11. Certification Regarding Wage Violations. The Contractor certifies that within three (3) years prior to the date of execution of this Contract, Contractor has not been determined by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of RCW chapters 49.46, 49.48, or 49.52.

The Contractor further certifies that it will remain in compliance with these requirements during the term of this Contract. Contractor will immediately notify the Superintendent of any finding of a willful violation entered by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction entered during the term of this Contract.

12. Change in Status. In the event of substantive change in the legal status, organizational structure, or fiscal reporting responsibility of the Contractor, Contractor agrees to notify the Superintendent of the change. Contractor shall provide notice as soon as practicable, but no later than thirty (30) days after such a change takes effect.

13. Confidentiality. The Contractor acknowledges that all of the data, material and information which originates from this Contract, and any student assessment data, material and information which will come into its possession in connection with performance under this Contract, consists of confidential data owned by the Superintendent or confidential personally identifiable data subject to the federal Family Educational Rights and Privacy Act or other privacy laws, and that disclosure to or use by third parties would be damaging. The Contractor, therefore, agrees to hold all such material and information in strictest confidence, not to make use thereof other than for the performance of this Contract, to release it only to authorized employees and agents requiring such information and not release or disclose it to

any other party. The Contractor agrees to release such information or material only to employees and agents who have signed a written agreement expressly prohibiting disclosure.

14. Copyright Provisions. Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and copyright shall be owned by the Superintendent. The Superintendent shall be considered the author of such Materials. If Materials are not considered "works for hire", Contractor hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to the Superintendent effective from the moment of creation of such Materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Copyright ownership includes the right to patent, register and the ability to transfer these rights.

Contractor understands that, except where otherwise agreed to in writing or approved by the Superintendent or designee, all original works of authorship produced under this Contract shall carry a [Creative Commons Attribution License](#), version 4.0 or later.

All Materials the Contractor has adapted from others' existing openly licensed resources must be licensed with the least restrictive open license possible that is not in conflict with existing licenses.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, Contractor will license the materials to allow others to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. If the Contractor would like to limit these pre-existing portions of the work to [non-commercial use](#), the [Creative Commons Attribution-NonCommercial-ShareAlike](#) license, version 4.0 or later, is acceptable for these specific sections.

The Contractor warrants and represents that Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to apply such a license.

The Contractor shall exert all reasonable effort to advise the Superintendent, at the time of delivery of data furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Superintendent shall receive prompt written notice of each notice or claim of infringement received by the Contractor with respect to any data delivered under this Contract. The Superintendent shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

15. Covenant Against Contingent Fees. The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agent maintained by the Contractor for the purpose of securing business. The Superintendent shall have the right, in the event of breach of this clause by the Contractor, to annul this Contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fees.

16. Disputes. In the event that a dispute arises under this Contract, it shall be determined by a Dispute Board in the following manner: (1) The Superintendent shall appoint a member to the Dispute Board; (2) the Contractor shall appoint a member to the Dispute Board; (3) the Superintendent and the Contractor shall jointly appoint a member to the Dispute Board; (4) the Dispute Board shall evaluate the dispute and make a determination of the dispute; and, the determination of the Dispute Board shall be final and binding on the parties hereto.

As alternatives to the above Dispute Board process: (1) if the dispute is between two or more state agencies, any one of the agencies may request intervention by the Governor, as provided by 43.17.330 RCW, in which event the Governor's process shall control; and, (2) if the dispute is between a non-state agency and another state agency or non-state agency party to this Contract, all the disputing parties may mutually agree to mediation prior to submitting the dispute to a Dispute Board in the event the dispute is not resolved pursuant to mediation within an agreed-upon time period.

17. Duplicate Payment. The Superintendent shall not pay the Contractor, if the Contractor has charged or will charge the state of Washington or any other party under any other contract or agreement, for the same services or expenses.

18. Entire Agreement. This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

19. Ethical Conduct. Neither the Contractor nor any employee or agent of the Contractor shall participate in the performance of any duty or service in whole or part under this Contract in violation of, or in a manner that violates any provision of the Ethics in Public Service law at Chapter 42.52 RCW, RCW 42.17A.550, RCW 42.17A.555, and 41.06.250 prohibiting the use of public resources for political purposes.

20. Governing Law and Venue. This Contract shall be construed and interpreted in accordance with the laws of the State of Washington and the venue of any action brought hereunder shall be in Superior Court for Thurston County.

21. Indemnification. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless the Superintendent and all officials, agents, and employees of the Superintendent, from and against all claims for injuries or death arising out of or resulting from the performance of this Contract. "Claim" as used in this Contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom. Additionally, "claims" shall include but not be limited to, assertions that the use or transfer of any software, book, document, report, film, tape or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, or otherwise results in an unfair trade practice or in unlawful restraint of competition. Contractor's obligation to indemnify, defend and hold harmless includes any claim by Contractor's agents, employees, representatives, or any subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the Superintendent for any and all claims, costs, charges, penalties, demands, losses, liabilities, damages, judgments, or fines out of or incident to Contractor's or subcontractor's performance or failure to perform the Contract. Contractor's obligation to indemnify, defend, or hold harmless the

Superintendent shall not be eliminated or reduced by any actual or alleged concurrent negligence by Superintendent or its agents, employees, or officials.

Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless Superintendent and its agents, employees, or officials.

22. Independent Capacity of the Contractor. The parties intend that an independent Contractor relationship will be created by this Contract. The Contractor and his/her employees or agents performing under this Contract are not employees or agents of the Superintendent. The Contractor will not hold himself/herself out as nor claim to be an officer or employee of the Superintendent or of the state of Washington by reason hereof, nor will the Contractor make any claim or right, privilege, or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with the Contractor.

23. Insurance.

a. **Worker's Compensation Coverage.** The Contractor shall at all times comply with all applicable worker's compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the fullest extent applicable. This requirement includes the purchase of industrial insurance coverage for the Contractor's employees, as may now hereafter be required of an "employer" as defined in Title 51 RCW. Such worker's compensation and occupational disease requirements shall include coverage for all employees of the Contractor, and for all employees of any subcontract retained by the Contractor, suffering bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Contract. Satisfaction of these requirements shall include, but shall not be limited to:

- 1) Full participation in any required governmental occupational injury and/or disease insurance program, to the extent participation in such a program is mandatory in any jurisdiction;
- 2) Purchase worker's compensation and occupational disease insurance benefits to employees in full compliance with all applicable laws, statutes, and regulations, but only to the extent such coverage is not provided under mandatory governmental program in "a" above, and/or;
- 3) Maintenance of a legally permitted and governmentally approved program of self-insurance for worker's compensation and occupational disease.

Except to the extent prohibited by law, the program of the Contractor's compliance with worker's compensation and occupational disease laws, statutes, and regulations in 1), 2), and 3) above shall provide for a full waiver of rights of subrogation against the Superintendent, its directors, officers, and employees.

If the Contractor, or any subcontractor retained by the Contractor, fails to effect and maintain a program of compliance with applicable worker's compensation and occupational disease laws, statutes, and regulations and the Superintendent incurs fines or is required by law to provide benefits to such employees, to obtain coverage for such employees, the Contractor will indemnify the Superintendent for such fines, payment of benefits to Contractor or subcontractor employees or their heirs or legal representatives, and/or the cost of effecting coverage on behalf of such employees. Any amount owed the

Superintendent by the Contractor pursuant to the indemnity may be deducted from any payments owed by the Superintendent to the Contractor for the performance of this Contract.

- b. **Automobile Insurance.** In the event that services delivered pursuant to this Contract involve the use of vehicles, owned or operated by the Contractor, automobile liability insurance shall be required. The minimum limit for automobile liability is:

\$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

- c. **Business Automobile Insurance.** In the event that services performed under this Contract involve the use of vehicles or the transportation of clients, automobile liability insurance shall be required. If Contractor-owned personal vehicles are used, a Business Automobile policy covering a minimum Code 2 "owned autos only" must be secured. If the Contractor's employees' vehicles are used, the Contractor must also include under the Business Automobile policy Code 9, coverage for "non-owned autos." The minimum limits for automobile liability is:

\$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

- d. **Public Liability Insurance.** The Contractor shall at all times during the term of this Contract, at its cost and expense, carry and maintain general public liability insurance, including contractual liability, against claims for bodily injury, personal injury, death, or property damage occurring or arising out of services provided under this Contract. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or servants. The limits of liability insurance, which may be increased from time to time as deemed necessary by the Superintendent, with the approval of the Contractor (which shall not be unreasonably withheld), shall not be less than as follows:

| | |
|---|-------------|
| Each Occurrence | \$1,000,000 |
| General Aggregate Limits (other than products-completed operations) | \$2,000,000 |
| Products-Completed Operations Limit | \$2,000,000 |
| Personal and Advertising Injury Limit | \$1,000,000 |
| Fire Damage Limit (any one fire) | \$ 50,000 |
| Medical Expense Limit (any one person) | \$ 5,000 |

- e. **Additional Insured.** The State of Washington, Office of Superintendent of Public Instruction, shall be specifically named as an additional insured on all policies except for liability insurance on privately-owned vehicles, and all policies shall be primary to any other valid and collectible insurance. The Superintendent may waive this requirement at its discretion. Policies and certificates of insurance shall include the contract reference number.
- f. **Proof of Insurance.** Certificates and or evidence satisfactory to the Superintendent confirming the existence, terms and conditions of all insurance required above shall be delivered to the Superintendent within five (5) days of the Contractor's receipt of Authorization to Proceed.

- g. **General Insurance Requirements.** Contractor shall, at all times during the term of the Contract and at its cost and expense, buy and maintain insurance of the types and amounts listed above. Failure to buy and maintain the required insurance may result in the termination of the Contract at the Superintendent's option. By requiring insurance herein, Superintendent does not represent that coverage and limits will be adequate to protect Contractor and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to the Superintendent in this Contract.

Contractor shall include all subcontractors as insureds under all required insurance policies, or shall furnish proof of insurance and endorsements for each subcontractor. Subcontractor(s) must comply fully with all insurance requirements stated herein. Failure of subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

- 24. Licensing and Accreditation Standards.** The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary to the performance of this Contract.

- 25. Limitation of Authority.** Only the Superintendent or the Superintendent's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Contract is not effective or binding unless made in writing and signed by the Superintendent.

- 26. Non-Discrimination.** The Contractor shall comply with all the federal and state non-discrimination laws, regulations and policies, which are otherwise applicable to the Superintendent. Accordingly, no person shall, on the ground of sex, race, creed, religion, color, national origin, marital status, families with children, age, veteran or military status, sexual orientation, gender expression, gender identity, disability, or the use of a trained dog guide or service animal, be unlawfully excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any activity performed by the Contractor and its agents under this Contract. The Contractor shall notify the Superintendent immediately of any allegations, claims, disputes, or challenges made against it under non-discrimination laws, regulations, or policies, or under the Americans with Disabilities Act. In the event of the Contractor's noncompliance or refusal to comply with this nondiscrimination provision, this Contract may be rescinded, cancelled or terminated in whole or part, and the Contractor may be declared ineligible for further contracts with the Superintendent.

- 27. Overpayments.** Contractor shall refund to Superintendent the full amount of any overpayment under this Contract within thirty (30) calendar days of written notice. If Contractor fails to make a prompt refund, Superintendent may charge Contractor one percent (1%) per month on the amount due until paid in full.

- 28. Payments.** No payments in advance or in anticipation of services or supplies to be provided under this Contract shall be made by the Superintendent. All payments to the Contractor are conditioned upon (1) Contractor's submission of a properly executed and supported voucher for payment, including such supporting documentation of performance and supporting documentation of costs incurred or paid, or both as is otherwise provided for in the body of this Contract under Duties of the Superintendent, and (2) Acceptance and certification by the Superintendent or designee of satisfactory performance by the Contractor.

Except as otherwise provided in this Contract, (1) All approvable vouchers for payment due to the Contractor shall be paid within thirty (30) calendar days of their submission by the Contractor, and (2) All expenses necessary to the Contractor's performance of this Contract not specifically mentioned in the Contract shall be borne in full by the Contractor.

29. Public Disclosure. Contractor acknowledges that the Superintendent is subject to the Washington State Public Records Act, Chapter 42.56 RCW, and that this Contract shall be a public record as defined in RCW 42.56. Any specific information that is claimed by the Contractor to be confidential or proprietary must be clearly identified as such by the Contractor. To the extent consistent with chapter 42.56 RCW, the Superintendent shall maintain the confidentiality of all such information marked confidential or proprietary. If a request is made to view the Contractor's information, the Superintendent will notify the Contractor of the request and the date that such records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If the Contractor fails to obtain the court order enjoining disclosure, the Superintendent will release the requested information on the date specified.

30. Publicity. The Contractor agrees to submit to the Superintendent all advertising and publicity matters relating to this Contract which in the Superintendent's judgment, Superintendent's name can be implied or is specifically mentioned. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of the Superintendent.

31. Registration with Department of Revenue. The Contractor shall complete registration with the Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

32. Records Maintenance. The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review or audit by the Superintendent, personnel duly authorized by the Superintendent, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

33. Right of Inspection. The Contractor shall provide right of access to its facilities to the Superintendent or any of its officers at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract on behalf of the Superintendent. All inspections and evaluations shall be performed in such a manner that will not unduly interfere with the Contractor's business or work hereunder.

34. Severability. The provisions of this Contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Contract.

35. Site Security. While on Superintendent premises, Contractor, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

36. Subcontracting. Neither the Contractor nor any subcontractor shall enter into subcontracts for any of the work contemplated under this Contract without obtaining prior written approval of the Superintendent. Contractor is responsible to ensure that all terms, conditions, assurances and certifications set forth in this Contract are included in any and all Subcontracts. In no event shall the existence of the subcontract operate to release or reduce liability of the Contractor to the Superintendent for any breach in the performance of the Contractor's duties. This clause does not include contracts of employment between the Contractor and personnel assigned to work under this Contract.

If, at any time during the progress of the work, the Superintendent determines in its sole judgment that any subcontractor is incompetent, the Superintendent shall notify the Contractor, and the Contractor shall take immediate steps to terminate the subcontractor's involvement in the work. The rejection or approval by the Superintendent of any subcontractor or the termination of a subcontractor shall not relieve the Contractor of any of its responsibilities under the Contract, nor be the basis for additional charges to the Superintendent.

37. Taxes. All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

38. Termination for Convenience. Except as otherwise provided in this Contract, the Superintendent or Superintendent's Designee may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this Contract in whole or in part. The notice shall specify the date of termination and shall be conclusively deemed to have been delivered to and received by the Contractor as of midnight the second day of mailing in the absence of proof of actual delivery to and receipt by the Contractor. If this Contract is so terminated, the Superintendent shall be liable only for payment required under the terms of the Contract for services rendered or goods delivered prior to the effective date of termination.

39. Termination for Default. In the event the Superintendent determines the Contractor has failed to comply with the conditions of this Contract in a timely manner, the Superintendent has the right to suspend or terminate this Contract. The Superintendent shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within thirty (30) days, the Contract may be terminated. The Superintendent reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by the Superintendent to terminate the Contract. In the event of termination, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover Contract and all administrative costs directly related to the replacement Contract, e.g., cost of the competitive bidding, mailing, advertising and staff time. The termination shall be deemed to be a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of the Superintendent provided

in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

40. Termination Due to Funding Limitations or Contract Renegotiation, Suspension. In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion of this Contract, with the notice specified below and without liability for damages:

- a. At Superintendent's discretion, the Superintendent may give written notice of intent to renegotiate the Contract under the revised funding conditions.
- b. At Superintendent's discretion, the Superintendent may give written notice to Contractor to suspend performance when Superintendent determines there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Contractor's performance to be resumed.
 - (1) During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.
 - (2) When Superintendent determines that the funding insufficiency is resolved, it will give the Contractor written notice to resume performance, and Contractor shall resume performance.
 - (3) Upon the receipt of notice under b. (2), if Contractor is unable to resume performance of this Contract or if the Contractor's proposed resumption date is not acceptable to Superintendent and an acceptable date cannot be negotiated, Superintendent may terminate the Contract by giving written notice to the Contractor. The parties agree that the Contract will be terminated retroactive to the date of the notice of suspension. Superintendent shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the retroactive date of termination.
- c. Superintendent may immediately terminate this Contract by providing written notice to the Contractor. The termination shall be effective on the date specified in the termination notice. Superintendent shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. No penalty shall accrue to Superintendent in the event the termination option in this section is exercised.
- d. For purposes of this section, "written notice" may include email.

41. Termination Procedure. Upon termination of this Contract the Superintendent, in addition to other rights provided in this Contract, may require the Contractor to deliver to the Superintendent any property specifically produced or acquired for the performance of such part of this Contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The Superintendent shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the Superintendent and the amount agreed upon by the Contractor and the Superintendent for (a) completed work and services for which no separate price is stated, (b) partially completed work and services, (c) other property or services which are accepted by the Superintendent, and (d) the protection and preservation

of the property, unless the termination is for default, in which case the Superintendent shall determine the extent of the liability. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause for this Contract. The Superintendent may withhold from any amounts due to the Contractor such sum as the Superintendent determines to be necessary to protect the Superintendent against potential loss or liability.

The rights and remedies of the Superintendent provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law under this Contract.

After receipt of a notice of termination, and except as otherwise directed by the Superintendent, the Contractor shall:

- a. Stop work under this Contract on the date and to the extent specified, in the notice;
- b. Place no further orders or subcontractors for materials, services or facilities except as may be necessary for completion of such portion of the work under the Contract that is not terminated;
- c. Assign to the Superintendent, in the manner, at the times, and to the extent directed by the Superintendent, all rights, title, and interest of the Contractor under the orders and subcontracts in which case the Superintendent has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Superintendent to the extent the Superintendent may require, which approval or ratification shall be final for all the purposes of this clause;
- e. Transfer title to the Superintendent and deliver, in the manner, at the times and to the extent as directed by the Superintendent, any property which, if the Contract had been completed, would have been required to be furnished to the Superintendent;
- f. Complete performance of such part of the work not terminated by the Superintendent; and
- g. Take such action as may be necessary, or as the Superintendent may direct, for the protection and preservation of the property related to this Contract which, in is in the possession of the Contractor and in which the Superintendent has or may acquire an interest.

42. Treatment of Assets. Except as otherwise provided for in the Contract, the ownership and title to all real property and all personal property purchased by the Contractor in the course of performing this Contract with moneys paid by the Superintendent shall vest in the Superintendent, except for supplies consumed in performing this Contract. The Contractor shall (1) maintain a current inventory of all the real and personal property; (2) label all the property "State of Washington, Superintendent of Public Instruction"; and, (3) surrender property and title to the Superintendent without charge prior to settlement upon completion, termination or cancellation of this Contract.

Any property of the Superintendent furnished to the Contractor shall, unless otherwise provided herein, or approved by the Superintendent, be used only for the performance of the Contract.

The Contractor shall be responsible for any loss or damage to property of the Superintendent which results from the negligence of the Contractor which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.

If any property is lost, destroyed, or damaged, the Contractor shall notify the Superintendent and take all reasonable steps to protect the property from further damage.

All reference to the Contractor under this clause shall include Contractor's employees, agents and subcontractors.

43. Waiver. A failure by either part to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this agreement. Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing and signed by personnel authorized to bind each of the parties.

EXHIBIT D

SAMPLE DATASHARE AGREEMENT

AGREEMENT BETWEEN REQUESTOR AND THE OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION TO AUTHORIZE THE RELEASE AND USE OF IDENTIFIABLE STUDENT-LEVEL DATA

In consideration of the promises and conditions contained herein, the Office of Superintendent of Public Instruction (“OSPI”) and Requestor (“Contractor”) do hereby mutually agree as follows.

PURPOSE

OSPI has agreed to share the student data described in this Agreement with Contractor under the Studies Exception to the Family Educational Rights and Privacy Act (“FERPA”) (20 U.S.C. § 1232g(b)(1)(F); 34 C.F.R. § 99.31(a)(6)) and the Contractor, Consultant, or Volunteer Exception to FERPA (20 U.S.C. § 1232g(b)(1)(F); 34 C.F.R. § 99.31(a)(1)(i)(B)).

The Studies Exception allows for the disclosure of personally identifiable information (“PII”) from education records without the consent of parents or eligible students to organizations conducting studies for, or on behalf of, schools and school districts.

The Contractor, Consultant, or Volunteer Exception allows for the disclosure of personally identifiable information (“PII”) from education records without the consent of parents or eligible students to parties whom an agency or institution has outsourced institutional services provided that the outside party. (1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and (3) Is subject to the requirements of § 99.33(a) governing the use and redisclosure of personally identifiable information from education records.

The work described in this Agreement is being done for OSPI.

Contractor submitted a completed Student-Level Data Request Form (Exhibit A) to OSPI. The purpose of this Agreement is to authorize the release of student and family information to conduct studies while maintaining the confidentiality of student-level data.

DUTIES OF OSPI

OSPI agrees to disclose to Contractor the data identified in Exhibit E Data Approved For Sharing solely for the purpose, scope, and duration described in Exhibit A.

DUTIES OF CONTRACTOR

Contractor will not disclose the data to any other party, except those employees of Contractor and Contractor’s subcontractors (collectively, “Authorized Users”) that are directly involved and have a legitimate interest or a “need to know” in the performance of the research according to the terms of this Agreement.

The Contractor must require all Authorized Users as listed in Exhibit D Authorized Users for Contractor to comply with applicable state and federal student privacy laws, including without

limitation the Family Education Rights Privacy Act, 20 U.S.C. 1892(g); the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq.; the Child Nutrition Act of 1966, 42 U.S.C. 1771 et seq. Contractor must require each Authorized User to sign OSPI's Statement of Confidentiality and Non-Disclosure Statement (Exhibit B). Alternatively, Contractor may require each Authorized User to sign a confidentiality agreement that must contain, at a minimum, the terms and conditions of this Agreement. Signed copies of Contractor's confidentiality agreement or OSPI's Non-Disclosure Statement(s), as appropriate, shall be attached to this Agreement as Exhibit B.

The Contractor agrees to protect data in a manner that does not permit personal identification of students, and shall not publish results for student aggregations of fewer than 10 students, in order to protect against revealing potentially individually identifiable student-level information. This includes applying complementary suppression techniques or blurring of reported data such that the values of suppressed cells (fewer than 10 students) may not be inferred or calculated by subtracting reported values from row or column totals.

Contractor certifies that it has the capacity to restrict access to the data solely to Authorized Users and to ensure that the data is accessed only for the purpose, scope, and duration described in Exhibit A. Contractor shall comply with its data security policies and procedures included within the Student-Level Data Request Form (Exhibit A). In addition, Contractor must store all data on secure data servers using current industry best practices. Contractor agrees to notify OSPI as soon as practicable if Contractor learns of any security breach to the server containing the data or of any disclosure of data to anyone other than the Authorized Users or OSPI officials authorized to receive confidential data. Contractor must cooperate and take all reasonable means prescribed by OSPI to secure any breaches as soon as practicable.

Contractor agrees to destroy all data within forty-five (45) days after it is no longer needed for the purpose described in Exhibit A, upon OSPI's request, or upon termination of this Agreement, whichever occurs first, and unless agreed otherwise in writing. Contractor must provide written verification of the data destruction (signed copy of Exhibit C Certification of Data Destruction) to OSPI within forty-five (45) days after the data is destroyed.

Contractor agrees to permit OSPI, at OSPI's cost and upon written reasonable request, to inspect, review, or audit Contractor to confirm that the Contractor is complying with this Agreement, including, without limitation, the data security policies and procedures identified in Exhibit A, and the methods of data destruction described in Exhibit C.

Contractor will collect and use the data provided under Exhibit E of this Agreement only for the purposes, scope, and duration identified in Exhibit A. Contractor agrees to provide a copy of any products or reports with OSPI before they are released, published, or otherwise made available. If Contractor becomes legally compelled to disclose any data (whether by judicial or administrative order, applicable law, rule or regulation, or otherwise), the Contractor must use all reasonable efforts to provide OSPI with prior notice before disclosure so that OSPI may seek a protective order or other appropriate remedy to prevent the disclosure or to ensure OSPI's compliance with the confidentiality requirements of federal or state law. If a protective order or other remedy is not obtained prior to the deadline by which any legally compelled disclosure is required, Contractor will disclose only that portion of the data that Contractor is compelled to disclose under law.

ALTERATIONS AND AMENDMENTS

Terms and conditions of this Agreement, including the Exhibits thereto, may only be amended by mutual written consent of both OSPI and Contractor. Contractor will not assign its respective rights or obligations under this Agreement without prior written consent of OSPI. The rights and obligations of each party under this Agreement shall inure to the benefit of and shall be binding upon that party and its respective successors and assigns.

AUTHORIZED USERS

The individuals who are the designated Authorized Users for Contractor with respect to this Agreement are listed with their contact information in Exhibit D.

CONTRACT MANAGEMENT

The following Contract Manager for each of the parties shall be the contact person for all communications regarding the performance of this Agreement.

| Requestor | Superintendent |
|------------------------|--------------------------------------|
| [Name] | [Name] |
| [Title] | [Title] |
| [Address] | Old Capitol Building, P.O. Box 47200 |
| | Olympia, WA 98504-7200 |
| Phone: () - | Phone: () - |
| Fax: () - | Fax: () - |
| Email: [Email Address] | Email: [Email Address] |

DATA STORAGE ON PORTABLE DEVICES OR MEDIA

Student-level data shall not be stored by Contractor on portable devices or media unless the Contractor encrypts the device with commercial encryption software using a minimum of 128 bit encryption.

ENTIRE CONTRACT

This contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

EFFECTIVE DATE AND TERM

OSPI will not disclose the data prior to the occurrence of each of the following conditions: (1) This Agreement must be executed by a representative of OSPI and Contractor; (2) Contractor must provide copies of Exhibit A and Exhibit B to OSPI’s Contract Manager; and (3) The Contractor confidentiality agreements attached as Exhibit B must be executed.

The term of this Agreement is as follows, subject to the three prior conditions to OSPI’s commencement of performance set forth immediately above and except as otherwise provided in this Agreement:

[start date], or date of execution, whichever is later, through [end date].

GOVERNING LAW

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington and the venue of any action brought hereunder shall be in Superior Court for Thurston County.

INDEMNIFICATION

Each party shall be responsible for the negligence of its own employees or agents in the performance of this Agreement.

LIMITATION OF AUTHORITY

Only OSPI shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by OSPI.

PUBLICITY

OSPI is not required to agree with or endorse the conclusions or results of the research described in Exhibit A. Contractor agrees to submit to OSPI all advertising and publicity matters relating to this Agreement which in OSPI's judgment, OSPI's name can be implied or is specifically mentioned. Contractor agrees not to publish or use such advertising or publicity without the prior written consent of OSPI. Notwithstanding the foregoing, Contractor may make known in a public fashion the existence of the Agreement without prior consent of OSPI.

TRANSFER PROTOCOL

OSPI and the Contractor agree to work cooperatively to determine the proper medium and method for the transfer of the data between each other. Contractor will confirm the transfer of confidential data and notify OSPI as soon as practicable of any discrepancies between the actual data transferred and the data described in this Agreement. The same protocol will apply to any transfer of data from Contractor to OSPI.

SEVERABILITY

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Agreement, either party may, by five (5) days written notice, beginning on the second day after the mailing, terminate this contract in whole or in part. The notice must specify the date of termination.

TERMINATION FOR DEFAULT

Either party may terminate this Agreement in the event the other party materially breaches any term, provision, warranty, or representation.

Contractor acknowledges that the breach of this Agreement or its part may result in irreparable and continuing damage to OSPI for which money damages may not provide adequate relief. In the event of a breach or threatened breach of this Agreement by Contractor, OSPI, in addition to any other rights and remedies available to OSPI under this Agreement, at law, or in equity, may be entitled to preliminary and permanent injunctions to enjoin and restrain the breach or threatened breach.

If OSPI determines that Contractor has violated this Agreement, OSPI may, at its discretion, bar Contractor from accessing student-level data from OSPI for at least five (5) years.

In the event of a breach by Contractor, the rights and remedies of OSPI provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.

INCORPORATION OF EXHIBITS AND ORDER OF PRECEDENCE

Each of the attachments listed below is by this reference hereby incorporated into this contract. In the event of an inconsistency in this Agreement, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable Federal and state of Washington statutes and regulations
- Exhibit A – Student-Level Data Request Form
- Exhibit B – Statement of Confidentiality and Non-Disclosure
- Exhibit C – Certification of Data Destruction
- Exhibit D – Authorized Users for Contractor
- Exhibit E – Data Approved For Sharing
- Exhibit F – Contract #
- Any other provision, term or material incorporated herein by reference or otherwise incorporated

APPROVAL

This Agreement shall be subject to the written approval of the Superintendent's authorized representative and shall not be binding until so approved. The Agreement may be altered, amended, or waived only by a written amendment executed by both parties.

We the undersigned agree to the terms of the foregoing Agreement.

Requestor

Superintendent of Public Instruction
State of Washington

Signature

Title

OSPI Contracts Administrator

Print Name

Date

Date

Who certifies that he/she is the Contractor identified herein, OR a person duly qualified and authorized to bind the Contractor so identified to the foregoing Agreement.

Approved as to FORM ONLY
by the Assistant Attorney General

EXHIBIT E
CONTRACTOR INTAKE FORM

Available as an editable Word document on [OSPI's contract website](#):

<http://www.k12.wa.us/RFP/default.aspx>

EXHIBIT F
PROPOSAL CHECKLIST

Please use the checklist below to ensure that you have submitted all required materials in the required format. This checklist does not need to be submitted with your proposal.

| Included in Proposal | Component |
|-----------------------------|---|
| <input type="checkbox"/> | Letter of Submittal |
| <input type="checkbox"/> | Management Proposal |
| <input type="checkbox"/> | References |
| <input type="checkbox"/> | Cost Proposal |
| <input type="checkbox"/> | Certifications and Assurances |
| <input type="checkbox"/> | Contractor Intake Form |
| <input type="checkbox"/> | Washington State Business License, if applicable (see Contractor Intake Form) |
| <input type="checkbox"/> | Small Business Self-Certification, if applicable (see Contractor Intake Form) |