

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

**REQUEST FOR PROPOSALS (RFP)**  
**Amended and Revised 6/19/2009**

**RFP NO. SPED-RSTPP-01**

*This RFP is available on the Office of Superintendent of Public Instruction website located at <http://www.k12.wa.us/RFP/> and at the Office of General Administration, Washington Electronic Business Solution (WEBS) Procurement Website at <http://www.ga.wa.gov/webs/>. All RFP amendments or bidder questions/OSPI answers will be posted to these sites. All interested proposers must be registered with WEBS under any of the following commodity codes in order to receive notifications through that system: **9855 – Medical Service Providers; 9837 – Social Research Services; 9815 – Educational Consulting Services.***

**PROJECT TITLE:** **Special Education and Related Services Teletherapy Pilot Project**

**PROPOSAL DUE DATE:** 4:30 PM, PST, ~~Monday, June 5, 2009~~ **Monday, August 14, 2009**, in Olympia, Washington.

**EXPECTED TIME PERIOD FOR CONTRACT:** September 7, 2009 to August 31, 2010. The Office of Superintendent of Public Instruction reserves the right at its discretion, to extend the contract for up to two (2) additional one-year periods.

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

**CONTENTS OF THE REQUEST FOR PROPOSALS**

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  - B. Personal Service Contract with General Terms and Conditions

**Message to Consultants:**

Effective November 1, 2008, the State of Washington is required to publish all bidding opportunities on the Office of General Administration's Washington Electronic Business Solution (WEBS) website. Please register at <http://www.ga.wa.gov/webs/>, under any of the specific commodity codes listed above and any other commodity code for which you would like to receive notification of future bidding opportunities.

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# 1. INTRODUCTION

## 1.1. PURPOSE AND BACKGROUND

The Office of Superintendent of Public Instruction, hereafter called "OSPI," is initiating this Request for Proposals (RFP) to solicit proposals from firms, school districts, institutes of higher education, medical facilities, and other agencies interested in participating on a project to develop, implement, and evaluate a teletherapy pilot program to provide designated special education and/or related services to students with disabilities ages three (3) through twenty-one (21). The objective is to provide speech language, occupational, and physical therapy services via point-to-point teletherapy technologies in pilot public school districts that have been struggling to implement the services identified on special education students' Individualized Education Programs (IEPs).

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA) requires states to ensure children and youth with disabilities have opportunities to participate and succeed in their education programs. OSPI has provided assurances to the federal Office of Special Education Programs (OSEP) that the needs of all students eligible for special education services in Washington are provided opportunities to receive a free and appropriate public education. All state projects and activities funded through federal special education discretionary funds are scrutinized to ensure they support the State's efforts in achieving the IDEA requirements.

Through the implementation of Rules for the Provision of Special Education to Special Education Students (WAC 392-172A), the State of Washington provides the following assurances to OSEP:

- All students eligible for special education have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;
- The rights of students eligible for special education and their parents are protected;
- Provide assistance to school districts, educational service agencies, and federal and state agencies to provide for the education of all students eligible for special education; and
- Assess and ensure the effectiveness of efforts to educate students eligible for special education.

Washington State public schools face persistent statewide shortages in available, qualified personnel to provide the required special education and related services to children and youth eligible for special education services. This personnel shortage includes the availability of qualified therapy staff including speech-language pathologists (SLP), occupational therapists (OT), and physical therapists (PT).

As a result of this shortage, affected school districts in Washington:

- Are unable to hire certificated SLP, OT, and PT staff;
- Are forced to increase caseloads of existing therapy staff;
- Provide SLP, OT and PT services through classified staff; and/or
- Contract with private personnel agencies at a higher cost.

Children eligible for special education may:

- a) Not receive appropriate level of services designed in their IEPs,
- b) Experience a loss of instructional time from school due to travel distance to obtain services;
- c) Receive services less frequently than needed, as therapy personnel travel significant distances, therefore, visit schools infrequently; or

- d) Receive services from classified staff without the required supervision from certificated therapy staff as required by WAC 392-172A-02090 (g).

## 1.2. OBJECTIVE AND SCOPE OF WORK

OSPI is inviting individuals, firms, agencies, and any other qualified interested parties to submit proposals to provide a pilot Special Education and Related Services Teletherapy program to no less than five (5) school districts that, due to unfilled personnel vacancies and/or personnel shortages, do not currently have the required special education-related service providers to implement services identified on special education students' individual education plans. The successful applicant will be responsible to develop, implement, and evaluate the Special Education and Related Services Teletherapy pilot program. Proposers may submit a proposal to address one or more of the related services (speech language, occupational and physical therapies), therefore, one or more Contractors may be selected to provide the services required. OSPI, along with the Contractor(s), will identify the participating pilot school districts from rural, suburban, and urban locations within Washington State. The Special Education and Related Services Teletherapy services must conform to the district's existing student Individualized Education Programs (IEPs) by providing the required services indicated in the IEPs.

The project design and work plan must include goals/objectives, activities, timelines, persons responsible, and anticipated outcomes. The design must include innovative methods to address the following areas:

- Information and resource dissemination of research literature and best practice concerning the specific teletherapy(ies) the success applicant(s) will deliver (speech language, occupational, and physical teletherapies) for both families and educational staff.
- Training for families, educational staff, and community members.
- Responding to the needs of underserved populations (develop a plan to systemically address districts that are culturally, linguistically, economically, and geographically diverse).
- Coordinating and collaborating with existing parent and educational organizations.
- Linkages with institutes of higher education to promote understanding and strategies to enhance and expand the specific teletherapy(ies) the successful applicant(s) will deliver (speech language, occupational, and physical teletherapies) in education.
- Supporting district staff involved with the program including but not limited to the district contact person, district technology staff, educators, paraeducators, etc.
- Providing the technology equipment, management software, and educational software for the implementation of the specific teletherapy(ies) the successful applicant(s) will deliver (speech language, occupational, and physical teletherapies) program.
- Use of Washington State's K-20 Education Network to deliver teletherapy services. (This is the only high-speed, high-capacity network entirely dedicated to meeting the unique needs and diverse interests of Washington State's educational community.)
- Development/editing of materials (family/educator guide, brochures, training materials, etc.) as needed and approved by OSPI.
- Thorough evaluation process to include quantitative and qualitative methods to evaluate the project's anticipated outcomes from students, school staff, and parents.
- Cost benefit-analysis of special education-related service teletherapy program.
- On site configuration, installation, and training of purchased teletherapy equipment in order to deliver special education and related services from speech language pathologists, occupational therapists, and physical therapists—provided by, as proposed and agreed upon between the Contractor(s) and OSPI to at least five or more public school districts, selected by OSPI.

- Access to specialty consultation in areas such as augmentative and alternative communication (AAC) and assistive technology (AT).

Five or more school districts, representing varying size and geographic location, will be selected by OSPI in collaboration with the Contractor(s). Districts participating in the pilot program will need to:

- Identify students needing speech language, occupational therapy, and/or physical therapy services as required in each student's IEP;
- Provide T-1 or faster Internet connection;
- Access to a quiet room appropriate for therapy services;
- Access to technology support personnel (e.g. district, ESD);
- Assign an individual responsible for:
  - student's attendance and equipment;
  - material preparation (as designed by the therapist, etc.);
- Have fiscal capacity to contract for the speech language, occupational, and/or physical therapy service(s) based on a break-even business model;
- Use Washington State's K-20 Education Network to receive teletherapy services; and
- Maximize e-rate funding to offset costs incurred for use of the K-20 system.

The Contractor(s) will provide:

- Travel to and from school district sites (training, equipment installation, etc.);
- Videoconferencing hardware and software at no cost to the pilot district (all inventory purchased for the school district to participate in the project will become property of the school district at the conclusion of the pilot project);
- Staff training at no cost to the pilot district;
- Qualified therapy staff at the same cost as a district employee (salary plus benefits);
- Stipend to offset costs incurred for use of the K-20 system for this project (Total cost minus potential maximized e-rate funding equals stipend.);
- Quarterly reports and a final report on the project design and work plan outlined in Section 1.2 Objective and Scope of Work to OSPI; and
- A third-party evaluator with the ability and capacity to conduct scientifically valid research on the effectiveness of the pilot program including but not limited to the project's anticipated outcomes from students, school staff, parents, and the Contractor(s).

### **1.3. STATE'S ROLE**

- Meet monthly with the Contractor(s) for updates.
- Provide Contractor(s) with updates on new laws or licensure requirements, if necessary.
- Notify Contractor(s) of continuation of contract by June 1, 2010.
- Notify Contractor(s) of any concerns from school personnel and/or family members, if necessary.

### **1.4. CONSULTANT QUALIFICATIONS**

#### **Minimal Qualifications**

- The Consultant must be licensed to do business in the State of Washington.

## Desirable Qualifications

- Experience in/with developing speech language, occupational, and physical teletherapy programs as it applies to the proposal.
- The speech language, occupational, and physical therapists involved with providing direct services to students must meet the requirements of WAC 181-79A to obtain Educational Staff Associate Certification and have prior successful experience working with school-aged students.

### 1.5. FUNDING

OSPI has budgeted an amount not to exceed \$250,000 for this the entire project. **Proposals in excess of \$250,000 will be rejected as non-responsive and will not be evaluated.**

Preference for consideration in the selection process will be for applicants that provide speech language, occupational and physical therapy services. OSPI will consider proposals for one or more individual service areas (speech language therapy, occupational therapy, physical therapy).

OSPI reserves the right to negotiate the final contract amount dependent on the number of successful applicants to be awarded contracts. The final contract amount will reflect changes in the final workplan and deliverables as necessary.

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

The Consultant shall provide their most favorable and competitive cost estimate to perform the work.

### 1.6. PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFP is tentatively scheduled to begin on **September 7, 2009, and end on August 31, 2010**. Amendments extending the period of performance, if any, shall be at the sole discretion of OSPI. OSPI has the right to renew the contract for up to two (2) additional one-year periods based upon an annual review of Contractor(s) performance, successful completion of yearly project objectives, reports, and availability of funding.

### 1.7. DEFINITIONS

Definitions for the purposes of this RFP include:

**Consultant** – Individual or company submitting a proposal in order to attain a contract with OSPI.

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

**FAPE** - Free appropriate public education is defined in WAC 392-172A-01080 to mean special education and related services that:

- (1) Are provided at public expense, under public supervision and direction, and without charge;
- (2) Meet the standards of the OSPI, and the IDEA;
- (3) Include an appropriate preschool, elementary school or secondary school education in the state; and
- (4) Are provided in conformity with an individualized education program (IEP) that meets the requirements of WAC 392-172A-03090 through 392-172A-03135.

**K-20 Network** – Washington's K-20 network is a high-speed, high-capacity network that links K-12 school districts, libraries, colleges, and universities – across 476 locations in Washington. The

network connects educators, students, and communities with innovative, affordable programs and services that promote 21st Century market skills and life-long learning. For more information, go to <http://www.wa-k20.net/>.

**OSPI** – Office of Superintendent of Public Instruction is the agency of the State of Washington that is issuing this RFP.

**Proposal** – A formal offer submitted in response to this solicitation.

**Request for Proposals (RFP)** – Formal procurement document in which a service or need is identified but no specific method to achieve it has been chosen. The purpose of an RFP is to permit the Consultant community to suggest various approaches to meet the need at a given price.

**Teletherapy** – For the purposes of this RFP, teletherapy is a term used to describe the use of telecommunication technology – such as videoconferencing with additional computer abilities when distance separates the professional staff from the student. It includes, but is not limited to, individual and small group therapy diagnosis, evaluation, consultation, meeting participation, and education. School-based teletherapy is derived from the successful application of these technologies in telemedicine and/or telehealth practices in the medical field and distance learning in the field of education.

## **1.8. ADA**

OSPI complies with the Americans with Disabilities Act (ADA). Consultants may contact the RFP Coordinator to receive this Request for Proposals in Braille or on tape.

# **2. GENERAL INFORMATION FOR CONSULTANTS**

## **2.1. RFP COORDINATOR**

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

|                       |                                     |
|-----------------------|-------------------------------------|
| Name                  | <b>Lou Colwell</b>                  |
| Physical Address      | <b>600 Washington Street South</b>  |
| Mailing Address       | <b>PO Box 47200</b>                 |
| City, State, Zip Code | <b>Olympia WA 98504-7200</b>        |
| Phone Number          | <b>360.725.6075</b>                 |
| Fax Number            | <b>360.586.0247</b>                 |
| E-Mail Address        | <b>MaryLouise.Colwell@k12.wa.us</b> |

Any other communication will be considered unofficial and non-binding on OSPI. Consultants are to rely on written statements issued by the RFP Coordinator. Communication directed to parties other than the RFP Coordinator may result in disqualification of the Consultant.

## **2.2. ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES**

|                                        |                                                                  |
|----------------------------------------|------------------------------------------------------------------|
| Issue Request for Proposals            | <del>April 23, 2009</del> <b>June 19, 2009</b>                   |
| Question and answer period             | <del>April 23 – May 29, 2009</del> <b>June 22-August 7, 2009</b> |
| Preproposal Conference (If applicable) | <b>N/A</b>                                                       |
| Last date for questions regarding RFP  | <del>May 29, 2009</del> <b>August 7, 2009</b>                    |
| Proposals due                          | <del>June 5, 2009</del> <b>August 14, 2009</b>                   |

|                                                                                                               |                                                           |
|---------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|
| Evaluate written proposals                                                                                    | <del>June 10-11, 2009</del> <b>August 19, 2009</b>        |
| Conduct oral interviews with finalists, if necessary                                                          | <del>June 12, 2009</del> <b>August 20, 2009</b>           |
| Announce "Apparent Successful Contractor(s)" and send notification via fax or email to unsuccessful proposers | <del>June 16, 2009</del> <b>August 21, 2009</b>           |
| Hold debriefing conferences (if requested)                                                                    | <del>June 19-26, 2009</del> <b>August 24, 2009</b>        |
| Negotiate contract                                                                                            | <del>June 22-July 8, 2009</del> <b>August 25-26, 2009</b> |
| File contract with OFM (if required)                                                                          | <del>August 3, 2009</del> <b>August 28, 2009</b>          |
| Begin contract work                                                                                           | <del>September 1</del> <b>7, 2009</b>                     |

OSPI reserves the right to revise the above schedule.

### **2.3. SUBMISSION OF PROPOSALS**

Consultants are required to submit four (4) copies of their proposal. One (1) copy must have original signatures and three (3) copies can have photocopies signatures. Additionally, the Consultant must provide one copy of the proposal electronically, either by email or on a compact disc (CD). The proposal, whether mailed or hand delivered, must be received by OSPI no later than 4:30 p.m. PST in Olympia, Washington, on ~~June 5~~ **August 14**, 2009. The proposal is to be sent to the RFP Coordinator at the address noted in Section 2.1. The envelope should be clearly marked to the attention of the RFP Coordinator, who is OSPI's sole point of contact for this procurement.

Consultants mailing proposals should allow normal mail delivery time to ensure timely receipt of their proposals by the RFP Coordinator. Consultants who are hand-delivering their proposals should allow time for traffic congestion. Consultants assume the risk for the method of delivery chosen. OSPI assumes no responsibility for delays caused by any delivery service.

Late proposals will not be accepted and will be automatically disqualified from further consideration. The 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.

### **2.4. PROPRIETARY INFORMATION/PUBLIC DISCLOSURE**

Proposals submitted in response to this competitive procurement shall become the property of OSPI.

All proposals received shall remain confidential until the contract, if any, resulting from this RFP is signed by the Contracts Administrator of OSPI and the apparent successful Contractor; thereafter, the proposals shall be deemed public records as defined in RCW 42.56.

Any information in the proposal that the Consultant desires to claim as proprietary and exempt from disclosure under the provisions of RCW 42.56 must be clearly designated. The page must be identified and the particular exception from disclosure upon which the Consultant is making the claim. Each page claimed to be exempt from disclosure must be clearly identified by the word "Confidential" printed on the lower right-hand corner of the page.

OSPI will consider a Consultant's request for exemption from disclosure; however, OSPI will make a decision predicated upon RCW 42.56. Marking the entire proposal exempt from disclosure will not be honored. The Consultant must be reasonable in designating information as confidential. If any information is marked as proprietary in the proposal, such information will not be made available until the affected proposer has been given an opportunity to seek a court injunction against the requested disclosure.

A charge will be made for copying and shipping, as outlined in RCW 42.56. No fee shall be charged for inspection of contract files, but twenty-four (24) hours' notice to the RFP Coordinator is required. All requests for information should be directed to the RFP Coordinator.

## **2.5. REVISIONS TO THE RFP**

In the event it becomes necessary to revise any part of this RFP, addenda will be provided via e-mail to all who were sent the RFP directly.

In the event it becomes necessary to revise any part of this RFP, addenda will be published on the OSPI website at <http://www.k12.wa.us/RFP/>. For this purpose, the published bidder question/agency answers and any other pertinent information shall be considered an addendum to the RFP and also placed on the website. Additionally, all addenda referred to above will be released on WEBS for all Consultants who are registered.

It will be the responsibility of interested vendors to check the website periodically for RFP addenda and updates. For this purpose, the published bidder questions/agency answers and any other pertinent information shall be considered an addendum to the RFP and also placed on the website.

OSPI also reserves the right to cancel or to reissue the RFP in whole or in part, prior to execution of a contract.

## **2.6. MINORITY & WOMEN-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 solicitation or on a subcontractor basis. 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.

The established annual procurement participation goals for MBE is 8 percent and, for WBE, 4 percent, for this type of project. These goals are voluntary. Bidders may contact OMWBE at 360/753-9693 to obtain information on certified firms.

## **2.7. ACCEPTANCE PERIOD**

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

## **2.8. RESPONSIVENESS**

All proposals will be reviewed by the RFP Coordinator to determine compliance with administrative requirements and instructions specified in this RFP. The Consultant is specifically notified that failure to comply with any part of the RFP may result in rejection of the proposal as non-responsive.

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

## **2.9. 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 Consultant can propose. There will be no best and final offer procedure. OSPI does reserve the right to contact a Consultant for clarification of its proposal.

The Consultant should be prepared to accept this RFP for incorporation into a contract resulting from this RFP. Contract negotiations may incorporate some or all of the Consultant's proposal. It is understood that the proposal will become a part of the official procurement file on this matter without obligation to OSPI.

## **2.10. CONTRACT AND GENERAL TERMS & CONDITIONS**

The apparent successful Contractor(s) will be expected to enter into a contract which is substantially the same as the sample contract and its general terms and conditions attached as Exhibit B. In no event is a Consultant to submit its own standard contract terms and conditions in response to this solicitation. The Consultant may submit exceptions as allowed in the Certifications and Assurances Section, Exhibit A to this solicitation. OSPI will review requested exceptions and accept or reject the same at its sole discretion.

## **2.11. 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 RFP, in conduct of a presentation or any other activities related to responding to this RFP

## **2.12. NO OBLIGATION TO CONTRACT**

This RFP does not obligate the State of Washington or OSPI to contract for services specified herein.

## **2.13. 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 RFP.

## **2.14. COMMITMENT OF FUNDS**

The Contracts Administrator or her delegate are the only individuals who may legally commit OSPI to the expenditures of funds for a contract resulting from this RFP. No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

## **2.15. STATEWIDE VENDOR PAYMENT REGISTRATION**

Consultants awarded contracts as a result of this RFP 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. While registration in the SWV is mandatory, the vendor is NOT required to participate in the direct deposit program and therefore is not required to submit banking information. Please go to <http://www.ofm.wa.gov/accounting/vendors.asp> for online registration.

## **2.16. INSURANCE COVERAGE**

The Contractor(s) is to furnish OSPI with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth below.

The Contractor(s) 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(s) 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.

### **Liability Insurance**

- 1) **Commercial General Liability Insurance:** Contractor(s) shall maintain general liability (CGL) insurance and, if necessary, commercial umbrella insurance, with a limit of not less than \$1,000,000 per each occurrence. If CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit. CGL insurance shall be written on ISO occurrence from CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insureds (cross liability) condition.

Additionally, the Contractor(s) is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

- 2) **Business Auto Policy:** As applicable, the Contractor(s) shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto." Business auto coverage shall be written on ISO form CA 00 01, 1990 or later edition, or substitute liability form providing equivalent coverage.

### **Employers Liability ("Stop Gap") Insurance**

In addition, the Contractor(s) shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

### **Additional Provisions**

Above insurance policy shall include the following provisions:

1. **Additional Insured.** The State of Washington, Office of Superintendent of Public Instruction, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State.
2. **Cancellation.** State of Washington, Office of Superintendent of Public Instruction, shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications. Insurers subject to 48.18 RCW (Admitted and Regulation by the Insurance Commissioner): The insurer shall give the State 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation. Insurers subject to 48.15 RCW (Surplus lines): The State shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.
3. **Identification.** Policy must reference the State's contract number and the agency name.
4. **Insurance Carrier Rating.** All insurance and bonds should be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by the OSPI Risk Manager, or the Risk Manager for the State of Washington, before the contract is accepted or work may begin. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with chapter 48.15 RCW and 284-15 WAC.
5. **Excess Coverage.** By requiring insurance herein, the State does not represent that coverage and limits will be adequate to protect Contractor(s), and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to the State in this contract.

#### **Worker's Compensation Coverage**

The Contractor(s) will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. The State will not be held responsive in any way for claims filed by the Contractor(s) or their employees for services performed under the terms of this contract.

### **3. PROPOSAL CONTENTS**

Proposals must be submitted on eight and one-half by eleven (8 1/2 x 11) inch paper size with tabs separating the major sections of the proposal. The Letter of Submittal, excluding the signed Certifications and Assurances shall be a maximum of one (1) page. The four major sections of the proposal are to be submitted in the order noted below:

1. Letter of Submittal, including signed Certifications and Assurances (Exhibit A to this RFP).
2. Technical Proposal
3. Management Proposal
4. 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.

### **3.1. LETTER OF SUBMITTAL (MANDATORY)**

The Letter of Submittal and the attached Certifications and Assurances form (Exhibit A to this RFP) 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, the Letter of Submittal is to include by attachment the following information about the Consultant and any proposed subcontractors:

1. Name, address, principal place of business, telephone number, fax number and e-mail address of legal entity or individual with whom contract would be written.
2. Name, address, and telephone number of each principal officer (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.).
3. Legal status of the Consultant (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business as the entity now substantially exists.
4. Federal Employer Tax Identification number or Social Security number and the Washington Uniform Business Identification (UBI) number issued by the State of Washington Department of Revenue.
5. Location of the facility from which the Consultant would operate.
6. Identify any State employees or former State employees employed or on the firm’s governing board as of the date of the proposal. Include their position and responsibilities within the Consultant’s organization. If following a review of this information, it is determined by OSPI that a conflict of interest exists, the Consultant may be disqualified from further consideration for the award of a contract.

### **3.2. TECHNICAL PROPOSAL (SCORED)**

OSPI seeks to initiate a Special Education and Related Service Teletherapy Pilot. This RFP is to solicit proposals from firms, school districts, institutes of higher education, medical facilities, and other agencies interested in participating on a project to develop, implement and evaluate a teletherapy pilot program for designated special education and/or related services to students with disabilities ages three (3) through twenty-one (21). The objective is to provide speech language, occupational, and physical therapy via point-to-point teletherapy technologies in pilot public school districts that have been struggling to implement the services identified on special education students’ Individualized Education Programs (IEPs) due to unfilled personnel vacancies and/or personnel shortages.

The project design and work plan must include goals/objectives, activities, timelines, persons responsible, and anticipated outcomes. The design must include innovative methods in the areas previously described in Section 1.2, Objective and Scope of Work.

The Technical Proposal must contain a comprehensive description of services including the following elements:

- A. Project Approach/Methodology** – Include a complete description of the Consultant’s proposed approach and methodology for the project. This section should convey the Consultant’s understanding of the proposed project.
- B. Work Plan** – Include all project requirements and the proposed tasks, services, activities, etc. necessary to accomplish the scope of the project defined in this RFP. This section of the

technical proposal must contain sufficient detail to convey to members of the evaluation team the Consultant's knowledge of the subjects and skills necessary to successfully complete the project. Include any required involvement of OSPI staff. The Consultant may also present any creative approaches that might be appropriate and may provide any pertinent supporting documentation.

- C. Project Schedule** – Include a project schedule indicating when the elements of the work will be completed and when deliverables, if any, will be provided.
- D. Deliverables** – Fully describe deliverables to be submitted under the proposed contract.
- E. Outcomes and Performance Measurement** – Describe the impacts/outcomes the Consultants propose to achieve as a result of the delivery of these services including how these outcomes would be monitored, measured and reported to the state agency.

**Please Note: Mere repetition of the work statement in Section 1 will not be considered responsive.**

#### **F. Risks**

##### **Overall Risk**

Define risks you identify as being significant to the success of the project. Include how you would propose to effectively monitor and manage these risks, including reporting of risks to the agency's contract manager.

##### **Specific Risks**

- Outline a proposal for minimizing staff turnover and its impact on the agency's contract management staff.
- Provide a business continuation plan that illustrates how you will monitor and manage through times of labor disruption, loss of facility and/or key staff/personnel.

### **3.3. 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 resumes' 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. Indicate 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 RFP. 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/e-mail addresses of three business references for whom work has been accomplished and briefly describe the type of service provided. The Consultant must grant permission to OSPI to contact the references. Do not include current OSPI staff as references. References will be contacted for the top-scoring proposal(s) only.

## **D. Related Information (MANDATORY)**

1. If the Consultant or any subcontractor contracted with the State of Washington during the past 24 months, indicate the name of the agency, the contract number and project description and/or other information available to identify the contract.
2. If the Consultant's staff or subcontractor's staff was an employee of the State of Washington during the past 24 months, or is currently a Washington state employee, identify the individual by name, the agency previously or currently employed by, job title or position held and separation date.
3. If the Consultant has had a contract terminated for default in the last five years, describe such incident. Termination for default is defined as notice to stop performance due to the Consultant's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer or (b) litigated and such litigation determined that the Proposer was in default.
4. Submit full details of the terms for default including the other party's name, address, and phone number. Present the Consultant's position on the matter. OSPI will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience. If no such termination for default has been experienced by the Consultant in the past five years, so indicate.

### 3.4. 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 RFP. However, Consultants are encouraged to submit proposals that are consistent with state government efforts to conserve state resources.

OSPI has budgeted an amount not to exceed \$250,000 for this the entire project. **Proposals in excess of \$250,000 will be rejected as non-responsive and will not be evaluated.**

Preference for consideration in the selection process will be for applicants that provide speech language, occupational and physical therapy services.. OSPI will consider proposals for one or more individual service areas (speech language therapy, occupational therapy, physical therapy).

OSPI reserves the right to negotiate the final contract amount dependent on the number of successful applicants to be awarded contracts. The final contract amount will reflect changes in the final workplan and deliverables as necessary.

#### **A. 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.

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.

#### **B. Computation**

The score for the cost proposal will be computed by dividing the lowest cost bid received by the Consultant's total cost. Then the resultant number will be multiplied by the maximum possible points for the cost section.

## 4. EVALUATION AND CONTRACT AWARD

### 4.1. EVALUATION PROCEDURE

Responsive proposals will be evaluated strictly in accordance with the requirements stated in this solicitation 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.

OSPI, at its sole discretion, may elect to select the top-scoring firms as finalists for an oral presentation.

#### 4.2. EVALUATION WEIGHTING AND SCORING

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

|                                                         |                     |                   |
|---------------------------------------------------------|---------------------|-------------------|
| <b>Technical Proposal – 35%</b>                         |                     | <b>70 points</b>  |
| Project Approach/Methodology                            | 15 points (maximum) |                   |
| Quality of Work Plan                                    | 35 points (maximum) |                   |
| Project Schedule                                        | 10 points (maximum) |                   |
| Project Deliverables                                    | 10 points (maximum) |                   |
| <b>Management Proposal – 30%</b>                        |                     | <b>60 points</b>  |
| Project Team Structure/<br>Internal Controls            | 15 points (maximum) |                   |
| Staff Qualifications/Experience                         | 15 points (maximum) |                   |
| Experience of the Consultant                            | 30 points (maximum) |                   |
| <b>Cost Proposal – 35%</b>                              |                     | <b>70 points</b>  |
| Sub-Total                                               |                     | 200 points        |
| <b>Oral Presentation [top-scoring proposer(s) only]</b> |                     | <b>10 points</b>  |
| <b>References [top-scoring proposer(s) only]</b>        |                     | <b>10 points</b>  |
| <b>GRAND TOTAL FOR PROPOSAL</b>                         |                     | <b>220 points</b> |

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

#### 4.3. 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 Consultant at the oral interview, if any, will be considered binding. The score from the oral presentation will be considered independently and will determine the apparently successful proposer.

#### 4.4. NOTIFICATION TO PROPOSERS

Firms whose proposals have not been selected for further negotiation or award will be notified via FAX or by e-mail.

#### **4.5. DEBRIEFING OF UNSUCCESSFUL PROPOSERS**

Upon request, an individual debriefing conference will be scheduled with an unsuccessful Proposer. The request for a debriefing conference must be received by the RFP Coordinator within three (3) business days after the Notification of Unsuccessful Consultant letter is faxed/e-mailed to the Consultant. The debriefing must be held within three (3) business days of the request.

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 one hour.

#### **4.6. PROTEST PROCEDURE**

This procedure is available to Consultants who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the Consultant is allowed three (3) business days to file a protest of the acquisition with the RFP Coordinator. Protests may be submitted by facsimile, but should be followed by the original 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 with specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included. All protests shall be addressed to the RFP 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.
- Errors in computing the score.
- 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, or 2) OSPI'S assessment of its own and/or other agencies needs or requirements.

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 five business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

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 RFP 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 acquisition 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 solicitation 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 apparently successful Contractor(s). If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

## **5. RFP EXHIBITS**

Exhibit A Certifications and Assurances

Exhibit B Personal Service Contract Format including General Terms and Conditions (GT&Cs)

## CERTIFICATION AND ASSURANCES

I/we make 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. I/we declare 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, I/we 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 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 60-day period.
4. In preparing this proposal, I/we have 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. I/we understand that OSPI will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of OSPI, and I/we claim 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 Proposer and will not knowingly be disclosed by him/her prior to opening, directly or indirectly to any other Proposer or to any competitor.
7. I/we agree 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, I/we have described those exceptions in detail on a page attached to this document.
8. No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.
9. I/we grant OSPI the right to contact references and others, who may have pertinent information regarding the Proposer's prior experience and ability to perform the services contemplated in this procurement.

*On behalf of the firm submitting this proposal, my name below attests to the accuracy of the above statements.*

---

Signature of Proposer

---

Title

---

Date

**EXHIBIT B**  
**CONTRACT FOR PERSONAL SERVICES**  
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

**NAME OF CONTRACTOR  
(hereinafter referred to as Contractor)  
Address of Contractor**

**Social Security # or Federal Identification #  
and  
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 are as follows:

*(Enter a brief description of the agreed upon services 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, \_\_\_\_\_:

*(Describe the work to be performed by Contractor in detail, including a breakdown of the quantifiable steps or components of what Contractor is to do)*

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

Contractor shall not commence performance, or be entitled to compensation or reimbursement for any services rendered, prior to the occurrence of each of the following conditions: (1) This contract must be executed by a representative of the Contractor and the Superintendent; (2) This contract must be filed with, and approved by, the Office of Financial Management, if and to the extent required by state personal service contract laws; and, (3) Superintendent's designee must confirm the occurrence of conditions number one and two and notify the Contractor to commence performance.

The schedule of performance of Contractor's duties is as follows subject, however, to the three prior conditions to commencement of performance set forth immediately above.

### III. DUTIES OF THE SUPERINTENDENT

- A. In consideration of Contractor's satisfactory performance of the duties set forth herein, Superintendent shall compensate Contractor > at an hourly rate of \$> not to exceed a total of > dollars (\$>) OR > not to exceed a total of > dollars (\$>) as noted below in part B, Schedule of Payments OR > in an amount equal to Contractor's actual cost, plus overhead or indirect costs at a rate of > percent of actual costs not to exceed a total of > dollars (\$>) as per Attachment B, Budget, attached hereto and incorporated by this reference.

>Funds for the payment of this contract are provided by federal program(s) \_\_\_\_\_, CFDA #(s) \_\_\_\_\_.

- 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

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

- 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 > dollars (\$>). Contractor's "official duty station" (i.e., the origin of reimbursable travel and/or per diem) shall be > and /or,
2. Expenses incurred for the following specified purposes not to exceed a total of > dollars (\$>). Contractor must submit receipts or other documentation.

### IV. RENEWAL (OPTIONAL CLAUSE)

OSPI has the right to renew this contract in whole or in part for the year(s)\_\_\_\_\_ by giving notice on or before \_\_\_\_\_ to the Contractor. If OSPI 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. 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 Personal Services, General Terms and Conditions
- Attachment B – Request for Proposals No. \_\_\_\_\_
- Attachment C – Contractor's Proposal
- Any other provision, term or material incorporated herein by reference or otherwise incorporated.

## VI. 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

\_\_\_\_\_  
Melanie S. Buechel, Contracts Administrator

\_\_\_\_\_  
Title

\_\_\_\_\_  
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

**Non-profit organization?** ☐ yes\* ☐ no

\_\_\_\_\_  
Assistant Attorney General

\_\_\_\_\_  
**\*If yes, under what IRS section?**

\_\_\_\_\_  
Date

## **Exhibit B**

### **Attachment A Contract for Personal Services GENERAL TERMS AND CONDITIONS**

1. **Access to Data.** In compliance with Chapter 39.29 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 agreement 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. **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.
8. **Certification Regarding Debarment, Suspension, and Ineligibility.** If federal funds are the basis for this contract, 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 \$25,000. Contractor may do so by obtaining a certification statement from the potential subcontractor or subrecipient or by checking the "List of Parties Excluded from Federal Procurement and Non-Procurement Programs" provided on-line by the General Services Administration.
9. **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.
10. **Confidentiality.** The Contractor acknowledges that all of the data, material and information which originates from this contract, and the 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.

11. 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 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 Agency 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. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the contract, but that incorporate pre-existing materials not produced under the contract Contractor hereby grants to the Agency a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the Agency.

The Contractor shall exert all reasonable effort to advise the Agency, 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 Agency 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 Agency shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

12. 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 Agency 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.
13. 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.

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

15. 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 Agreement shall be deemed to exist or to bind any of the parties hereto.
16. 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 42.17.130 and 41.06.250 prohibiting the use of public resources for political purposes.
17. Governing Law. 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.
18. 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 claim 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.

19. 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.
20. 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. 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.

- c. 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)                              | \$50,000    |

- d. Additional Insured. The State of Washington and the Superintendent shall be specifically named as an additional insured on all policies, and all policies shall be primary to any other valid and collectible insurance. At its option, the Superintendent may waive this requirement where insurance carriers will not under any circumstances extend secondary insurance

coverage for physicians' professional liability, or Architects' and Engineers' insurance. The Superintendent may also waive this requirement where insurance carriers will not under any circumstances extend secondary fidelity bonding coverage for private non-profit organizations.

- e. 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.
- f. 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.

- 21. 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.
- 22. Limitation of Authority. Only the Superintendent of 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 or any clause or condition of this contract is not effective or binding unless made in writing and signed by the Superintendent.
- 23. 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 race, creed, color, national origin, sex, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability, 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 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.
- 24. 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.
- 25. 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.

26. Public Disclosure. Contractor acknowledges that the Agency is subject to Chapter 42.56 RCW, the Public Disclosure Act 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 Agency shall maintain the confidentiality of all such information marked confidential or proprietary. If a request is made to view the Contractor's information, the Agency 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 Agency will release the requested information on the date specified.
27. Publicity. The Contractor agrees to submit to the Agency all advertising and publicity matters relating to this Contract which in the Agency's judgment, Agency'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 Agency.
28. 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.
29. 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 Agency, personnel duly authorized by the Agency, 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.
30. 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.
31. 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.
32. Site Security. While on Agency premises, Contractor, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.
33. 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. 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.
34. 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.

35. 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.
36. 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 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
37. Termination Due to Funding Limitations. 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, the Superintendent may, without advance notice and without liability for damages, terminate the contract under the "Termination for Convenience" clause. The Superintendent and Contractor may, however, renegotiate this contract under any such new funding limitations and conditions.
38. 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 agreement 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:

1. Stop work under this contract on the date and to the extent specified, in the notice;
2. 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 this is not terminated;

3. 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;
  4. 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;
  5. 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;
  6. Complete performance of such part of the work not terminated by the Superintendent; and
  7. Take such action as may be necessary, or as the Superintendent may direct, for the protection and preservation of the property related to this agreement which, in is in the possession of the Contractor and in which the Superintendent has or may acquire an interest.
39. 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 agreement.

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.