

**STATE OF WASHINGTON
DEPARTMENT OF EARLY LEARNING
REQUEST FOR QUALIFICATIONS AND QUOTATIONS
RFQQ NO. 09-107**

If you download this RFQQ from the Department of Early Learning website you are responsible for sending your name, address, e-mail address and telephone number to the RFQQ Coordinator in order for your organization to receive any RFQQ amendments or bidder questions/answers.

PROJECT TITLE: On-Line Training

PROPOSAL DUE DATE: October 5, 2009

EXPECTED TIME PERIOD FOR CONTRACT: November 2, 2009 – June 30, 2010

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.

CONTACT INFORMATION:

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CONTENTS OF THE REQUEST FOR QUALIFICATIONS AND QUOTATIONS:

- 1. Introduction**
- 2. General Information for Consultants**
- 3. Proposal Contents**
- 4. Evaluation and Award**
- 5. Exhibits**
 - A. Certifications and Assurances**
 - B. Personal Service Contract with General Terms and Conditions**

TABLE OF CONTENTS

1	INTRODUCTION	4
1.1	PURPOSE AND BACKGROUND.....	4
1.2	OBJECTIVE.....	4
1.3	MINIMUM QUALIFICATIONS.....	4
1.4	FUNDING.....	4
1.5	PERIOD OF PERFORMANCE	4
1.6	DEFINITIONS	4
1.7	ADA	5
2	GENERAL INFORMATION FOR CONSULTANTS	5
2.1	RFQQ COORDINATOR.....	5
2.2	ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES	5
2.3	SUBMISSION OF PROPOSALS	6
2.4	PROPRIETARY INFORMATION/PUBLIC DISCLOSURE	6
2.5	REVISIONS TO THE RFQQ	6
2.6	MINORITY & WOMEN-OWNED BUSINESS PARTICIPATION	7
2.7	ACCEPTANCE PERIOD.....	7
2.8	RESPONSIVENESS	7
2.9	MOST FAVORABLE TERMS	7
2.10	CONTRACT AND GENERAL TERMS & CONDITIONS	7
2.11	COSTS TO PROPOSE.....	7
2.12	NO OBLIGATION TO CONTRACT	8
2.13	REJECTION OF PROPOSALS.....	8
2.14	COMMITMENT OF FUNDS.....	8
2.15	ELECTRONIC PAYMENT	8
2.16	INSURANCE COVERAGE	8
3	PROPOSAL CONTENTS.....	8
3.1	LETTER OF SUBMITTAL (MANDATORY).....	8
3.2	QUALIFICATIONS SECTION.....	9
3.3	QUOTATIONS SECTION	11
4	EVALUATION AND CONTRACT AWARD	11
4.1	EVALUATION PROCEDURE	11
4.2	CLARIFICATION OF PROPOSAL	12
4.3	EVALUATION WEIGHTING AND SCORING.....	12
4.4	ORAL PRESENTATIONS MAY BE REQUIRED	12
4.5	NOTIFICATION TO PROPOSERS	12
4.6	DEBRIEFING OF UNSUCCESSFUL PROPOSERS	12
4.7	PROTEST PROCEDURE	12
5	RFQQ EXHIBITS.....	13

1 INTRODUCTION

1.1 PURPOSE AND BACKGROUND

The purpose of this bid request is to develop on-line training courses to facilitate trainings offered by the Department of Early Learning (DEL).

1.2 OBJECTIVE

The objective of this bid opportunity is to develop customized on-line training courses primarily for DEL licensing staff; however, other modules maybe developed for all DEL employees, child care providers, or any group identified by DEL as needing training.

DEL may award one or more contracts to consultants who submit proposals as a result of this RFQQ.

1.3 MINIMUM QUALIFICATIONS

The Consultant must be licensed to do business in the state of Washington and have at least three years of experience in on-line training development.

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

1.4 FUNDING

The overall budget for this project will be based on the number of modules, languages requested, and complexity of the modules as agreed upon by both parties prior to the development of any module.

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

1.5 PERIOD OF PERFORMANCE

The period of performance of any contract(s) resulting from this RFQQ is tentatively scheduled to begin on or about November 2, 2009 and to end on June 30, 2010. DEL reserves the option at its sole discretion to extend the contract for an additional one-year period.

1.6 DEFINITIONS

Definitions for the purposes of this RFQQ include:

Agency. The Department of Early Learning is the agency of the state of Washington that is issuing this RFQQ.

Consultant. Individual, company, or firm submitting a proposal in order to attain a contract with the AGENCY.

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

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

Request for Qualifications and Quotations (RFQQ). Formal procurement document in which services needed are identified and firms are invited to provide their qualifications to provide the services and their hourly rates.

1.7 ADA

The AGENCY complies with the Americans with Disabilities Act (ADA). Consultants may contact the RFQQ Coordinator to receive this Request for Qualifications and Quotations in Braille or on tape.

2 GENERAL INFORMATION FOR CONSULTANTS

2.1 RFQQ COORDINATOR

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

Name	Debby Carr
Mailing Address	P.O. Box 40970 Olympia, WA 98504-0970
Street Address	OR Delivery Only: 649 Woodland Square Loop SE Lacey, WA 98503
Phone Number	360-725-4914
Fax Number	360-725-4930
E-Mail Address	Debby.carr@del.wa.gov

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

2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue Request for Qualifications and Quotations	September 18, 2009
Proposals due	October 5, 2009
Evaluate proposals	October 6, 2009
Conduct oral interviews with finalists, if required	October 7, 2009
Announce "Apparent Successful Contractor" and send notification via fax or e-mail to unsuccessful proposers	October 9, 2009
Hold debriefing conferences (if requested)	October 12 – October 14, 2009
Negotiate contract	October 15, 2009
File contract with OFM	October 16, 2009
Begin contract work	November 2, 2009

The AGENCY reserves the right to revise the above schedule.

2.3 SUBMISSION OF PROPOSALS

The proposal must be **received by the RFQQ Coordinator** no later than 3:00 p.m. Pacific Standard Time or Pacific Daylight Time, in Olympia, Washington.

Proposals must be submitted electronically as an attachment to an e-mail to the RFQQ Coordinator at the e-mail address listed in Section 2.1. Attachments to e-mail shall be on Microsoft Word format or PDF. Zipped files cannot be received by the AGENCY and cannot be used for submission of proposals. The cover submittal letter and the Certifications and Assurances form must have a scanned signature of the individual within the organization authorized to bind the Consultant to the offer. The AGENCY does not assume responsibility for problems with Consultant's e-mail. If the AGENCY'S email is not working, appropriate allowances will be made.

Proposals may not be transmitted using facsimile transmission.

Consultants should allow sufficient time to ensure timely receipt of the proposal by the RFQQ Coordinator. Late proposals will not be accepted and will be automatically disqualified from further consideration, unless the AGENCY'S e-mail is found to be at fault. All proposals and any accompanying documentation become the property of the AGENCY and will not be returned.

2.4 PROPRIETARY INFORMATION/PUBLIC DISCLOSURE

Materials submitted in response to this competitive procurement shall become the property of the AGENCY.

All proposals received shall remain confidential until the contract, if any, resulting from this RFQQ is signed by the AGENCY and the apparent successful Contractor; thereafter, the proposals shall be deemed public records as defined in RCW 42.17.250 to .340, "Public Records."

Any information in the proposal that the Consultant desires to claim as proprietary and exempt from disclosure under the provisions of RCW 42.17.250 to .340 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.

The AGENCY will consider a Consultant's request for exemption from disclosure; however, the AGENCY will make a decision predicated upon Chapter 42.17 RCW and Chapter 143-06 of the Washington Administrative Code. 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 42.17.300. No fee shall be charged for inspection of contract files, but twenty-four (24) hours' notice to the RFQQ Coordinator is required. All requests for information should be directed to the RFQQ Coordinator.

2.5 REVISIONS TO THE RFQQ

In the event it becomes necessary to revise any part of this RFQQ, addenda will be provided to all who receive the RFQQ.

The AGENCY also reserves the right to cancel or to reissue the RFQQ 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.

The established annual procurement participation goals for MBE is 10% and for WBE, 4%, for this type of project. These goals are voluntary. Bidders may contact OMWBE at 360/753-9693 or <http://www.omwbe.wa.gov> to obtain information on certified firms.

2.7 ACCEPTANCE PERIOD

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

2.8 RESPONSIVENESS

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

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

2.9 MOST FAVORABLE TERMS

The AGENCY 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. The AGENCY does reserve the right to contact a Consultant for clarification of its proposal.

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

2.10 CONTRACT AND GENERAL TERMS & CONDITIONS

The apparent successful contractor 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. The AGENCY will review requested exceptions and accept or reject the same at its sole discretion.

2.11 COSTS TO PROPOSE

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

2.12 NO OBLIGATION TO CONTRACT

This RFQQ does not obligate the state of Washington or the AGENCY to contract for services specified herein.

2.13 REJECTION OF PROPOSALS

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

2.14 COMMITMENT OF FUNDS

The director of the AGENCY or the director's delegate are the only individuals who may legally commit the AGENCY to the expenditures of funds for a contract resulting from this RFQQ. No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

2.15 ELECTRONIC PAYMENT

The state of Washington prefers to utilize electronic payment in its transactions. The successful contractor will be provided a form to complete with the contract to authorize such payment method.

2.16 INSURANCE COVERAGE

The Contractor is to furnish the AGENCY with a certificate of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth in the attached Exhibit B Sample Contract under the General Terms and Conditions.

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

3 PROPOSAL CONTENTS

Proposals must be written in English and submitted electronically in the order noted below:

1. Letter of Submittal, including signed Certifications and Assurances (Exhibit A to this RFQQ)
2. Qualifications
3. Quotation

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 RFQQ) 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 of a corporation, the managing partner of a partnership, or the proprietor of a sole proprietorship. Attach the Certifications and Assurances form to the Letter of Submittal.

3.2 QUALIFICATIONS SECTION

The services to be provided under this project are:

1. Create, on-line courses using content specifications and curriculum provided by DEL. DEL anticipates there will be eight or nine modules for DEL licensing staff.
2. The on-line courses will include:
 - a. Student Interactions
 - b. Quizzes
 - c. Discussion Boards
 - d. Completion Certificates
 - e. Completion Reports
 - f. Graphics
 - g. Narrations
 - h. Other multimedia provided by DEL
3. Technical Qualifications to address
 - a. What Learning Management System (LMS) or platform will be used to host the online curriculum?
 - b. Does this LMS or platform meet/comply with SCORM standards?
 - c. How will DEL be provided the online training content? DEL requires the content be delivered at various specified points throughout the contract as well as upon request. It is expected that the file structure and format be defined and shared with DEL IT program.
 - d. DEL requests documentation about the technical architecture and how it is secured.
 - e. DEL would like to know what information/data will be collected and stored about each trainee. How long will the information be stored and how will it be used? Will any personally identifiable information be stored?
 - f. If data is collected, DEL requires that the data be delivered to DEL at various specified points throughout the contract as well as upon request. It is expected that the file structure and format be defined and shared with DEL IT. Is it possible to grant DEL IT read-only access to query a non-production copy of the database?
4. Courses will be narrated with a male or female voice, to be determined by DEL.
5. Quizzes will be reviewed and approved by DEL and will include multiple choice questions.
6. DEL will provide graphic images and documents they want used in the training.
7. Work will begin on or before November 2, 2009.
8. All coursework will be completed by June 30, 2010.

The Qualifications Section of the proposal must contain information that will demonstrate to the evaluation committee the Consultant's understanding of the types of services proposed, the firm's ability to accomplish them, and the ability to meet tight timeframes.

The Qualifications Response is to be submitted in three sections as follows: 1) Business Information, 2) Experience and Staffing, and 3) Schedule. The optional fourth section would include proof of certification for minority and women-owned businesses participating on the project.

3.2.1 BUSINESS INFORMATION (MANDATORY)

- A. State the name of the company, address, phone number, fax number, e-mail address, legal status of entity (ownership) and year entity was established as it now substantially exists.
- B. Provide the firm's 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.
- C. Indicate how many employees are with the firm. Name the firm principles and their roles.
- D. Identify any state employees or former state employees employed by the Consultant or on the Consultant'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 the AGENCY that a conflict of interest exists, the Consultant may be disqualified from further consideration for the award of a contract.
- E. 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.
- F. 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.
- G. 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. The AGENCY 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.

3.2.2 QUALIFICATIONS

1. EXPERIENCE (SCORED)

- A. Describe services provided by the Consultant that indicate the firm's ability to provide the services described in this RFQQ.
- B. Describe the firm's recent experience with on-line training courses.

2. STAFFING (SCORED)

- A. Provide a description of the proposed project team structure and internal controls to be used during the course of the project, including any subcontractors.
- B. Provide the name and a resume' of the person who will be the lead contact for the project. Provide names and resumes' for other staff, which includes information on the individual's particular skills related to this project, education, experience, significant accomplishments and any other pertinent information.
- C. List any sub-consultants you may want to include to complete your roster of services. Describe what services each would provide. Provide the information in Section 3.2.1 about each.

3. SCHEDULE (SCORED)

Describe the firm's ability to meet deadlines, especially on a short-time frame, and give examples of how past tight deadlines have been successfully met.

4. REFERENCES (MANDATORY)

List names, addresses, telephone numbers, fax numbers and e-mail addresses of three business references for whom work has been accomplished and briefly describe the type of service provided for them. The Consultant must grant permission to the AGENCY to contact the references and others who may have pertinent information. Do not include current AGENCY staff as references. The AGENCY may evaluate references at the AGENCY's discretion.

5. OMWBE CERTIFICATION (OPTIONAL AND NOT SCORED)

Include proof of certification issued by the Washington State Office of Minority and Women's Business Enterprises if certified minority-owned firm and/or women-owned firm(s) will be participating on this project.

3.3 QUOTATIONS SECTION

3.3.1 IDENTIFICATION OF COSTS (SCORED)

The Quotations section must list all hourly rates in U.S. dollars for services anticipated under the proposed contract. The hourly rates are to represent fully weighted costs. This includes the hourly rates of staff that would be assigned to the project, administrative costs, local travel costs, or any other applicable fees that would be charged under this contract.

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

Consultants are required to collect and pay Washington State taxes as applicable.

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

3.3.2 COMPUTATION

The score for the cost proposal will be computed by dividing the lowest average hourly rate received by the Consultant's average hourly rate. 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 the AGENCY, which will determine the ranking of the proposals.

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

4.2 CLARIFICATION OF PROPOSAL

The RFQQ Coordinator may contact the Consultant for clarification of any portion of the Consultant's proposal.

4.3 EVALUATION WEIGHTING AND SCORING

The following weighting and points will be assigned to the proposal for evaluation purposes:

Qualifications Section – 60%	60 points
Firm Experience.....35 points (maximum)	
Staff Qualifications.....15 points (maximum)	
Schedule.....10 points (maximum)	
Quotation Section – 40%	<u>40 points</u>
Grand Total	<u>100 Points</u>

4.4 ORAL PRESENTATIONS MAY BE REQUIRED

Oral presentations, if considered necessary by the AGENCY, may be utilized in selecting the winning proposal. The AGENCY, at its sole discretion, may elect to select the top-scoring firm(s) from the written evaluation or also consider an oral presentation and may contact the top-scoring firm(s) to schedule a date, time and location for an oral presentation. Commitments made by the Consultant at the oral interview, if any, will be considered binding.

The score from the oral presentation will be added to the written score to determine the Apparently Successful Contractor.

4.5 NOTIFICATION TO PROPOSERS

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

4.6 DEBRIEFING OF UNSUCCESSFUL PROPOSERS

Upon request, a debriefing conference will be scheduled with an unsuccessful Proposer. The request for a debriefing conference must be received by the RFQQ 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.

4.7 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 RFQQ 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 RFQQ Coordinator.

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

- A matter of bias, discrimination or conflict of interest on the part of the evaluator
- Errors in computing the score
- Non-compliance with procedures described in the procurement document or AGENCY 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) AGENCY'S assessment of its own and/or other agencies' needs or requirements.

Upon receipt of a protest, a protest review will be held by the AGENCY. The AGENCY director or an employee delegated by the director 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 RFQQ Coordinator.

The final determination of the protest shall:

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

If the AGENCY determines that the protest is without merit, the AGENCY will enter into a contract with the apparently successful contractor. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

5 RFQQ EXHIBITS

- Exhibit A Certifications and Assurances

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

Certifications and Assurances

1. 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):
2. I/we declare that all answers and statements made in the proposal are true and correct.
3. 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.
4. The attached proposal is a firm offer for a period of 60 days following receipt, and it may be accepted by the AGENCY without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60-day period.
5. 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.)
6. I/we understand that the AGENCY will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of the AGENCY, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
7. Unless otherwise required by law, the prices and/or cost data that 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.
8. 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.
9. 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.
10. I/we grant the AGENCY 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 Consultant submitting this proposal, my name below attests to the accuracy of the above statements.

We are submitting a scanned signature of this form with our electronic proposal.

Signature of Proposer

Title

Date

 Washington State Department of Early Learning		PERSONAL SERVICE		DEL Contract Number:
This Contract is between the state of Washington Department of Early Learning (DEL) and the Contractor identified below.				
CONTRACTOR INFORMATION				
NAME			Doing business as (DBA)	
ADDRESS			WASHINGTON UNIFORM BUSINESS IDENTIFIER (UBI)	
CONTACT	TELEPHONE	FAX	E-MAIL ADDRESS	
DEL INFORMATION				
CONTACT NAME AND TITLE		CONTACT ADDRESS 649 Woodland Square Loop SE Lacey, WA 98503 P.O. Box 40970 Olympia, WA 98504-0970		
TELEPHONE	FAX 360-413-3482	E-MAIL ADDRESS		
IS THE CONTRACTOR A SUBRECIPIENT FOR PURPOSES OF THIS CONTRACT? <input checked="" type="checkbox"/> No <input type="checkbox"/> YES		If A SUBRECIPIENT - CFDA NUMBER(S)		
CONTRACT STATE FUNDS	CONTRACT FEDERAL FUNDS	CONTRACT MAXIMUM AMOUNT		
CONTRACT START DATE		CONTRACT END DATE		
CONTRACT PURPOSE: The purpose of this contract is to				
The following Exhibits are attached and are incorporated to this Contract by this reference: Statement Of Work and General Terms And Conditions				
The terms and conditions of this Contract are an integration and representation of the final, entire and exclusive understanding between the parties superseding and merging all previous agreements, writings, and communications, oral or otherwise, regarding the subject matter of this Contract. The parties signing below represent that they have read and understand this Contract, and have the authority to execute this Contract. This Contract shall be binding on DEL only upon signature by DEL.				
CONTRACTOR SIGNATURE		PRINTED NAME AND TITLE	DATE SIGNED	
DEL SIGNATURE		PRINTED NAME AND TITLE	DATE SIGNED	

STATEMENT OF WORK

To be completed as negotiated with successful bidder.

GENERAL TERMS AND CONDITIONS

1) ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this Contract shall be made by DEL.

2) ACCESS TO DATA

In compliance with RCW 39.29.080, the Contractor shall provide access to data generated under this Contract to DEL, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes, but is not limited to, access to all information that supports the findings, conclusions and recommendations of the Contractor's reports, including computer models and methodology for those models.

3) AMENDMENTS

This Contract may be amended 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.

4) ASSIGNMENT

Neither this Contract, nor any claim arising under this Contract, shall be transferred, delegated, or assigned by the Contractor without prior written consent of DEL.

5) ATTORNEY FEES

In the event of litigation or other action brought to enforce this Contract, each party agrees to bear its own attorney fees and costs.

6) BILLING PROCEDURES AND PAYMENT

- a) DEL will pay the Contractor upon: (1) acceptance of services provided and (2) receipt of a properly completed A-19, provided by DEL, which shall be submitted, at least once per month, to:

- (i) Department of Early Learning
- (ii) Attn: Financial Services Office
- (iii) P.O. Box 40970
- (iv) Olympia, WA 98504-0970

- b) Statewide Vendor Registration and Direct Deposit Authorization: The Washington State Office of Financial Management (OFM) maintains a central Contractor registration file for Washington State agencies to use for processing contractor payments. Contractors are encouraged to register in the Statewide Vendor Payment Registration System and sign up for Electronic Funds Transfer (EFT) at <http://www.ofm.wa.gov/isd/vendors.asp>.

- c) Payment shall be considered timely if made by DEL within thirty (30) calendar days after (1) acceptance of services, and (2) receipt of properly completed invoices in accordance with Section 6(a) above. Payments will be made by EFT if the Contractor has established an EFT account, otherwise a warrant shall be sent to the address on the statewide vendor table, or if none, to the address identified on the Contractor's W-9.

7) CHANGES IN CONTRACTOR'S LEGAL STATUS

In the event of a substantive change in the Contractor's legal status, organizational structure related to the performance of this Contract, or management staff responsible for the performance of this Contract, the Contractor agrees to notify DEL in writing. The Contractor shall notify DEL as soon as practicable, but no later than thirty calendar days after the effective date of such change.

8) COMPLIANCE WITH LAWS

The Contractor agrees that all activity pursuant to this Contract will be in accordance with all applicable current federal, state and local laws, rules, and regulations, including but not limited to all applicable non-discrimination laws and, if applicable, Chapter 42.56 RCW (the Public Records Act), 5 U.S.C. 522 (the Freedom of Information Act), and Chapter 40.14 RCW (Records Retention Act).

9) CONFIDENTIALITY OF DEL INFORMATION

The Contractor shall not use or disclose any information about DEL that may be classified as confidential for any purpose not directly connected with the Contractor's activities under this Contract except with the prior written consent of DEL or as required by law.

10) CONFIDENTIALITY OF PERSONAL INFORMATION

- a) The Contractor shall protect all Personal Information collected, used, or acquired in connection with this Contract against loss and against unauthorized use, release, disclosure, publishing, modification, transfer, or sale.
- b) "Personal Information" means information identifiable to any natural person, including but not limited to information that relates to the person's name, health, medical or mental health treatment, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers or other identifying numbers, drivers license numbers, and any financial identifiers.
- c) To safeguard the confidentiality of all Personal Information the Contractor must:
 - i) Ensure that the Contractors' directors, officers, employees, or agents (collectively "Staff") and Subcontractors use Personal Information solely for the purposes of this Contract.

- ii) Limit access to Personal Information to Staff and Subcontractors requiring access for performance of their assigned duties.
- iii) Notify Staff, and Subcontractors in accordance with Section 34, of the requirements of this Section 10.
- iv) Ensure Personal Information is not used, released, disclosed, published, modified, transferred, sold, or otherwise made known to unauthorized persons without the prior written consent of the individual named or as provided by law.
- v) Ensure that Personal Information is protected from loss and from unauthorized physical or electronic access.
- vi) Destroy all Personal Information so that it cannot be accessed by unauthorized individuals and cannot be recovered when the Personal Information is no longer used for providing services under this Contract, and retention is no longer required by Section 30.
- vii) Immediately notify DEL of any potential, suspected, attempted or actual violation of this Section 10, including but not limited to breaches of security, compromised data, or compromised login IDs or passwords, by contacting DEL's Network Administrator, at (360) 480-3398 or via e-mail at security@del.wa.gov.
- viii) Any breach of this Section 10 may at DEL's discretion, and in addition to all other rights and remedies available to DEL, result in: (1) termination of the Contract, (2) a requirement that the Contractor return to DEL all Personal Information provided to the Contractor by the State of Washington, and (3) a requirement that the Contractor destroy all Personal Information so it cannot be accessed by unauthorized individuals and cannot be recovered.

11) CONFLICT OF INTEREST

- a) Notwithstanding any determination by the Executive Ethics Board or other tribunal, DEL may in its sole discretion, by written notice to the Contractor, terminate this Contract without liability if DEL finds that the Contractor's procurement of or performance under this Contract has violated the Ethics in Public Service Act, chapter 42.52 RCW, or any similar statute.
- b) In the event this Contract is terminated as provided above, DEL shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor. The rights and remedies of DEL provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law.

12) CONFORMANCE

If any provision of this Contract violates any applicable federal or Washington statute, regulation, or rule of law, that provision is considered modified to conform to that statute, regulation, or rule of law.

13) CONTRACT MANAGEMENT

The Contract Manager for each of the parties shall be the contact person for all communications regarding the performance of the Contract, unless otherwise stated herein. The Contract Managers are the individuals identified under "Contractor Information" and "DEL Information" on the cover sheet of this Contract.

14) COPYRIGHT PROVISIONS

- a) 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 DEL. DEL shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in the Materials, including all intellectual property rights, to DEL effective from the moment of creation of such Materials.
- b) "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.
- c) For Materials that are delivered under the Contract, but that incorporate pre-existing Materials not produced under the Contract, the Contractor hereby grants to DEL a nonexclusive, royalty-free, perpetual, irrevocable, worldwide license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, or otherwise use such Materials. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to DEL.
- d) The Contractor shall exert all reasonable effort to advise DEL, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such Materials that was not produced in the performance of this Contract.
- e) The Contractor shall provide DEL with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. DEL shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

15) DISALLOWED COSTS

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

16)DISPUTES

- a) Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the DEL Director or the Director's delegate authorized in writing to act on the Director's behalf ("the Director").
- b) The request for a dispute hearing must:
 - i) Be in writing;
 - ii) State the disputed issue(s);
 - iii) State the relative positions of the parties;
 - iv) State the Contractor's name, address, and contract number; and
 - v) Be mailed to the Director and the other party's (respondent's) Contract Manager within three (3) business days after the parties agree that they cannot resolve the dispute.
- c) The respondent shall send a written answer to both the Director and the requester within five (5) business days of receiving the requesting party's statement.
- d) The Director shall review the written statements and reply in writing to both parties within ten (10) business days. The Director may extend this period if necessary by notifying the parties in writing.
- e) The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.
- f) Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternative dispute resolution method in addition to, or in lieu of, the dispute resolution procedure outlined above.

17)DUPLICATE PAYMENT

DEL shall not pay the Contractor if the Contractor has charged or will charge the State of Washington, or any other party under any other contract or agreement, for the same services or expenses.

18)ENTIRE AGREEMENT

This Contract, including referenced exhibits, represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, shall be deemed a part hereof or to bind any of the parties to this Contract.

19)FEDERAL FUNDING REQUIREMENTS

- a) If this Contract is funded, in whole or in part, with federal funds, the Contractor makes the assurances and certifications and agrees to the terms and conditions contained in Attachment A (Federal Certifications and Assurances), which is incorporated by reference.

- b) **Covenant Against Contingent Fees.** If this Contract is funded, in whole or in part, with federal funds, 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 agents maintained by the Contractor for securing business. DEL 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 fee.
- c) **Single Audit Requirements.** If the Contractor is a subrecipient of federal awards as defined by Office of Management and Budget (OMB) Circular A-133, the Contractor shall maintain records that identify all federal funds received and expended. Such funds shall be identified by the appropriate OMB Catalog of Federal Domestic Assistance (CFDA) Numbers. The Contractor shall make the Contractor's records available for review or audit by officials of the federal awarding agency, the General Accounting Office, DEL, and the Washington State Auditor's Office. The Contractor shall incorporate OMB Circular A-133 audit requirements into all contracts between the Contractor and its Subcontractors who are subrecipients. The Contractor shall comply with any future amendments to OMB Circular A-133 and any successor or replacement Circular or regulation.
- d) If the Contractor expends \$500,000 or more in federal awards from any and/or all sources in any fiscal year ending after December 31, 2003, the Contractor shall procure and pay for a single or program-specific audit for that year. Upon completion of each audit, the Contractor shall submit to DEL's Contract Manager the data collection form and reporting package specified in OMB Circular A-133, and any reports required by the program-specific audit guide (if applicable).

20) 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 the Superior Court for Thurston County.

21) INDEMNIFICATION

- a) To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the State of Washington and its agencies, officers, employees, and agents, from and against all claims for injuries or death arising out of or resulting from the performance of the Contract.
- b) "Claim," as used in this Contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees and costs,

attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting there from.

- c) The Contractor's obligations to indemnify, defend, and hold harmless includes any claim by the Contractor's agents, employees, representatives, or any Subcontractor or its employees.
- d) The Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to the Contractor's or any Subcontractor's performance or failure to perform the Contract. The Contractor's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees, and officials.
- e) The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless the State and its agencies, officials, agents, or employees.

22) INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and its employees or agents performing under this Contract are not officers, employees, or agents of the State of Washington or DEL. The Contractor will neither hold itself out as nor claim to be an officer or employee of DEL or the State of Washington by reason hereof, nor will the Contractor make any claim of right, privilege, or benefit that would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Contractor.

23) INDUSTRIAL INSURANCE COVERAGE

The Contractor shall comply with the provisions of Title 51 RCW (Industrial Insurance). If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, DEL may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. DEL may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by DEL under this Contract, and DEL may also transmit the deducted amount to the Department of Labor and Industries (L&I), Division of Insurance Services. This provision does not waive any of L&I's right to collect from the Contractor.

24) INSURANCE

- a) The Contractor shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the Contractor or Subcontractor, or agents of either, while performing under the terms of this Contract. The Contractor shall provide insurance coverage, which shall be maintained in full force and effect during the term of this Contract, as follows:

- i) Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence.
Additionally, the Contractor is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.
- ii) Professional Liability. Required if services delivered pursuant to this Contract, either directly or indirectly, involve or require providing professional services. Such coverage shall cover injury or loss resulting from Contractors' rendering or failing to render professional services.
- iii) Contractor shall maintain minimum limits no less than \$1,000,000 per incident, loss, or person, as applicable. If defense costs are paid within the limit of liability, Contractor shall maintain limits of \$2,000,000 per incident, loss, or person, as applicable. If the policy contains a general aggregate or policy limit, it shall be at least two times the incident, loss or person limit.
- iv) If professional liability insurance is written on a "claims made" basis, the policy shall provide full coverage for prior acts or include a retroactive date that precedes the effective date of this Contract.
- v) Contractor agrees to disclose the existence and nature of any limiting endorsement that applies to any liability insurance policy purchased in accord with this Contract.
- vi) Contractor is required to buy professional liability insurance for a period of 24 months after completion of this Contract. This requirement may be satisfied by the continuous purchase of commercial insurance or an extended reporting period.
- vii) Automobile Liability. In the event that services delivered pursuant to this Contract involve the use of vehicles, either owned or unowned by the Contractor, automobile liability insurance shall be required. The minimum limit for automobile liability is:
 - \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.
- viii) The insurance required shall be issued by an insurance company/ies authorized to do business within the State of Washington, and shall name the State of Washington, its officers, agents and employees as additional insureds under the insurance policy/ies. All policies shall be primary to any other valid and collectable insurance. The Contractor shall instruct the insurers to give DEL thirty (30) calendar days advance notice of any insurance cancellation.
- ix) The Contractor shall submit to DEL within fifteen (15) calendar days of the Contract "Start Date" listed on the Contract cover sheet, a certificate of insurance that outlines the coverage and limits defined in this Insurance

section. The Contractor shall submit renewal certificates as appropriate during the term of the Contract.

25) LICENSING, ACCREDITATION AND REGISTRATION

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation, and registration requirements/standards necessary for the performance of this Contract.

26) LIMITATION OF AUTHORITY

Only the DEL Director or the Director'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 DEL Director or the Director's delegate by writing (delegation to be made prior to action).

27) MONITORING

- a) DEL has the right to monitor and evaluate performance, compliance, and quality assurance under this Contract. The Contractor shall provide a right of access to its facilities to DEL, personnel authorized by DEL, or to any other authorized agent or official of the State of Washington or the federal government at all reasonable times in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.
- b) Monitoring activities may include, but are not limited to:
 - i) Review of deliverables listed in Exhibit A Statement of Work.
 - ii) Intensive on-site program reviews to monitor Contract compliance, scheduled in advance with the Contractor.
 - iii) Site visits to review records, observe implementation of services or follow up on compliance issues. These visits may be unannounced.
 - iv) Review of the Contractor's compliance with Section 10 Confidentiality of Personal Information.

28) OFM FILING REQUIREMENT

Under the provisions of Chapter 39.29 RCW, this personal service Contract is required to be filed with the Office of Financial Management (OFM). No contract required to be so filed is effective and no work shall be commenced nor payment made until ten (10) working days following the date of filing, and if required, until approved by OFM. In the event OFM fails to approve the Contract, the Contract shall be null and void.

29) PUBLICITY AND PUBLICATIONS

The Contractor agrees to submit to DEL all advertising and publicity matters relating to this Contract in which the State of Washington or DEL's name, state seal or logo is mentioned or used or language is used from which a connection with the State of Washington or DEL may, in DEL's judgment, be inferred or implied. The Contractor

agrees not to publish or use such advertising and publicity matters without the prior written consent of DEL.

All publications funded, in whole or in part, under this Contract will use the DEL logo and will acknowledge credit as either providing "funding in partnership with" or "funded by" DEL. The full-color or black-and-white DEL logo, provided by the DEL Contract Manager, shall appear in its entirety, without modification.

30) RECORDS MAINTENANCE

- a) The Contractor shall maintain 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 that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract (collectively "Records").
- b) The Contractor shall retain such Records for a period of six (6) 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, copying, review, or audit by DEL, personnel duly authorized by DEL, the Office of the State Auditor, and federal and state officials so authorized by law, regulation, or agreement.
- c) 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 finally resolved.

31) REGISTRATION WITH DEPARTMENT OF REVENUE

- a) The Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

32) SAVINGS

- a) 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, DEL may terminate the Contract under the "Termination for Convenience" clause without the ten (10) day notice requirement, subject to renegotiation at DEL's discretion under those new funding limitations and conditions.

33) 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.

34) SITE SECURITY

While on DEL premises, Contractor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security policies or regulations.

35) SUBCONTRACTING

- a) 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 DEL. All subcontracts must be in writing and in effect before Subcontractor services begin. "Subcontractor" shall mean one who is not employed by the Contractor, but who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "Subcontractor" and "Subcontractors" mean Subcontractors in any tier. In no event shall the existence of the subcontract operate to release or reduce the liability of the Contractor to DEL for any breach in the performance of the Contractor's duties. The Contractor is responsible to DEL for the performance and monitoring of the Subcontractor to ensure compliance with the terms, conditions, assurances, and certifications of this Contract. This clause does not include contracts of employment between the Contractor and personnel assigned to work under this Contract.
- b) Additionally, the Contractor is responsible for ensuring that all terms, conditions, assurances, and certifications set forth in this Contract are carried forward to any subcontracts.

36) TAXES

All payments accrued because 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.

37) TERMINATION FOR CAUSE

- a) In the event DEL determines the Contractor is in default, DEL has the right to immediately suspend or terminate this Contract. Before suspending or terminating the Contract, the DEL may, in DEL's sole discretion, elect to notify the Contractor in writing of the need to take corrective action and offer the Contractor the opportunity to take corrective action before the Contract is suspended or terminated.
- b) In the event of termination or suspension, 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). DEL may also declare the Contractor ineligible for further contracts with DEL.
- c) DEL 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 any alleged breach, or during any pending corrective action by the Contractor or pending a decision by DEL to terminate the Contract.

- d) If it is later determined that: (1) the Contractor was not in default; or (2) the Contractor's failure to perform was outside of the Contractor's control, fault, or negligence, the termination shall be considered a Termination for Convenience.
- e) The rights and remedies of DEL provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

38) TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract, when, at the sole discretion of DEL, it is in the best interest of the State, DEL may terminate this Contract, in whole or in part, by giving the Contractor ten (10) days written notice. Termination becomes effective ten (10) calendar days from the second day after mailing the notice. If this Contract is so terminated, DEL shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

39) TERMINATION PROCEDURES

- a) Upon termination of this Contract, DEL, in addition to any other rights provided in this Contract, may require the Contractor to deliver to DEL any property specifically produced or acquired for the performance of such part of this Contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.
- b) DEL shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by DEL and the amount agreed upon by the Contractor and DEL for (i) completed work and services for which no separate price is stated; (ii) partially completed work and services; (iii) other property or services that are accepted by DEL; and (iv) the protection and preservation of property, unless the termination is for default, in which case DEL shall determine the extent of the liability of DEL.
- c) DEL may withhold from any amounts due the Contractor such sum as DEL determines to be necessary to protect DEL against potential loss or liability. The rights and remedies of DEL provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- d) After receipt of a notice of termination, and except as otherwise directed by DEL, the Contractor shall:
 - i) Stop work under the Contract on the date, and to the extent specified, in the notice;

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

40) TREATMENT OF ASSETS

- a) Title to all property furnished by DEL shall remain in DEL. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vest in DEL upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this Contract, shall pass to and vest in DEL upon (i) issuance for use of such property in the performance of this Contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by DEL in whole or in part, whichever first occurs.
- b) Any property of DEL furnished to the Contractor shall, unless otherwise provided herein or approved by DEL, be used only for the performance of this Contract.
- c) The Contractor shall be responsible for any loss or damage to property of DEL that results from the negligence of the Contractor or that results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
- d) If any DEL property is lost, destroyed, or damaged, the Contractor shall immediately notify DEL and shall take all reasonable steps to protect the property from further damage.

- e) The Contractor shall surrender to DEL all property of DEL prior to settlement upon completion, termination, or cancellation of this Contract.
- f) All reference to the Contractor under this clause shall also include the Contractor's employees, agents, or Subcontractors.

41)WAIVER

Waiver of any default or breach shall not be deemed a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by an authorized representative of DEL.

ATTACHMENT A
Federal Certifications and Assurances

- 1) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions
 - a) The Contractor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
 - b) This certification is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
 - c) The Contractor shall provide immediate written notice to DEL is submitted if at any time the Contractor learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
 - d) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. The Contractor may contact DEL for assistance in obtaining a copy of those regulations.
 - e) The Contractor agrees that it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
 - f) The Contractor agrees that it will include this clause titled ``Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
 - g) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
 - h) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to

exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

- i) Except for transactions authorized under paragraph 5 above, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

2) Certification Regarding Lobbying

a) Certification for Contracts, Grants, Loans, and Cooperative Agreements. The Contractor certifies, to the best of the Contractor's knowledge and belief, that:

- i) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of a federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- ii) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- iii) The Contractor shall require that the language of this certification be included in the all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

b) Statement for Loan Guarantees and Loan Insurance The Contractor states, to the best of the Contractor's knowledge and belief, that if any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection

with this commitment providing for the United States to insure or guarantee a loan, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- 3) Certification Regarding Environmental Tobacco Smoke
 - a) The Contractor certifies that it will comply with the requirements of Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994 (the Law).
 - b) The Law requires that smoking not be permitted in any portion of any indoor facility routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The Law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the Law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the responsible entity.
 - c) The Contractor further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

- 4) Assurance of Compliance with Federal Nondiscrimination Laws
 - a) The Contractor provides this assurance in consideration of and for the purpose of obtaining Federal grants, loans, contracts, property, discounts or other Federal financial assistance from the Department of Health and Human Services (HHS). The Contractor hereby agrees that it will comply with:
 - i) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), as amended, and all requirements imposed by or pursuant to the regulations of HHS (45 CFR Part 80), to the end that, in accordance with Title VI of that Act and the regulations, no person in the United State shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Contractor receives Federal financial assistance from HHS.
 - ii) Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and all requirements imposed by or pursuant to the regulations of HHS (45 CFR Part 84), to the end that, in accordance with Section 504 of that Act and the regulations, no otherwise qualified handicapped individual in the United States shall, solely by reason of his or her handicap, be excluded from

participation in, be denied the benefit of, or be subjected to discrimination under any program or activity for which the Contractor receives Federal financial assistance from HHS.

- iii) Title IX of the Educational Amendments of 1972 (Pub. L. 92-318), as amended, and all requirements imposed by or pursuant to the regulations of HHS (45 CFR Part 86), to the end that, in accordance with Title IX and the regulations, no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any education program or activity for which the Contractor receives Federal financial assistance from HHS.
- iv) The Age Discrimination Act of 1975 (Pub. L. 94-135), as amended, and all requirements imposed by or pursuant to the regulations of HHS (45 CFR Part 91), to the end that, in accordance with the Act and the regulations, no person in the United States shall, on the basis of age, be denied the benefits of, be excluded from participation in, or be subjected to discrimination under any program or activity for which the Contractor receives Federal financial assistance from HHS.

b) The Contractor agrees that compliance with this assurance constitutes a condition of continued receipt of Federal financial assistance, and that it is binding upon the Contractor, its successors, transferees and assignees for the period during which such assistance is provided. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Contractor by HHS this assurance shall obligate the Contractor, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance shall obligate the Contractor for the period during which it retains ownership or possession of the property. The Contractor further recognizes and agrees that the United States shall have the right to seek judicial enforcement of this assurance.

Approved as to Form Only

/s/

6/30/09

Ann C. Essko, AAG

Date