STATE OF WASHINGTON
DEPARTMENT OF EARLY LEARNING

REQUEST FOR QUALIFICATIONS AND QUOTATIONS
RFQQ NO. 14-115 EfC Executive Director

PROJECT TITLE: Essentials for Childhood Executive Director


EXPECTED TIME PERIOD FOR CONTRACT: February 27, 2015 through February 29, 2016 with a possible extension for two more years, depending on available funding.

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

CONTACT INFORMATION:

NAME: Debby Carr
PHONE: (360) 725-4914
E-MAIL: del.contracts@del.wa.gov
# TABLE OF CONTENTS

**INTRODUCTION** .......................................................................................................................... 3

1.1 **DEFINITIONS** .......................................................................................................................... 3

1.2 **PURPOSE AND BACKGROUND** .......................................................................................... 3

1.3 **OBJECTIVE** ............................................................................................................................ 3

1.4 **MINIMUM QUALIFICATIONS** .............................................................................................. 5

1.5 **FUNDING** .............................................................................................................................. 5

1.6 **PERIOD OF PERFORMANCE** .............................................................................................. 5

1.7 **ADA** ......................................................................................................................................... 5

2 **GENERAL INFORMATION FOR BIDDERS** ............................................................................ 6

2.1 **RFQQ COORDINATOR** .......................................................................................................... 6

2.2 **ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES** ............................................ 6

2.3 **QUESTION & ANSWER PERIOD** ......................................................................................... 7

2.4 **CONCERN & RESPONSE PERIOD** ..................................................................................... 7

2.5 **REVISIONS TO THE RFQQ** ................................................................................................ 7

2.6 **SUBMISSION OF BIDS** ........................................................................................................ 7

2.7 **PUBLIC INFORMATION/PROPRIETARY INFORMATION** ..................................................... 8

2.8 **MINORITY & WOMEN-OWNED BUSINESS PARTICIPATION** ........................................... 8

2.9 **SMALL BUSINESS PARTICIPATION** ..................................................................................... 9

2.10 **RESPONSIVENESS** ............................................................................................................... 9

2.11 **ACCEPTANCE** ..................................................................................................................... 9

2.12 **MOST FAVORABLE TERMS** ............................................................................................... 9

2.13 **CONTRACT AND GENERAL TERMS & CONDITIONS** .................................................... 9

2.14 **COMMITMENT OF FUNDS** ................................................................................................ 10

2.15 **ELECTRONIC PAYMENT** .................................................................................................... 10

2.16 **INSURANCE COVERAGE** ................................................................................................... 10

2.17 **BID CONTENTS** .................................................................................................................. 10

2.18 **LETTER OF SUBMITTAL (MANDATORY)** ......................................................................... 10

2.19 **QUALIFICATIONS SECTION** ............................................................................................. 11

2.19.3 **QUALIFICATIONS (SCORED)** ..................................................................................... 12

2.20 **QUOTATIONS SECTION** .................................................................................................... 14

3 **EVALUATION AND CONTRACT AWARD** ................................................................................. 14

3.1 **EVALUATION PROCEDURE** ................................................................................................ 14

3.2 **CLARIFICATION OF BID** ....................................................................................................... 14

3.3 **EVALUATION WEIGHTING AND SCORING** ....................................................................... 15

3.4 **ORAL PRESENTATIONS MAY BE REQUIRED** .................................................................... 15

3.5 **NOTIFICATION TO BIDDERS** ............................................................................................ 15

3.6 **DEBRIEFING OF UNSUCCESSFUL BIDDERS** ................................................................... 15

3.7 **PROTEST PROCEDURE** ........................................................................................................ 15

4 **RFQQ EXHIBITS AND ATTACHMENTS** .................................................................................... 17
INTRODUCTION

1.1 DEFINITIONS
Definitions for the purposes of this RFQQ include:

**AGENCY** - The Department of Early Learning (DEL) is the AGENCY of the state of Washington that is issuing this RFQQ.

**Bid** – A formal offer submitted in response to this RFQQ.

**BIDDER** – Means an individual or entity who submits a bid, quotation, or proposal in response to a RFQQ issued for such goods or services by the Department of Enterprise Services or an agency of Washington state government.

**Contractor** – means an individual or entity awarded a contract with an agency to perform a service or provide goods.

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

1.2 PURPOSE AND BACKGROUND
The AGENCY is initiating this RFQQ to solicit quotations from BIDDERS interested in participating on a collaborative project to provide strategic leadership, resource development, and high level public exposure for the work of the Washington Essentials for Childhood (EfC) Initiative. Washington State has developed a collective impact initiative focused on promoting safe, stable, nurturing relationships in families, communities, and early learning and school environments. The Initiative’s overall goal and commitment is by 2025 to attain measurable and significant improvements in children’s health, development and education outcomes and work towards eliminating equity gaps. The Backbone team, Steering Committee, and consultants have completed a solid body of work during the first year, and we are poised to begin the work of years 2-5. This initiative is funded jointly by the Centers for Disease Control and Prevention and the Gates Foundation, with interagency support provided by the Departments of Health and Early Learning.

The Executive Director will champion and support the work of a multi-disciplinary Steering Committee, provide strategic leadership to and collaborate with the EfC Backbone team, and engage culturally and linguistically diverse stakeholders from the public and private sectors to achieve the Essentials for Childhood goals. The successful candidate will be able to approach the work with boldness and innovation, and will set about accomplishing population-level goals through working across sectors with an assets-based perspective. He or she will build on existing work, and ensure that approaches are community-informed, evidence-driven, address inequities, and have an emphasis on prevention.

See Attachment 1 Washington State Essentials for Childhood Fact Sheet

1.3 OBJECTIVE
The Contractor will provide services and staff, and do all things necessary in the performance of work listed below:
The unique structure of this position requires a collaborative, adaptive leader who is able to
guide the EfC Initiative towards success, working with diverse partners at many levels to
move the needle forward to provide and promote safe, stable and nurturing relationships for
children in Washington State. The Executive Director will keep the Steering Committee
engaged, informed, and involved; cultivate and maintain relationships with other cross-
sector leaders to generate their support for and involvement in EfC; connect EfC to related
initiatives; leverage relationships to generate additional resources to support EfC; and serve
as primary staff liaison to the Steering Committee and Management Team. The Executive
Director will report to the cross agency (Department of Health and Department of Early
Learning) Essentials for Childhood Management Team.

Key functions for the role will include the following:

1. **Strategic leadership and visioning**
   - Drawing on the collective impact model, guide the Backbone team to
     implement the EfC common agenda and develop an appropriate operating
     framework. Use quality improvement practices to meet desired goals and
     metrics across the EfC Initiative, and adapt plans and activities to the
     emergent landscape as needed.
   - Maintain understanding of current progress toward goals and implementation
     challenges, and develop comprehensive solutions to address them.
   - Provide direction and support to partner organizations in aligning their work to
     the Common Agenda (e.g., identifying opportunities for program work to
     support specific goals).
   - Oversee development of briefing documents and other communications, as
     necessary, to inform Steering Committee of EfC status.
   - Ensure effective facilitation of Steering Committee and working group
     meetings. Outline the overall vision for Steering Committee meetings (meeting
     purposes, goals, agendas and processes). Support Backbone team and
     Workgroup co-chairs with facilitating meetings, assisting in preparation of
     meeting materials, etc. as needed.

2. **Partner cultivation, engagement and public outreach**
   - Strategically cultivate relationships with Steering Committee members, keep
     them informed about EFC and be a conduit for their input into EfC.
   - Effectively communicate the vision, purpose and value for EfC and create an
     urgency for change among relevant stakeholders, including community
     members, policymakers, funders, and potential partners.
   - Create and leverage the necessary partnerships, relationships, and
     community-based support with relevant stakeholders to achieve success of
     the EfC common agenda.
   - Serve as a liaison to other related initiatives, as needed. For example,
     coordinate research and other activities with relevant EfC partners to minimize
     redundancies and to align strategies and actions.
   - Serve as an EfC ambassador at select conferences and events.
   - Support development of communications strategies and materials as the EfC
     initiative evolves (summary documents, brochures, web/social media
     approaches, press strategy, etc.).

3. **Data collection, analysis, and learning**
In general, work closely with research and data staff and the EfC Data Committee lead, to conceptualize, implement, and measure data-driven initiatives that drive improvements in safe, stable, and nurturing relationships and environments for children and families.

- Identify improvements in use of data-driven decision-making and ensure that data is collected, integrated, and communicated effectively across EfC and partner organizations.
- Ensure a data, measurement and reporting infrastructure to support shared measurement for the EfC initiative is successfully established.
- In partnership with the Data Committee, manage creation of yearly summary reports of progress for Steering Committee, Advisory Council, and external audiences.

4. **Financial Sustainability**
- Organize and implement a sustainability plan, including grant support and the establishment of ongoing revenue sources. Set development targets, cultivate funder and other relationships, manage grants, and develop existing funds. Provide support and guidance to partner organizations in aligning resources to support the EfC agenda.

See Attachment 2: Washington Essentials for Childhood (EfC) Executive Director Job Description for a consolidated description of the role’s functions and qualifications.

1.4 **MINIMUM QUALIFICATIONS**

The BIDDER must be licensed to do business in the state of Washington.

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

1.5 **FUNDING**

The overall budget for a one year project period shall not exceed $200,000. Bids in excess of $200,000 will be rejected as non-responsive and will not be evaluated. In the event additional funding becomes available, any contract awarded may be renegotiated to provide for additional related services.

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

1.6 **PERIOD OF PERFORMANCE**

The period of performance of any contract(s) resulting from this RFQQ is tentatively scheduled to begin on or about February 27, 2015 and to end on February 29, 2016 with the potential for up to two additional years of contracted services based on securing additional funding.

Amendments extending the period of performance, if any, shall not be for more than five (5) years and be at the sole discretion of the AGENCY.

1.7 **ADA**

The AGENCY complies with the Americans with Disabilities Act (ADA). BIDDERS may contact the RFQQ Coordinator to receive this RFQQ in Braille or on tape.
2 GENERAL INFORMATION FOR BIDDERS

2.1 RFQQ COORDINATOR

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

<table>
<thead>
<tr>
<th>Name</th>
<th>Debby Carr</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mailing Address</td>
<td>P.O. Box 40970</td>
</tr>
<tr>
<td>City, State, Zip Code</td>
<td>Olympia, Washington 98504-0970</td>
</tr>
<tr>
<td>Phone Number</td>
<td>360-725-4914</td>
</tr>
<tr>
<td>E-Mail Address</td>
<td><a href="mailto:del.contracts@del.wa.gov">del.contracts@del.wa.gov</a></td>
</tr>
</tbody>
</table>

Any other communication will be considered unofficial and non-binding on the AGENCY. BIDDERS 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 BIDDER.

2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

<table>
<thead>
<tr>
<th>Event</th>
<th>Date/Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issue Request for Qualifications and Quotations</td>
<td>December 8, 2014</td>
</tr>
<tr>
<td>Question and Answer Period</td>
<td>December 8 through December 12, 2014</td>
</tr>
<tr>
<td>Questions due on or before December 12, 2014 at 3 pm</td>
<td>December 8 through December 12, 2014</td>
</tr>
<tr>
<td>Issue addendum to RFQQ response to questions</td>
<td>December 18, 2014</td>
</tr>
<tr>
<td>Concern &amp; Response Period</td>
<td>December 8, 2014 through January 6, 2015</td>
</tr>
<tr>
<td>Issue addendum to RFQQ responding to any Concerns submitted</td>
<td>Issue within 1-2 days after January 6, 2015</td>
</tr>
<tr>
<td>Bids due</td>
<td>January 14, 2015 at 3 pm Pacific Time</td>
</tr>
<tr>
<td>Evaluate bids</td>
<td>January 20-23, 2015</td>
</tr>
<tr>
<td>Conduct oral interviews with BIDDER finalists, if required</td>
<td>January 26-February 6, 2015</td>
</tr>
<tr>
<td>Announce “Apparent Successful BIDDER” (ASB) and send notification via fax or e-mail to unsuccessful BIDDERS</td>
<td>February 10, 2015</td>
</tr>
<tr>
<td>Hold debriefing conferences (if requested)</td>
<td>February 11-13, 2015</td>
</tr>
<tr>
<td>Protest Request (available to BIDDERS who submitted a Response to this solicitation and have received a debriefing conference.)</td>
<td>Must be requested w/in 5 business days immediately following debriefing conferences</td>
</tr>
<tr>
<td>Protest decision from AGENCY</td>
<td>Must be w/in 5 business days after the request is received.</td>
</tr>
<tr>
<td>Negotiate contract</td>
<td>February 14-23, 2015</td>
</tr>
<tr>
<td>--------------------</td>
<td>----------------------</td>
</tr>
<tr>
<td>Begin contract work (AGENCY will postpone signing a Contract with the ASB until all Protests have been resolved.)</td>
<td>February 27, 2015</td>
</tr>
</tbody>
</table>

The AGENCY reserves the right to revise the above schedule.

2.3 QUESTION & ANSWER PERIOD

Answers to questions related to the RFQQ received by December 12, 2014 at 3 p.m. Pacific Time will be posted as an addendum no later than December 17, 2014 by close of business.

2.4 CONCERN & RESPONSE PERIOD

The AGENCY provides prospective BIDDERS a period of time to voice concerns about this procurement in order to promote a transparent, fair, and competitive process. Prospective BIDDERS must provide the RFQQ Coordinator concerns in written form no later than five business days prior to when the bids are due. Concern topics are inclusive of:

a. Unnecessary competition restriction;

b. Unfair or flawed evaluation/scoring process; or

c. Inadequate or insufficient requirements so a response is difficult to prepare.

Concerns raised in communication with the RFQQ Coordinator will be documented and responded to in written form. The response may include how a review was conducted and the basis upon which a response was made. A copy of the concern and response will be sent to each prospective BIDDER who has received a copy of the RFQQ or made the RFQQ Coordinator aware of his or her interest in this procurement.

2.5 REVISIONS TO THE RFQQ

In the event it becomes necessary to revise any part of this RFQQ, addenda will be posted on the WEBS site.

For this purpose, the published questions and answers and any other pertinent information shall be provided as an addendum to 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 SUBMISSION OF BIDS

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

Late bids will not be accepted and will be automatically disqualified from further consideration. All bids and any accompanying documentation become the property of the AGENCY and will not be returned.

The bid must be received by the RFQQ Coordinator no later than 3 p.m. Pacific Time, in Olympia, Washington, on January 14, 2015.
Bids 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 bids. 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 BIDDER to the offer. The AGENCY does not assume responsibility for problems with BIDDER’s e-mail. If the AGENCY’S email is not working, appropriate allowances will be made.

Bids may not be transmitted using facsimile transmission.

BIDDERS should allow sufficient time to ensure timely receipt of the bid by the RFQQ Coordinator. Late bids 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 bids and any accompanying documentation become the property of the AGENCY and will not be returned.

2.7 PUBLIC INFORMATION/PROPRIETARY INFORMATION

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

All records related to state procurements remain public records subject to disclosure to the extent provided in chapter 42.56 RCW, however, once the AGENCY announces the apparent successful bidder, bid submissions and bid evaluations are exempt from disclosure.

Any information in the bid that the BIDDER 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 BIDDER 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 BIDDER’s request for exemption from disclosure; however, the AGENCY will make a decision predicated upon Chapter 42.17 RCW and Chapter 136-06 of the Washington Administrative Code. Marking the entire bid exempt from disclosure will not be honored. The BIDDER must be reasonable in designating information as confidential. If any information is marked as proprietary in the bid, 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 24 hours’ notice to the RFQQ Coordinator is required. All requests for information should be directed to the RFQQ Coordinator.

2.8 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 bids, no minimum level of MWBE
participation shall be required as a condition for receiving an award and bids 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.

2.9 SMALL BUSINESS PARTICIPATION

In accordance with the legislative findings and policies set forth in Chapter 39.26 RCW, the state of Washington encourages participation in all of its contracts by BIDDERS defined as a small business. 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 bids.

2.10 RESPONSIVENESS

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

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

2.11 ACCEPTANCE

BIDDERS must provide 60 days for acceptance by the AGENCY from the due date of receipt of bids. After review of the bids, the AGENCY may:

- Reject all bids and rebid or cancel this competitive solicitation;
- Request best and final offers from responsive and responsible bidders; or
- Award the purchase or contract to the lowest responsive and responsible bidder.
- Award one or more contracts from a competitive solicitation.

2.12 MOST FAVORABLE TERMS

The AGENCY reserves the right to make an award without further discussion of the bid submitted. Therefore, the bid should be submitted initially on the most favorable terms which the BIDDER can propose. The AGENCY does reserve the right to contact a BIDDER for clarification of its bid.

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

2.13 CONTRACT AND GENERAL TERMS & CONDITIONS

The apparent successful BIDDER will be expected to enter into a contract, which is substantially the same as the sample contract and its general terms and conditions attached as Exhibit B. In no event is a BIDDER to submit his or her own standard contract terms and conditions in response to this solicitation. The BIDDER 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.
2.14 COMMITMENT OF FUNDS

The Director of the AGENCY or her delegates 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 AGENCY with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth in the sample contract general terms and conditions attached and incorporated by this reference as Exhibit B. The insurance requirements set forth in the Contract are standard minimum insurance requirements and may vary depending on the specific terms and the needs of the final negotiated contract. AGENCY and the Contractor may negotiate insurance requirements at the time of contract negotiations depending on contract terms and contractor’s risk evaluation.

2.17 BID CONTENTS

Bids 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. Respondent Information
3. Experience
4. Qualifications
5. References
6. Quotation

Bids 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 bid, but should assist the BIDDER in preparing a thorough response.

Items in this section marked “mandatory” must be included as part of the bid for the bid 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.

2.18 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 BIDDER 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.
2.19 QUALIFICATIONS SECTION

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

2.19.1 RESPONDENT 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. Identify the specific employee that will be assigned to the project.

d. Identify any state employees or former state employees employed by the BIDDER or on the BIDDER’s governing board as of the date of the bid. Include their position and responsibilities within the BIDDER’s organization. If following a review of this information, it is determined by the AGENCY that a conflict of interest exists, the BIDDER may be disqualified from further consideration for the award of a contract.

e. If the BIDDER’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 BIDDER 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 BIDDER’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 BIDDER’s position on the matter. The AGENCY will evaluate the facts and may, at its sole discretion, reject the bid on the grounds of the past experience. If no such termination for default has been experienced by the BIDDER in the past five years, so indicate.

2.19.2 EXPERIENCE (SCORED)

A. Describe services provided by the BIDDER that indicate the individual or firm’s ability to provide the services described in this RFQQ.

B. Describe the individual or firm’s recent experience with Collective Impact initiatives.

C. Please include the resume and address the individual’s particular skills related to this project, education, experience, significant accomplishments and any other pertinent
information. Provide a detailed description about how the individual would support the work of the EFC initiative.

2.19.3 QUALIFICATIONS (SCORED)

In the application, please address the following qualifications:

Have a Master’s degree or higher in Public Health, Health Education, Health Administration, Community Health, Business Administration, Communications, Social Work, Organizational Psychology or a closely allied field and have at least five or more years of experience in:

i. Strategic leadership and planning;
ii. Resource development and fundraising;
iii. Public and private stakeholder engagement;
iv. Meeting facilitation;
v. Grant oversight; and
vi. Contract and budget oversight.

2.19.3.1 Competencies Desired (For more information see Attachment 3 Washington Essentials for Childhood (EfC) Executive Director Job Description).

1. Visionary and Compassionate Leader with a Passion for Making Life Better for Children: Embarking on the Essentials for Childhood’s (EfC’s) initiative to promote safe, stable, and nurturing relationships and environments for the children within Washington State, the Executive Director will:

   a. Engage in a process to develop and implement a shared, inspired and strategic outcome-oriented approach that addresses the goals articulated in EfC’s Common Agenda.
   b. Passionately and effectively communicate the EfC agenda in a way that builds excitement and fosters commitment to the initiative among internal and external audiences.

2. Constituency Building Skills: In the context of a growing need for diverse partnerships to support children and families, the Executive Director will have a track record of success developing broad constituencies and working collaboratively. He/she will:

   a. Develop key relationships and ensure strong collaboration with relevant stakeholders, including government entities, health providers, educators, care givers, etc. to advance the goals of EfC.
   b. Have a track record of successful collaboration with a diverse group of people including stakeholders as described above.
   c. Demonstrate strong interpersonal and public speaking skills.

3. Community Nonprofit and Coalition-Building Expertise: The ideal candidate will demonstrate a record of building infrastructure, technology and operations for a community nonprofit organization and a track record of successful outcomes. The ideal candidate will be one who is respected as an even-handed, committed leader in the not-for-profit communities. With strong financial, coalition-building and operation skills, the candidate will be an expert in leading administrative teams, building community stakeholder coalitions, and gaining support from government leaders and philanthropic organizations.
4. **Influencing Skills**: He/she quickly determines the levers of influence to gain broad support for new initiatives, bringing a keen sense of interpersonal and political dynamics and strong negotiation and conflict resolution skills. The candidate builds trust-based relationships by operating in an ethical, honest and forthright manner. He/she is a strong communicator, articulate, diligent and persistent, who creates both a value proposition and sense of inclusiveness for all parties. An orientation to creatively and constructively remove barriers to success is critical. He/she is comfortable reviewing and interpreting data to communicate needs, opportunities, and results.

5. **Leadership in Addressing Inequities**: The ideal candidate will demonstrate experience in efforts to eliminate and address inequities. The candidate has a strong understanding of root causes of inequities and can explain this to others, and has the ability to build wide support to focus energy and resources towards eliminating equity gaps. The candidate is culturally competent and practices cultural humility when engaging diverse communities.

6. **Public Health/Early Learning Expertise**: The ideal candidate will be able to demonstrate an understanding of public health and systems approaches that result in improved health and education outcomes for children.

7. **Administrative Leadership and Project Management**: In the context of a dynamic, growing organization, the candidate will use structured business planning and analysis to establish short and long term goals, and will have strong project management skills to achieve early wins, meet critical milestones and build momentum for a large scale initiative. He/she is fully apprised of regulatory and policy shifts that impact EfC’s agenda.

8. **Personal Characteristics**:
   a. Possesses a guiding set of personal values and passion that is consistent with the mission and values of the EfC initiative.
   b. Comfortable with change and ambiguity; looks to the future with a sense of optimism and opportunity.
   c. Creative problem-solver.
   d. Demonstrates commitment to personal development and learning.

9. **Desired Experience**:
   e. Demonstrated executive-level management experience in a community nonprofit organization or state health or education agency, with demonstrated success in leading teams, and meeting financial targets and strategic goals.
   f. Ability to interact and negotiate effectively at the executive level and the grassroots in a complex environment with a diverse range of constituencies.
   g. Working knowledge and experience with process improvement, project management, quality improvement, statistical analysis and change management tools and techniques.
   h. Demonstrated experience leading efforts to eliminate and address equity gaps.
   i. Excellent written and verbal communication skills.
   j. Analytical ability to conceptualize within unstructured, dynamic and/or multidisciplinary environments requiring analysis, foresight, intuition and mature judgment.
   k. Excellent communication and interpersonal skills for frequent interactions and negotiation with internal and external stakeholders.
   l. Ability to work independently, exercise appropriate action and good business judgment.
   m. Ability to manage multiple priorities, organize tasks and maintain control of workflow.
n. Strong effective collaboration, negotiation and influencing, goal setting, conflict resolution, staff development and customer service skills.

2.19.2 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 BIDDER 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.

2.19.3. 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.

2.20 QUOTATIONS SECTION
2.20.1 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 any additional 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.

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

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

3 EVALUATION AND CONTRACT AWARD
3.1 EVALUATION PROCEDURE
Responsive bids will be evaluated strictly in accordance with the requirements stated in this solicitation and any addenda issued. The evaluation of bids shall be accomplished by an evaluation team to be designated by the AGENCY, which will determine the ranking of the bids.

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

3.2 CLARIFICATION OF BID
The RFQQ Coordinator may contact the BIDDER for clarification of any portion of the BIDDER’s bid.
3.3 EVALUATION WEIGHTING AND SCORING

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

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<thead>
<tr>
<th>Section</th>
<th>Percentage</th>
<th>Points</th>
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<tr>
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<td>Qualifications</td>
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<tr>
<td><strong>Grand Total</strong></td>
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<td><strong>100 Points</strong></td>
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3.4 ORAL PRESENTATIONS MAY BE REQUIRED

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

The oral presentation shall determine the Apparently Successful Bidder.

3.5 NOTIFICATION TO BIDDERS

BIDDERS whose bids have not been selected for further negotiation or award will be notified by e-mail.

3.6 DEBRIEFING OF UNSUCCESSFUL BIDDERS

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

Discussion will be limited to a critique of the requesting BIDDER’s bid. Comparisons between bids or evaluations of the other bids 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.

3.7 PROTEST PROCEDURE

3.7.1 Procedure

This protest procedure is available to BIDDERS who submitted a Response to this solicitation and have received a debriefing conference. Protests are made to the AGENCY after the AGENCY has announced the Apparent Successful BIDDER (the “ASV”). BIDDER protests shall be received, in writing, by the AGENCY within five (5) Business Days after the BIDDER debriefing conference.

3.7.2 Grounds for protest are:
1. State Arithmetic errors were made in computing the score;
2. The AGENCY failed to follow procedures established in the solicitation document or applicable state or federal laws or regulations; or
3. There was bias, Discrimination or conflict of interest on the part of an evaluator. Protests not based on these criteria will not be considered.

3.7.3 Format and Content:

BIDDERS making a protest shall include in their written protest to the AGENCY all facts and arguments upon which the BIDDER relies. BIDDERS shall, at a minimum, provide:

a. Information about the protesting BIDDER; name of firm, mailing address, phone number and name of individual responsible for submission of the protest;
b. Information about the acquisition; the AGENCY, and acquisition method;
c. A specific and complete statement of the AGENCY’s action(s) being protested;
d. A specific reference to the grounds for the protest; and
e. A description of the relief or corrective action requested.

3.7.4 The Review Process:

Upon receipt of a BIDDER’s protest, the AGENCY will:

a. Postpone signing a Contract with the ASB until the BIDDER protest has been resolved.
b. Perform an objective review of the protest, by individuals not involved in the acquisition process being protested. The review shall be based on the written protest material submitted by the BIDDER and all other relevant facts known to the AGENCY.
c. Render a written decision to the BIDDER within five (5) Business Days after receipt of the BIDDER protest, unless more time is needed. The protesting BIDDER shall be notified if additional time is necessary.

3.7.5 The AGENCY Determination:

The final determination shall:

a. Find the protest lacking in merit and uphold the AGENCY’s action;
b. Find only technical or harmless errors in the AGENCY’s acquisition process conduct, determine the AGENCY to be in substantial compliance, and reject the protest;
c. Find merit in the protest and provide the AGENCY with options that may include:
   i. Correct errors and reevaluate all bids; or
   ii. Reissue the solicitation document; or
   iii. Make other findings and determine other courses of action as appropriate.
   iv. Not require the AGENCY to award the Contract to the protesting party or any other BIDDER, regardless of the outcome.
4 RFQQ EXHIBITS AND ATTACHMENTS

Exhibit A Certifications and Assurances
Exhibit B Personal Service Contract Sample including General Terms and Conditions (GT&Cs)

Attachment 1 Essentials for Childhood Fact Sheet Washington State
Attachment 2 EfC Executive Director Job Description
EXHIBIT A CERTIFICATIONS AND ASSURANCES

- I/we make the following certifications and assurances as a required element of the bid 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):

- I/we declare that all answers and statements made in the bid are true and correct.

- 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 bid.

- The attached bid 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.

- In preparing this bid, 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 bid 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.)

- I/we understand that the AGENCY will not reimburse me/us for any costs incurred in the preparation of this bid. All bids 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 bid.

- 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.

- I/we agree that submission of the attached bid 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.

- 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 bid for the purpose of restricting competition.

- 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 BIDDER submitting this bid, my name below attests to the accuracy of the above statements.

If electronic, also include: We are submitting a scanned signature of this form with our electronic bid. Follow-up with originals of all signatures pages and initials required for submitting this bid to AGENCY prior to scored reviews begin.

__________________________
Signature of Proposer

__________________________
Title

__________________________
Date
EXHIBIT B GENERAL TERMS AND CONDITIONS

1. ADVANCE PAYMENTS PROHIBITED

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

2. AMENDMENT

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.

3. ASSIGNMENT

The work to be provided under this Contract, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

4. 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.

5. 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 subrecipients 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 or services awarded under a nonprocurement transaction (e.g. grant or cooperative agreement) that are expected to equal or exceed $25,000, and sub-awards to subrecipients for any amount. The 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.

6. CHOICE OF LAW AND VENUE

This Contract shall be governed by the laws of the State of Washington without regard to the conflict of law rules of any jurisdiction. Every dispute concerning the interpretation or effect of this Contract and/or the use of the goods or services described in this Contract must be resolved in the federal or state courts located in Washington. The Contractor agrees to the exclusive personal jurisdiction, and subject matter jurisdiction of these courts. Thurston County shall be the venue of any litigation arising out of this Contract.

7. COMPLIANCE WITH LAWS, RULES, AND REGULATIONS

7.1 Assurances

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 the Public Records Act (chapter 42.56 RCW), the Freedom of Information Act (5 U.S.C. 522) and the Records Retention Act (chapter 40.14 RCW).

7.2 Civil Rights Laws

(a) During the performance of this Contract the parties shall comply with all federal and state nondiscrimination laws including, but not limited to chapter 49.60 RCW, Washington’s Law
Against Discrimination, and 42 U.S.C. § 12101 et seq., the Americans with Disabilities Act (ADA).

(b) In the event of the Contractor’s or its subcontractors’ noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the DEL. The Contractor shall, however, be given a reasonable time in which to remedy this noncompliance. Any dispute may be resolved in accordance with the “Disputes” procedure set forth herein.

7.3 Conflict of Interest
(a) Notwithstanding any determination by the Executive Ethics Board or other tribunal, the DEL may, in its sole discretion, by written notice to the Contractor terminate this Contract if it is found after due notice and examination by the DEL that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW, or any similar statute involving the Contractor in the procurement of, or performance under, this Contract.

(b) In the event this Contract is terminated as provided above, the 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 the DEL provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the DEL makes any determination under this clause shall be an issue and may be reviewed as provided in the “Disputes” clause of this Contract.

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

7.5 Noncompliance with Laws, Regulations, or Policies
The Contractor shall be responsible for and shall pay any fines, penalties, or disallowances imposed on the State or Contractor arising from any noncompliance with the laws, regulations, policies, guidelines and Collective Bargaining Agreements that affect the Services or Deliverables that are to be provided or that have been provided by Contractor, its Subcontractors or agents.

7.6 Registration with Department of Revenue and Payment of Taxes
The Contractor must pay all taxes including, but not limited to, sales and use taxes, Business & Occupation taxes, other taxes based on the Contractor’s income or gross receipts, or personal property taxes levied or assessed on the Contractor’s personal property. 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.

8. CONTRACTOR STAFF

8.1 Prior to the effective date of this Contract, the Contractor shall have provided to the DEL an organization chart of the Contractor’s staff, including the names and positions of staff that will be performing services pursuant to this Contract. The Contractor shall also provide to the DEL job descriptions for the staff performing services pursuant to this Contract.

8.2 During the term of the Contract, the DEL reserves the right to approve or disapprove Contractor’s and any Subcontractor’s staff assigned to this Contract, to approve or disapprove any proposed changes in staff, or to require the removal or reassignment of any Contractor or Subcontractor staff found unacceptable by DEL, subject to DEL’s compliance with applicable laws and regulations. Contractor shall provide DEL with a resume of any member of its staff or a Subcontractor’s staff assigned to or proposed to be assigned to any aspect of the performance of this Contract prior to commencing any Services.
8.3 All staff proposed by Contractor as replacements for other staff shall have comparable or greater skills for performing the activities as performed by the staff being replaced. The Contractor shall provide the DEL with written notice of any staff changes that the Contractor proposes. The written notice shall not be effective until fourteen business days from the date of the mailing.

8.4 Contractor assumes sole and full responsibility for its acts and the acts of its personnel. Contractor shall ensure that any transition to new staff will not affect the schedule or provision of services set forth in this Contract. Contractor understands and agrees that the DEL does not assume liability for the actions of Contractor’s, its Subcontractors or agents. Contractor agrees that it has no right to indemnification or contribution from DEL for any judgments rendered against Contractor, its Subcontractors or agents.

8.5 Due to the confidential nature of the information and materials which will be accessible to Contractor, the DEL shall have the right to conduct reference checks and background checks on Contractor staff to be used to provide the services pursuant to this Contract. The DEL reserves the right in its sole discretion to reject any proposed staff as a result of information produced by such reference checks, background checks, or additional sources of information. In addition, the Contractor shall conduct its own reference and background checks on Staff or their substitutes to be used to provide the services pursuant to this Contract, subject to Contractor providing to the DEL the questions asked during such checks and other information about the checks as requested by DEL, and to those questions and this information satisfying DEL’s requirements. Contractor further agrees to cooperate fully with DEL in completion of these requirements.

9. CONTINUED PERFORMANCE

If the DEL, in good faith, has reason to believe that Contractor does not intend to, or is unable to perform or has refused to perform or continue performing all material obligations under this Contract, the DEL may demand in writing that Contractor give a written assurance of intent to perform. Failure by Contractor to provide written assurance within the number of days specified in the demand (in no event less than five business days) may, at the DEL’s option, be the basis for terminating this Contract under the terms and conditions or other rights and remedies available by law or provided by this Contract.

10. COPYRIGHT

10.1 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 DEL. The 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, Contractor hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to the DEL effective from the moment of creation of such Materials.

10.2 “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.

10.3 For Materials that are delivered under the Contract, but that incorporate preexisting materials not produced under the Contract, Contractor hereby grants to the DEL 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 DEL.

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

11. PROTECTION OF CONFIDENTIAL INFORMATION

11.1 Scope of Protection
This Section (Section 11) applies to data, information, or materials related to the subject matter of this Contract which is received, created, developed, revised, modified, or amended by the DEL, the Contractor, or subcontractors. Such data, information, and materials shall include but is not limited to all confidential information.

11.2 Use of Confidential Information
(a) For data and confidential information collected, used, or acquired in connection with this Contract the parties shall comply with the following:
   (1) All federal and state laws and regulations, as currently enacted or revised, regarding data and confidential information protection, security; and
   (2) All federal and state laws and regulations, as currently enacted or revised, regarding the use, disclosure, modification or loss of data and confidential information.

(b) The DEL does not warrant or guarantee the accuracy of the data or confidential information provided pursuant to this Contract. The Contractor understands all the risks and liabilities of the use and misuse of the information provided pursuant to this Contract.

11.3 Confidentiality Protection
To safeguard the confidentiality of all confidential information and in addition to the requirements contained in this Section (Section 11) the Contractor must:
(a) Ensure that the Contractor, the Contractor’s staff, subcontractors, and the subcontractors’ staff use confidential information solely for the purposes of accomplishing the services set forth in this Contract.

(b) Limit access to confidential information to the Contractor’s staff and subcontractors’ staff requiring access for performance of their assigned duties.

(c) Require that the Contractor’s staff and subcontractors’ staff having access to confidential information sign a Statement of Confidentiality and Non-Disclosure Agreement consistent with Attachment 2. Confidential information shall not be released to the Contractor’s staff person(s) or subcontractors’ staff person(s) until the following conditions have been met:
   (1) The DEL approves the Contractor’s staff person, or subcontractor’s staff person, to work on this Contract; and
   (2) The DEL must receive the signed original Statement of Confidentiality and Non-Disclosure Agreement, signed by the staff person, from the Contractor or subcontractor.

(d) Notify its staff person(s) and ensure its subcontractors notify the subcontractors’ staff person(s) of the requirements of Section 7.1 (Assurances), and this Section (Section 11).

(e) Ensure that personal information is not released, disclosed, published, modified, transferred, sold, or otherwise made known to unauthorized persons without the prior written consent of the individual named or as otherwise authorized by law.

(f) Ensure that confidential information is protected from loss and from unauthorized physical or electronic access.

(g) Destroy all confidential information so that it cannot be accessed by unauthorized individuals and cannot be recovered when the confidential information is no longer used for providing services under this Contract, and retention is no longer required by the Records Retention Act (chapter 40.14 RCW) or Section 32 (Records Maintenance), whichever is longer. Unless the Washington State Office of the Chief Information Officer IT Standards
require a different method for the destruction of confidential information, confidential information required to be destroyed under this section must be destroyed as follows:

1. For paper documents containing data, but not confidential information, a contract with a paper shredding firm is acceptable, provided the contract ensures that the confidentiality of the data will be protected. Such documents may also be destroyed by on-site shredding, pulping, or incineration.

2. For paper documents containing Confidential Information requiring special handling (e.g. Protected Client Information) the documents must be destroyed by on-site shredding, pulping, or incineration.

3. If data or confidential information has been contained on optical discs (e.g. CDs or DVDs), the Contractor shall either destroy by incinerating the disc(s), shredding the discs, or completely deface the readable surface with a coarse abrasive.

4. If data or confidential information has been stored on magnetic tape(s), the Contractor shall destroy the data or confidential information by degaussing, incinerating or crosscut shredding.

5. If data or confidential information has been stored on server or workstation data hard drives or similar media, the Contractor shall destroy the data or confidential information by using a “wipe” utility which will overwrite the data or confidential information at least three (3) times using either random or single character data, degaussing sufficiently to ensure that the data or confidential information cannot be reconstructed, or physically destroying disk(s).

6. If data or confidential information has been stored on removable media (e.g. floppies, USB flash drives, portable hard disks, or similar disks), the data recipient shall destroy the data or confidential information by using a “wipe” utility which will overwrite the data or confidential information at least three (3) times using either random or single character data, degaussing sufficiently to ensure that the data or confidential information cannot be reconstructed, or physically destroying disk(s).

(h) Within fifteen calendar days after the completion of the requirements contained in Section 11.4(g) the Contractor shall complete and deliver to the DEL a signed Certification of Data Disposition (Attachment 3).

(i) Paper records must be protected by storing the records in a secure area which is only accessible to authorized personnel. When not in use, such records must be stored in a locked container, such as a file cabinet, locking drawer, or safe, to which only authorized persons have access.

(j) Shall immediately notify the DEL after becoming aware of any potential, suspected, attempted or actual breaches of security including, but not limited to, unauthorized access, use or disclosure. The Contractor shall take all necessary steps to mitigate the harmful effects of such breach of security. The Contractor agrees to defend, protect and hold harmless the DEL for any damages related to a breach of security by their officers, directors, employees, subcontractors or agents.

11.4 Confidentiality Breach
In the event of a breach by the Contractor of this Section (Section 11) and in addition to all other rights and remedies available to the DEL, the DEL may elect to do any of the following:
(a) Terminate the Contract;

(b) Require that the Contractor return all confidential information to the DEL that was previously provided to the Contractor by the DEL;

(c) Require that the Contractor destroy all confidential information so it cannot be accessed by unauthorized individuals and cannot be recovered; or

(d) Suspend the Contractor’s on-line access to accounts and other information.

11.5 Public Disclosure
(a) Either party to this Contract may designate certain Confidential Information as "Confidential Information/Notice Requested." This designation shall be made by clearly stamping, watermarking, or otherwise marking each page of the Confidential Information. The party who owns the data is responsible for informing the other party what it considers confidential.

(b) If a third party requestor seeks information that has been marked "Confidential Information/Notice Requested," notice shall be given to the marking party prior to release of the information. Such notice shall be provided to the program contact no less than five business days prior to the date of the disclosure, to allow the party objecting to disclosure to seek a protective order from the proper tribunal.

11.6 Access to Data
In compliance with RCW 39.26.180, 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.

11.7 Definitions
As used throughout this Contract, the following terms shall have the meanings set forth below:
(a) "Confidential Information" means information that may be exempt from disclosure under either chapter 42.56 RCW or other state or federal statutes. Confidential Information includes, but is not limited to, personal information, agency source code or object code, and agency security data.

(b) "Converted Data" means the data which has been successfully converted by the Contractor for processing by the DEL's computer system.

(c) "Data" means the DEL's records, files, forms, data, information and other documents in electronic or hard copy form, including but not limited to Converted Data.

(d) "Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, e-mail addresses, credit card information, law enforcement records or other identifying numbers or Protected Health Information, any financial identifiers, and other information that may be exempt from disclosure under either chapter 42.56 RCW or other state and federal statutes.

12. DISALLOWED COSTS
The Contractor is responsible for any audit exceptions or disallowed costs incurred by the Contractor or that of its subcontractors.

13. DISPUTES
13.1 Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a Dispute Resolution Board ("DRB").

13.2 A request for a DRB must:
(a) Be in writing;
(b) State the disputed issues;
(c) State the relative positions of the parties;
(d) State the Contractor's name, address, and contact telephone number; and
(e) Be mailed to the other party's (respondent's) Contract Manager after the parties agree that they cannot resolve the dispute;
13.3 The respondent shall mail a written answer to the requester’s Contract Manager within 10 business days of the receipt of the request for a DRB.

13.4 Once a party requests a DRB, each party shall designate a representative. The representatives shall mutually select a third member. The DRB shall evaluate the facts, Contract terms and applicable statutes and rules and make a determination by majority vote. The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding concerning the Contract. The parties agree that the DRB shall precede any action in judicial or quasi-judicial tribunal.

14. DUPLICATE PAYMENT

The 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.

15. ENTIRE CONTRACT

This Contract, including all referenced exhibits and attachments, contains all the terms and conditions agreed upon by the parties. No other understanding, written, oral, or otherwise regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

16. EXPENSES

All expenses not provided for specifically in this Contract shall be the responsibility of the Contractor unless otherwise mutually agreed upon by the parties.

17. FEDERAL FUNDING REQUIREMENTS

17.1 Federal Certifications and Assurances (Attachment 1)
   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 1.

17.2 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 agents maintained by the Contractor for the purpose of securing business. The 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 fees.

17.3 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, the 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.

17.4 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 the 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).

18. FUNDING CONTINGENCY

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 completion of the work in this Contract, the DEL may:

18.1 Terminate this Contract with ten (10) days advance notice. If this Contract is terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Contract prior to the effective date of termination;

18.2 Renegotiate the terms of the Contract under the new funding limitations and conditions;

18.3 After a review of project expenditures and deliverable status, extend the end date of this Contract and postpone deliverables or portions of deliverables; or

18.4 Pursue such other alternatives as the parties mutually agree to in writing.

19. HEADINGS

The headings throughout this Contract are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Contract.

20. INDEMNIFICATION

20.1 To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless State, agencies of State and all officials, agents and employees of State, from and against all claims for injuries or death arising out of or resulting from the performance of the Contract. Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractors' agents, employees, representatives, or any subcontractor or its employees.

20.2 The Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform under the Contract. The Contractor shall be required to indemnify, defend, and hold harmless the State only to the extent claim is caused in whole or in part by negligent acts or omissions of Contractor.

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

21. INDEPENDENT CAPACITY

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

22. 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, the DEL may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. The 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 the 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.

23. INSURANCE

23.1 Insurance Required
Contractor shall, at its sole cost and expense, obtain, and during the term of this Contract, maintain, in full force and effect, the insurance coverage as described in this Section (Section 23).

23.2 Eligible Insurance Companies
Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the State of Washington and having a rating of A-, Class VII or better, in the most recently published edition of Best’s Reports.

23.3 Failure to Purchase and Maintain Insurance
If Contractor fails to buy and maintain the insurance coverage described in this Section (Section 23), DEL may terminate this Contract under Section 36 (Termination for Cause). The intent of the required insurance is to protect the DEL should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the Contractor or Subcontractors, or agents of either, while performing under the terms of this Contract.

23.4 Insurance Description and Limits
The minimum acceptable insurance and limits shall be as indicated below with no deductible as indicated below:

(a) Commercial General Liability Insurance
The Contractor shall maintain commercial general liability 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 form 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 a separation of insureds (cross liability) condition.

(b) Business Automobile Liability
The Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a combined single limit of not less than $1,000,000 per accident. Such insurance shall cover liability (bodily injury and property damage) 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.

(c) Employer’s Liability (“Stop Gap”) Insurance
The Contractor shall maintain 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.

(d) Professional Liability (Errors and Omissions) Insurance
The Contractor shall maintain professional liability insurance with a limit of not less than $1,000,000 per claim with a $2,000,000 aggregate.

23.5 Additional Insured
The State of Washington, the DEL, 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.

23.6 Subcontractors
Contractor shall include all Subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Contractor shall ensure that all Subcontractors have and maintain insurance with the same types and limits of coverage as required of Contractor under the Contract and shall maintain copies of Certificates of Insurance, policies, and additional insured endorsements for each Subcontractor as evidence that each Subcontractor maintains insurance as required by the Contract. Subcontractor(s) shall 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.

23.7 Premiums
Premiums on all insurance policies shall be paid by Contractor or its Subcontractors. Such insurance policies provided for the DEL pursuant to this Section (Section 23) shall expressly provide therein that the DEL be named as additional insured, and that it shall not be revoked by the insurer until 30 days’ Notice of intended revocation thereof shall have first been given to the DEL by Contractor.

23.8 Cancellation
Contractor’s insurance policies shall not be canceled or non-renewed in scope of coverage without provision for equivalent substitute insurance and such cancellation or nonrenewal shall not take place or be reduced in scope of coverage until forty-five (45) days’ written Notice has been given to the DEL, attention the DEL Contract Manager, and Contractor has replacement insurance policy(ies) in place that satisfy the requirements set forth in this Section (Section 23). Contractor’s insurance policies shall not be reduced in scope without the DEL’s prior written consent.

23.9 Insurance Documents
Contractor shall furnish to the DEL copies of certificates of all required insurance within 30 days of the Effective Date, and copies of renewal certificates of all required insurance within 30 days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this Section (Section 23). Failure to provide these documents shall be grounds for immediate termination or suspension of this Contract by the DEL for material breach under Section 36 (Termination for Cause). The insurance and policies described in this Section (Section 23) shall reference this Contract’s number and the Department of Early Learning.

23.10 Extended Coverage
For Professional Liability Errors and Omissions coverage under Section 23.4(d), Contractor shall continue such coverage for at least five (5) years beyond the expiration or termination of this Contract. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work. If coverage is canceled or non-renewed, and not replaced with another claims made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.

23.11 Employees and Volunteers
Insurance required of Contractor under the Contract shall include coverage for the acts and omissions of Contractor’s employees and volunteers.

23.12 General
By requiring insurance, the State and DEL do not represent that the coverage and limits specified will be adequate to protect Contractor. Such coverage and limits shall not be construed to relieve Contractor from liability in excess of the required coverage and limits and shall not limit Contractor’s liability under the indemnities and reimbursements granted to the State and DEL in this Contract. 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.

24. LIMITATION OF AUTHORITY
Only the Contractor’s agent or agent’s delegate by writing (delegation to be made prior to action) and
the DEL’s agent or agent’s delegate by writing (delegation to be made prior to action) shall have the
express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of
this Contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or
condition of this Contract is not effective or binding unless made in writing and signed by the agents
for both parties.

25. MONITORING

25.1 The 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 the DEL,
personnel authorized by the 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.

25.2 Monitoring activities may include, but are not limited to:
(a) Review of deliverables listed in Exhibit A.
(b) Intensive on-site program reviews to monitor Contract compliance, scheduled in advance
with the Contractor.
(c) Site visits to review records, observe implementation of services or follow up on compliance
issues. These visits may be unannounced.
(d) Review of the Contractor’s compliance with Section 11 (Protection of Confidential
Information).

26. NEUTRAL AUTHORSHIP

Each of the provisions of this Contract has been reviewed and negotiated, and represents the
combined work product of both parties hereto. No presumption or other rules of construction which
would interpret the provisions of this Contract in favor of or against the party preparing the same shall
be applicable in connection with the construction or interpretation of any of the provisions of this
Contract.

27. ORDER OF PRECEDENCE

In the event of an inconsistency in the terms of this Contract, or between the terms and any
applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following
order:
1. Applicable Federal statutes, regulations, policies, and attachment 1 (Federal
Certificates and Assurances);
2. Applicable State of Washington statutes, regulations, and policies;
3. The terms and conditions as contained in this basic Contract instrument but not
contained in exhibit A, exhibit B, or exhibit C of this Contract;
4. Exhibit C (General Terms and Conditions);
5. Exhibit B (Budget);
6. Exhibit A (Statement of Work); and
7. Any other exhibit or attachment, provision, term or material incorporated herein by
reference or otherwise.

28. OVERPAYMENT

29.1 Contractor shall promptly, but in all cases within 30 Days, pay to the DEL the full amount of any
erroneous payment or overpayment (a) upon Notice of an erroneous payment or overpayment
to which Contractor is not entitled with supporting documentation to substantiate such
erroneous payment or overpayment and the grounds for the DEL’s determination of such
erroneous payment or overpayment or (b) when any such erroneous payment or overpayment
is otherwise discovered by Contractor.
29.2 In addition to the requirements contained in this Section (Section 29), the Contractor agrees that the DEL may also recover overpayments made to the Contractor by deducting amounts owed to the Contractor. The DEL must provide written notice to the Contractor if it elects to recover overpayments by deducting amounts owed to the Contractor.

29. PUBLICITY

30.1 The award of this Contract to Contractor is not in any way an endorsement of Contractor or Contractor’s Services by DEL and shall not be so construed by Contractor in any advertising or publicity materials.

30.2 The Contractor agrees to submit to the DEL all advertising and publicity matters relating to this Contract in which the State of Washington or the 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 the DEL may, in the 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 the DEL.

30.3 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” the DEL. The full-color or black-and-white DEL logo, provided by the DEL Contract Manager, shall appear in its entirety, without modification.

30. RECAPTURE

31.1 In the event that the Contractor fails to expend funds under this contract in accordance with state laws and/or the provisions of this contract, the DEL reserves the right to recapture state funds in an amount equivalent to the extent of the noncompliance in addition to any other remedies available at law or in equity.

31.2 Such right of recapture shall exist for a period not to exceed six years following contract termination. Repayment by the Contractor of funds under this recapture provision shall occur within 30 days of demand. In the event that the DEL is required to institute legal proceedings to enforce the recapture provision, the DEL shall be entitled to its costs thereof.

31. RECORDS MAINTENANCE

32.1 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 DEL, personnel duly authorized by the DEL, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

32.2 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.

32. REMEDIES

Except for remedies designated specifically as exclusive, no remedy conferred by any of the specific provisions of this Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

33. SEVERABILITY
If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract which can be given effect without the invalid provision, and to this end the provisions of this Contract are declared to be severable.

34. SITE SECURITY

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

35. SUBCONTRACTING

36.1 As used throughout this Contract, the following terms shall have the meanings set forth below:
   (a) "Subcontractor" means one not in the employment of a party to this Contract, who is performing all or part of those services under this Contract under a separate contract with a party to this Contract. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier, and the subcontractors' directors, officers, employees, and agents.
   (b) "Staff" or "staff person" means the Contractor's subcontractors, directors, officers, employees, and agents who provide goods or services on behalf of the Contractor. The term "staff" or "staff person" also means the subcontractors' directors, officers, employees, and agents who provide goods or services on behalf of the subcontractor and Contractor.

36.2 Neither the Contractor nor any subcontractor shall enter into subcontracts for any of the work contemplated under this Contract without obtaining prior written approval from the DEL. The Contractor is responsible to ensure that all terms, conditions, assurances and certifications set forth in this Contract are included in any and all Subcontracts. Any failure of the Contractor or its Subcontractors to perform the obligations of this Contract shall not discharge the Contractor from its obligations under this Contract. In no event shall the existence of the subcontract operate to release or reduce the liability of the Contractor to the DEL for any breach in the performance of the Contractor's duties.

36. TERMINATION FOR CAUSE

37.1 In the event the DEL determines the Contractor has failed to comply with the conditions of this Contract in a timely manner, the DEL has the right to suspend or terminate this Contract. The DEL shall notify the Contractor in writing of the need to take corrective action. If appropriate corrective action is not taken within 30 days, the Contract may be terminated.

37.2 Section 37.1 shall not apply to conduct, in the performance of this Contract, by the Contractor or sub-contractor(s) that involves child abuse or neglect. In the event the DEL has reason to believe that in the performance of this Contract, the Contractor or its sub-contractors cause a child to be abused or neglected as defined in chapter 26.44 RCW, the DEL may immediately suspend or terminate this Contract. The DEL may elect to notify the Contractor in writing of the need to take corrective action before the Contract is suspended or terminated by the DEL.

37.3 The 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 the alleged compliance breach and pending corrective action by the Contractor or a decision by the DEL to terminate the Contract.

37.4 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: (1) the Contractor was not in default; or (2) failure to perform was outside of Contractor's control,
fault or negligence. The rights and remedies of the DEL provided in this section (section 37) shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

37.5 A filing for bankruptcy by Contractor will be deemed a material breach and may result in immediate termination of this Contract.

37. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract, the DEL may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, the 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.

38. TERMINATION PROCEDURE

39.1 Upon termination of this Contract the DEL, in addition to any other rights provided in this Contract, may require the Contractor to deliver to the DEL any property specifically produced or acquired for the performance of such part of this Contract as has been terminated. The provisions of Section 40 (Treatment of Assets) shall apply in such property transfer.

39.2 The DEL shall pay to the Contractor the agreed upon price, if separately stated, for completed work and service(s) accepted by the DEL, and the amount agreed upon by the Contractor and the DEL for (i) completed work and service(s) for which no separate price is stated, (ii) partially completed work and service(s), (iii) other property or services which are accepted by the DEL, and (iv) the protection and preservation of property, unless the termination is for default, in which case the DEL and Contractor may agree to the extent of the liability of the DEL. Failure to agree to the extent of the liability shall be a dispute within the meaning of Section 13 (Disputes) of this contract. The DEL may withhold from any amounts due the Contractor such sum as the DEL determines to be necessary to protect the DEL against potential loss or liability.

39.3 The rights and remedies of the 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.

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

(a) Stop work under the contract on the date, and to the extent specified, in the notice;
(b) 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 as is not terminated;
(c) Assign to the DEL, in the manner, at the times, and to the extent directed by the DEL, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the 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;
(d) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the DEL to the extent the DEL may require, which approval or ratification shall be final for all the purposes of this clause;
(e) Transfer title to the DEL and deliver in the manner, at the times, and to the extent directed by the DEL any property which, if the contract had been completed, would have been required to be furnished to the DEL;
(f) Complete performance of such part of the work as shall not have been terminated by the DEL; and
(g) Take such action as may be necessary, or as the 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 the DEL has or may acquire an interest.

39. TREATMENT OF ASSETS
40.1 Title to all property furnished by the DEL shall remain in the 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 the 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 the 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 the DEL in whole or in part, whichever first occurs.

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

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

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

40.5 The Contractor shall surrender to the DEL all property of the DEL prior to settlement upon completion, termination or cancellation of this contract.

40.6 All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

40. WAIVER

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

41. WARRANTY

42.1 The CONTRACTOR warrants that all services performed pursuant to this Contract shall be generally suitable for the use to which the DEL intends to use said services and deliveries as expressed in Exhibit A.

42.2 In the performance of services under this Contract, the Contractor and its employees agree to exercise the degree of skill and care required by customarily accepted good practices and procedures followed by professionals/consultants rendering the same or similar type of service. All obligations and services of the Contractor hereunder shall be performed diligently and completely according to such professional standards.

42.3 If the Contractor intends to rely on information or data supplied by the DEL, other DEL contractors or other generally reputable sources without independent verification, such intent shall be brought to the attention of the DEL.

42. WITHHOLDING PAYMENTS

The DEL may withhold payment to the Contractor for any services/deliverables not performed as required hereunder until such time as the Contractor modifies or delivers services/deliverables to the satisfaction of the DEL.