



IDAHO DEPARTMENT OF EDUCATION SPECIAL TERMS AND CONDITIONS FOR SOLICITATIONS

1. Definitions. Unless the context clearly requires otherwise, the definitions set forth in the IDE General Terms and Conditions shall apply to terms used in these IDE Special Terms and Conditions for Solicitations.

2. Priority of Documents. The Agreement consists of, and precedence is established by, the order of the following documents: 1) the contract purchase order; 2) the IDE's solicitation of bids, proposals, or quotations; 3) the Contractor's bid, proposal, or quotation as accepted by the IDE. The solicitation and the Contractor's bid, proposal, or quotation as accepted by the IDE are incorporated into the Agreement by this reference. The documents set forth above are complementary and what is required by one shall be binding as if required by all. In the case of any conflict or inconsistency arising under the Agreement documents, a document identified with a lower number in this section shall supersede a higher numbered document to the extent necessary to resolve any such conflict or inconsistency. Provided, however, that in the event an issue is addressed in one of the above-mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur. Where terms and conditions specified in the Contractor's bid, proposal, or quotation differ from the terms in the solicitation, the terms and conditions in the solicitation shall apply. Where terms and conditions specified in the Contractor's bid, proposal, or quotation supplement the terms and conditions in the solicitation, the supplemental terms and conditions shall apply only if specifically accepted by the IDE in writing.

3. Application of Certain Laws. The provisions of IDAPA 38.05.01.112, Contract Terms - Policies and Limitations, shall apply to the provisions of the Agreement.

4. Notices. Any notice given in connection with the Agreement shall be given in writing and shall be delivered either by hand to the other party or by certified mail, return receipt requested, to the other party at the other party's address stated below. Either party may change its address by giving notice of the change in accordance with this paragraph.

4.1. **Contractor:**

4.2. IDE: Idaho Department of Education
Attention:
650 State Street
Boise, ID 83702
Email address



5. Insurance Requirements. The Contractor shall obtain and maintain insurance at its own expense as required herein for the duration of the Agreement, and comply with all limits, terms, and conditions stipulated. Policies shall provide, or be endorsed to provide, all required coverage. The Contractor shall provide certificates of insurance or certified endorsements as applicable for the insurance required. The Contractor shall not commence work under the Agreement until satisfactory evidence of all required insurance is provided to the State of Idaho.

All insurance, except for workers compensation and professional liability/errors and omissions, shall be endorsed to name the State of Idaho and IDE as Additional Insured.

All insurance shall be with insurers rated A-, VII, or better in the latest Best's Rating Guide, and be in good standing and authorized to transact business in Idaho. The coverage provided by such policies shall be primary. Policies may contain deductibles, but such deductibles shall not be deducted from any damages due the State of Idaho.

If any of the liability insurance required for the Agreement is arranged on a "claims-made" basis, "tail coverage" will be required at the completion or termination of the Agreement for a duration of twenty-four (24) months thereafter. Continuous "claims-made" coverage will be acceptable in lieu of "tail-coverage" provided the retroactive date is on or before the effective date of the Agreement, or twenty-four-months "prior acts" coverage is provided. The Contractor will be responsible for furnishing certification of "tail coverage" or continuous "claims-made" coverage.

By requiring insurance herein, the State of Idaho does not represent that coverage and limits will necessarily be adequate to protect the Contractor, and such coverage and limits shall not be deemed as a limitation on the Contractor's liability under the indemnities granted to the State of Idaho.

The Contractor shall maintain insurance in amounts not less than the following [Please refer to the IDE Procurement Manual Appendix related to Insurance Language to identify types of insurance coverage and limits required]:

5.1. Commercial general liability ("CGL") with a limit of not less than \$1,000,000 each occurrence, and \$1,000,000 annual aggregate, if defense is outside the limits. If defense is inside the limits, the limit must be \$2,000,000 each occurrence, and \$2,000,000 aggregate. If necessary, a commercial umbrella or excess policy may be used to meet the limits required, providing the CGL is listed on the underlying insurance in the umbrella or excess policy, and the umbrella/excess policy meets the requirements above for acceptable carriers.

5.2. [Include if use of a vehicle is integral to the performance of the Agreement.]



Automobile liability including owned, non-owned, and hired liability with a limit of not less than \$1,000,000 each occurrence, and \$1,000,000 aggregate. If necessary, a commercial umbrella or excess policy may be used to meet the limits required, providing the automobile is listed on the underlying insurance in the umbrella or excess policy, and the umbrella/excess policy meets the requirements above for acceptable carriers.

5.3. [Include if the Contractor has one or more employees.] Workers compensation insurance in amounts as required by statute in all states in which the Contractor performs work, and employers' liability with a limit of \$100,000 bodily injury by accident-each accident, \$100,000 bodily injury by disease-each employee, \$1,000,000 bodily injury by disease-policy limit.

5.4. Professional liability insurance covering any damages caused by an error, omission, or any negligent acts. Combined single limit per occurrence shall not be less than \$1,000,000, or the equivalent. Annual aggregate limit shall not be less than \$2,000,000.

5.5. Employee dishonesty coverage including coverage for Client's Property with the IDE as Loss Payee. Coverage limits shall not be less than \$_____, or the equivalent. [Risk Management should be consulted as to the limit amount. This insurance is required for any contract with a third-party Contractor that will have state-owned property in their care, custody and control.]

5.6. [Include if the Contractor will have access to IDE's network or access to IDE's data that includes PII or student data.] Information Security/Cyber Liability insurance covering claims resulting from wrongful acts committed in the performance of, or failure to perform, all services under the Agreement, including, without limitation, claims, demands, and any other payments related to electronic or physical security, breaches of confidentiality, and invasion of or breaches of privacy. This coverage is to include Internet media liability including cloud computing and mobile devices, for protection of private or confidential information whether electronic or non-electronic, network security and privacy; privacy against liability for system attacks, digital asset loss, denial or loss of service, introduction, implantation or spread of malicious software code, security breach, unauthorized access and use; including regulatory action expenses; and notification and credit monitoring expenses with at least the following minimum limits: each occurrence - \$3,000,000; network security/privacy liability - \$3,000,000; breach response/notification sublimit - a minimum limit of 50% of the policy aggregate; technology products E&O - \$3,000,000. [These are the limits required for an "average" exposure contracts. Please refer to the IDE Procurement Manual for more details and reach out to the Director of Policy and Procurement with questions.]



6. Contact with Idaho Public School Children [Include if Contractor will have unsupervised contact with students.]

6.1. Background Check. If the Contractor or its employees, agents, or representatives will have unsupervised contact with Idaho public school children when performing any duty required by this Agreement, then the Contractor or its employees, agents, or representatives shall submit to a criminal background check performed pursuant to Idaho Code section 33-130. Said criminal background check results shall be accessible to the IDE prior to performance of this Agreement. Failure of the Contractor or its employees, agents, or representatives to submit to such criminal background check or failure to pass such criminal background check shall constitute a material breach of the Agreement, and the IDE reserves the right to terminate this Agreement without incurring any liability for payment to the Contractor.

6.2. Abuse and Molestation Insurance. If the Contractor or its employees, agents, or representatives will have unsupervised contact with Idaho public school children when performing any duty required by this Agreement, then the Contractor shall obtain and keep in force during the term of the Agreement Abuse and Molestation Insurance in a form and coverage that are satisfactory to the IDE. The policy shall cover any and all claims, suits, or damages arising out of actual, perceived, or threatened physical abuse, mental injury, sexual molestation, negligent hiring, negligent employment, negligent supervision, negligent training, negligent investigation, negligent reporting to proper authorities, and negligent retention of any person for whom the Contractor is responsible.

Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Any annual aggregate limit shall not be less than \$2,000,000. Coverage may be provided by a separate policy or as an endorsement to commercial general liability or professional liability policies. These limits shall be exclusive to this required coverage. Coverage shall include the cost of defense which shall be provided outside the coverage limit.

7. Liability. The Contractor's liability for damages to the IDE for any cause whatsoever may not be limited or capped for the following:

- 7.1. Patent and copyright indemnity required by the Agreement;
- 7.2. Liquidated damages assessed under the Agreement;
- 7.3. Claims for personal injury, including death;
- 7.4. Claims for damage to real property or tangible or intangible property arising from the Contractor's acts or omissions under the contract;



- 7.5. The insurance coverage required by the Agreement;
- 7.6. Damages arising from the gross negligence or willful misconduct of the Contractor, its employees, its subcontractors, or its agents; and,
- 7.7. Government fines and penalties not imposed by the IDE.