

# Idaho State Department of Education



## REQUEST FOR PROPOSAL

### #22-4512 Digital English Learner Language Curricular Program

Date of Issue: August 3, 2021

Date of Closing: August 24, 2021

RFP Lead - Point of Contact:

Kathy Corless, Contracts and Procurement Officer

208-332-6587

[procurement@sde.idaho.gov](mailto:procurement@sde.idaho.gov)

650 W. State Street

P.O. BOX 83720

Boise, Idaho 83720-0027

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## RFP ADMINISTRATIVE INFORMATION

RFP Title:	Digital English Learner Language Curricular Program
RFP Project Description:	An RFP for a Digital English Learner Language Curricular Program for Idaho LEAs for the 2021-2022 school year
RFP Lead:	Kathy Corless, Contracts and Procurement Officer procurement@sde.idaho.gov 208-332-6587
Submitting Manually: Proposals must be received at the physical address prior to the closing date and time.	<u>Address for US Mail:</u> 650 W. State Street PO Box 83720 Boise, Idaho 83720-0027
Submit electronically:	Email: procurement@sde.idaho.gov
Deadline to Receive Written Questions:	August 10, 2021
Answers/Clarifications Issued	August 12, 2021
RFP Closing Date:	August 24, 2021
Notice of Intent to Award	August 31, 2021
Term of Contract:	The term of the agreement is September 1, 2021 – June 30, 2022.

# 1 OVERVIEW

## 1.1. Acronyms and Definitions

**Authorized Purchaser** – K-12 school district synonymous with LEA.

**LEA** – Local Education Agency

**EL** – English Learner

**ELD** – English language development

**Provider** – The one who offers the EL Language Curricular Program, synonymous with contractor and vendor

**RFP** – Request for Proposal

**SDE** – Idaho State Department of Education

**Services** - The duties and obligation accepted by the Provider to carry out requirements, and meet specifications, of this procurement

**WIDA**- A U.S.-based collaborative group of 40-member states, territories and federal agencies. WIDA provides a comprehensive, research-based system of language standards, assessments, professional learning and educator assistance

## 1.2. Purpose

The Idaho State Department of Education (“SDE”) is issuing this Request for Proposal (“RFP”) for digital content for research-based programs to assist with the instruction of students of non-English or limited English proficiency and for learning loss. The result of this RFP will be a price agreement, with multiple companies (“Provider”). The SDE is looking for strategic partners with experience in Idaho schools with a proven background in English language acquisition digital content for K-12 students.

The term of the Agreement is for one year. Idaho K-12 school districts, independent charter schools and LEAs, will apply to the SDE for licenses. The SDE will be the “Authorized Purchaser” to enter in agreement with multiple English language digital content Providers under this agreement.

The program must align to the Idaho ELD standards (<https://www.sde.idaho.gov/federal-programs/el/index.html>)

The program should provide content in the K-12 grade span, but doesn't have to meet all grades. Bidder will be asked to define its programs and grade compatibility. The program must already have been used in the State of Idaho for the prior two school years, 2019/2020 and 2020/2021. This proposal is for one-time funding for the 2021-2022 school year.

# 2 QUESTIONS

## 2.1. Single Point of Contact

The single point of contact for the RFP is identified on the cover page, along with the contact information. Provider shall direct all communications related to any provision of the RFP to the single point of contact.

## 2.2. Questions

2.2.1. This solicitation is issued via the SDE’s Contracting Opportunities website: <https://www.sde.idaho.gov/contracting-opportunities/>. All correspondence must be in writing.

In the event that it becomes necessary to revise any part of this RFP, amendments will be posted

on the SDE's website. It is the responsibility of parties interested in this RFP to monitor this site for any updates or amendments. Any oral interpretations or clarifications of this RFP must not be relied upon. All changes to this RFP will be in writing and posted to the SDE website to be valid.

**2.2.2. Written questions must be submitted using Attachment 1 - Provider Questions, by the date listed in the RFP Administration Information.** Official answers to all written questions will be posted on the SDE website as an amendment to this RFP.

Idaho State Department of Education  
Attn: Kathy Corless  
650 W. State Street  
PO Box 83720  
Boise, Idaho 83720-0027  
E-Mail: [procurement@sde.idaho.gov](mailto:procurement@sde.idaho.gov)

**2.2.3. Proposals that are based upon accepting other terms and conditions not found in the RFP, or which take exception to terms may be found non-responsive, and no further consideration of the Proposal will be given.**

### **3 INSTRUCTIONS FOR SUBMISSION OF PROPOSAL**

#### **3.1. General Instructions**

3.1.1. Proposals may be submitted electronically or manually.

3.1.2. All electronic files (whether submitted electronically or manually) must be in Microsoft Word or Excel format; the only exception is for financials, brochures or other information only available in an alternate format.

#### **3.2. Trade Secrets**

If your Proposal contains trade secret information which you have identified, you must also submit a redacted copy of the Technical Proposal (in electronic format, with the word "redacted" in the file name) with all trade secret information removed or blacked out; as well as a separate document containing a complete list of all trade secret information, as authorized by Idaho Code §74-107, which was removed or blacked out in the redacted copy.

Solicitation Instructions to Providers describes trade secrets to "include a formula, pattern, compilation, program, computer program, device, method, technique or process that derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons and is subject to the efforts that are reasonable under the circumstances to maintain its secrecy." In addition to marking each page of the document with a trade secret notation (as applicable; and as provided in Paragraph 28 of the Solicitation Instructions to Providers), Providers must also:

3.2.1. Identify with particularity the precise text, illustration, or other information contained within each page marked “trade secret” (it is not sufficient to simply mark the entire page). The specific information you deem “trade secret” within each noted page must be highlighted, italicized, identified by asterisks, contained within a text border, or otherwise clearly delineated from other text/information and specifically identified as a “trade secret.”

3.2.2. Provide a separate document entitled “List of Redacted Trade Secret Information” which provides a succinct list of all trade secret information noted in your Proposal; listed in the order it appears in your submittal documents, identified by Page #, Section #/Paragraph #, Title of Section/Paragraph, specific portions of text/illustrations; or in a manner otherwise sufficient to allow the State’s procurement personnel to determine the precise text/material subject to the notation. Additionally, this list must identify with each notation the specific basis for your position that the material be treated as exempt from disclosure and how the exempting the material complies with the Public Records Law.

### **3.3. Electronically Submitted Proposals**

3.3.1. Submit electronic proposals to the RFP lead, Kathy Corless, via email at [procurement@sde.idaho.gov](mailto:procurement@sde.idaho.gov). UPLOAD YOUR PROPOSAL, SEPARATE COST PROPOSAL, AND ALL OTHER REQUIRED SUBMITTAL ITEMS. Remember to submit an additional redacted version of the proposal if you have identified trade secrets.

3.3.2. If submitting via email, be advised that the Provider for Proposal evaluation and award purposes is the entity profile under which the Proposal is submitted via email, which must be the same legal entity presented in the uploaded response materials. If the entity identified on the supplied Signature Page differs from the entity under which you submit your Proposal, the information provided on the Signature Page prevails.

3.3.3. Providers are further advised to upload response materials with descriptive file names, organized and consolidated in a manner that allows evaluators to efficiently navigate the Provider’s response.

### **3.4. Manual Submission**

3.4.1. The Proposal must be addressed to the RFP Lead, sealed, and identified as “**RFP #22-4512 - Digital English Learner Language Curricular Program**”. Include your company name on the outside of the package.

3.4.2. The Cost Proposal should be sealed separately, the entire proposal shall be in a sealed envelope or container. The entire proposal shall be submitted at the same time.

3.4.3. Each Proposal must be submitted in one (1) original with three (3) copies.

3.4.4. Providers submitting manually must also submit one (1) electronic copy of the entire Proposal on CD or USB device. The format and content must be the same as the manually submitted Proposal. The electronic version must NOT be password protected or locked in any way.

3.4.5. The Proposal, minus the cost proposal, must be separately sealed, identified “Proposal – **RFP #22-4512 - Digital English Learner Language Curricular Program**”.

3.4.6. The Cost Proposal must be separately sealed, identified as “Cost Proposal – **RFP #22-4512 Digital English Learner Language Curricular Program**”.

### **3.5. Signature Page Required**

All Proposals must be submitted with the supplied Signature Page. For electronically submitted Proposals, submit a completed, scanned signature page. For manually submitted Proposals, the signature page must contain an **ORIGINAL HANDWRITTEN** signature executed in **INK**.



## 4 PROPOSAL FORMAT

These instructions describe the format to be used when submitting a Proposal. The format is designed to ensure a complete submission of information necessary for an equitable analysis and evaluation of submitted Proposals. **There is no intent to limit the content of Proposals, however we strongly recommend proposals not exceed 30 pages.**

### 4.1. Table of Contents

Include a table of contents in the Scope of Work identifying the contents of each section, including page numbers of major Sections.

### 4.2. Format

Proposals shall follow the numerical order of this RFP starting at the beginning and continuing through the end of the RFP. Proposal sections and Sections must be identified with the corresponding numbers and headings used in this RFP. **In your response, restate the RFP section #, followed with your response.**

Providers are encouraged to use a different color font, bold text, italics, or other indicator to clearly distinguish the RFP section or Section from the Provider's response.

**The SDE reserves the right to waive minor informalities as well as minor deviations. The SDE also reserves the right to seek clarification on any M, MD or PD requirement. See below.**

### 4.3. Evaluation Codes

**(M) Mandatory Response** - failure to respond to any (M) section, or to comply with any mandatory specification or requirement, will render Provider's Proposal non-responsive and no further evaluation will occur.

**(MD) Mandatory and Describe Response** - failure to respond to any (MD) section, or to comply with any mandatory specification or requirement in an (MD) section, will render Provider's Proposal non-responsive and no further evaluation will occur. Provider must respond to these sections as directed; points will be awarded based on predetermined criteria.

**(PD) Preferred Describe** - a response is desired and will be evaluated. If Provider cannot meet the requirement, or chooses not to respond for any reason, zero (0) points will be awarded for the section. If Provider responds, points will be awarded based on predetermined criteria.

## 5 PROPOSAL REVIEW, EVALUATION, AND AWARD

### 5.1. Overview

The objective of the SDE in soliciting and evaluating Proposals is to ensure the selection of several qualified providers. SDE will determine a rank order for each Provider, with the highest score receiving the highest rank, and successive rank order determined by the next highest score.

5.1.1. All Proposals will be reviewed first to ensure that they meet the Mandatory Submission Requirements of the RFP as addressed in Sections noted with an (M) or (MD). Any Proposal(s) not meeting the Mandatory Submission Requirements will be found non-responsive.

### 5.1.2. Evaluation Criteria

#### **Proposal:**

Mandatory Submission Requirements	Pass/Fail
Business Information	<b>50</b>
Functional Requirements	<b>350</b>
<b>Cost Proposal</b>	<b>100</b>
<b>TOTAL POINTS</b>	<b>500 points</b>

### 5.2. Cost Proposal

The Cost Proposal will only be opened and evaluated by the SDE.

### 5.3. Responsibility

The RFP Lead may, at the SDE's sole discretion, require Provider to make available documentation to demonstrate its responsibility. The RFP Lead may request documentation including, but not limited to: credit or financial reports, and references. Failure to provide requested documentation may result in the Provider being deemed non-responsible. Nothing herein shall prevent the SDE from using other means to determine Provider's responsibility.

### 5.4. Award Notification

Award of Price Agreements will be made to the responsive, responsible Providers whose Proposals receives the highest-ranking score(s).

## 6 MANDATORY SUBMISSION REQUIREMENTS

The proposal begins with the mandatory items identified in this list and the following sections. **NOTE: THIS CHECKLIST IS PROVIDED AS A COURTESY ONLY; PROVIDERS ARE RESPONSIBLE FOR SUBMITTING ALL MANDATORY SECTIONS, ATTACHMENTS, SUBMITTAL ITEMS, ETC., REGARDLESS OF WHETHER THEY ARE IDENTIFIED IN THIS LIST.**

- ☐ **(M) Signature Page:** All Proposals must be submitted with the supplied Signature Page. For electronic proposals, scan and complete signature page. For manual proposals, the signature page must contain an original handwritten signature signed in ink. The signature page should be included at the front of the Proposal.
- ☐ **(M) Cover Letter:** Complete, sign, and submit **Attachment #2, Cover Letter**.
- ☐ **Section 7: Business Information.** Provide response to all (M) and (MD) sections, and any other required submittal items.
- ☐ **Section 8: Scope of Work: Attachment #3, Functional Requirements.** Provide response to all (M), (MD) and (PD) sections.
- ☐ **(MD) Cost Proposal:** Provide your cost information on the form provided in **Attachment #4, Cost Proposal**. Submit the Cost Proposal in a separately uploaded file or separately sealed envelope.
- ☐ Redacted copy of Proposal and list of Trade Secret redactions, as detailed in **Section 3.2**.
- ☐ **(M) Acknowledgement of Amendments:** If the RFP is amended, the Provider must acknowledge each amendment with a signature on the acknowledgement form provided with each amendment.

## **7 BUSINESS INFORMATION**

### **7.1. (MD) Business Experience**

Describe in detail your knowledge and experience in providing English language digital programs.

### **7.2. (M) Solution Experience**

The Provider must have a minimum of two (2) years' experience providing the proposed Program in Idaho LEAs as a Solution to be considered for price agreement. Please list which LEAs have been using your program for the past two school years (2019-2020 and 2020-2021 school year).

### **7.3. (M) Solution**

The provider must own the Software as a Solution to be considered for pricing agreement. Provide evidence showing ownership of program.

### **7.4. (MD) Subcontractors and third-party providers**

If you intend to utilize subcontractors and/or third-party providers, describe the extent to which they will be used to comply with Contract requirements.

### **7.5 (MD) Support Services**

Describe your field support personnel who will be providing training and support to LEAs. Include the number of field support personnel, where they are located geographically, and how they will provide support to LEAs (phone, email, virtual meetings, in-person).

## 8 SCOPE OF WORK

**All sections of the Scope of Work are required.**

Attachment #2- Cover Letter

Attachment #3- Functional Requirements

Attachment #4- Cost Proposal

Signature Page

Use the following attachments to detail response to the RFP. Keep in mind, the evaluators will be scoring your Proposal based on the information provided and the completeness of the response to each item.

Describe how you will meet each requirement in the attachments, noting the question number at the beginning of your response.

For all items marked MD or PD a description must be provided.

## ATTACHMENT 1 – PROVIDER QUESTIONS

### RFP #22-4512 Digital English Learner Language Curricular Program

**Instructions:**

DO NOT IDENTIFY YOUR NAME OR YOUR COMPANY’S NAME OR PRODUCT NAMES OF INTELLECTUAL PROPERTY IN YOUR QUESTIONS.

Use the following format when submitting written questions. The e-mail subject line is to state the RFP number followed by “Questions.”

### RFP #22-4512 Digital English Learner Language Curricular Program

Question	RFP Section	RFP Page	Question
1			
2			
3			
4			
5			

## ATTACHMENT 2 – COVER LETTER

### RFP #22-4512 Digital English Learner Language Curricular Program

**(M) Attachment #2, Cover Form must be completed, signed, and submitted with your Proposal.** Failure to complete and submit this form may result in your Proposal being deemed non-responsive.

**Instructions:** The Proposal must include a signed copy of this cover form. You may elect to copy and paste this form onto your company letterhead, or include the following information:

Provider's company name, mailing address, phone number, fax number, e-mail address, and name of Provider's authorized signer. Include the Contract Administrator, Program Manager and any other Key Personnel. The cover letter must include the RFP Number and Title and must be signed by an individual authorized to commit the Provider to the contents of the Proposal.

Requirement	Response
Provider's corporate or other legal entity status	<input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Corporation (LLC) <input type="checkbox"/> Limited Liability Partnership <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Other (specify)
Provider's Tax Identification Number	EIN:
Provider's DUNS Number	DUNS:
Is Provider a legal entity with the legal right to contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Provider accepts and is willing to comply with, the requirements of this RFP and attachments.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is Provider in compliance with applicable equal employment regulations?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Does Provider affirm that it has not employed any company or person other than a bone fide employee working solely for the Provider or a company regularly employed as its marketing agent, to solicit or secure the Contract, and that it has not paid or agreed to pay any company or person, other than a bone fide employee working solely for the Provider or a company regularly employed by the Provider as its marketing agent, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award of the Contract.?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Does Provider understand and agree that for breach or violation of the above term, the State has the right to annul the Contract without liability or, in its discretion, to deduct from the offered price the amount of any such fee, commission, percentage, brokerage fee, gifts, or contingencies.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Does Provider affirm that it is not currently suspended, debarred, or otherwise excluded from federal or state procurement and non-procurement programs? Note: vendor information is available at <a href="https://sam.gov">https://sam.gov</a> .	<input type="checkbox"/> Yes <input type="checkbox"/> No
Does the Provider affirm that the Proposal will be firm and binding for ninety (90) calendar days from the Proposal opening date?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Does Provider warrant that it does not knowingly and willfully employ persons who cannot legally work in this country; and that Provider takes steps to verify that it does not hire persons who have entered our nation illegally or cannot legally work in the United States; and that any misrepresentation in this regard or any employment of persons who have entered our nation illegally or cannot legally work in the United States constitutes a material breach and will be cause for the imposition of monetary penalties up to five percent (5%) of the Contract price, per violation, and/or termination of the Contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Contractor's Legal Business Name	Tax ID#	
Contractor's Authorized Representative's Printed Name	Title	
Signature		Date



## ATTACHMENT 3 – FUNCTIONAL REQUIREMENTS

### RFP #22-4512 Digital English Learner Language Curricular Program

Evaluation Codes: MD and PD	MD - Mandatory Describe (SCORED) - Provider must meet this specification or requirement and must provide a detailed response identifying its understanding how it will comply. Failure to comply with any mandatory specification or requirement may render the proposal non-responsive. Points will be awarded on predetermined criteria.			
	PD - Preferred Describe (SCORED) - Provider response is desired and will be evaluated and scored. If not available, respond with "Not Available". Failure to respond will result in zero (0) points awarded for the specification.			
	NOTE: All questions should have a detailed response, which may include examples and screenshots.			
Question #	Functional Requirement of English Learner Digital Content	MD-Mandatory Describe	PD-Preferred Describe	Provider Description
	Overall System Features and Professional Development: Describe in Detail			
1	Describe how the program aligns to the Idaho ELD (WIDA) standards	X		
2	Outline the provider's experience with K-12 LEAs of various sizes (<300, 1,000, 5,000, +10,000 students)		X	
3	List the LEAs where the program has provided in the past two school years (2019-2020 and 2020-2021)	X		
4	Provide details on how the program has improved student academic outcomes in English language acquisition	X		
5	Detail all available parent resources.		X	
6	Detail all available languages the program supports.	X		
7	Describe how the provider supports LEAs with professional development for implementation and ongoing support	X		
8	Describe how the teacher's interface with the program, including available student progress data and any instructional materials and supports.	X		
9	Describe how the program provides assessments and reporting aligned to Idaho ELD standards.	X		
10	Outline the program's initial placement assessment and the adaptive curriculum model	X		
11	Describe the technology support provided to LEAs	X		

## ATTACHMENT 4 – COST PROPOSAL

### RFP #22-4512 Digital English Learner Language Curricular Program

**(MD) Attachment #4, Cost Proposal must be completed and submitted with your response.** Provide a fully-burdened per license rate which must include, **but not be limited to**, all operating and personnel expenses, such as: overhead, salaries, administrative expenses, travel, profit, and supplies.

The proposal shall be inclusive of technical support, professional development, upgrades and patches as part of the license.

Provide cost per license	\$
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The SDE requests the Provider offer the same terms and pricing of this proposal to all school districts in the State of Idaho regardless of its size. If an Idaho district has a current agreement with the Provider, the Provider will offer best possible Idaho pricing in this RFP and apply it to all current K-12 District contracts.

## **APPENDIX A – IDAHO TERMS AND CONDITIONS**

### **RFP #22-4512 Digital English Learner Language Curricular Program**

#### Idaho Terms and Conditions

If price agreement is awarded, below is a list of standard terms and conditions.

#### 1 TERMS OF PAYMENT

All payments will be made in accordance with Idaho Code § 67-2302, All bills shall be accepted, certified for payment, and paid within sixty (60) calendar days of receipt of invoice.

#### 2 CONTRACT TERM

Any price agreement that may result from this RFP shall be effective upon the signature by both parties and shall remain in force until June 30, 2022, or until terminated by the SDE, whichever occurs first.

#### 3 TERMINATION

SDE shall not pay, and shall have no obligation to pay, for any services rendered prior to the effective date of this Agreement. The SDE may terminate this Agreement at any time with or without cause upon ten (10) days of notice to Contractor, specifying the date of termination. Upon termination pursuant to this section, all obligations of the parties shall cease and the Contractor will be entitled to a pro rata payment for all work accomplished and accepted by the SDE.

#### 4 CONFIDENTIALITY

Any and all reports, analyses and data, whether statistical or otherwise, transmitted to the SDE by Contractor shall become the property of the SDE for such uses as SDE shall deem appropriate and shall not be disclosed to any person without prior written consent of the SDE. In addition, except as may be required by applicable law or in any governmental or judicial proceeding or inquiry, and then only upon timely notice to the SDE, Contractor shall maintain strict confidence with respect to the SDE and all of its services under this Agreement. The SDE may require that Contractor's officers, employees, agents or subcontractors agree in writing to the obligations contained in this section. This obligation shall survive termination of this Agreement.

#### 5 INTELLECTUAL PROPERTY AND OWNERSHIP OF MATERIALS

SDE shall retain all ownership rights in any information or materials provided to the Contractor by the SDE for purposes of this Agreement. Additionally, subject to any interests of the United States, all documents, reports, memoranda, summaries, presentations, surveys, and any other materials of any kind created by Contractor pursuant to this Agreement ("Intellectual Property") shall be the exclusive property of the SDE and shall not be disclosed by Contractor to any third party without the prior, written consent of SDE. To the extent that any Intellectual Property

constitutes a “work” within the meaning of the U.S. Copyright Law, 17 U.S.C. § 101, et seq., it shall be a “work for hire.” Provided, however, that in the event the Intellectual Property is not a “work for hire”, the Contractor hereby assigns to the SDE all the Contractor’s rights of copyright in the Intellectual Property.

## 6 CONTRACTOR’S PERFORMANCE

All work done by the Contractor shall be of the highest professional standard and shall be performed to the SDE's reasonable satisfaction. The detailed manner and method of performing the work is under the control of Contractor, with the SDE being interested only in the results obtained. The SDE and Contractor agree that the Contractor is an "Independent Contractor" as defined by law as to all work performed under this Agreement.

Contractor while operating under this agreement, including trainings, meetings with educators and SDE employees shall provide information, guidance, recommendations and such that pertain only to the solution. Contractor shall not use the agreement or any meetings, training or conference calls related to the contract to market other software, products, or services. The Contractor acknowledges and understands that violation of this section may be considered a breach of contract.

## 7 CONTRACTOR’S STATUS

The Contractor's status under this Agreement shall be that of an Independent Contractor, and not that of an agent or employee. The Contractor shall be responsible for paying all employment-related taxes and benefits, such as federal and state income tax withholding, social security contributions, worker’s compensation and unemployment insurance premiums, health and life insurance premiums, pension contributions and similar items. The Contractor shall indemnify the SDE and State of Idaho and hold them harmless from any and all claims for taxes (including, but not limited to, social security taxes), penalties, attorney’s fees and costs that may be made or assessed against the SDE or State of Idaho arising out of the Contractor’s failure to pay such taxes, fees or contributions. The Contractor warrants and represents that the Contractor has complied and will comply with all federal, state and local laws regarding business permits and licenses that may be required for the Contractor to perform the work as set forth in this Agreement.

## 8 REIMBURSEMENT OF EXPENSES

SDE shall not be liable to the Contractor for any expenses paid or incurred by the Contractor unless otherwise agreed to in writing by the SDE.

## 9 EQUIPMENT, TOOLS, MATERIALS, OR SUPPLIES

Contractor shall supply, at its sole expense, all equipment, tools, materials or supplies to accomplish the work to be performed.

## 10 FRINGE BENEFITS

Contractor is engaged in a contracting business, the Contractor is not eligible for, nor entitled to, and shall not participate in, any of the SDE's or the State of Idaho's pension, health or fringe benefit plans.

## 11 INDEMNIFICATION

Contractor shall indemnify, defend, and save harmless the State, its officers, agents, employees, and volunteers from and against any and all liability, claims, damages, losses, expenses, actions, settlements, attorneys' fees, and suits whatsoever caused by, arising out of, or in connection with Contractor's acts or omissions under this Agreement or Contractor's failure to comply with any state or federal statute, law, regulation, or rule.

Upon receipt of the State's tender of indemnity and defense, Contractor shall immediately take all reasonable actions necessary, including, but not limited to, providing a legal defense for the State, to begin fulfilling its obligation to indemnify, defend, and save harmless the State.

Contractor's indemnification and defense liabilities described herein shall apply regardless of any allegations that a claim or suit is attributable in whole or in part to any act or omission of the State under this Agreement. However, if it is determined by a final judgment that the State's negligent act or omission is the sole proximate cause of a suit or claim, the State shall not be entitled to indemnification from Contractor with respect to such suit or claim, and the State, in its discretion, may reimburse Contractor for reasonable defense costs attributable to the defense provided by any Special Deputy Attorney General appointed pursuant to Idaho Code Section 12.123 (3).

Any legal defense provided by Contractor to the State under this section must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the Attorney General of the State of Idaho as a Special Deputy Attorney General pursuant to Idaho Code Sections 67-1401(13) and 67-1409(1).

## 12 EFFECT OF TERMINATION

Upon termination by the SDE, the Contractor shall: (a) promptly discontinue all work, unless the termination notice directs otherwise; (b) promptly return to the SDE any property provided by the SDE pursuant to this Agreement; and (c) deliver or otherwise make available to the SDE all data, reports, estimates, summaries and such other information and materials as may have been prepared or accumulated by the Contractor in performing this Agreement, whether completed

or in process. Upon termination by the SDE, the SDE may take over the work and may award another party a contract to complete the work contemplated by this Agreement.

## 13 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. Either party may change its address by giving notice of the change in accordance with this paragraph.

## 14 NO AUTHORITY TO BIND SDE

The Contractor has no authority to enter into contracts or agreements on behalf of the SDE. This Agreement does not create a partnership between the parties and nothing contained in this Agreement shall be interpreted to create an employer-employee, master-servant, or principal-agent relationship between the SDE and Contractor in any respect.

## 15 RECORDS AND AUDITS

The Contractor shall maintain a complete file of all records, documents, communications and other written materials that pertain to the delivery of goods or services under this Agreement and shall maintain such records for a period of three (3) years after termination of this Agreement or final payment, whichever is later, or for such further period as may be necessary to resolve any matters that may be pending.

The Contractor shall permit the SDE or any duly authorized agent of the SDE, the Comptroller General and/or the Inspector General of any federal agency to audit, inspect, examine, excerpt, copy or transcribe the Contractor's records during the term of this Agreement and for a period of three (3) years following termination of this Agreement or final payment, whichever is later, to assure compliance with the terms of this Agreement or to evaluate Contractor's performance under this Agreement. The Contractor shall also permit the SDE, the Comptroller General and/or the Inspector General of any federal agency or its agent to monitor all activities conducted by it pursuant to this Agreement. As the monitoring agency may determine in its sole discretion, such monitoring may include internal evaluation procedures, examination of data, special analyses, on-site checks or other reasonable procedures. 34 CFR Part 80.

## 16 ASSIGNMENT

The Contractor may not assign this Agreement without the prior written permission of the SDE.

## 17 WAIVER

The waiver by either party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

## 18 MODIFICATION

No change, modification, or waiver of any term of this Agreement shall be valid unless it is in writing and signed by both the SDE and the Contractor.

## 19 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements or understandings between the SDE and the Contractor. This Agreement may not be modified without the written consent of the parties.

## 20 ATTORNEYS' FEES

In the event a lawsuit of any kind is instituted under this Agreement or to obtain performance of any kind under this Agreement, the prevailing party shall be awarded such additional sums as the court may adjudge for reasonable attorneys' fees and to pay all costs and disbursements incurred therein.

## 21 APPLICABLE LAW

This Agreement shall be governed by, construed, and enforced in accordance with, the laws of Idaho without regard to its conflicts of law principles. This Agreement shall be governed by and construed under the laws of the State of Idaho and the parties hereto consent to the jurisdiction of the state courts of Ada County in the State of Idaho in the event of any dispute with respect to this Agreement.

## 22 LEGAL COMPLIANCE

The Contractor agrees to comply with all applicable requirements of federal and state statutes, rules, and regulations.

## 23 SUFFICIENT FUNDING

This Agreement is federally funded. It is understood and agreed that the SDE is a governmental entity, and this Agreement shall in no way be construed so as to bind the SDE or the State of Idaho beyond the term of any particular appropriation or award of funds by the United States Congress, United States Department of Education, United States Department of Agriculture, or any other federal agency or entity, as may exist from time to time, or beyond the term of any particular approval of spending authority of federal funds by the Legislature or Executive Department of the State of Idaho, as may exist from time to time. The SDE reserves the right to terminate this Agreement if, in its sole judgment, the United States Congress, United States Department of Education, United States Department of Agriculture, or other applicable federal agency or entity, withdraws or freezes the SDE's federal funding or fails, neglects, or refuses to

appropriate or provide sufficient funds, including any sequestration of funds pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 (Pub. Law 99-177, Title II) and/or the Budget Control Act of 2011 (Pub. Law 112-25), as may be required to continue payments under this Agreement. The SDE further reserves the right to terminate this Agreement if, in its sole judgment, the Legislature or Executive Department of the State of Idaho withdraws or freezes the SDE's spending authority regarding the federal funds required to continue payments under this Agreement. Any such termination shall take effect on ten (10) days written notice to the Contractor.

## 24 OFFICIALS, AGENTS AND EMPLOYEES OF SDE NOT PERSONALLY LIABLE

The Parties agree that in no event shall any official, officer, employee or agent of the SDE or State of Idaho be in any way liable or responsible for any covenant or agreement, whether expressed or implied, nor for any statement, representation or warranty made in or in connection with this Agreement. In particular, and without limitation of the foregoing, no full-time or part-time agent or employee of the SDE shall have any personal liability or responsibility under this Agreement, and the sole responsibility and liability for the performance of this Agreement and all of the provisions and covenants contained in this Agreement shall rest in and be vested with the State of Idaho.

## 25 FORCE MAJEURE

Neither party to this Agreement shall be liable for or deemed to be in default for any delay or failure to perform under this Agreement if such delay or failure to perform results from act of God, civil or military authority, act of war, riot, insurrection or other occurrence beyond that party's control. In such case, the intervening cause must not be caused by the party asserting it and the excused party is obligated to promptly perform in accordance with the terms of this Agreement after the intervening cause ceases.

## 26 CRIMINAL BACKGROUND CHECK

This Agreement is contingent upon Contractor, its employees, agents or representatives, that may come into contact with Idaho public school children when performing any duty required by this contract, submit to a criminal background check. Contractor, its employees, agents or representative shall bear the cost of the criminal background check. Said criminal background check results shall be submitted to the SDE prior to performance of this contract. Failure of the Contractor, its employees, agents or representatives to submit to a criminal background or failure to pass a criminal background check shall constitute a material breach of the Agreement and the SDE reserves the right to terminate this contract without incurring any liability for payment to Contractor.



## 27 KICKBACKS

Contractor certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this agreement, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this agreement. If the Contractor breaches or violates this warranty, Agency may, at its discretion, terminate this agreement without liability to Agency, or deduct from the agreed upon price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

## 28 ASSUMPTION OF RISK

The Contractor shall assume the risk of any loss of state or federal funding, either administrative or program dollars, due to its failure to comply with state or federal requirements. The SDE shall notify the Contractor of any state or federal determination of noncompliance.

## 29 PUBLICITY

Any publicity given to the program or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for Contractor and related to the services and work to be performed under this agreement, shall identify the Idaho State Department of Education as the sponsoring agency and shall not be released without prior written approval of SDE.

## 30 SUSPENSION AND DEBARMENT

By signing this agreement, the Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction nor from federal financial or non-financial assistance, nor are any of the participants involved in the execution of this agreement suspended, debarred, or voluntarily excluded by any federal department or agency in accordance with Executive Order 12549 (Debarment and Suspension) and 34 CFR Part 85, or are on the disbarred vendors list at [www.epls.gov](http://www.epls.gov). Further, the Contractor agrees to notify Agency by certified mail should it or any of its agents become debarred, suspended, or voluntarily excluded during the term of this agreement.

## 31 NONDISCRIMINATION

The Contractor shall comply with the Civil Rights Act of 1964, the Americans With Disabilities Act (ADA), 42 U.S.C. § 12101, et seq., and the Age Discrimination Act of 1975 and/or any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin, or disability in connection with the performance under this agreement.

## 32 LIMITATIONS ON LOBBYING ACTIVITIES

By signing this agreement, the Contractor certifies and agrees that, in accordance with 34 CFR Part 82, payments made from a federal grant shall not be utilized by the Contractor or its subcontractors in connection with lobbying Congressmen, or any other federal agency in connection with the award of a federal grant, contract, cooperative agreement, or loan.

## 33 COPYRIGHT LICENSE AND PATENT RIGHTS

The Contractor acknowledges in 34 CFR Part 80 that U.S. Department of Education, the State of Idaho, and the SDE reserve a royalty-free, non-exclusive, unlimited, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal and state government purposes: (1) the copyright in any work developed under this agreement; and (2) any rights of copyright to which the Contractor purchases ownership using funds awarded under this agreement. The Contractor must consult with the SDE regarding any patent rights that arise from, or are purchased with, funds awarded under this agreement.

## 34 HUMAN TRAFFICKING

As required by 22 U.S.C. 7104(g) and 2 C.F.R. Part 175, this agreement may be terminated without penalty if a private entity that receives funds under this agreement: (a) Engages in severe forms of trafficking in persons during the period of time that the award is in effect; (b) Procures a commercial sex act during the period of time that the agreement is in effect; or (c) Uses forced labor in the performance of the agreement.

## 35 DATA RIGHTS

The Contractor grants to the SDE the right to use data created in the performance of this Agreement solely for the purpose of and only to the extent required to meet the SDE's obligations to the Federal Government under its Prime Award. SDE shall retain all ownership rights in any data or information provided to the Contractor by the SDE for purposes of this Agreement.

## 36 COMPLIANCE WITH STATUTES, REGULATIONS, AND APPLICATIONS

The contractor shall comply with applicable Federal and state statutes, regulations, and shall use Federal funds in accordance with those statutes, regulations, and federal program specific requirements.

## 37 PROHIBITION OF TEXT MESSAGING AND EMAILING WHILE DRIVING

Federal grant recipients, sub recipients and their grant personnel are prohibited from text messaging while driving a government owned vehicle during official grant business or from using government supplied electronic equipment to text or email when driving. Recipients must comply with these conditions under Executive Order 13513, October 1, 2009.

## 38 SECURITY OF STUDENT DATA

- 38.1. The Contractor acknowledges that data received, transmitted, or originating under this Agreement may contain confidential, personally identifiable student data subject to The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99), the Idaho Student Data Accessibility, Transparency and Accountability Act of 2014 ("Idaho Student Data Act"), Idaho Code 33-133, or other privacy laws, and that disclosure to or use by third parties would be damaging and is expressly prohibited under this Agreement without the prior written permission of the SDE. Any such student data shall be used only for purposes of this Agreement, and any other uses of such student data not specifically set forth in this Agreement are strictly prohibited.
- 38.2. In addition to those definitions provided in FERPA (20 U.S.C. § 1232g; 34 CFR Part 99), and any other applicable state or federal law, and pursuant to the Idaho Student Data Act, Idaho Code 33-133, "Student data" shall mean data collected and/or reported at the individual student level, and shall include, but not be limited to, (1) state and national assessment results, including information on untested public school students; (2) course taking and completion, credits earned and other transcript information; (3) course grades and grade point average; (4) date of birth, grade level and expected graduation date/graduation cohort; (5) degree, diploma, credential attainment and other school exit information such as general educational development and drop-out data; (6) attendance and mobility; (7) data required to calculate the federal four (4) year adjusted secondary cohort graduation rate, including sufficient exit information; (8) discipline reports limited to objective information sufficient to produce the federal annual incident reports, children with disabilities disciplinary reports and discipline reports including students involved with firearms; (9) remediation; (10) special education data; (11) demographic data and program participation information; and (12) files, documents, images or data containing a student's educational record that are stored in or transmitted through a cloud computing service.
- 38.3. The contractor agrees to hold any such student data in the strictest confidence, not to make use thereof other than for the performance of this Agreement, to release it only to authorized employees and agents requiring such information, and shall not release or disclose it to any other party. The Contractor shall immediately (within twelve hours) notify the SDE of any known or reasonably suspected unauthorized disclosures of student data. The Contractor shall also ensure that all subcontractor agreements specifically include the provisions of this section.
- 38.4. The Contractor shall have a detailed data security plan that includes, (1) guidelines for authorizing access to the student data system and to individual student data including guidelines for authentication of authorized access; (2) guidelines relating to administrative safeguards providing for the security of electronic and physical data; such guidelines should

include provisions relating to data encryption as well as staff training to better ensure the safety and security of data, (3) privacy compliance standards; (4) privacy and security audits; (5) breach planning, notification and procedures (6) data retention and disposition policies.

- 38.5. At the conclusion of the Agreement, the Contractor shall transfer to the SDE any student data in its possession, custody, or control obtained or created pursuant to this Agreement. No later than thirty days following the conclusions of this Agreement, provided the Contractor has transferred to the SDE all students' data in its possession, custody, or control obtained or created pursuant to this Agreement, the Contractors shall destroy all copies of any such student data in its possession, custody, or control and provide written notice to the SDE describing the student data destroyed, date of destruction and method of destruction.
- 38.6. The Contractor acknowledges and understand that any violations of this section regarding security of student data, in addition to constituting a breach of the Agreement, may subject the Contractor to a civil penalty under the terms of the Idaho Student Data Act.

## 39 INSURANCE REQUIREMENTS

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 this Agreement until satisfactory evidence of all required insurance is provided to the state.

### 39.1 Insurance Endorsements

All insurance, except for Workers Compensation, and Professional Liability/Errors and Omissions shall be endorsed to name the State of Idaho as Additional Insured. A certified copy of the endorsement, or complete policy containing the endorsement, shall be provided to the state prior to the commencement of work.

### 39.2 Insurance Details.

All insurance shall be with insurers rated A-, VII, or better in the latest Bests 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.

If any of the liability insurance required for this agreement is arranged on a "claims-made" basis, "tail coverage" will be required at the completion or termination of this 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 this agreement or twenty-four-months "prior acts" coverage is provided. Contractor will be responsible for furnishing certification of "tail coverage" or continuous "claims-made" coverage.

## 40 INSURANCE TYPES

By requiring insurance herein, the state 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. Contractor shall maintain insurance in amounts not less than the following:

- 40.1. 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, \$500,000 Bodily Injury by Disease-policy limit.

Because Contractor is engaged in an independent contracting business and is not an employee of SDE, SDE will not obtain workers compensation insurance for Contractor or Contractor's employees. Contractor agrees to obtain worker's compensation coverage as required by law for the Contractor and the Contractor's employees and to furnish a copy of the Contractor's certificate of workers compensation insurance to the SDE upon the SDE's demand.

- 40.2. 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.

- 40.3. Cyber Risk Insurance - Information Security/Cyber Liability Insurance written on a "claims-made" basis covering Vendor, supplier, its employees, subcontractors and agents for expenses, claims and losses resulting from wrongful acts committed in the performance of, or failure to perform, all services under this Agreement, including, without limitation, claims, demand and any other payments related to electronic or physical security, breaches of confidentiality and invasion of or breaches of privacy.

Information Security/Cyber Liability Insurance 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 minimum limits listed below.

- 40.3.1. Cyber Risk Limits with a limit of not less than \$2,000,000 each occurrence, and \$2,000,000 for Network Security and Privacy Liability. A minimum limit of 50% of the policy aggregate dedicated for Breach Response and Notification Sublimit.

Technology Products E&O with a limit of not less than \$2,000,000 if Vendors supplying technology related services and or products.

The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the contract of work. If coverage is canceled and non-renewed, and not replaced with another claims-made policy form with Retroactive Date prior to the contract effective date, the Vendor must purchase “extended reporting” coverage for a minimum of five years after completion of contract work.

## 41 COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same agreement. Electronic, facsimile, scanned, or photocopied signatures shall be deemed original signatures.

## **APPENDIX B – SECURITY OF STUDENT DATA**

### **RFP #22-4512 Digital English Learner Language Curricular Program**

#### **Security of Student Data**

The Contractor acknowledges that data received, transmitted, or originating under this Agreement may contain confidential, personally identifiable student data subject to the federal Family Educational Rights and Privacy Act (FERPA), the Idaho Student Data Accessibility, Transparency and Accountability Act of 2014 ("Idaho Student Data Act"), or other privacy laws, and that disclosure to or use by third parties would be damaging and is expressly prohibited under this Agreement without the prior written permission of the Authorized Purchaser. Any such student data shall be used only for purposes of this Agreement, and any other uses of such student data not specifically set forth in this Agreement are strictly prohibited.

In addition to those definitions provided in FERPA, and any other applicable state or federal law, and pursuant to the Idaho Student Data Act, "Student data" shall mean data collected and/or reported at the individual student level, and shall include, but not be limited to, (1) state and national assessment results, including information on untested public school students; (2) course taking and completion, credits earned and other transcript information; (3) course grades and grade point average; (4) date of birth, grade level and expected graduation date/graduation cohort; (5) degree, diploma, credential attainment and other school exit information such as general educational development and drop-out data; (6) attendance and mobility; (7) data required to calculate the federal four (4) year adjusted secondary cohort graduation rate, including sufficient exit information; (8) discipline reports limited to objective information sufficient to produce the federal annual incident reports, children with disabilities disciplinary reports and discipline reports including students involved with firearms; (9) remediation; (10) special education data; (11) demographic data and program participation information; and (12) files, documents, images or data containing a student's educational record that are stored in or transmitted through a cloud computing service.

The Contractor agrees to hold any such student data in strictest confidence, not to make use thereof other than for the performance of this Agreement, to release it only to authorized employees and agents requiring such information, and shall not release or disclose it to any other party without the prior written consent of the Authorized Purchaser. The Contractor shall immediately (within twelve (12) hours) notify the Authorized Purchaser of any known or reasonably suspected unauthorized disclosures of student data. The Contractor shall also ensure that all subcontractor agreements specifically include the provisions of this section.

At the conclusion of this Agreement, the Contractor shall transfer to the Authorized Purchaser any student data in its possession, custody, or control obtained or created pursuant to this Agreement. No later than thirty (30) days following the conclusion of this Agreement, provided the Contractor has transferred to the Authorized Purchaser all student data in its possession, custody, or control obtained or created pursuant to this Agreement, the Contractor shall destroy all copies of any such student data in its possession, custody, or control and provide written notice to the Authorized Purchaser describing the student data destroyed, date of destruction, and method of destruction.

The Contractor acknowledges and understands that any violation of this section regarding security of student data, in addition to constituting a breach of this Agreement, may subject the Contractor to a civil penalty under the terms of the Idaho Student Data Act.