

**PHYSICAL THERAPY INVITATION FOR BID  
PART ONE  
INTRODUCTION**

**1. GENERAL INFORMATION:**

1.1 The State of Missouri, Department of Elementary and Secondary Education, Missouri Schools for the Severely Disabled (MSSD), are seeking bids for therapy services as described in this document, known as an Invitation for Bid (IFB).

1.2 This document is divided into the following parts:

- 1.2.1 Part One-Introduction
- 1.2.2 Part Two-Scope of Work
- 1.2.3 Part Three-General Contractual Requirements
- 1.2.4 Part Four-Bid Submission Information
- 1.2.5 Part Five-Exhibits and Attachments

1.3 LOCATION OF SERVICES: School addresses located on Exhibit A Pricing Page of this IFB or home addresses as assigned for homebound programs.

**2. BACKGROUND INFORMATION:**

2.1 MISSOURI DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION  
MISSOURI SCHOOLS FOR THE SEVERELY DISABLED  
FACT SHEET

**GENERAL INFORMATION:**

The MSSD is a statewide public school system that serves Missouri's students with severe disabilities. Established by state law in 1957, the MSSD serve children and youth between the ages of 5 and 21. These schools are administered by the State Board of Education, through the Office of Special Education. The MSSD system is supported primarily by funds appropriated each year by the Missouri Legislature. The MSSD central office and the superintendent, along with other supervisory staff, are headquartered in Jefferson City. Regional offices are located in Sedalia, St. Louis and Springfield. Area directors work with the schools located in their catchment area. The MSSD serve about 832 students throughout the state. Students are referred to a MSSD location when a local school district is unable to meet a student's educational needs.

**WHO IS SERVED?**

Generally, students enrolled in the MSSD schools are students who according to an appropriate measurement of intelligence fall four or more standard deviations below the mean and/or their adaptive behavior rating indicates the need for pervasive supports. Educationally, students at MSSD function in the severe to profound range of mental retardation. Many of the students have multiple disabilities.

**INSTRUCTIONAL STAFF:**

The MSSD employ approximately 120 classroom teachers throughout the state. All are certificated to teach severely disabled or developmentally delayed students. Teachers normally work with six to nine students. All classrooms in the schools have at least one full-time paraprofessional assigned to assist the teachers and students. The program strives for an adult to student ratio of less than one to three. The MSSD employ 18 physical education teachers and one

speech and language teacher. These teachers may work in one school or travel to several schools, depending on the size of the schools. Occupational, physical, and speech therapists are provided on a contractual basis, depending on the needs of each school. The MSSD employ 23 registered nurses. Larger schools have a full-time nurse assigned; smaller schools provide nursing services on a scheduled basis. There are seven instructional specialists who work with MSSD personnel across the state to plan and improve the instructional program. These specialists are available to assist teachers and other staff members in their assigned catchment areas.

**FACILITIES:**

Of the 34 MSSD locations operating during 2015-2016, 28 are located in state-owned buildings. These schools have been specifically designed and built to accommodate the MSSD instructional program. These facilities range in size from one to 12 classrooms. The MSSD provide a six-hour instructional program each day; no residential services are provided. Most MSSD students live with their natural or foster parents and are transported by bus to and from school each day.

**CURRICULUM:**

The MSSD provide a full range of instructional services designated to promote essential life skills and functioning of each student. An Individualized Education Plan (IEP) is prepared for each child. The curriculum emphasizes the following areas:

- Fine Arts
- Science
- Mathematics
- Communication Arts
- Social Studies
- Health/Physical Education

MSSD staff use an integrated approach to teaching and other services. As much as possible, therapies are integrated into the classroom IEP related instructional activities. This approach allows all members of the professional team (teachers, therapists, nurses, etc.) to exchange information and training so that all services are integrated into the classroom instructional program daily.

**PART TWO**  
**SCOPE OF WORK**

**1. REQUIREMENTS FOR THERAPISTS:**

1.1 The contractor shall provide a Missouri registered physical therapist in compliance with Chapter 334, Revised Missouri Statutes (RSMo) in good standing throughout the contract period to provide physical therapy services and coordinate these services for the assigned MSSD school in conjunction with the school administration, staff, student Individualized Education Programs (IEPs) and the IFB specifications. The contractor may not use someone with provisional licensure. Certificated physical therapist assistants (PTAs) or aides may only be used to provide services under this contract when the contractor and alternate providers are unable to locate a registered physical therapist to cover the contract. Approval to use a PTA must be given by the MSSD business manager prior to using the PTA to fulfill the contract. MSSD will expect a reduced unit price to be payable while contract services are provided by a PTA. The reduced price shall be mutually agreed upon between the contractor and the MSSD business manager. The contractor shall further agree and understand that utilizing a non-registered physical therapist, or a PTA or therapist aide to provide services under this contract without the prior approval of the MSSD business manager may result in the immediate termination of the contract at the option of the MSSD Superintendent.

1.2 In accordance with the State Board of Education regulations, any person who has actual or potential direct physical contact with students under the contract must undergo a "Criminal Record/Child Abuse and Neglect" screening through the Missouri Highway Patrol (MHP) and the Department of Social Services, Division of Children's Services and Division of Senior and Disability Services. This requirement applies to all contractors and therapists provided by the contractor, regardless of length of employment or subcontracting with the contractor, who have actual or potential direct physical contact with students. Any negative findings resulting from the screening or background check will be cause for the MSSD to reject that individual from providing services under this contract.

The background check will be initiated when the successful contractor has been awarded the contract. Service providers will complete and return the Request for Child Abuse or Neglect/Criminal Record, the Authorization to Conduct a Background Check-Contract Service Provider, and Request for Criminal Record Check to the MSSD Central Office prior to the start of service. However, therapists may begin providing services under this contract prior to the receipt of the results.

MSSD will continue to provide these required background checks to the contractor at no charge until such time as the reporting agencies require payment from MSSD for these services.

1.2.1 In accordance with the State Board of Education regulations, any person who has actual or potential direct physical contact with students must undergo a finger print check through the FBI. There will be a fee charged for this service by the checking agency. This fee will be paid by the therapy provider. MSSD will not pay this fee. Any therapists who have worked in the MSSD since the implementation of this regulation are exempt from this regulation. However, any new therapist placed in the MSSD schools will be required to present certification of a clean record from the finger print check. Therapists must attend their FBI fingerprint appointment prior to the start of service. However, therapists may begin providing service under this contract prior to the receipt of the results

- 1.3 All therapists employed by the contractor to provide services in the MSSD shall enroll with MO HealthNet Division as performing providers if not already enrolled. Therapists are responsible for maintaining active enrollment with MO HealthNet. Any therapists failing to obtain and maintain active enrollment with MO HealthNet may be determined ineligible for providing services under this contract. The contractor is responsible for notifying MSSD whenever a therapist providing services under the contract has been denied enrollment with MO HealthNet or has had an existing enrollment with MO HealthNet terminated. The contractor agrees that any reimbursements from MO HealthNet for services provided and paid under this contract are the property of the MSSD. In addition, the contractor agrees to accept payment from the MSSD as full payment for services rendered and agrees not to seek reimbursement from MO HealthNet, private insurance companies, or any other healthcare agents for services provided under this contract.
- 1.4 The contractor shall provide to the MSSD copies of required certifications/registrations, resumes/vitae, and documentation of insurance coverage for all contracting therapists. It is the responsibility of the contractor to keep updated license and insurance documentation on file with the MSSD business manager. The contractor shall notify the MSSD business manager whenever a therapist providing services under the contract has a license or certification revoked or any disciplinary action is taken against the therapist by the relevant board or licensing authority.

## **2. SERVICES TO BE PROVIDED BY THERAPISTS**

- 2.1 The contractor shall provide services at the assigned MSSD school on an as needed, if needed, basis. (Homebound services will be provided in the student's home, unless otherwise designated, on an as needed, if needed, basis.)
- 2.2 Students are present at the school from 9:00 a.m. to 3:00 p.m. The contractor shall agree and understand that the times and days on which the contractor provides services should be at the sole discretion of the MSSD. In-school services must be provided within the school calendar on the days of Monday - Friday. Homebound services may be provided outside the above designated times if necessary and by mutual agreement between the school staff, the contracted therapist and the student's parents or guardians. The contractor's therapist shall provide therapy schedules to MSSD teachers for coordination of activities.
- 2.3 The contractor shall provide services for MSSD students as required by the student's IEP and approved by the building administrator. The contracting therapist is responsible for providing services to only those students approved for such services on their IEPs. Documentation of the related services on the IEP must be in place before a student is approved for services and assigned to the contracting therapist's caseload.
- 2.4 The contractor's therapist is responsible for ensuring that a Therapy Authorization form or a doctor's prescription form is available for each student receiving direct physical therapy. The Therapy Authorization form (7-760-584) must be signed and dated by a licensed physician. The authorization or prescription should outline in detail the exact number of minutes and frequency of physical therapy to be provided to the student under the terms of the student's current IEP. Under MSSD policy a new therapy authorization form is required whenever a new IEP is written for a student; a revised authorization is required if there are any amendments in the IEP that increase the duration and/or frequency of any therapy. Any doctor's order ceases to be recognized by MSSD as authorizing the provision of therapy when the new IEP cycle begins and the contractor's therapist must not provide physical therapy services to

the student until the therapist has seen a new authorization form. The contractor shall not be reimbursed for any physical therapy units provided to students with expired therapy authorization forms or prescriptions.

- 2.5 Direct services to students shall be provided through the integrated therapy approach.
- 2.6 All direct services shall be provided on an individual basis unless the IEP specifies or the building administrator requests group services for the student. The contractor does not determine when group services are to be provided.
- 2.7 The contractor's therapist shall:
  - 2.7.1 Provide direct physical therapy to the student if stated as a required service to support the student in achieving IEP goals and benchmarks. Data on the student's progress must be collected and shared when requested by the classroom teacher or other MSSD staff. The therapy provided shall be limited to the amount of time required under the IEP.
  - 2.7.2 Provide consultation with classroom staff and other MSSD personnel to collaborate on supporting the student in achievement of IEP goals. These consultations must be required under the student's IEP and are limited to the IEP time specified. The therapist may demonstrate techniques with the student to the classroom teacher during consultation.
  - 2.7.3 Write present level information for the student's IEP, progress notes and/ or suggestions on future IEP goals/benchmarks. These items must be requested by the classroom teacher. Therapists will be reimbursed for a reasonable amount of time for creating and providing this information. Claims for excessive time may be investigated by MSSD Central Office and full payment refused by MSSD Central Office if unsupported by the written information provided to the classroom teacher.
  - 2.7.4 Offer additional services when approved in advance in writing by the MSSD school's building administrator, teacher-in-charge, contact teacher, area director or MSSD Central Office professional staff. These services shall include but are not limited to:
    - 2.7.4.1 Consultations between therapist and other therapists/ consultants and/or other MSSD staff. Such consultations are additional to any required consultations required by the student's IEP.
    - 2.7.4.2 The preparation and provision of trainings for MSSD staff, including the creation of PowerPoints and any training materials.
    - 2.7.4.3 The development of adapted items to be used by the student or the provision of materials to assist the classroom staff in supporting the student during the therapist's absence.
    - 2.7.4.4 Attendance at staffing and/or IEP meetings at the request of the building administrator.
  - 2.7.5 Have an email address. The therapist shall check the email account regularly for notices and messages sent on behalf of the MSSD. Therapists/ consultants shall notify the MSSD business office as soon as there is a change in the email address.
  - 2.7.6 Undergo periodic training at the request of MSSD. Trainings may be offered at designated locations and/or online in group or one-on-one presentations and may be offered at specific times with a live presenter and/or be available for viewing in a recorded version. Trainings may be provided by MSSD or other entities.

- 2.7.7 Complete and correct all School District Administrative Claiming (SDAC) random moment sampling surveys when required by the MSSD. The surveys may be completed in paper format, by email or by using an online program or any other format required by MSSD.
  - 2.7.8 Fully complete the therapy Record Form or its replacement and any additional methods of recording therapy units. All forms, software, programs and other recording methods adopted by the MSSD must be completed in accordance with the current instructions, including deadlines for reporting information. MSSD reserves the right to alter the acceptable method(s) for recording the therapy sessions at any time during the period of this contract and to require that more than one method of recording the sessions shall be completed.
- 2.8 The contractor and any therapist provided by the contractor shall not disclose any information concerning a student for any purpose not directly connected with the administration of the contract. All confidentiality guidelines set forth by the MSSD shall apply to this agreement. Therapists are limited to discussing the student with other members of the instructional team, at staffing and IEP meetings to which the therapist has been invited and, in a professional capacity, with the therapist's supervisor, if any. Therapists shall not discuss the student's progress or other concerns with the student's parents unless the school's building administrator is present during the discussion. Therapists may speak to the parents in the student's IEP meeting (if the therapist is invited) or when providing therapy services in the home.

The contractor and any therapist provided by the contractor shall agree and understand that all discussions with the contractor and any therapist provided by the contractor and all information gained by the contractor and any therapist provided by the contractor as a result of the contractor's performance under the contract shall be confidential and that no reports, documentation, or material prepared as required by the contract shall be released to the public without the prior written consent of the state agency.

**3. SPECIFIC SKILLS REQUIRED OF THERAPISTS**

The therapist(s) provided under this contract shall have:

- 3.1 Thorough knowledge of the principles, methods, materials, and equipment used in physical therapy.
- 3.2 The ability to work as a team member in planning and implementing appropriate physical therapy programs for students with severe disabilities.
- 3.3 The ability to keep pertinent records as requested by the MSSD for educational purposes and MO HealthNet reporting, and to make clear and concise oral and written reports.
- 3.4 The ability to communicate effectively with other professionals from different disciplines through oral and written correspondence.
- 3.5 The ability to secure cooperation of others.
- 3.6 The ability to work under supervision.

**4. IMPLEMENTATION OF THE THERAPY SERVICES**

- 4.1 The contractor or contractor's therapist shall meet with the building administrator before service begins for orientation. At this orientation meeting the building administrator shall review with the therapist the MSSD's expectations for contracted therapy providers, a copy of which is attached as Attachment 1.
- 4.2 Students will be assigned to the therapist by the building administrator in accordance with each student's IEP.
- 4.3 The contracting therapist shall review the student's current IEP with the classroom teacher to ensure that the need for the service is included within the IEP. The review of the IEP with the classroom teacher gives the therapist guidance as to how services are to be integrated into the educational program through the integrated therapy approach.
- 4.4 The contracting therapist shall review records to ensure knowledge of the student's past and present program(s). The therapist shall become knowledgeable about the physical condition of the student including but not limited to: History of medical background, surgeries, dislocated joints, shunts, etc. This information is valuable for implementation of the educational program. Review of this information will not be in lieu of consultation/direct services to the student. The contractor understands that this review is part of the professional duties necessary to provide quality services and time spent reviewing these records is not billable.
- 4.5 The contractor shall coordinate and supervise all aspects of the services in accordance with the MSSD guidelines. The contractor shall communicate with the building administrator in areas of instruction and monitoring of services being provided. The contractor shall report and communicate directly with the MSSD business manager in the areas of, but not limited to, contract issues. The therapist providing services at the school will report directly to the building administrator.
- 4.6 In the event of a change in address, telephone number, email address or change in the organization of the contractor's business, the contractor is to contact the Business Manager, Department of Elementary and Secondary Education, Missouri Schools for the Severely Disabled, P.O. Box 480, Jefferson City, Missouri 65102.
- 4.7 The contractor shall provide written notice to the building administrator if a student therapist is being considered to accompany the contracted therapist to a MSSD site. The letter should include a copy of the affiliation agreement with the student therapist's Missouri school, the student therapist's name, the dates for the activity and full acknowledgement of insurance coverage of the student therapist by the sending school and the agency. The building administrator shall work with the Area Director to gain approval from the Superintendent. A student therapist shall not accompany the contracting therapist until approval is given by the MSSD Superintendent. Having a student therapist accompany the contracted therapist shall not interfere with the provision of services under the contract.

5 **INVOICING AND PAYMENT:**

- 5.1 The MSSD estimates, but in no way guarantees, the number of units on the pricing page(s). The units quoted represent those units of direct and consultation service included in students' IEPs at the beginning of the bid process.
- 5.2 It is understood between the parties hereto that the MSSD agrees to compensate the contractor at the unit rate agreed upon from the procurement process, for the amount of time/units taken by the contractor and/or contractor's therapist(s) providing approved services under the contract.

- 5.3 The contractor shall understand and agree that a unit in this contract shall be defined as thirty (30) minutes of service. Contractors may bill for 5 minute increments of time. The therapist must provide the full amount of time invoiced for any service reimbursable under this contract.
- 5.4 All therapists provided by the contractor under this contract shall complete the currently required records for therapy sessions for all direct and consultation services required by student IEPs. The records may include hardcopy forms, online software or any other method designated by the MSSD. All records must be completed in accordance with current instructions.
- 5.5 The contractor shall invoice the MSSD on a monthly basis. Invoice form (7-760-517) must be completed showing the date the invoice was completed, the contractor's address, the school name and number, the type of therapy provided, the total units, the unit rate, the dates encompassed by the invoice, and the total reimbursement. The invoice form must be signed by the contractor and forwarded to the school's building administrator with the required supporting documents. Separate invoices are required for each school, for in-school and homebound services and for different therapies at the same school (if provided by the same contractor.) If an invoice includes the services of more than one therapist, the number of units and prorated charges for each therapist should be indicated on the invoice.
- 5.6 For reimbursement of direct and consultation services, the invoice form must be accompanied by any required hardcopy record forms. Additional requirements to record details of therapy sessions using software or other recording methods must be completed prior to submitting the invoice for the sessions. The building administrator will forward the invoice and any supporting documents to the MSSD business office for approval and payment.
- 5.7 When seeking reimbursement for writing the present level details, possible goals/benchmarks for IEP meetings and quarterly reports of progress as requested by the classroom teacher or other MSSD supervisory staff, these activities should be identified separately on the invoice for direct and consultation services, with the name of the therapist, initials of the student(s) and time taken on the activities. No other supporting documentation is required.
- 5.8 Invoicing for training times may be included on the direct and consultation service invoice or on a separate invoice. Details on the attendee(s), the training(s), and the date(s) of training must be included on the invoice form. Therapists taking the annual SDAC training must sign an attendance sheet before reimbursement will be released. Reimbursement for training shall cover the training time only. There shall be no reimbursement for travel or other time/expenses involved in accessing the training.
- 5.9 Invoices for additional preapproved services must be supported by approval in writing (email, note or fax) issued by designated MSSD staff to the provider prior to beginning the service and include an indication of the dates and hours when the service was provided and name of the student involved (if applicable).
- 5.10 Payments for approved invoices are made in arrears. It is the responsibility of the contractor to ensure that the invoices are completed correctly per instructions provided by the MSSD.
- 5.11 The contractor shall agree and understand that the following activities shall not be directly reimbursed. The following activities are considered incidental to contracting

with MSSD and should be taken into account when determining the per unit bid submitted.

- 5.11.1 Travel time and mileage.
  - 5.11.2 Completion of MSSD required record forms and entry of data into any MSSD designated tracking program.
  - 5.11.3 Review of student's file, including ongoing review of IEP requirements.
  - 5.11.4 Completion of invoices and supporting documents.
  - 5.11.5 Completion of SDAC random moment sampling surveys, including any required corrections to the survey forms.
  - 5.11.6 Review of training materials or additional one-on-one training for topics already covered in a required training.
  - 5.11.7 Creation of minor materials or adaptations commonly provided in the course of business of providing direct services to students.
  - 5.11.8 Completion of forms and/or reports necessary in the normal course of business at MSSD locations when requested by the MSSD building administrator or by MSSD Central Office. Examples: witness statements, property loss or damage statements.
- 5.12 MO HealthNet billing for reimbursement will be completed by the MSSD Central Office. The contractor will have no responsibility for the billing beyond correctly completing the current version of the Related Service Record form (7-760-578) or substitute form and/or entering data into a designated software program or similar recording system.

**PART THREE  
GENERAL CONTRACTUAL REQUIREMENTS**

- 1 The contractor understands that the price quoted on Exhibit A (pricing page) shall remain a firm fixed price for the duration of the contract.
- 2 All materials developed or acquired by the contractor as a result of work under the contract shall become the property of the MSSD. The contractor shall agree and understand that all discussions with the contractor and all information gained by the contractor as a result of the contractor's performance under the contract shall be confidential and that no reports or materials prepared, as required by the contract, shall be released to the public without prior written consent of the MSSD.
- 3 The contractor shall not assign any interest in the contract and shall not transfer any interest, whatsoever, in the contract without prior written consent from the MSSD.
- 4 The contractor agrees and understands that the contract shall constitute an assignment by the contractor to the State of Missouri of all rights, title and interest in and to all causes of action that the contractor may have under the antitrust laws of the United States or the State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular goods or services purchased or procured by the contractor in the fulfillment of the contract with the MSSD.
- 5 The contractor covenants that he or she presently has no interest and shall not acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the services hereunder. The contractor further covenants that no person having any such known interest shall be employed or conveyed an interest, directly or indirectly, in the contract.
- 6 The contractor represents him or herself to be an independent contractor offering such services to the general public and shall not represent himself or his employees to be an employee of the State of Missouri. Therefore, the contractor shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers compensation employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save and hold the State of Missouri, its officers, agents, and employees harmless from and against, any and all loss; cost (including attorney fees); and damage of any kind related to such matters as taxes, FICA, employee fringe benefits, workers compensation, employee insurance, minimum wage requirements, overtime, etc. Contractors who subcontract with or utilize independent contractors to provide the services in this contract shall notify the independent contractors that the independent contractor shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers compensation employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save and hold the State of Missouri, its officers, agents, and employees harmless from and against, any and all loss; cost (including attorney fees); and damage of any kind related to such matters as taxes, FICA, employee fringe benefits, workers compensation, employee insurance, minimum wage requirements, overtime, etc. Contractors shall provide proof of notice to subcontractors or independent contractors of the above requirements upon request.
- 7 Upon filing for any bankruptcy or insolvency proceeding by or against the contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the contractor must notify the MSSD immediately. Upon learning of the actions herein identified, the MSSD reserves the right at its sole discretion to either cancel the contract or re-affirm the contract.

- 8 The contract shall be construed according to the regulations of the MSSD, and the laws of the State of Missouri. The contractor shall comply with all local, state and federal laws and regulations related to the performance of the contract to the extent that the same may be applicable.
- 9 The MSSD is not obligated for any payments to the contractor under the terms of the contract until funds have been encumbered in accordance with the provisions of Chapter 33, RSMo 1986, and any other applicable state statute. Upon the certified encumbrance of funds in accordance with state law, a copy of the contract will be mailed to the contractor as authorization to proceed with the act of performance under the contract. The contractor understands and agrees that the act of obtaining a certified encumbrance of funds and that any payment due under the terms of the contract shall be the sole responsibility of the MSSD, for whom the services and or supplies are being purchased and furnished. The contractor further agrees and understands that any payment due under the terms of the contract shall be made by the MSSD only (a) after the receipt of a properly itemized invoice, (b) after the successful completion of all requirements set forth in the contract, and (c) after approval and acceptance of the contractor's performance, services and/or supplies required by the terms of the contract. Payment will be made to the name and address identified in the contract as the "contractor" unless (a) the contractor has authorized a different name and mailing address in writing or (b) authorized a different name and mailing address in an official State of Missouri Registration Application Form or (c) unless a court of law specifies otherwise. The contractor should not invoice federal tax.
- 10 The contractor agrees and understands that the MSSD agreement to the contract is predicated, in part and among other considerations, on the utilization of the specific individual(s) and/or personnel qualification(s) as identified and/or described in the contractor's bid. Therefore, any substitution made pursuant to this paragraph must be equal or better than originally proposed. The contractor must inform the MSSD of the substitution in writing and provide proof that the substitute is licensed in the State of Missouri in compliance with Chapter 334, Missouri Revised Statutes (RSMo) before the substitute therapist may begin providing services under this contract.
  - 10.1 Any personnel substitutions shall enroll with MO HealthNet Division as performing providers if not an already enrolled MO HealthNet provider and must maintain this enrollment while providing services under this contract. Any therapists failing to obtain and maintain active enrollment with MO HealthNet may be determined ineligible for providing services under this contract. The contractor is responsible for notifying MSSD whenever a therapist has been denied enrollment with MO HealthNet or has had an existing enrollment with MO HealthNet terminated.
- 11 The contract between the contractor and the MSSD, shall consist of (1) the Invitation for Bid (IFB) and (2) the bid submitted by the contractor in response to the IFB. In the event of a conflict of language between the above documents, the provisions and requirements set forth and/or referenced in the Invitation for Bid shall govern. However, the MSSD reserves the right to clarify any contractual relationship in writing with the concurrence of the contractor, and such written clarification shall govern in case of conflict with the applicable requirements stated in the IFB of the contractor's bid. In all other matters not affected by the written clarification, if any, the IFB shall govern. The contractor is cautioned that his bid shall be subject to acceptance by the MSSD without further clarification.
  - 11.1 No modification of a provision in the contract shall be made or construed to have been made unless such modification is mutually agreed to in writing by the contractor and the MSSD and incorporated in a written amendment to the contract approved by the MSSD Superintendent prior to the effective date of such modification.

- 12 The MSSD reserves the right to terminate the contract at any time without penalty or recourse by giving the contractor a written notice of such termination at least 30 calendar days prior to termination. The agreement may be canceled at any time by the contractor with the mutual consent of the parties or upon thirty (30) days written notice. Any nonfeasance, misfeasance or malfeasance on the part of the contractor may be cause for immediate termination of the agreement. The contractor shall be entitled to receive just and equitable compensation for work completed pursuant to the contract prior to the effective date of the termination.
  - 12.1 The MSSD may cancel the contract at any time for material breach of contractual obligations by providing the contractor with written notice of such cancellation. Prior to issuing such a notice, the contractor will be provided with an opportunity to cure the breach, if appropriate, within a reasonable period of time.
  - 12.2 In the event the contractor becomes unable to provide the services required under this contract, the contractor will be provided with an opportunity to fulfill the contractual requirements within a reasonable period of time of not less than seven (7) days and not to exceed thirty (30) days, after which the MSSD may cancel the contract at any time by providing the contractor written notice of such cancellation.
- 13 The MSSD in its sole discretion reserves the right to determine that the contractor and/or any therapist providing services under this contract is/are no longer acceptable to provide services under any contract for therapy services with MSSD. Behavior on the part of the contractor or therapist that results in this determination may range from nonfeasance, misfeasance or malfeasance to documented evidence of persistent inability to follow the terms of this contract or the directions provided by the building administrator(s) or other MSSD staff. Prior to MSSD issuing a letter of non-acceptability, the contractor or therapist will be provided with an opportunity to cure the behavior, if appropriate, within a reasonable period of time. Any contractor or therapist receiving a letter of unacceptability issued by the MSSD business office must disclose this fact in future responses to bids from MSSD and may be denied an award. Contractors must disclose letters of unacceptability sent to any therapist employed by the contractor or providing services on behalf of the contractor to any MSSD schools under the contract. Any contractor or therapist receiving a letter of unacceptability issued by the MSSD business office will no longer be eligible to provide services at MSSD locations for the remainder of the contract period, including while employed by or acting as an independent contractor with any other contractor. MSSD reserves the right to refuse the services of individuals who have previously been issued a letter of unacceptability when accepting a bid from a contractor.
- 14 The contract shall not bind, nor purport to bind, the MSSD for any contractual commitment in excess of the original contract period. The MSSD shall have the right, at its sole option, to extend the contract for two one-year periods, or a portion thereof. In the event that the MSSD exercises its options, all terms, conditions, and provisions of the original contract shall remain the same and apply during the extension period. If the options are exercised, the contractor shall agree that the prices stated in the original contract shall not be increased in excess of the maximum unit price, if any, stated on the pricing page of the contract. If the pricing page does not include a maximum unit price or if applicable spaces are left blank, or not completed, prices during extension periods shall be the same as during the original contract period. The MSSD does not automatically exercise its options based upon the maximum increase without documented justification supporting an increase and reserves the right to offer or to request an extension of the contract at a price less than that price derived from the contractor's extension unit price, if any.
- 15 The contractor shall maintain adequate liability insurance including, but not limited to, professional liability malpractice insurance. Proof of such insurance shall be provided by the contractor to the MSSD and such evidence shall include, but not necessarily be limited to:

effective dates of coverage, limits of liability, insurers' names, policy numbers, etc. The evidence of insurance must be submitted before or upon award of the contract and will become a permanent part of the contract file. In the event the insurance coverage is canceled, the MSSD must be notified immediately.

15.1 The contractor shall be responsible for any and all injury or damage as a result of the contractor's negligence involving any equipment or service provided under the terms and conditions of the contract. In addition to the liability imposed upon the contractor on account of personal injury, bodily injury (including death), or property damage suffered as the result of the contractor's negligence, the contractor assumes the obligation to save the MSSD, including its employees and assigns, from every expense, liability or payment arising out of such negligent act. The contractor also agrees to hold the MSSD, including its employees and assigns, harmless for any negligent act or omission committed by any subcontractor or other person employed by or under the supervision of the contractor under the terms of the contract.

15.1.1 However, the contractor shall not be responsible for any injury or damage occurring as a result of any negligent act or omission committed by the MSSD.

- 16 In connection with the furnishing of supplies of performance of work under the contract, the contractor agrees to comply with the Fair Labor Standard Act, Equal Opportunity Employment Act, and all other applicable Federal and State laws, regulations, and executive orders to the extent that the same may be applicable and further agrees to insert the foregoing provision in all subcontracts awarded hereunder.
- 17 Contractor shall defend, protect, and hold harmless the MSSD, its officers, agents, and employees, against all suits of law or in equity resulting from patent and copyright infringement by contractor or their employees.
- 18 Each and every provision of law and clause required by law to be inserted herein and the contract will be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the contract will forthwith be physically amended to make such insertion or correction.
- 19 The contractor must, within sixty (60) days after notification of contract award, provide the MSSD business office with completed copies of the Vendor Input/ACH-EFT Application form (MO 300-1489) and any supporting documents to ensure that payment for services may be processed. The contractor shall provide MSSD with any other documentation required by the Office of Administration from vendors providing services to the State of Missouri.
- 20 It is the policy of the Missouri Department of Elementary and Secondary Education not to discriminate on the basis of race, color, religion, gender, national origin, age, or disability in its programs or employment practices as required by Title VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975 and Title II of the Americans with Disabilities Act of 1990.

Inquiries related to Department employment practices may be directed to the Jefferson State Office Building, Human Resources Director, 205 Jefferson Street, Jefferson City, Missouri 65102-0480; telephone number 573-751-9619. Inquiries related to Department programs and to the location of services, activities, and facilities that are accessible by persons with disabilities may be directed to the Jefferson State Office Building, Office of the General Counsel, Coordinator – Civil Rights Compliance (Title VI/Title IX/504/ADA/Age Act), 6<sup>th</sup> Floor, 205 Jefferson Street, P.O. Box 480, Jefferson City, MO 65102-0480; telephone number 573-526-4757 or TTY 800-735-2966; fax number 573-522-4883; email [civilrights@dese.mo.gov](mailto:civilrights@dese.mo.gov).

- 21 The MSSD reserves the right to evaluate the performance of the contractor in fulfilling the contractual requirements. The award, termination and/or extension of existing or future contracts may be based wholly or partially upon past evaluations. The evaluations will be completed by school personnel including, but not limited to, the building administrator and teachers familiar with the contractors' performance. An evaluation will be completed for each therapist providing services under this contract.

The evaluations will be completed at least annually and may be completed at any time deemed necessary by MSSD staff. The contractor will be provided with a copy of the completed evaluation and will be allowed the opportunity to provide a written response.

- 22 It is estimated that this program will be funded one hundred percent with state funds.

- 23 While providing services under this contract, all contractor personnel are subject to the following rules of conduct:

23.1 Expected level of behavior

- 23.1.1 All students, parents, school staff, visitors and volunteers will be treated with courtesy and respect.

23.2 Unacceptable/Disruptive Behavior/Conduct

- 23.2.1 Disruptive behavior includes, but is not limited to; behavior which interferes with or threatens to interfere with providing educational services, business operations, or the general use of any area of a school open to parents, guardians and the general public.
- 23.2.2 Using loud and/or offensive language (e.g., the use of profane language, or the display of temper).
- 23.2.3 Threatening to do physical harm to students, parents, staff, visitors or volunteers, regardless of whether or not the behavior may constitute a criminal behavior.
- 23.2.4 Damaging or destroying any State property.
- 23.2.5 Any other behavior which disrupts the orderly operation of a school, or a school classroom.
- 23.2.6 Abusive, threatening, or obscene phone calls, voice mail, faxes, or electronic messages

23.3 Sexual Harassment

- 23.3.1 Sexual harassment is prohibited by law.
- 23.3.2 Sexual harassment by a non-employee of the MSSD for example, a customer, vendor, or supplier, is prohibited.
- 23.3.3 Sexual harassment is the unwelcome and offensive conduct because of the individual's sex and which fosters a sexually objectionable environment that is both subjectively and objectively offensive.
- 23.3.4 Any contractor who engages in any of the acts or behavior defined below violates MSSD policy, and such misconduct may, depending upon degree of harassment, result in cancellation of the contract for malfeasance.

Examples of conduct that may create a sexually objectionable environment:

- 23.3.5 Verbal abuse of a sexual nature;
- 23.3.6 Unfilled threats of adverse employment action;
- 23.3.7 Displays of obscene or pornographic material;
- 23.3.8 Repeated unwelcome requests for dates or sexual favors; and/or
- 23.3.9 Offensive physical touching.

24 While providing services under this contract, all contractor personnel are expected to observe and adhere to these guidelines:

24.1 Abuse of any kind is not permitted within MSSD schools and grounds, or during MSSD activities. By policy and practice MSSD does not tolerate physical, sexual, emotional or verbal abuse or misconduct from contracted personnel at any time in any location when services are provided under the contract.

24.2 Physical or sexual abuse is strictly prohibited. This includes, but is not limited to: striking, hitting, kicking, biting, indecent or wanton gesturing, lewd remarks, indecent exposure, unwanted physical contact, any form of sexual contact, inappropriate touching, or inappropriate use of technology.

24.3 Emotional abuse or verbal abuse is also prohibited. This includes, but is not limited to such forms of abuse as: yelling, insulting, threatening, mocking, demeaning behavior, or making abusive statements in regard to a person's race, gender, religion, nationality/ ethnicity, sex, age, or disability.

24.4 MSSD is committed to providing a safe environment for students. Contractor personnel are responsible for reporting to the Building Administrator any case of abuse or suspected abuse toward our students by any staff member, contractor, volunteer, parent, or other student.

24.5 To protect the students, MSSD requires that contracted personnel are never alone with a student during school hours or school sponsored activities. In particular, MSSD requires that contracted personnel:

24.5.1 Will not drive alone with a student in a car.

24.5.2 Will not take a student alone to the bathroom or any other private room.

24.5.3 Will not provide one-on-one training, individual teaching, or assistance with diapering, toileting, or bathing without the assistance of another adult or at least will be in the line of vision of one other adult.

24.6 Administrative staff will respond quickly to any and all allegations of abuse within the MSSD system. This information will be communicated, under the legal requirement of mandated reporting, to the authorities for investigation and will be reviewed by the administrative staff. The alleged offender will be notified of such allegations promptly.

24.7 Any contracted personnel accused of sexual, physical, verbal, or emotional abuse may be asked to withdraw voluntarily from the contract or may be suspended until the matter is resolved.

24.8 When requested, sign a form acknowledging that these guidelines have been read and understood.

25 The contractor understands and agrees that by signing the contract, the following is certified:

25.1 The contractor shall only employ personnel authorized to work in the United States in accordance with applicable federal and state laws. This includes but is not limited to the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and INA Section 274A.

25.2 If the contractor is found to be in violation of this requirement or the applicable state, federal and local laws and regulations, and if the State of Missouri has reasonable cause to believe that the contractor has knowingly employed individuals who are not eligible to work in the United States, the state shall have the

right to cancel the contract immediately without penalty or recourse and suspend or debar the contractor from doing business with the state. The state may also withhold up to twenty-five percent of the total amount due to the contractor.

25.3 The contractor shall agree to fully cooperate with any audit or investigation from federal, state or local law enforcement agencies.

25.4 If the contractor meets the definition of a business entity as defined in section 285.525, RSMo, pertaining to section 285.530, RSMo, the contractor shall maintain enrollment and participation in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the contracted services included herein. If the contractor's business status changes during the life of the contract to become a business entity as defined in section 285.525, RSMo, pertaining to section 285.530, RSMo, then the contractor shall, prior to the performance of any services as a business entity under the contract:

25.4.1 Enroll and participate in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services required herein; AND

25.4.2 Provide to the MSSD the documentation required in the exhibit titled, Business Entity Certification, Enrollment Documentation, and Affidavit of Work Authorization affirming said company's/individual's enrollment and participation in the E-Verify federal work authorization program; AND

25.4.3 Submit to the MSSD a completed, notarized Affidavit of Work Authorization provided in the exhibit titled, Business Entity Certification, Enrollment Documentation, and Affidavit of Work Authorization.

25.5 In accordance with subsection 2 of section 285.530 RSMo, the contractor should renew their Affidavit of Work Authorization annually. A valid Affidavit of Work Authorization is necessary to award any new contracts.

26 The contractor must be in compliance with the laws regarding conducting business in the State of Missouri. The contractor certifies by signing the signature page of this original document and any amendment signature page(s) that the contractor and any proposed subcontractors either are presently in compliance with such laws or shall be in compliance with such laws prior to any resulting contract award. The contractor shall provide documentation of compliance upon request by the MSSD. The compliance to conduct business in the state shall include, but not necessarily be limited to:

26.1 Registration of business name (if applicable)

26.2 Certificate of authority to transact business/certificate of good standing (if applicable)

26.3 Taxes (e.g., city/county/state/federal)

26.4 State and local certifications (e.g., professions/occupations/activities)

26.5 Licenses and permits (e.g., city/county license, sales permits)

26.6 Insurance (e.g., worker's compensation/unemployment compensation)

**PART FOUR  
BID SUBMISSION INFORMATION**

**1 SUBMISSION OF BIDS:**

- 1.1 Bids shall be priced, signed, and returned (with all necessary attachments) to the MSSD business manager by the bid receipt date. Bids may be returned by hand delivery, courier, mail, fax to (573) 522-9242 or by email to [DESE.MSSDRelatedServices@dese.mo.gov](mailto:DESE.MSSDRelatedServices@dese.mo.gov). Faxed or electronic signatures are acceptable.
- 1.2 Suppliers who provide hardcopy responses must return one copy in addition to the original of the completed IFB for evaluation. Documents should not be in binders. Paper clipped or stapled sets are acceptable. Suppliers faxing or emailing the bid response are required to provide one copy only of the bid response documents. The completed IFB will consist of any and all pages on which information is provided including licensure and insurance papers. This will not include the "boiler plate" pages or the examples of forms attached. It is the responsibility of the supplier to maintain a copy of the entire IFB. Only the first page will be returned to successful contractors.
- 1.3 The supplier should respond to this IFB by submitting all data required herein in order for the bid to be evaluated and considered for award. Failure to submit such data could be deemed sufficient cause for disqualification of a bid from further consideration of award.
- 1.4 To facilitate the evaluation process, the supplier should organize the bid into distinctive sections that correspond with the individual evaluation categories described herein.
  - 1.4.1 Each distinctive section should be titled with each individual evaluation category and all material related to that category should be included herein.

**2 EVALUATION PROCESS:**

2.1 After determining that a bid satisfies the mandatory requirements stated in the Invitation for Bid and that the supplier is not considered an unacceptable vendor by MSSD, the comparative assessment of the relative benefits and deficiencies of the bid in relationship to the published evaluation criteria shall be made by using subjective judgment. The award of a contract resulting from this Invitation for Bid shall be based on the lowest and best bid received in accordance with the evaluation criteria stated below:

- 2.1.1 Cost.....50%
- 2.1.2 Experience and Reliability.....30%
- 2.1.3 Expertise of Personnel.....10%
- 2.1.4 Service Implementation.....10%

Other factors that affect the determination of the lowest price responsive supplier include consideration of the Domestic Product Procurement Act, the Blind/Sheltered Workshop Preference, and the Missouri Service Disabled Veteran Enterprise Preference explained in the next section.

- 2.2 After an initial screening process, a technical question and answer conference or interview may be conducted, if deemed necessary by the MSSD, to clarify or verify the contractor's bid and to develop a comprehensive assessment of the bid.
- 2.3 The MSSD reserves the right to consider historic information and fact, whether gained from the contractor's bid, question and answer conferences, references, or any other source, in the evaluation process.
- 2.4 The supplier is cautioned that it is the supplier 's sole responsibility to submit information related to the evaluation categories and that the MSSD is under no obligation to solicit such information if it is not included with the supplier's bid. Failure of the supplier to submit such information may cause an adverse impact on the evaluation of the supplier's bid.

**3 OTHER FACTORS:**

- 3.1 Preference for Organizations for the Blind and Sheltered Workshops/Service-Disabled Veteran Business Enterprises (SDVEs):

Organizations for the Blind and Sheltered Workshops

- 3.1.1 Pursuant to 34.165, RSMo, and 1 CSR 40-1.050, a ten (10) bonus point preference shall be granted to suppliers including products and/or services manufactured, produced or assembled by a qualified nonprofit organization for the blind established pursuant to 41 U.S.C. sections 46 to 48c or a sheltered workshop holding a certificate of approval from the Department of Elementary and Secondary Education pursuant to section 178.920, RSMo.
  - a. In order to qualify for the ten bonus points, the following conditions must be met and the following evidence must be provided:
    - 1) The supplier must either be an organization for the blind or sheltered workshop or must be proposing to utilize an organization for the blind/sheltered workshop as a subcontractor and/or supplier in an amount that must equal the greater of \$5,000 or 2% of the total dollar value of the contract for purchases not exceeding \$10 million.
    - 2) The services performed or the products provided by the organization for the blind or sheltered workshop must provide a commercially useful function related to the delivery of the contractually-required service/product in a manner that will constitute an added value to the contract and shall be performed/provided exclusive to the performance of the contract. Therefore, if the services performed or the products provided by the organization for the blind or sheltered workshop is utilized, to any extent, in the supplier's obligations outside of the contract, it shall not be considered a valid added value to the contract and shall not qualify as participation in accordance with this clause.
    - 3) If the supplier is proposing participation by an organization for the blind or sheltered workshop, in order to receive evaluation consideration for participation by the organization for the blind or sheltered workshop, the supplier must provide the following information with the bid:
      - Participation Commitment – The supplier must complete **Exhibit H**, Participation Commitment, by identifying the organization for the blind or sheltered workshop and the commercially useful

products/services to be provided by the listed organization for the blind or sheltered workshop. If the supplier submitting the bid is an organization for the blind or sheltered workshop, the supplier must be listed in the appropriate table on the Participation Commitment Form.

- Documentation of Intent to Participate – The supplier must either provide a properly completed **Exhibit I**, Documentation of Intent to Participate Form, signed and dated no earlier than the IFB issuance date by the organization for the blind or sheltered workshop proposed or must provide a recently dated letter of intent signed and dated no earlier than the IFB issuance date by the organization for the blind or sheltered workshop which: (1) must describe the products/services the organization for the blind/sheltered workshop will provide and (2) should include evidence of the organization for the blind/sheltered workshop qualifications (e.g. copy of certificate or Certificate Number for Missouri Sheltered Workshop).

NOTE: If the supplier submitting the bid is an organization for the blind or sheltered workshop, the supplier is not required to complete **Exhibit I**, Documentation of Intent to Participate Form or provide a recently dated letter of intent.

- b. A list of Missouri sheltered workshops can be found at the following internet address:  
<http://dese.mo.gov/special-education/sheltered-workshops/directories>
- c. The websites for the Missouri Lighthouse for the Blind and the Alphapointe Association for the Blind can be found at the following Internet addresses:  
<http://www.lhbindustries.com>  
<http://www.alphapointe.org>
- d. Commitment – If the supplier’s bid is awarded, the organization for the blind or sheltered workshop participation committed to by the supplier on **Exhibit H**, Participation Commitment, shall be interpreted as a contractual requirement.

Service-Disabled Veteran Business Enterprises (SDVEs)

- 3.2.2 Pursuant to section 34.074, RSMo, and 1 CSR 40-1.050, the state agency has a goal of awarding three (3) percent of all contracts for the performance of any job or service to qualified service-disabled veteran business enterprises (SDVEs). A three (3) point bonus preference shall be granted to suppliers including products and/or services manufactured, produced or assembled by a qualified SDVE.
  - a. In order to qualify for the three bonus points, the following conditions must be met and the following evidence must be provided:
    - 1) The supplier must either be a SDVE or must be proposing to utilize a SDVE as a subcontractor and/or supplier that provides at least three percent (3%) of the total contract value.

- 2) The services performed or the products provided by the SDVE must provide a commercially useful function related to the delivery of the contractually-required service/product in a manner that will constitute an added value to the contract and shall be performed/provided exclusive to the performance of the contract. Therefore, if the services performed or the products provided by the SDVE is utilized, to any extent, in the supplier's obligations outside of the contract, it shall not be considered a valid added value to the contract and shall not qualify as participation in accordance with this clause.
- 3) If the supplier is proposing participation by a SDVE, in order to receive evaluation consideration for participation by the SDVE, the supplier must provide the following information with the bid:

- Participation Commitment - The supplier must complete **Exhibit H**, Participation Commitment, by identifying each proposed SDVE, the committed percentage of participation for each SDVE, and the commercially useful products/services to be provided by the listed SDVE. If the supplier submitting the bid is a qualified SDVE, the supplier must be listed in the appropriate table on the Participation Commitment Form.
- Documentation of Intent to Participate – The supplier must either provide a properly completed **Exhibit I**, Documentation of Intent to Participate Form, signed and dated no earlier than the bid issuance date by each SDVE or must provide a recently dated letter of intent signed and dated no earlier than the bid issuance date by the SDVE which: (1) must describe the products/services the SDVE will provide and (2) must include the SDV Documents described below as evidence that the SDVE is qualified, as defined herein.
- Service-Disabled Veteran (SDV) Documents – If a participating organization is an SDVE, unless previously submitted within the past five (5) years to the state agency, the supplier must provide the following Service-Disabled Veteran (SDV) documents.
  - ✓ a copy of the SDV's award letter from the Department of Veterans Affairs or a copy of the SDV's discharge paper (DD Form 214, Certificate of Release or Discharge from Active Duty); and
  - ✓ a copy of the SDV's documentation certifying disability by the appropriate federal agency responsible for the administration of veterans' affairs.

NOTE: If the supplier submitting the bid is a qualified SDVE, the supplier must include the SDV Documents as evidence that the supplier qualifies as an SDVE. However, the supplier is not required to complete **Exhibit I**, Documentation of Intent to Participate Form or provide a recently dated letter of intent.

- b. Commitment – If awarded a contract, the SDVE participation committed to by the supplier on **Exhibit H**, Participation Commitment, shall be interpreted as a contractual requirement.
- c. Definition – Qualified SDVE:

- 1) SDVE is doing business as a Missouri firm, corporation, or individual or maintaining a Missouri office or place of business, not including an office of a registered agent;
- 2) SDVE has not less than fifty-one percent (51%) of the business owned by one (1) or more service-disabled veterans (SDVs) or, in the case of any publicly-owned business, not less than fifty-one percent (51%) of the stock of which is owned by one (1) or more SDVs;
- 3) SDVE has the management and daily business operations controlled by one (1) or more SDVs;
- 4) SDVE has a copy of the SDV's award letter from the Department of Veterans Affairs or a copy of the SDV's discharge paper (DD Form 214, Certificate of Release or Discharge from Active Duty), and a copy of the SDV's documentation certifying disability by the appropriate federal agency responsible for the administration of veterans' affairs; and
- 5) SDVE possesses the power to make day-to-day as well as major decisions on matters of management, policy, and operation.

Pursuant to section 34.074, RSMo, and 1 CSR 40-1.050, a three (3) bonus point preference shall be granted to suppliers who qualify as Missouri service-disabled veteran business enterprises and who complete and submit **Exhibit J**, Missouri Service-Disabled Veteran Business Enterprise Preference with the bid. If the bid does not include the completed **Exhibit J** and the documentation specified on **Exhibit J** in accordance with the instructions provided therein, no preference points will be applied.

#### 4 **CONTRACT AWARD:**

- 4.1 Any award of contract resulting from this IFB will be made in writing by the MSSD. This will be in the form of a copy of the first page of this IFB countersigned by the MSSD Superintendent. The award document may be returned by mail, email or fax to the successful contractor.
- 4.2 The State of Missouri reserves the right to make multiple and/or partial awards.

#### 5 **COST:**

- 5.1 The supplier must provide a firm, fixed price(s) to provide services in accordance with the requirements set forth in this Invitation for Bid, including pricing for all renewal periods. All firm, fixed, price(s) must be shown on the Pricing Page (Exhibit A) of this IFB, which must be completed, signed and returned with the supplier's bid. Firm fixed prices are per unit (30 minutes of service).
- 5.2 The cost evaluation shall be based on an average price per unit (the supplier's price). This price will be calculated by averaging the supplier's price per unit for the initial year, the first renewal year and the second renewal year.
  - a. Cost evaluation points shall be determined from the result of the calculation stated above using the following formula:

$$\frac{\text{Lowest Responsive Supplier's Price}}{\text{Compared Supplier's Price}} \times \text{Maximum Cost Evaluation points (50)} = \text{Assigned Cost Points}$$

**6 SUPPLIER'S EXPERIENCE AND RELIABILITY:**

6.1 Experience and reliability of the supplier's organization is considered in the evaluation process. Therefore, the supplier is advised to submit any information which documents successful and reliable experience in past performances, especially those performances related to the requirements of this IFB.

6.2 The supplier should provide the following information related to previous and current contracts, which are considered identical or similar to the requirements of this IFB.

- 6.2.1 Name, address and telephone number of contracting agency and a contact person who may be contacted for verification of all dates submitted.
- 6.2.2 Dates of the contract.
- 6.2.3 A brief, written description of the specific prior services performed and requirements thereof.
- 6.2.4 The above information may be shown on the form attached as Exhibit B to this IFB or in a similar manner.

**7 EXPERTISE OF SUPPLIER'S PERSONNEL:**

7.1 The qualifications of personnel proposed by the supplier to perform the requirements of this IFB will be considered in the evaluation. Therefore, the supplier should submit detailed information related to the expertise and qualifications of the staff proposed. Detailed information is to include educational credentials, state licensures, registrations/certificates, references, information regarding past working experience with persons with severe disabilities ages 5-21 years of age, and experience in performance under PL 94-142. A short summary of the designated therapist's understanding of the integrated therapy approach and a short summary explaining the designated therapist's understanding of their roles in compliance with provisions of P.L. 94-142, should also be included in this section.

7.2 The supplier's designated person to provide services must be, at a minimum, a Missouri registered physical therapist, and must maintain said registration in good standing throughout the contract period. Therapists with prior service experience with persons with severe disabilities in an educational setting are preferred. The MSSD must be notified when substitution of another therapist takes place. The substitute therapist must be at a minimum a Missouri registered physical therapist, with equal or better experience, expertise and proposed service implementation. Neither certificated physical therapist assistants (PTA) nor aides shall be used to meet this bid without prior approval of the MSSD business manager.

7.3 The supplier should provide a resume including references detailing educational qualifications and previous work assignments as may relate to this IFB for key personnel to be assigned to the project. References will be contacted during the review process.

7.4 If staff is not yet hired, the supplier should provide detailed descriptions of the required employment qualifications and detailed job descriptions of the position to be filled, including the type of individual proposed to be hired.

- 7.5 The supplier may utilize Exhibit C for displaying such information or may use any other method necessary. Attach copies of registrations to Exhibit C.

## **8 SERVICE IMPLEMENTATION:**

- 8.1 Bids will be evaluated based on the supplier's distinctive plan for implementing the requirements of the IFB. Since the evaluators have already read the Scope of Work as described in the IFB, it is not necessary for the supplier to repeat the exact IFB language, or to present a paraphrased version, as an original idea for a technical approach.
- 8.2 The supplier should present a written narrative, which demonstrates the method or manner in which the supplier proposes to satisfy the requirements of the Scope of Work. The language of the narrative should be straightforward and limited to facts, solutions to problems, and plans of proposed action. Provide information speaking to the Scope of Work of this IFB along with, but not limited to: Method of contacting and starting services, how absences of therapists are handled, how the MSSD information sent to the agency is transmitted to the therapist working at the school site, acknowledgment that payment cannot be made for services provided not meeting contract requirements, etc.
- 8.3 The method by which the service implementation is written is left to the discretion of the supplier. However, the specific area being addressed from within the Scope of Work should be clearly defined and followed by the response, procedure, or action being proposed. Exhibit D can be used for displaying this information or other formats may be used to get information effectively submitted.
- 8.4 The supplier should provide an organizational chart showing the staffing and lines of authority for the key personnel to be used. The relationship of the project leader to management and to support personnel should be clearly illustrated.
- 8.5 The supplier should include with the bid, a description of the type and amount of insurance coverage, which will be maintained during the effective period of the contract. The description should identify the type of coverage such as general liability, errors and omissions, or professional liability, medical malpractice, and the limitations of amounts per occurrence and per person. The supplier is advised that the MSSD requests that a copy of the insurance cover page be submitted for the evaluation process. Attach this to Exhibit D.
- 8.6 It is the responsibility of the supplier to provide current insurance information and copies of current registrations, enrollment letters and licenses to the MSSD throughout the contract option years if options are exercised.
- 8.7 Economic Impact to Missouri: The supplier should describe the economic advantages that will be realized as a result of the supplier performing the required services – see Exhibit G.

## **9 AFFIDAVIT OF WORK AUTHORIZATION AND DOCUMENTATION**

- 9.1 Pursuant to 285.530 RSMo, the supplier must affirm its enrollment and participation in a federal work authorization program with respect to the employees proposed to work in connection with the services requested herein by:
  - 9.1.1 Submitting a completed, notarized copy of Exhibit F, Affidavit of Work Authorization and

- 9.1.2 Providing documentation affirming the supplier's name's enrollment and participation in a federal work authorization program (see below) with respect to the employees proposed to work in connection with the services required herein.

E-Verify is an example of a federal work authorization program. Acceptable enrollment and participation documentation consists of the following two pages of the E-Verify Memorandum of Understanding (MOU): 1) a valid, completed copy of the first page identifying the supplier's name and 2) a valid copy of the signature page completed and signed by the supplier's authorized representative, the Social Security Administration and the Department of Homeland Security – Verification Division.

**Employee Bidding/Conflict of Interest:**

Suppliers who are employees of the State of Missouri, a member of the General Assembly or a statewide elected official must comply with Sections 105.450 to 105.458 RSMo regarding conflict of interest. If the supplier and/or any of the owners of the supplier's organization are currently an employee of the State of Missouri, a member of the General Assembly or a statewide elected official, please provide the following information.

Name and title of state employee, General Assembly member or statewide elected official: \_\_\_\_\_

Name of state agency where employed: \_\_\_\_\_

Percentage of ownership interest in supplier's organization held by state employee, General Assembly member or statewide elected official: \_\_\_\_\_%

STATE OF MISSOURI  
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION  
**TERMS AND CONDITIONS -- INVITATION FOR BID**

### 1. TERMINOLOGY/DEFINITIONS

Whenever the following words and expressions appear in an Invitation for Bid (IFB) document or any amendment thereto, the definition or meaning described below shall apply.

- a. **Agency and/or State Agency** means the statutory unit of state government in the State of Missouri for which the equipment, supplies, and/or services are being purchased by the **Department of Elementary and Secondary Education (DESE)**. The agency is also responsible for payment.
- b. **Amendment** means a written, official modification to an IFB or to a contract.
- c. **Attachment** applies to all forms which are included with an IFB to incorporate any informational data or requirements related to the performance requirements and/or specifications.
- d. **Bid Opening Date and Time** and similar expressions mean the exact deadline required by the IFB for the receipt of sealed bids.
- e. **Supplier** means the person or organization that responds to an IFB by submitting a bid with prices to provide the equipment, supplies, and/or services as required in the IFB document.
- f. **Buyer** means the procurement staff member of the DESE. The **Contact Person** as referenced herein is usually the Buyer.
- g. **Contract** means a legal and binding agreement between two or more competent parties, for a consideration for the procurement of equipment, supplies, and/or services.
- h. **Contractor** means a person or organization who is a successful supplier as a result of an IFB and who enters into a contract.
- i. **Exhibit** applies to forms which are included with an IFB for the supplier to complete and submit with the sealed bid prior to the specified opening date and time.
- j. **Invitation for Bid (IFB)** means the solicitation document issued by the DESE to potential suppliers for the purchase of equipment, supplies, and/or services as described in the document. The definition includes these Terms and Conditions as well as all Pricing Pages, Exhibits, Attachments, and Amendments thereto.
- k. **May** means that a certain feature, component, or action is permissible, but not required.
- l. **Must** means that a certain feature, component, or action is a mandatory condition. Failure to provide or comply will result in a bid being considered non-responsive.
- m. **Pricing Page(s)** applies to the form(s) on which the supplier must state the price(s) applicable for the equipment, supplies, and/or services required in the IFB. The pricing pages must be completed and submitted by the supplier with the sealed bid prior to the specified bid opening date and time.
- n. **RSMo (Revised Statutes of Missouri)** refers to the body of laws enacted by the Legislature which govern the operations of all agencies of the State of Missouri. Chapter 34 of the statutes is the primary chapter governing the operations of DESE.
- o. **Shall** has the same meaning as the word **must**.
- p. **Should** means that a certain feature, component and/or action is desirable but not mandatory.

### 2. APPLICABLE LAWS AND REGULATIONS

- a. The contract shall be construed according to the laws of the State of Missouri. The contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract to the extent that the same may be applicable.
- b. To the extent that a provision of the contract is contrary to the Constitution or laws of the State of Missouri or of the United States, the provisions shall be void and unenforceable. However, the balance of the contract shall remain in force between the parties unless terminated by consent of both the contractor and the DESE.
- c. The contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations.
- d. The contractor must timely file and pay all Missouri sales, withholding, corporate and any other required Missouri tax returns and taxes, including interest and additions to tax.
- e. The exclusive venue for any legal proceeding relating to or arising out of the IFB or resulting contract shall be in the Circuit Court of Cole County, Missouri.
- f. The contractor shall only utilize personnel authorized to work in the United States in accordance with applicable federal and state laws and Executive Order 07-13 for work performed in the United States.

### 3. OPEN COMPETITION/INVITATION FOR BID DOCUMENT

- a. It shall be the supplier's responsibility to ask questions, request changes or clarification, or otherwise advise the DESE if any language, specifications or requirements of an IFB appear to be ambiguous, contradictory, and/or arbitrary, or appear to inadvertently restrict or limit the requirements stated in the IFB to a single source. Any and all communication from suppliers regarding specifications, requirements, competitive bid process, etc., must be directed to the buyer from the DESE, unless the IFB specifically refers the supplier to another contact. Such communication should be received at least ten calendar days prior to the official bid opening date.
- b. Every attempt shall be made to ensure that the supplier receives an adequate and prompt response. However, in order to maintain a fair and equitable bid process, all suppliers will be advised, via the issuance of an amendment to the IFB, of any relevant or pertinent information related to the procurement. Therefore, suppliers are advised that unless specified elsewhere in the IFB, any questions received less than ten calendar days prior to the IFB opening date may not be answered.
- c. Suppliers are cautioned that the only official position of the State of Missouri is that which is issued by the DESE in the IFB or an amendment thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response or statement.
- d. The DESE monitors all procurement activities to detect any possibility of deliberate restraint of competition, collusion among suppliers, price-fixing by suppliers, or any other anticompetitive conduct by suppliers which appears to violate state and federal antitrust laws. Any suspected violation shall be referred to the Missouri Attorney General's Office for appropriate action.

- e. The DESE reserves the right to officially amend or cancel an IFB after issuance.

#### **4. PREPARATION OF BIDS**

- a. Suppliers **must** examine the entire IFB carefully. Failure to do so shall be at supplier's risk.
- b. Unless otherwise specifically stated in the IFB, all specifications and requirements constitute minimum requirements. All bids must meet or exceed the stated specifications and requirements.
- c. Unless otherwise specifically stated in the IFB, any manufacturer names, trade names, brand names, information and/or catalog numbers listed in a specification and/or requirement are for informational purposes only and are not intended to limit competition. The supplier may offer any brand which meets or exceeds the specification for any item, but must state the manufacturer's name and model number for any such brands in the bid. In addition, the supplier shall explain, in detail, (1) the reasons why the proposed equivalent meets or exceeds the specifications and/or requirements and (2) why the proposed equivalent should not be considered an exception thereto. Bids which do not comply with the requirements and specifications are subject to rejection without clarification.
- d. Bids lacking any indication of intent to bid an alternate brand or to take an exception shall be received and considered in complete compliance with the specifications and requirements as listed in the IFB.
- e. In the event that the supplier is an agency of state government or other such political subdivision which is prohibited by law or court decision from complying with certain provisions of an IFB, such a supplier may submit a bid which contains a list of statutory limitations and identification of those prohibitive clauses which will be modified via a clarification conference between the DESE and the supplier, if such supplier is selected for contract award. The clarification conference will be conducted in order to agree to language that reflects the intent and compliance of such law and/or court order and the IFB. Any such supplier needs to include in the bid, a complete list of statutory references and citations for each provision of the IFB which is affected by this paragraph.
- f. All equipment and supplies offered in a bid must be new, of current production, and available for marketing by the manufacturer unless the IFB clearly specifies that used, reconditioned, or remanufactured equipment and supplies may be offered.
- g. Prices shall include all packing, handling and shipping charges FOB destination, freight prepaid and allowed unless otherwise specified in the IFB.
- h. Bids, including all pricing therein, shall remain valid for 90 days from bid opening unless otherwise indicated. If the bid is accepted, the entire bid, including all prices, shall be firm for the specified contract period.
- i. Any foreign supplier not having an Employer Identification Number assigned by the United States Internal Revenue Service (IRS) must submit a completed IRS Form W-8 prior to or with the submission of their bid in order to be considered for award.

#### **5. SUBMISSION OF BIDS**

- a. Suppliers may submit bids hard copy delivered to the DESE office. Delivered bids must be sealed in an envelope or container, and received in the DESE office located (see cover page for address) no later than the exact opening time and date specified in the IFB. All bids must (1) be submitted by a duly authorized representative of the supplier's organization, (2) contain all information required by the IFB, and (3) be priced as required. Hard copy bids may be mailed to the DESE post office box address. However, it shall be the responsibility of the supplier to ensure their bid is in the DESE office (address listed above) no later than the exact opening time and date specified in the IFB.
- b. The sealed envelope or container containing a bid should be clearly marked on the outside with (1) the official IFB title and (2) the official opening date and time. Different bids should not be placed in the same envelope, although copies of the same bid may be placed in the same envelope.
- c. A bid which has been delivered to the DESE office, may be modified by signed, written notice which has been received by the DESE prior to the official opening date and time specified. A bid may also be modified in person by the supplier or its authorized representative, provided proper identification is presented before the official opening date and time. Telephone or telegraphic requests to modify a bid shall not be honored.
- d. A bid which has been delivered to the DESE office, may only be withdrawn by a signed, written notice or facsimile which has been received by the DESE prior to the official opening date and time specified. A bid may also be withdrawn in person by the supplier or its authorized representative, provided proper identification is presented before the official opening date and time. Telephone, e-mail, or telegraphic requests to withdraw a bid shall not be honored.
- e. Suppliers delivering a hard copy bid to DESE must sign and return the IFB cover page or, if applicable, the cover page of the last amendment thereto in order to constitute acceptance by the supplier of all IFB terms and conditions. Failure to do so may result in rejection of the bid unless the supplier's full compliance with those documents is indicated elsewhere within the supplier's response.
- f. Faxed bids shall not be accepted. However, faxed and e-mail no-bid notifications shall be accepted.

#### **6. BID OPENING**

- a. Bid openings are public on the opening date and at the opening time specified on the IFB document. Names, locations, and prices of respondents shall be read at the bid opening. The DESE will not provide prices or other bid information via the telephone.
- b. Bids which are not received in the DESE office prior to the official opening date and time shall be considered late, regardless of the degree of lateness, and normally will not be opened. Late bids may only be opened under extraordinary circumstances in accordance with 1 CSR 40-1.050.

#### **7. PREFERENCES**

- a. In the evaluation of bids, preferences shall be applied in accordance with Chapter 34 RSMo. Contractors should apply the same preferences in selecting subcontractors.
- b. By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the State of Missouri and to all firms, corporations or individuals doing business as Missouri firms, corporations or individuals. Such preference shall be given when quality is equal or better and delivered price is the same or less.
- c. In accordance with Executive Order 05-30, contractors are encouraged to utilize certified minority and women-owned businesses in selecting subcontractors.
- d. In the evaluation of bids, a service-disabled veteran business preference shall be applied in accordance with Section 34.074 RSMo.

#### **8. EVALUATION/AWARD**

- a. Any clerical error, apparent on its face, may be corrected by the buyer before contract award. Upon discovering an apparent clerical error, the buyer shall contact the supplier and request clarification of the intended bid. The correction shall be incorporated in the notice of award. Examples of apparent clerical errors are: 1) misplacement of a decimal point; and 2) obvious mistake in designation of unit.
- b. Any pricing information submitted by a supplier shall be subject to evaluation if deemed by the DESE to be in the best interest of the State of Missouri.
- c. The supplier is encouraged to propose price discounts for prompt payment or propose other price discounts that would benefit the State of Missouri. However, unless otherwise specified in the IFB, pricing shall be evaluated at the maximum potential financial liability to the State of Missouri.
- d. Awards shall be made to the supplier whose bid (1) complies with all mandatory specifications and requirements of the IFB and (2) is the lowest and best bid, considering price, responsibility of the supplier, and all other evaluation criteria specified in the IFB and (3) complies with Sections 34.010 and 34.070 RSMo and Executive Order 04-09.
- e. In the event all suppliers fail to meet the same mandatory requirement in an IFB, DESE reserves the right, at its sole discretion, to waive that requirement for all suppliers and to proceed with the evaluation. In addition, the DESE reserves the right to waive any minor irregularity or technicality found in any individual bid.
- f. The DESE reserves the right to reject any and all bids.
- g. When evaluating a bid, the State of Missouri reserves the right to consider relevant information and fact, whether gained from a bid, from a supplier, from supplier's references, or from any other source.
- h. Any information submitted with the bid, regardless of the format or placement of such information, may be considered in making decisions related to the responsiveness and merit of a bid and the award of a contract.
- i. Any award of a contract shall be made by notification from the DESE to the successful supplier. The DESE reserves the right to make awards by item, group of items, or an all or none basis. The grouping of items awarded shall be determined by DESE based upon factors such as item similarity, location, administrative efficiency, or other considerations in the best interest of the State of Missouri.
- j. All bids and associated documentation which were submitted on or before the official opening date and time will be considered open records pursuant to Section 610.021 RSMo following the official opening of bids.
- k. The DESE reserves the right to request clarification of any portion of the supplier's response in order to verify the intent of the supplier. The supplier is cautioned, however, that its response may be subject to acceptance or rejection without further clarification.
- l. Any bid award protest must be received within ten (10) calendar days after the date of award in accordance with the requirements of 1 CSR 40-1.050 (10).
- m. The final determination of contract award(s) shall be made by DESE.

## **9. CONTRACT/PURCHASE ORDER**

- a. By submitting a bid, the supplier agrees to furnish any and all equipment, supplies and/or services specified in the IFB, at the prices quoted, pursuant to all requirements and specifications contained therein.
- b. A binding contract shall consist of: (1) the IFB and any amendments thereto, (2) the contractor's response (bid) to the IFB, (3) clarification of the bid, if any, and (4) DESE's acceptance of the response (bid) by "notice of award" or by "purchase order." All Exhibits and Attachments included in the IFB shall be incorporated into the contract by reference.
- c. A notice of award issued by the State of Missouri does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services for the State of Missouri, the contractor must receive a properly authorized purchase order or other form of authorization given to the contractor at the discretion of the state agency.
- d. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change to the contract, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the contractor and the DESE or by a modified purchase order prior to the effective date of such modification. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification to the contract.

## **10. INVOICING AND PAYMENT**

- a. The State of Missouri does not pay state or federal taxes unless otherwise required under law or regulation.
- b. The statewide financial management system has been designed to capture certain receipt and payment information. For each purchase order received, an invoice must be submitted that references the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
- c. The contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of the DESE.
- d. Payment for all equipment, supplies, and/or services required herein shall be made in arrears unless otherwise indicated in the IFB.
- e. The State of Missouri assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any unauthorized quantity is subject to the state's rejection and shall be returned at the contractor's expense.
- f. All invoices for equipment, supplies, and/or services purchased by the State of Missouri shall be subject to late payment charges as provided in Section 34.055 RSMo.
- g. The State of Missouri reserves the right to purchase goods and services using the state purchasing card.

## **11. DELIVERY**

Time is of the essence. Deliveries of equipment, supplies, and/or services must be made no later than the time stated in the contract or within a reasonable period of time, if a specific time is not stated.

## **12. INSPECTION AND ACCEPTANCE**

- a. No equipment, supplies, and/or services received by an agency of the state pursuant to a contract shall be deemed accepted until the agency has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or

which do not conform to any warranty of the contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.

- c. The State of Missouri reserves the right to return any such rejected shipment at the contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
- d. The State of Missouri's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the state may have.

**13. WARRANTY**

- a. The contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by the DESE, (2) be fit and sufficient for the purpose expressed in the IFB, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.
- b. Such warranty shall survive delivery and shall not be deemed waived either by reason of the state's acceptance of or payment for said equipment, supplies, and/or services.

**14. CONFLICT OF INTEREST**

- a. Elected or appointed officials or employees of the State of Missouri or any political subdivision thereof, serving in an executive or administrative capacity, must comply with sections 105.452 and 105.454, RSMo, regarding conflict of interest.
- b. The contractor hereby covenants that at the time of the submission of the bid the contractor has no other contractual relationships which would create any actual or perceived conflict of interest. The contractor further agrees that during the term of the contract neither the contractor nor any of its employees shall acquire any other contractual relationships which create such a conflict.

**15. REMEDIES AND RIGHTS**

- a. No provision in the contract shall be construed, expressly or implied, as a waiver by the State of Missouri of any existing or future right and/or remedy available by law in the event of any claim by the State of Missouri of the contractor's default or breach of contract.
- b. The contractor agrees and understands that the contract shall constitute an assignment by the contractor to the State of Missouri of all rights, title and interest in and to all causes of action that the contractor may have under the antitrust laws of the United States or the State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or procured by the contractor in the fulfillment of the contract with the State of Missouri.

**16. CANCELLATION OF CONTRACT**

- a. In the event of material breach of the contractual obligations by the contractor, the DESE may cancel the contract. At its sole discretion, the DESE may give the contractor an opportunity to cure the breach or to explain how the breach will be cured. The actual cure must be completed within no more than 10 working days from notification, or at a minimum the contractor must provide DESE within 10 working days from notification a written plan detailing how the contractor intends to cure the breach.
- b. If the contractor fails to cure the breach or if circumstances demand immediate action, the DESE will issue a notice of cancellation terminating the contract immediately.
- c. If the DESE cancels the contract for breach, the DESE reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the DESE deems appropriate and charge the contractor for any additional costs incurred thereby.
- d. The contractor understands and agrees that funds required to fund the contract must be appropriated by the General Assembly of the State of Missouri for each fiscal year included within the contract period. The contract shall not be binding upon the state for any period in which funds have not been appropriated, and the state shall not be liable for any costs associated with termination caused by lack of appropriations.

**17. COMMUNICATIONS AND NOTICES**

Any notice to the supplier/contractor shall be deemed sufficient when deposited in the United States mail postage prepaid, transmitted by facsimile, transmitted by e-mail or hand-carried and presented to an authorized employee of the supplier/contractor.

**18. BANKRUPTCY OR INSOLVENCY**

- a. Upon filing for any bankruptcy or insolvency proceeding by or against the contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the contractor must notify the DESE immediately.
- b. Upon learning of any such actions, the DESE reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the contractor responsible for damages.

**19. INVENTIONS, PATENTS AND COPYRIGHTS**

The contractor shall defend, protect, and hold harmless the State of Missouri, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the contractor's performance or products produced under the terms of the contract.

**20. NON-DISCRIMINATION AND AFFIRMATIVE ACTION**

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall agree not to discriminate against recipients of services or employees or applicants for employment on the basis of race, color, religion, national origin, sex, age, disability, or veteran status unless otherwise provided by law. If the contractor or subcontractor employs at least 50 persons, they shall have and maintain an affirmative action program which shall include:

- a. A written policy statement committing the organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination;
- b. The identification of a person designated to handle affirmative action;
- c. The establishment of non-discriminatory selection standards, objective measures to analyze recruitment, an upward mobility system, a wage and salary structure, and standards applicable to layoff, recall, discharge, demotion, and discipline;
- d. The exclusion of discrimination from all collective bargaining agreements; and
- e. Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.

If discrimination by a contractor is found to exist, the DESE shall take appropriate enforcement action which may include, but not necessarily be limited to, cancellation of the contract, suspension, or debarment by the DESE until corrective action by the contractor is made and ensured, and referral to the Attorney General's Office, whichever enforcement action may be deemed most appropriate.

## **21. AMERICANS WITH DISABILITIES ACT**

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (ADA).

## **22. FILING AND PAYMENT OF TAXES**

The commissioner of administration and other agencies to which the state purchasing law applies shall not contract for goods or services with a vendor if the vendor or an affiliate of the vendor makes sales at retail of tangible personal property or for the purpose of storage, use, or consumption in this state but fails to collect and properly pay the tax as provided in chapter 144, RSMo. For the purposes of this section, "affiliate of the vendor" shall mean any person or entity that is controlled by or is under common control with the vendor, whether through stock ownership or otherwise. Therefore supplier's failure to maintain compliance with chapter 144, RSMo may eliminate their bid from consideration for award.

## **23. TITLES**

Titles of paragraphs used herein are for the purpose of facilitating reference only and shall not be construed to infer a contractual construction of language.

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