



ADMINISTRATION
& INFORMATION

GENERAL SERVICES DIVISION

Mark Gordon, Governor | Patricia L. Bach, Interim Director | Rich Merrill, Administrator

Agency Bid Exception Approval (BEA) Request Purchases for Items and Services Exceeding \$7,500.00

Date of Request: _____

Requesting Agency: _____

Agency Authorization Name: _____

Agency Authorization Email: _____

Vendor Name (must match WOLFS or Contract): _____

Amount of Request: \$ _____

Anticipated Term or One-Time Purchase: _____

New Contract, Amendment/Change Order, or Product: _____

OCIO Approval (if applicable): _____

Purpose:

Justification: *Questions to consider: Why was this vendor chosen? Explain the type of competitive process used (i.e. obtaining quotes, research for available vendor, etc.). If a competitive process was not used, why has the agency determined the bid process is not feasible? If the agency considers this a "sole source", what research was done to determine no other vendor could provide this item or service? If this is an amendment or change order, explain what is changing (money, time, contractor's responsibilities, etc.).*

Continued Justification:



**SOLE SOURCE/BID WAIVER
ACTION MEMORANDUM**

Date: June 7, 2019

To: Department of A&I, General Services Division/Procurement

From: Margee Robertson, Director of Special Education Programs

Subject: Sole Source/Bid Waiver; Educational Advantages, Inc. (\$22,000.00)

Approval:  
Dicky Shanor, Chief of Staff

Priority: High

Purpose: To develop a Dispute Resolution system with access for up to seven (7) users that will include license fees and annual maintenance and support for the Dispute Resolution system. Educational Advantages will also maintain the developed statewide instance of SPED Advantage for all districts' data

Justification: Educational Advantages, Inc. provides Cloud based, secure, scalable, and highly customizable software solutions for the management of educational processes surrounding Special Education, Behavior, Section 504 and Discipline. Currently, 43 school districts utilize SPED Advantage Education Software application in Wyoming. Each school district has a separate instance which does not allow live data to be used for analysis at a State level. By implementing a single statewide instance and transferring all districts through the SPED Advantage System software into this instance will allow the Division of Individual Learning to save valuable time when reviewing special education files, gathering data, and training employees to do online audits.

Educational Advantages, Inc. and the SPED Advantage Education Software Application offers a highly unique system that is already being utilized by 43 Wyoming School Districts. With the majority of local school district already implementing and paying for this software Educational Advantage is the sole entity that can provide these seamless services to the State.

**INFORMATION TECHNOLOGY (IT) CONTRACT BETWEEN
WYOMING DEPARTMENT OF EDUCATION
AND
EDUCATIONAL ADVANTAGES, INC.**

1. **Parties.** The parties to this Contract are Wyoming Department of Education (Agency), whose address is: 122 W. 25th Street, Suite E200 Cheyenne, Wyoming 82002, and Educational Advantages, Inc., (Contractor), whose address is: P.O. Box 3, Ten Sleep, Wyoming 82442.
2. **Purpose of Contract.** The purpose of this Contract is to set forth the terms and conditions by which the Contractor shall provide and implement a Dispute Resolution system with access for up to seven (7) users that will include license fees and annual maintenance and support for the Dispute Resolution system. The Contractor will also maintain the developed statewide instance of Special Education (SPED) Advantage for all Districts' data. These services, as fully described in the Attachment A, Statement of Work, which is attached to and incorporated into this Contract by this reference that includes State Monitoring and Dispute Resolution Applications for the Department of Individual Learning.
3. **Term of Contract.** This Contract is effective when all parties have executed it (Effective Date). The term of the Contract is from August 1, 2019 through July 31, 2021. All services shall be completed during this term.

Contract may be extended once by agreement of both parties in writing and subject to the required approvals. There is no right or expectation of extension and any extension will be determined at the discretion of the Agency.

4. **Payment.**
 - A. The Agency agrees to pay the Contractor for the services in Attachment A, which is attached to and incorporated into this Contract by this reference. Total payment under this Contract shall not exceed twenty-two thousand dollars (\$22,000.00). Payment shall be made when services are completed. Payment shall be made within forty-five (45) days after submission of invoice pursuant to Wyo. Stat. § 16-6-602. Contractor shall submit invoices in sufficient detail to ensure that payments may be made in conformance with this Contract.
 - B. No payment shall be made for work performed before the Effective Date of this Contract. Should the Contractor fail to perform in a manner consistent with the terms and conditions set forth in this Contract, payment under this Contract may be withheld until such time as the Contractor performs its duties and responsibilities to the satisfaction of Agency.
 - C. Except as otherwise provided in this Contract, the Contractor shall pay all costs and expenses, including travel, incurred by Contractor or on its behalf in connection with Contractor's performance and compliance with all of Contractor's obligations under this Contract.

5. **Responsibilities of Contractor.** The Contractor agrees to:

Provide the services described in Attachment A.

6. **Responsibilities of Agency.** The Agency agrees to:

A. Pay Contractor in accordance with Section 4 above.

7. **Special Provisions.**

A. **Change Control Management.** The Contractor shall maintain a change control process with all changes which shall be approved through the Agency's change control board. The change control process will include the reason for the change, a complete description of work to be performed, an estimate of time and cost to complete the change, a completion date for the change and an impact analysis indicating ramifications or impact to the project. If unforeseen circumstances arise where a change order might be needed, the Contractor will submit in writing a description of the problem and proposed resolution to the project manager and primary point of contact Margee Robertson for their consideration. If change orders are needed, the Contractor agrees to continue at the hourly rate of one hundred fifty dollars (\$150.00) specified in the proposal.

If unforeseen circumstances arise where a change might be needed, Contractor will submit in writing a description of the problem and proposed resolution to the Agency Project Representative for consideration. If change orders are needed, the Contractor agrees to continue at the hourly rate specified in Attachment A, Statement of Work.

In the event it is determined that a change to Attachment A, Statement of Work, is required, a Contract amendment will be made in accordance with the Contract. The change request will be used by the Contractor as the justification for a change to the Statement of Work.

B. **Conflicting Language.** In the event of a conflict between the Contract, Attachment A, Statement of Work, or any other document attached or incorporated by reference, the following order of precedence will govern, in the order listed: (1) the Contract, (2) Attachment A, Statement of Work, then any other document incorporated by reference.

C. **Conflicts of Interest.**

(i) Contractor shall not engage in providing consultation or representation of clients, agencies or firms which may constitute a conflict of interest which may result in a disadvantage to the Agency or a disclosure which may adversely affect the interests of the Agency. Contractor shall notify the

Agency of any potential or actual conflicts of interest arising during the course of the Contractor's performance under this Contract. This Contract may be terminated in the event a conflict of interest arises. Termination of this Contract will be subject to a mutual settlement of accounts. In the event this Contract is terminated under this provision, the Contractor shall take steps to ensure that all files, evidence, evaluations and data are provided to the Agency or its designee. This provision does not prohibit or affect the Contractor's ability to engage in consultations, evaluations or representation under agreement with other agencies, firms, facilities, or attorneys so long as no conflict exists.

- (ii) A conflict of interest warranting termination of this Contract may include, but is not necessarily limited to, acting on behalf of a client in an adversarial proceeding against the State of Wyoming, its agencies, boards, commissions or the University of Wyoming, or initiating suits in equity including injunctions, declaratory judgments, writs of prohibition or quo warranto.

- D. Kickbacks.** Contractor certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If Contractor breaches or violates this warranty, Agency may, at its discretion, terminate this Contract without liability to the Agency, or deduct from the agreed upon price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.
- E. Monitoring Activities.** The Agency shall have the right to monitor all Contract related activities of the Contractor and all subcontractors. This shall include, but not be limited to, the right to make site inspections at any time, to bring experts and consultants on site to examine or evaluate completed work or work in progress, and to observe all Contractor personnel in every phase of performance of Contract related work.
- F. No Finder Fees.** No finder's fee, employment agency fee, or other such fee related to the procurement of this Contract will be paid by either party.
- G. Project Representative.** All project management and coordination for the Agency shall be through a single point of contact designated as the Project Representative. The Agency Project Representative for this project is Margee Robertson.

Any and all work performed under this Contract will be subject to approval and acceptance by the Agency Project Representative. In no instance will the Contractor's staff refer any matters to any Agency Director or Deputy Directors or any other official in Wyoming unless initial contact, both verbal and in writing, regarding the matter has first been presented to the Agency Project Representative.

All correspondence from the Contractor shall be addressed directly to the Agency Project Representative. The Agency Project Representative or his designee shall be responsible for corresponding and arranging meetings with Agency personnel and outside Agencies and associations.

The Agency Project Representative shall document performance of the Contractor as to the satisfaction of any deliverables required to meet the requirements of the Contract.

The Contractor will be required to perform its work in compliance with Agency technology standards, policies, and procedures, as well as any applicable Federal guidelines.

- H. Source Code Ownership and/or Escrow.** In the event the Contractor develops custom made software, a complete copy of the most current version of the software source code, with internal documentation, shall be placed in an escrow account that will be made available to the Agency. In the event the Contractor provides the Agency with a proprietary software package, the software will be provided to the Agency for the sole purpose of maintaining the license use of Contractor's software at Agency's location at the time of the issuance of the license. In the event the Contractor becomes insolvent, goes out of business or ceases to support the software, Contractor agrees to transfer the rights to the source code, either custom or proprietary, to the Agency in order for the Agency to continue to support the software.
- I. System Failure or Damage.** In the event of system failure or damage, as defined in this paragraph, directly caused in whole or in part as a result of the services provided by the Contractor, Contractor agrees to use its best efforts to restore the system to operational capacity. System failure or damage for purposes of this Contract will mean the inability of any mechanism provided by the Contractor pursuant to the terms of this Contract, to operate properly and, as a result of its failure to operate properly, critical government functions, including sending and receiving data information, are unable to be performed.
- J. Use of Subcontractors.** The Contractor shall be wholly responsible for performance of the entire Contract whether or not subcontractors are used. In any event, whether or not there are subcontracting or joint venture arrangements, a prime contractor shall be designated and the prime contractor shall sign this Contract. The Agency reserves the right to reject any named subcontractor or any subcontractor relationship. The Contractor shall not enter into any subcontracts or joint venture arrangement for any of the work proposed under this Contract without prior written acceptance from the Agency.
- K. Warranty of the Deliverables.** In the event that the Contractor develops software and applications for the Agency, the Contractor shall commit to a minimum warranty period of twelve (12) months for the software and applications related to

this Contract. Notwithstanding prior acceptance of deliverables by the Agency, the Contractor shall expressly warrant all delivered programs and documentation as properly functioning at the start of operations and compliant with the terms of the Contract thereafter. The warranty period will begin at the time the implementation of the application has been formally accepted in writing by the Agency. During the warranty period, the Contractor shall be responsible to correct, at its expense, any problems, defects and deficiencies reported which do not meet the specifications set forth in the Statement of Work. The Contractor will correct all defects and deficiencies in the system and replace incorrect or defective programs and documentation within five (5) business days of notification from the Agency of such deficiencies or within such period as may be necessary to make correction(s) using all due diligence and dispatch as agreed upon between the Agency and the Contractor. Deficiencies properly noted before expiration of the warranty will be covered regardless of such expiration. System modifications and other changes made during the Contract period will also be covered by this warranty.

- L. **Assumption of Risk.** The Contractor shall assume the risk of any loss of state or federal funding either administrative or program dollars, due to the Contractor's failure to comply with state or federal requirements. The Agency shall notify the Contractor of any state or federal determination of noncompliance.
- M. **Environmental Policy Acts.** Contractor agrees all activities under this agreement will comply with the Clean Air Act, the Clean Water Act, the National Environmental Policy Act, and other related provisions of federal environmental protection laws, rules or regulations.
- N. **Human Trafficking:** As required by 22 U.S.C. § 7104(g) and 2 CFR Part 175, this agreement may be terminated without penalty if a private entity that receives funds under this agreement:
 - i. Engages in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procures a commercial sex act during the period of time that the award is in effect; or
 - iii. Uses forced labor in the performance of the award or subawards under the award.
- O. **Limitations on Lobbying Activities.** By signing this agreement, Contractor certifies and agrees that, in accordance with P.L. 101-121, payments made from a federal grant shall not be utilized by Contractor or its subcontractors in connection with lobbying member(s) of Congress, or any federal agency in connection with the award of a federal grant, contract, cooperative agreement, or loan.
- P. **Nondiscrimination.** The Contractor shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105, *et*

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

- Q. **Publicity.** Any publicity given to the program or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for Contractor and related to the services and work to be performed under this agreement, shall identify the Agency as the sponsoring agency and shall not be released without prior written approval of Agency.
- R. **No Finder Fees.** No finder's fee, employment agency fee, or other such fee related to the procurement of this Contract will be paid by either party.
- S. **Suspension and Debarment.** By signing this agreement, Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction nor from federal financial or nonfinancial assistance, nor are any of the participants involved in the execution of this agreement suspended, debarred, or voluntarily excluded by any federal department or agency in accordance with Executive Order 12549 (Debarment and Suspension) and CFR 44 Part 17, or are on the disbarred vendors list at <http://www.sam.gov/>. Further, Contractor agrees to notify Agency by certified mail should it or any of its agents become debarred, suspended, or voluntarily excluded during the term of this agreement.

8. **General Provisions.**

- A. **Amendments.** Any changes, modifications, revisions, or amendments to this Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument, executed by all parties to this Contract.
- B. **Applicable Law, Rules of Construction, and Venue.** The construction, interpretation, and enforcement of this Contract shall be governed by the laws of the State of Wyoming, without regard to conflicts of law principles. The terms "hereof," "hereunder," "herein," and words of similar import, are intended to refer to this Contract as a whole and not to any particular provision or part. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming.
- C. **Assignment Prohibited and Contract Shall Not be Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Contract without the prior written consent of the other party. The Contractor shall not use this Contract, or any portion thereof, for collateral for any financial obligation without the prior written permission of the Agency.

- D. Audit and Access to Records.** The Agency and its representatives shall have access to any books, documents, papers, electronic data, and records of the Contractor which are pertinent to this Contract.
- E. Availability of Funds.** Each payment obligation of the Agency is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation and which may be limited for any reason including, but not limited to, congressional, legislative, gubernatorial, or administrative action. If funds are not allocated and available for continued performance of the Contract, the Contract may be terminated by the Agency at the end of the period for which the funds are available. The Agency shall notify the Contractor at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the Agency in the event this provision is exercised, and the Agency shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.
- F. Award of Related Contracts.** The Agency may award supplemental or successor contracts for work related to this Contract or may award contracts to other contractors for work related to this Contract. The Contractor shall cooperate fully with other contractors and the Agency in all such cases.
- G. Certificate of Good Standing.** The Contractor shall provide to the Agency a Certificate of Good Standing from the Wyoming Secretary of State, or other proof that Contractor is authorized to conduct business in the State of Wyoming, if required, before performing work under this Contract. Contractor shall ensure that all annual filings and corporate taxes due and owing to the Secretary of State's office are up-to-date before signing this Contract.
- H. Compliance with Laws.** The Contractor shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Contract.
- I. Confidentiality of Information.** All documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Contractor in the performance of this Contract shall be kept confidential by the Contractor unless written permission is granted by the Agency for its release. If and when Contractor receives a request for information subject to this Contract, Contractor shall notify Agency within ten (10) days of such request and shall not release such information to a third party unless directed to do so by Agency.
- J. Entirety of Contract.** This Contract, consisting of fourteen 14 pages; and Attachment A, Statement of Work, consisting of three (3) pages; represent the entire and integrated Contract between the parties and supersede all prior negotiations, representations, and agreements, whether written or oral.

- K. Ethics.** Contractor shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. § 9-13-101, *et seq.*) and any and all ethical standards governing Contractor's profession.
- L. Extensions.** Nothing in this Contract shall be interpreted or deemed to create an expectation that this Contract will be extended beyond the term described herein. Any extension of this Contract shall be initiated by the Agency and shall be accomplished through a written amendment between the parties entered into before the expiration of the original Contract or any valid amendment thereto, and shall be effective only after it is reduced to writing and executed by all parties to the Contract.
- M. Force Majeure.** Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays.
- N. Indemnification.** The Contractor shall release, indemnify, and hold harmless the State, the Agency, and their officers, agents, and employees from any and all claims, suits, liabilities, court awards, damages, costs, attorneys' fees, and expenses arising out of Contractor's failure to perform any of Contractor's duties and obligations hereunder or in connection with the negligent performance of Contractor's duties or obligations, including, but not limited to, any claims, suits, liabilities, court awards, damages, costs, attorneys' fees, and expenses arising out of Contractor's negligence or other tortious conduct.
- O. Independent Contractor.** The Contractor shall function as an independent contractor for the purposes of this Contract and shall not be considered an employee of the State of Wyoming for any purpose. Consistent with the express terms of this Contract, the Contractor shall be free from control or direction over the details of the performance of services under this Contract. The Contractor shall assume sole responsibility for any debts or liabilities that may be incurred by the Contractor in fulfilling the terms of this Contract and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Contractor or its agents or employees to act as an agent or representative for or on behalf of the State of Wyoming or the Agency or to incur any obligation of any kind on behalf of the State of Wyoming or the Agency. The Contractor agrees that no health or hospitalization benefits, workers' compensation, unemployment insurance or similar benefits available to State of Wyoming employees will inure to the benefit

of the Contractor or the Contractor's agents or employees as a result of this Contract.

- P. Nondiscrimination.** The Contractor shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105, *et seq.*), the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, *et seq.*, and the Age Discrimination Act of 1975 and any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin, or disability in connection with the performance under this Contract.
- Q. Notices.** All notices arising out of, or from, the provisions of this Contract shall be in writing either by regular mail or delivery in person at the addresses provided under this Contract.
- R. Notice of Sale or Transfer.** The Contractor shall provide the Agency with notice of any sale, transfer, merger, or consolidation of the assets of the Contractor. Such notice shall be provided in accordance with the notices provision of this Contract and, when possible and lawful, in advance of the transaction. If the Agency determines that the sale, transfer, merger, or consolidation is not consistent with the continued satisfactory performance of the Contractor's obligations under this Contract, then the Agency may, at its discretion, terminate or renegotiate the Contract.
- S. Ownership and Destruction of Documents and Information.** Agency owns all documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Contractor in the performance of this Contract. Upon termination of services, for any reason, Contractor agrees to return all such original and derivative information and documents to the Agency in a useable format. In the case of electronic transmission, such transmission shall be secured. The return of information by any other means shall be by a parcel service that utilizes tracking numbers. Upon Agency's verified receipt of such information, Contractor agrees to physically and electronically destroy any residual Agency-owned data, regardless of format, and any other storage media or areas containing such information. Contractor agrees to provide written notice to Agency confirming the destruction of any such residual Agency-owned data.
- T. Patent or Copyright Protection.** The Contractor recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license, or other similar restrictions, and warrants that no work performed by the Contractor or its subcontractors will violate any such restriction. The Contractor shall defend and indemnify the Agency for any infringement or alleged infringement of such patent, trademark, copyright, license, or other restrictions.
- U. Prior Approval.** This Contract shall not be binding upon either party, no services shall be performed, and the Wyoming State Auditor shall not draw warrants for

payment, until this Contract has been fully executed, approved as to form by the Office of the Attorney General, filed with and approved by A&I Procurement, and approved by the Governor of the State of Wyoming, or his designee, if required by Wyo. Stat. § 9-2-1016(b)(iv).

V. Insurance Requirements.

- (i) During the term of this Contract, the Contractor shall obtain and maintain, and ensure that each subcontractor obtains and maintains, each type of insurance coverage specified in Insurance Coverage, below.
- (ii) All policies shall be primary over any insurance or self-insurance program carried by the Contractor or the State of Wyoming. All policies shall include clauses stating that each insurance carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.
- (iii) The Contractor shall provide Certificates of Insurance to the Agency verifying each type of coverage required herein. If the policy is a “claims made” policy instead of an “occurrence” policy, the information provided shall include, but is not limited to, retroactive dates and extended reporting periods or tails.
- (iv) All policies shall be endorsed to provide at least thirty (30) days advance written notice of cancellation to the Agency. A copy of the policy endorsement shall be provided with the Certificate of Insurance.
- (v) In case of a breach of any provision relating to Insurance Requirements or Insurance Coverage, the Agency may, at the Agency’s option, obtain and maintain, at the expense of the Contractor, such insurance in the name of the Contractor, or subcontractor, as the Agency may deem proper and may deduct the cost of obtaining and maintaining such insurance from any sums which may be due or become due to the Contractor under this Contract.
- (vi) All policies required by this Contract shall be issued by an insurance company with an A.M. Best rating of A- VIII or better.
- (vii) The Agency reserves the right to reject any policy issued by an insurance company that does not meet these requirements.

W. Insurance Coverage. The Contractor shall obtain and maintain the following insurance in accordance with the Insurance Requirements set forth above:

- (i) Automobile Liability Insurance. Automobile liability insurance covering any auto (including owned, hired, and non-owned) with minimum limits of

\$1,000,000.00 each accident combined single limit.

- (ii) Professional Liability or Errors and Omissions Liability Insurance. Professional liability insurance or errors and omissions liability insurance protecting against any and all claims arising from the Contractor's alleged or real professional errors, omissions, or mistakes in the performance of professional duties under this Contract, with minimum limits as follows:

- (a) \$1,000,000.00 each occurrence; and
- (b) \$1,000,000.00 general aggregate.

The policy shall have an extended reporting period of two (2) years.

- (iii) Cyber Liability Insurance. Cyber liability insurance which shall be sufficiently broad to cover all duties and obligations undertaken by Contractor and shall include, but not be limited to, claims involving infringement of intellectual property, including, but not limited to, infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security, with minimum limits as follows:

- (a) \$2,000,000.00 each occurrence; and
- (b) \$2,000,000.00 general aggregate.

Coverage shall include breach response costs, regulatory fines and penalties, and credit monitoring expenses, with limits sufficient to respond to these obligations.

- X. Publicity.** Any publicity given to the projects, programs, or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices in whatever form, prepared by or for the Contractor shall identify the Agency as the sponsoring agency and shall not be released without prior written approval from the Agency.
- Y. Severability.** Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of the Contract shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.
- Z. Sovereign Immunity and Limitations.** Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming and Agency expressly reserve sovereign immunity by entering into this Contract and specifically retain all immunities and defenses available to them as sovereigns. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. Designations of venue, choice of law, enforcement actions,

and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Contract shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.

- AA. Taxes.** The Contractor shall pay all taxes and other such amounts required by federal, state, and local law, including, but not limited to, federal and social security taxes, workers' compensation, unemployment insurance, and sales taxes.
- BB. Termination of Contract.** This Contract may be terminated, without cause, by the Agency upon thirty (30) days written notice. This Contract may be terminated by the Agency immediately for cause if the Contractor fails to perform in accordance with the terms of this Contract. If at any time during the performance of this Contract, in the opinion of the Agency, the work is not progressing satisfactorily or within the terms of this Contract, then, at the sole discretion of the Agency and after written notice to the Contractor, the Agency may terminate this Contract or any part of it. As of the termination date, the Contractor will be entitled to a pro rata payment for all work accomplished and accepted by the Agency; however, the Contractor shall be liable to the Agency for the entire cost of replacement services for the duration of the Contract term.
- CC. Third-Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties, and obligations contained in this Contract shall operate only between the parties to this Contract and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract.
- DD. Time is of the Essence.** Time is of the essence in all provisions of this Contract.
- EE. Titles Not Controlling.** Titles of sections and subsections are for reference only and shall not be used to construe the language in this Contract.
- FF. Waiver.** The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.
- GG. Counterparts.** This Contract may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Contract. Delivery by the Contractor of an originally signed counterpart of this Contract by facsimile or PDF shall be followed up immediately by delivery of the originally signed counterpart to the Agency.

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9. **Signatures.** The parties to this Contract, either personally or through their duly authorized representatives, have executed this Contract on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Contract.

The Effective Date of this Contract is the date of the signature last affixed to this page.

AGENCY:

Wyoming Department of Education

Dicky Shanor, Chief of Staff

Date

Shelley Hamel, Chief of Academics

Date

CONTRACTOR:

Educational Advantages, Inc.

Sarah Anderson, CEO Educational Advantages, Inc.

Date

ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM

Kristin M. Nuss, Senior Assistant Attorney General

Date

Statement of Work



Wyoming Department of Education

Special Education Dispute Resolution Applications

Provided by:

Educational Advantages, Inc.

P.O. Box 10, Ten Sleep, WY 82442

307-431-1353

June 13, 2019

General Description

This document is intended to identify and describe important milestones and deliverables for two years of annual license and support for SPED Advantage and Dispute Resolution software applications. The goal of the project is to allow the Department of Special Education Programs to conduct file reviews online, gather special education data and for the Dispute Resolution team to be able to effectively track, monitor, and report on the Special Education Dispute Resolution Process.

This proposal includes:

- User licenses for designated employees of the Division of Special Education Programs
- Support for designated employees of the Division of Special Education Programs
- Annual software support and maintenance for both monitoring applications

Timeline and Deliverables

The following table details specific tasks, milestones, completion dates and estimated costs.

The Contractor estimates approximately twenty-four months to completion with a projected end date of July 31, 2021. This timeline includes work to allow the Special Education Programs Division to conduct file reviews online, gather special education data and for the Dispute Resolution team to be able to effectively track, monitor, and report on the Special Education Dispute Resolution Process. The Contractor will pursue all options to complete this project ahead of schedule and under the quoted costs. Payments of invoices will be based upon the Contractor meeting the stated deadlines for deliverables and upon the Agency's acceptance of the proposed deliverables.

TASK	DESCRIPTION	HOURS	COST	DATE
1	State Annual user and application Licensing – SPED Advantage (up to 10 users. Additional users will be \$20/month = \$240/year)		\$6,000	Year 1 – August 1, 2019 – July 31, 2020
2	Annual User and Application Licensing Dispute Resolution up to 7 users (Up to 7 users. Additional users will be \$20/month =		\$5,000	Year 1 – August 1, 2019 –

	\$240/year).			July 31, 2020
3	State Annual user and application Licensing – SPED Advantage (up to 10 users. Additional users will be \$20/month = \$240/year)		\$6,000	Year 2 – August 1, 2020 – July 31, 2021
4	Annual User and Application Licensing Dispute Resolution up to 7 users (Up to 7 users. Additional users will be \$20/month = \$240/year).		\$5,000	Year 2 – August 1, 2020 – July 31, 2021

Expectations of State by Contractor

The Contractor will rely on the Agency to provide assistance with contact information, review of milestones as they are completed, and general responsiveness to project needs and questions as they arise. The Contractor appreciates any input and critiques, and will work closely with the Project Representative to ensure all goals and requirements of this project are met.