

CCS General Terms and Conditions

1. **DEFINITIONS** - *As used throughout this **BID** including all sections and sub-sections and any purchase order or contract resulting therefrom, as well as these General Terms and Conditions, the following terms shall have the meaning set forth herein:*
- a. "**Agency**" shall mean CCS, an Agency of the State of Washington, any division, section, office, unit or other entity of CCS, or any of the officers or other officials lawfully representing CCS.
 - b. "**Bidder**" see Respondent.
 - c. "**CCS**" means Community Colleges of Spokane, any division, section, office, unit, campus or other entity of Spokane Community College or Spokane Falls Community College, or any of the officers or other officials lawfully representing the Community Colleges of Spokane.
 - d. "**College**" See CCS
 - e. "**Contract**" means purchase order and/or the entire written agreement between CCS and the Contractor, including any Exhibits, documents, and materials incorporated by reference.
 - f. "**Contractor**" (and "the Contractor") is the "Successful Respondent" and is that firm, provider, organization, individual or other entity providing goods and/or performing service(s) under an awarded contract resulting from this **BID**, and shall include all employees, assigns, successors in interest and authorized agents of the Contractor. See also "Successful Respondent."
 - g. "**Debarment**" means an action taken by a Federal official to exclude a person or business entity from participating in transactions involving certain federal funds.
 - h. "**Improper influence**" means any influence that induces or tends to induce a CCS employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.
 - i. "**Materials**" means all information in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, software, digital file, computer programs, films, tapes, and sound reproductions.
 - j. "**Ownership**" includes the right to copyright, patent, and register, and the ability to transfer, these rights.
 - k. "**Party**" or "**Parties**" Party, when capitalized, shall mean an individual generic reference to the Contractor or CCS. Parties, when capitalized, shall mean both the Contractor and CCS.
 - l. "**Personal Information**" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education,

business, use or receipt of governmental services or other activities, addresses, telephone numbers, Social Security Numbers, driver license numbers, other identifying numbers, and any financial identifiers.

- m. “**RCW**” means the Revised Code of Washington. All reference in this Contract to RCW chapters or sections shall include any successor, or replacement statute.
 - n. ”**Law**” means any federal, state, local or CCS regulation, law, rule, or ordinance.
 - o. “**Respondent**” means Seller or the bidder, person, firm, entity or corporation that submits to CCS a response, or an offer to sell, the goods or services intended by this BID.
 - p. “**Special Terms and Conditions**” means terms and conditions other than these General Terms and Conditions.
 - q. “**Subcontract**” means any separate agreement or contract between the Contractor and an individual or entity (“Subcontractor”) to perform all or portion of the duties and obligations that the Contractor is obligated to perform pursuant to this Contract.
 - r. “**Subcontractor**” means one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms “Subcontractor” and “Subcontractors” means Subcontractor(s) in any tier.
 - s. “**Successful Respondent**” refers to the respondent that has been awarded a contract resulting from this BID.
2. **ADVANCE PAYMENTS PROHIBITED** – No payments in advance of or in anticipation of goods or services to be provided under this Contract shall be made by CCS, except as authorized by law.
3. **AMENDMENTS** – Any contract or purchase order resulting from this BID may only be amended by the mutual written agreement of the Parties. No material alterations in any of the terms, conditions, delivery, price, quality, quantity, or specifications shall be effective unless the alteration is expressly acknowledged and accepted in writing by an authorized person at CCS.
4. **ANTITRUST ASSIGNMENTS** – The Contractor hereby assigns to CCS any and all claims for price fixing or overcharges relating to goods, products, services and/or materials purchased under this Contract, except as to overcharges that result from antitrust violations commencing after the price is established under this Contract and that are not passed on to CCS under an escalation clause.
5. **ASSIGNMENT** – The work to be provided under this Contract, and any claim arising there under, is not assignable or delegable by the Contractor without prior written consent by CCS. Provision of monies due under this Contract shall only be assignable with prior written permission of CCS.

6. **ATTORNEYS' FEES** – In the event of litigation or other action brought to enforce the Contract terms; each party shall bear its own attorneys' fees and costs.

7. **BREACH, DEFAULT, TERMINATION**

- a. Breach: A breach of a term or condition of this Contract shall mean any one or more of the following events:
 - i. The Contractor fails to perform the services by the date required or by a later date as may be agreed to in a written amendment to this Contract signed by CCS;
 - ii. The Contractor breaches any warranty or fails to perform or comply with any term or provision in this Contract;
 - iii. The Contractor makes any general assignment for the benefit of creditors;
 - iv. In CCS's sole opinion, the Contractor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder;
 - v. The Contractor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors;
 - vi. Any receiver, trustee, or similar official is appointed for the Contractor or any of the Contractor's property;
 - vii. The Contractor is determined to be in violation of any rules or Laws and that such determination, in CCS's sole opinion, renders the Contractor unable to perform any aspect of this Contract.
- b. Default: The Contractor may be declared in default for a material breach of any term or condition.
- c. Termination for Convenience: CCS may terminate this Contract, in whole or in part, at any time and for any reason by giving thirty (30) calendar days written termination notice to the Contractor. Termination charges shall not apply unless they are subsequently agreed upon by both Parties. Where termination charges are applicable, both Parties agree to negotiate in good faith and to limit the extent of negotiations to valid documented expenses incurred by the Contractor prior to date of termination. Should the Parties not agree to a satisfactory settlement, the matter may be subjected to mediation and/or legal proceedings.
- d. Termination for Breach and/or Default: Except in the case of delay or failure to perform resulting from circumstances beyond the control and without the fault or negligence of the Contractor or of the Contractor's suppliers or subcontractors, CCS shall be entitled, by written or oral notice, to cancel and/or terminate this Contract in its entirety or in part for breach and/or for default of any of the terms herein and to have all other rights against the Contractor by reason of the Contractor's breach as provided by Law.
- e. Funding Contingency: In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion, CCS may terminate this Agreement under the "Termination for Convenience" clause without advance notice, subject to renegotiation under those new funding limitations and conditions.
- f. Termination by Mutual Agreement: CCS or the Contractor may terminate this Contract in whole or in part, at any time, by mutual written agreement signed by authorized persons.

8. **COMPLIANCE WITH APPLICABLE LAW** – At all times during the term of this Contract, the Contractor shall comply with all Laws, including but not limited to, nondiscrimination laws, anti-kickback laws, fraudulent claims law and export controls.
9. **CONFIDENTIALITY** – The Contractor may use Personal Information and any other information gained by reason of this Contract only for the purpose of this Contract. The Contractor shall not disclose, transfer, or sell any such information to any third party, except as provided by law or, in the case of Personal Information, without the prior written consent of the person to whom the Personal Information pertains. The Contractor shall maintain the confidentiality of all confidential information gained by reason of this Contract and shall return or certify the destruction of such information if requested in writing by CCS.
10. **CONFLICT OF INTEREST** – Notwithstanding any determination by the Executive Ethics Board or other tribunal, CCS may, in its sole discretion, by written notice to the Contractor, terminate this Contract if it is found after due notice and examination by CCS that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW, or any similar statute involving the Contractor in the procurement of this Contract, or the provision of goods or services under this Contract.

If this Contract is terminated as provided above, CCS shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of this Contract by the Contractor. The rights and remedies of CCS provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law.

11. **COPYRIGHT AND INTELLECTUAL PROPERTY PROVISIONS** – Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by CCS. CCS shall be considered the author of such Materials. If the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to CCS effective from the moment of creation of such Materials.

For Materials that are delivered under this Contract, but that incorporate pre-existing materials not produced under this Contract, the Contractor grants to CCS a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights, and rights of publicity, necessary to grant such a license to CCS.

CCS shall receive prompt written notice of each notice or claim of copyright infringement received by the Contractor with respect to any Materials delivered under this Contract. CCS shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

12. **COVENANT AGAINST CONTINGENT FEES** – The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or

contingent fee, excepting bona fide employees or bona fide established agents, as defined in the FAR Subpart 3.4, maintained by the Contractor for the purpose of securing business. CCS shall have the right, in the event of breach of this clause by the Contractor, to annul this Contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage, or contingent fee.

- 13. DEBARMENT CERTIFICATION** – The Contractor, by accepting the terms of this Contract, certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from participating in transactions. The Contractor shall include the above-mentioned requirement in any and all subcontracts into which it enters. In the event that the Contractor becomes debarred, suspended or ineligible from participating in transactions, the Contractor shall notify CCS in writing within three working days of such an event.
- 14. DELIVERY AND ACCEPTANCE** – Delivery shall be accomplished by the date and time in the order, and noncompliance may be construed as grounds for termination for cause for failure to deliver on time. Partial delivery will not be construed as acceptance of goods, including failure to deliver related software, materials or documentation. Unless otherwise provided in writing, CCS shall have ninety (90) days after delivery to accept software and equipment.
- 15. DELIVERY RESTRICTIONS** – Parking on campus sidewalks, grounds, or roadways is strictly prohibited.
- 16. FORCE MAJEURE** – Neither the Contractor nor CCS shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either the Contractor or CCS. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than CCS acting in either its sovereign or contractual capacity, war, acts of terrorism, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or other force majeure; but in every case the delays must be beyond the reasonable control and without fault or negligence of the Contractor, CCS, or their respective Subcontractors.
- 17. GOVERNING LAW** – This Contract shall be interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in Courts of competent jurisdiction within the county of Spokane Washington. This BID document, any bids received in response to this BID document and any subsequent order(s) shall be governed by the Laws of the State of Washington, including the State of Washington Uniform Commercial Code (U.C.C.).
- 18. INDEMNIFICATION** – The Contractor shall indemnify, defend, and hold CCS, the Board of Trustees, and all CCS officers, employees, students and agents, harmless from and against all claims for damages, costs (including attorney’s fees), or liability, relating to the death or injury to any persons or the damage of any property resulting from or arising out of the acts or omissions of the Contractor or its employees, agents, or subcontractors in connection with this Contract. The Contractor expressly agrees to indemnify, defend, and hold harmless CCS for any claim arising out of or incident to the Contractor’s or any subcontractor’s performance or failure to perform this Contract. The Contractor shall be

required to indemnify, defend and hold harmless CCS only to the extent claim is caused in whole or in part by negligent acts or omissions of the Contractor.

The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify CCS, the Board of Trustees, and their officers, employees, students and agents as provided herein.

19. **PERSONAL LIABILITY** - It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of CCS be in any way personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement or representation made herein or in any connection with this agreement.
20. **INDEPENDENT CONTRACTOR** – The Parties intend that an independent contractor relationship is created by this Contract. The Contractor and its employees or agents performing under this Contract are not employees or agents of CCS. The Contractor, its employees, or agents performing under this Contract will not hold itself out as, nor claim to be, an officer or employee of CCS or of the State of Washington during the term of this Contract, or act as attorney in fact, nor will the Contractor make any claim of right, privilege or benefit that would accrue to such employee. Conduct and control of the work will be solely with the Contractor.
21. **INFRINGEMENTS** – The Contractor agrees to defend, indemnify and hold harmless CCS against all claims for patent, copyright, or franchising infringements arising from the purchase, installation, or use of software, documentation, material or product ordered on this Contract, and to assume all expense and damage arising from such claims.
22. **INSPECTION** – In addition to any rights of access or inspection that may be included in any Special Terms and Conditions, the Contractor shall provide reasonable access to the Contractor's place of business, the Contractor records, and client records, to CCS and to any authorized agent of the state of Washington or the federal government in order to monitor, audit, and evaluate the Contractor's performance and compliance with applicable Laws, and these Contract terms during the term of this Contract and for one (1) year following termination or expiration of this Contract, six (6) years in relation to all records maintained per Records Maintenance clause of this Contract.

The Purchaser's inspection of all materials and equipment upon delivery is for the sole purpose of identification. Such inspection shall not be construed as final acceptance, or as acceptance of the materials or equipment, if materials or equipment does not conform to contractual requirements. If there are any apparent defects in the materials or equipment at the time of delivery, the Purchaser will promptly notify the Contractor thereof. Without limiting any other rights, the Purchaser and/or the state at its option, may require the Contractor to: (a) Repair or replace, at Contractor's expense, any or all of the damaged goods, or (b) Refund the price of any or all of the damaged goods, or (c) Accept the return of any or all of the damaged goods.

23. **LIENS, CLAIMS AND ENCUMBRANCES** – The Contractor warrants and represents that all software, documentation, materials, equipment or services delivered under this Contract are free and clear of all liens, claims, or encumbrances of any kind.

24. **LIMITATION OF LIABILITY** – CCS shall not be liable to the Contractor or to any Subcontractor, regardless of the form of action, for any consequential, incidental, indirect, special or punitive damages, or for any claim or demand based on a Data Compliance issue, release of information, or patent, copyright, or other intellectual property right infringement. This section does not modify any specific agreement regarding liquidated damages or any other conditions as are elsewhere expressly agreed to between the Parties.
25. **NO DISCRIMINATION** - There will be no discrimination in the performance of this Contract on the basis of race, religion, creed, color, national origin, sex, marital status, sexual orientation (including gender identity), age, genetic history, honorably discharged veteran or military status, the presence of any sensory, mental, or physical disability, the use of a trained dog guide or service animal by a person with a disability, or any other protected status, in compliance with applicable state and federal law.
26. **ORDER IDENTIFICATION** – All invoices, packing lists, packages, shipping notices, and other written documentation affecting any goods delivered under this Contract shall contain the applicable order number. Packing lists shall be enclosed in each and every box or package shipped pursuant to this Contract indicating the contents therein. Invoices will not be processed for payment until all items invoiced are received. Shipments received without order numbers may be refused, at the Contractor’s expense.
27. **ORDER OF PRECEDENCE** – In the event of any inconsistencies or conflicting terms and conditions in this Contract, such inconsistency or conflict shall be resolved by giving precedence in the following order: federal, state, or local laws or Laws, CCS Special Terms and Conditions, CCS General Terms and Conditions. Any proposed Contractor’s terms are rejected, unless otherwise provided in writing by CCS’s Purchasing Department.
28. **PACKING** – No charges will be allowed for special handling, packing, wrapping, bags, containers, reels, etc. unless otherwise provided herein.
29. **PAYMENT, CASH DISCOUNT** – CCS shall not process invoices for payment, and the period of computation for cash discount will not commence, until CCS receives a properly completed invoice or receives and accepts invoiced items, whichever is later. A properly completed invoice must, in part, reference a valid CCS contract or a valid and duly authorized CCS purchase order. If an adjustment in payment is necessary due to damage or dispute, the cash discount period shall commence on the date final approval for payment is authorized. If CCS fails to make a timely payment, vendor may invoice for a minimum of \$1 or maximum of 1% per month on the amount overdue (RCW 39.76.011). Payment shall not be considered late if a check or warrant is available or mailed within the time specified, or, if no terms are specified, within 30 days from date of receipt of a properly completed invoice or goods, whichever is later. CCS shall not honor drafts nor accept goods on a sight draft basis.

The method of payment will be at the sole discretion of CCS using any of the following payment methods:

- a. By check;
- b. The CCS credit card – otherwise referred to as “payment card” or “P-Card”;
- c. Automated Clearing House (ACH).

30. **PROPRIETARY INFORMATION** – Supplier should clearly identify any material such as, but not restricted to, valuable formulae, design, drawing, and research data claimed to be exempt from public records request, as allowable by law (RCW 42.56.270), along with a statement of the basis for such claim of exemption. Pricing and entire bid packages are not considered proprietary and are subject to public record.
31. **PUBLICITY** – The Contractor agrees to submit to CCS for prior approval, all advertising and publicity matters relating to this Contract wherein CCS’S name is mentioned or language used from which the connection of CCS’S name may, in CCS’s judgment, be inferred or implied. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of CCS.
32. **RECORD MAINTENANCE** – The Contractor shall maintain, at no additional cost, all records and other materials relevant to this Contract for a period of six (6) years following the date of termination or expiration of this Contract. At no additional cost, these records shall be subject at all reasonable times to inspection, review or audit by CCS, personnel duly authorized by CCS, the Office of the State Auditor, and any federal and state officials so authorized by Law or this Contract. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.
33. **REJECTION** – All goods or materials purchased under this Contract are subject to approval by CCS. Any rejection of goods or material resulting from nonconformity to the terms, conditions, or specifications of this Contract, whether held by CCS or returned, will be at the Contractor’s risk and expense.
34. **RIGHTS AND REMEDIES** – Failure of CCS to insist upon the strict performance of any term or condition of this Contract or to exercise or delay the exercise of any right or remedy provided in this Contract or by law, or the acceptance of (or payment for) materials, equipment or services, shall not release the Contractor from any responsibilities or obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of CCS to insist upon the strict performance of this Contract.
35. **SEVERABILITY** – If any term or condition of this Contract is held invalid by any court, such invalidity shall not affect the validity of the other terms or conditions of this Contract.
36. **SHIPPING INSTRUCTIONS** – Unless otherwise instructed, all goods procured under this contract are to be shipped prepaid, FOB Destination, as defined in RCW Title 62A. Where specific authorization is granted to ship goods FOB Shipping Point, the Contractor agrees to prepay all shipping charges, to route via the cheapest common carrier, and to bill CCS as a separate item on the invoice for the charges. CCS reserves the right to refuse COD shipments. Regardless of FOB point, the Contractor agrees to bear all risks of loss, injury, or destruction of goods and materials ordered pursuant to this Contract that occurs prior to delivery to CCS, and such loss, injury, or destruction shall not release the Contractor from any obligation hereunder.

37. SUBCONTRACTING –Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this Contract without obtaining the prior written approval by CCS.

38. TAXES / FEES / LICENSES– All payments accrued on account of property taxes, payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

Where required by state statute or Law, the Contractor shall pay for and maintain in current status all taxes that are necessary for Contract performance. Unless otherwise indicated, CCS agrees to pay State of Washington sales or use taxes on all applicable consumer services and materials purchased. No charge by the Contractor shall be made for federal excise taxes and CCS agrees to furnish the Contractor with an exemption certificate where appropriate.

The Contractor shall calculate and enter the appropriate Washington State and local sales tax on the invoice. Tax is to be computed on new items after deduction of any trade-in in accordance with WAC 458-20-247.

Fees/Licenses: Prior to the competitive solicitation due date, the Contractor shall pay for and maintain in a current status, any license fees, assessments, permit charges, etc., which are necessary for contract performance. It is the contractor's sole responsibility to monitor and determine any changes or the enactment of any subsequent regulations for said fees, assessments, or charges and to immediately comply with said changes or regulations during the entire term of this contract.

Customs/Brokerage Fees: To be considered responsive, bid must include ALL customs duties, brokerage or import fees where applicable. Contractor shall take all-necessary actions to ensure that materials or equipment purchased are expedited through customs. Failure to do so may subject contractor to liquidated damages as identified in this document and/or to other administrative actions considered appropriate.

SALES TAX ON CASH DISCOUNTS: In accordance with the Washington State Department of Revenue, sales tax is calculated on the discounted amount paid.

- 39. TERMINATION PROCEDURES** – After receipt of a notice of termination, and except as otherwise directed by CCS, the Contractor shall:
- a. Stop work under this Contract on the date, and to the extent specified, in the notice;
 - b. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under this Contract that is not terminated;
 - c. Assign to CCS, in the manner, at the times, and to the extent directed by CCS, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case CCS has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
 - d. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of CCS to the extent CCS may require, which approval or ratification shall be final for all the purposes of this clause;

- e. Transfer title to CCS and deliver in the manner, at the times, and to the extent directed by CCS any property which, if this Contract had been completed, would have been required to be furnished to CCS;
 - f. Complete performance of such part of the work as shall not have been terminated by CCS; and
 - g. Take such action as may be necessary, or as CCS may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which CCS has or may acquire an interest.
- CCS shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services or goods accepted by CCS. CCS may withhold from any amounts due the Contractor a sum that CCS determines to be necessary to protect CCS against potential loss or liability.

The rights and remedies of CCS provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

40. TREATMENT OF ASSETS

- a. Title to all property furnished by CCS shall remain in CCS. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vest in CCS upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this Contract, shall pass to and vest in CCS upon (1) issuance for use of such property in the performance of this Contract, or (2) commencement of use of such property in the performance of this Contract, or (3) reimbursement of the cost thereof by CCS in whole or in part, whichever first occurs.
- b. Any property of CCS furnished to the Contractor shall, unless otherwise provided herein or approved by CCS, be used only for the performance of this Contract.
- c. The Contractor shall be responsible for any loss or damage to property of CCS that result from the negligence or misconduct of the Contractor or from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
- d. If any CCS property is lost, destroyed or damaged, the Contractor shall immediately notify CCS and shall take all reasonable steps to protect the property from further damage.
- e. The Contractor shall surrender to CCS all property of CCS before settlement upon completion, termination or cancellation of this Contract.

41. U.S. DEPARTMENT OF TREASURY, OFFICE OR FOREIGN ASSETS

CONTROL – CCS complies with U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC) payment rules. OFAC prohibits financial transactions with the individuals or organizations, which have been placed on the OFAC Specially Designated Nationals (SDN) and Blocked Persons sanctions list located at <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>. Compliance with OFAC payments rules ensures CCS does not conduct business with individuals or organizations that have been determined to be supporters of terrorism and international drug dealing or that pose other dangers to the United States.

Prior to making payment to individuals or organizations, CCS will download the current OFAC SDN file and compare it to CCS and statewide vendor files. In the event of a positive match, CCS reserves the right to: (1) make a determination of “reasonability” before take the positive match to a higher authority, (2) seek assistance from the Washington State Office of the State Treasurer (OST) for advanced assistance in resolving the positive match, (3) comply with an OFAC investigation, if required, and/or (4) if the positive match is substantiated, notify, Contractor in writing and terminate the Contract according to the Termination for Convenience provision without making payment. CCS will not be liable for any late payment fees or missed discounts that are the result of time required to address the issue of an OFAC match.

42. WAIVER – Waiver of any default or breach shall not be deemed a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by authorized representative of CCS.

43. WARRANTY

- a. **Product:** The Contractor warrants all goods, products and services delivered under this order conform to specifications set forth in this Contract and any request for proposal upon which this Contract is based, shall be free from defects in material and workmanship, and shall be fit for the intended purpose. All goods, software, documentation, materials, products and services found defective shall be replaced upon notification by CCS. All costs of replacement, including shipping charges, shall be borne by the Contractor.
- b. **Price:** The Contractor warrants that prices of software, documentation, materials, equipment, and services set forth herein do not exceed those charged by the Contractor to any other customer purchasing the same goods or services under similar conditions and in like or similar quantities.
- c. **Financial Status:** The Contractor warrants that at the time of the commencement of its performance under this Contract, it has not commenced bankruptcy proceedings and that there are no judgments, liens or encumbrances of any kind affecting title to any goods that are the subject of this Contract

44. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE) - In accordance with the legislative findings and policies set forth in Chapter 39.19 RCW, the State of Washington encourages participation in all its contracts by MWBE firms certified by the Office of Minority and Women’s Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this solicitation/invitation or as a subcontractor to a Bidder/Proposer. However, unless required by federal statutes, regulations, grants, or contract terms referenced in the contract documents, no preference will be included in the evaluation of bids/proposals, no minimum level of MWBE participation shall be required as condition for receiving an award, and bids/proposals will not be rejected or considered non-responsive on that basis. Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the contract documents will apply. Bidders may contact OMWBE to obtain information on certified firms for potential subcontracting arrangements.

45. GIFTS AND GRATUITIES - In accordance with RCW 43.19.1937 and 1939 and RCW 42.52.150 and 160, it is unlawful for any person to directly or indirectly offer, give or

accept gifts, gratuities, loans, trips, favors, special discounts, services, or anything of economic value in conjunction with state business practices to another to refrain from submitting a proposal. Further RCW 43.19.1937 and the Ethics in Public Service Law, Chapter 42.52 RCW prohibits state officers or employees from receiving, accepting, taking or seeking gifts (except as permitted by RCW 42.52.150) if the officer or employee participates in contractual matters relating to the purchase of goods or services.

- 46. INSTATE PREFERENCE-RECIPROCITY** - Pursuant to RCW 43.19.700-704 and WAC 236-48-085 the Department of General Administration has established a schedule of penalties applicable against firms submitting bids from states which grant a preference to their own in-state businesses. The penalties are available on the DES website at their [Reciprocal Preferences Table](#).

The appropriate percentage penalty will be added to each bid bearing the address from a state with in-state preferences rather than subtracting a like amount from Washington State bidders. This action will be used only for bid analysis and award. In no instances shall the increase be paid to a supplier whose bid is accepted.

- 47. PROTESTS** - Protests shall be filed and resolved in accordance with Washington Administrative Code (WAC) 236-48-141 through 143. Protests filed prior to award are to be addressed to the SPO in charge of the bid. Protests filed after the award are to be addressed to the Policy and Protest Manager, Office of State Procurement. If an award is cancelled as a result of a protest filed after award, the state shall not be liable to the awardee for, and the awardee shall not claim against the state, any alleged (a) bid preparation charges, (b) cost incurred to ensure that the awardees bid is responsive, (c) claims for anticipated lost profits, or (d) claims for damages.

- 48. MATERIAL SAFETY DATA SHEETS (MSDS)** – Law, including the Washington Administrative Code (WAC) 296-62-054, requires that all manufacturers / distributors of hazardous substances, including any of the items listed on this BID, BID, or contract bid and subsequent award, must include with each delivery completed Material Safety Data Sheets (MSDS) for each hazardous material. Additionally, each container of hazardous material must be appropriately labeled with the identity of the hazardous material, Appropriate hazardous warnings, and name and address of the chemical manufacturer, importer, or other responsible party. Labor and Industries may levy appropriate fines against employers for noncompliance and agencies may withhold payment-pending receipt of a legible copy of the MSDS. It should be noted that OSHA Form 20 is not acceptable in lieu of this requirement unless it is modified to include appropriate information relative to "carcinogenic ingredients" and "routes of entry" of the product(s) in question.

- 49. RECOVERY OF FUNDS:** Whenever any claim or sum of money shall be recoverable from, or payable by, the Contractor to CCS, the same amount may be deducted from any sum due and payable to the Contractor under the contract, PO, or under any other contract between the Contractor and the CCS, including reasonable attorney fees and any other collection costs. The rights of CCS are in addition and without prejudice to any other right CCS may have to claim the amount of any loss or damage suffered by CCS on account of the acts or omissions of the Contractor.

- 50. PATENTS, TRADEMARKS AND COPYRIGHT** - The Contractor warrants that the goods, equipment and/or materials furnished on any contract or order do not infringe any patent, registered trademark or copyright, and agrees to hold CCS harmless in the event of any infringement or claim thereof.
- 51. REGISTRATION OF CONTRACTOR** – Pursuant to RCW 39.26.160(7), by submitting a response to this BID, each respondent agrees and authorizes CCS to enter into the state's enterprise vendor registration and bid notification system (a.k.a. WEBS) the name of the respondent (i.e., register the respondent in WEBS).
- 52. NO FEE TO PREPARE RESPONSE** -- CCS will not be liable for any fee or costs incurred by the respondent in the preparation of any response or proposal submitted to CCS as a result of this BID, in conduct of a presentation, interviews or any other activities related to responding to this BID.
- 53. PERMITS, LICENSES, INSURANCE** – Unless specifically excluded in the Technical Specifications or Scope of Work section of this BID, all prices offered and quotes submitted shall include all licensing, permits, application, and/or filing fees. If the Technical Specifications or Scope of Work section of this BID requires installation, set-up or work to be performed on CCS Campus property, the respondent shall be required to provide the required insurance coverage (as set forth in Section 8 of this BID) and the response all pricing shall be inclusive of all costs to provide said insurance and applicable prevailing wage filing fees required by Washington State Department of Labor and Industries (L&I).
- 54. INDUSTRIAL INSURANCE COVERAGE** - The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, AGENCY may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. The AGENCY may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the AGENCY under this contract and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.
- 55. PUBLIC RECORDS** – All documents submitted by Bidders to the College as part of this procurement will become public records. They are subject to disclosure unless specifically exempt under Revised Code of Washington (RCW) 42.56 (The Public Records Act). All bids submitted for this BID will be exempt from public disclosure during the bid process (RCW 39.26.030) but will become eligible for public disclosure once the prevailing bidder has been announced (Notice of Intent to award). Any bids marked “Confidential”, “Proprietary”, “Trade Secret”, or similarly indicate confidential information will be rejected and returned to the bidder.
- 56. NON-EXCLUSIVE AGREEMENT** - Any contract awarded will be non-exclusive and if it be in CCS's best interest, it may award contracts for the same or similar products or work to other firms.

- 57. ADDITIONAL QUANTITIES** - In submitting a response to this BID and pursuant to RCW 39.34, the respondent agrees to sell to CCS, as well as to other public entities as defined in RCW 39.34, additional quantities at the prices offered in their response to this BID and under the same terms and conditions of this BID. The sale of additional quantities, under this paragraph, is contingent upon the seller's review and approval at the time of a requested sale. Any price de-escalation / escalation provisions may apply in the case of a sale of additional items. Seller's right to refuse to sell additional items at the time of request shall be absolute.
- 58. WIPHE PROVISIONS** – WIPHE means “Washington Institutions of Public Higher Education.” If a WIPHE Section 9 has been included in this BID, then this solicitation is being issued by CCS (as the Lead Institution) pursuant to the Inter-local Cooperative Act, RCW 39.34, and offers the successful respondent an opportunity to make any resulting contract available to WIPHE members agencies. WIPHE Section 9 of this BID contains information about the WIPHE cooperative membership and the terms and conditions of such arrangements. There are no WIPHE members committed to participate in this BID, but potential participants are identified in any WIPHE Section 9 of this BID. This BID provides no exclusive arrangements for obtaining product or services by any WIPHE Institution who has not specifically been identified as committed participants. Potential Participants may purchase any product or services in this bid through their own processes for competitive procurement or via other cooperative purchasing arrangements at their disposal.
- 59. AMERICANS WITH DISABILITIES ACT (ADA)** - The successful respondent must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.
- 60. ACCESSABILITY REQUIREMENTS COMPLIANCE** - In accordance with federal and state laws including the Americans with Disabilities Act (ADA) of 1990, ADA Amendments Act of 2008, Section 504 of the Rehabilitation Act of 1973, WaTech Accessibility Policy User-01 and RCW 43.105.205 Community Colleges of Spokane (CCS) is committed to providing accessible technology for individuals with disabilities. CCS intends to adhere to federal and state regulations and rules regarding information technology accessibility. If you need assistance in responding to this BID, contact the designated CCS point of contact listed on the cover page of this BID. Unless it is not possible due to technical limitations, or due to legal limitations, CCS will provide ADA equivalent access to the content of this BID to interested respondents with disabilities who contact CCS making a request for accommodation.