

**STATE OF WASHINGTON
OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION
OLYMPIA, WASHINGTON**

REQUEST FOR PROPOSALS (RFP)

RFP NO. 2011-07 Amendment 02

This RFP is available at the Office of Superintendent of Public Instruction website located at <http://www.k12.wa.us/RFP/> and at the Office of General Administration, Washington Electronic Business Solution (WEBS) Procurement Website at <http://www.ga.wa.gov/webs/>. All RFP amendments or Consultant questions and OSPI answers will be posted to these sites. All interested Consultants must be registered with WEBS under the following commodity codes in order to receive notifications: Sporting Goods, Athletic Equipment And Athletic Facility Equipment 805-35 and 805-35.

PROJECT TITLE: Bicycles and Bicycle Equipment for Safe Routes to School Bicycle and Pedestrian Safety Program

PROPOSAL DUE DATE: 4:30 p.m., Pacific Daylight Time (PDT) on ~~Thursday~~ Monday, August 1, 2011

ESTIMATED CONTRACT PERIOD: August 19, 2011 through June 30, 2012. Amendments extending the period of performance, if any, shall be at the sole discretion of OSPI.

CONSULTANT ELIGIBILITY: This procurement is open to those Consultants that satisfy the minimum qualifications stated herein and that are available for work in Washington State.

SUBMIT PROPOSAL TO: Kyla Ballentine, RFP Coordinator
contracts@k12.wa.us

FAXED BIDS WILL NOT BE ACCEPTED.

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Section A. INTRODUCTION

1. DEFINITIONS

Definitions for the purposes of this RFP include:

BAW – Bicycle Alliance of Washington; advocates for bicyclists and a bike-friendly Washington.

Buy America – Articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States, shall be acquired for public use.

Consultant – Individual or company (firm, state agency, etc.) submitting a proposal in order to attain a contract with OSPI.

Contractor – Individual or company whose proposal has been accepted by OSPI and is awarded a fully executed, written contract.

OSPI – Office of Superintendent of Public Instruction is the agency of the State of Washington that is issuing this RFP.

Proposal – A formal offer submitted in response to this solicitation.

Request for Proposals (RFP) – Formal procurement document in which a service or need is identified but no specific method to achieve it has been chosen. The purpose of an RFP is to permit the consultant community to suggest various approaches to meet the need at a given price.

Safe Routes to School Bicycle and Pedestrian Safety Education Program – Two-year grant from the Washington State Department of Transportation, managed by the Office of Superintendent of Public Instruction for Bike and Pedestrian Safety Education Programs for students in Grades 5-8 in approximately twenty-five (25) school districts across the state.

WSDOT – Washington State Department of Transportation

2. PURPOSE OF REQUEST FOR PROPOSALS

The Office of Superintendent of Public Instruction, hereafter called "OSPI," is initiating this Request for Proposals (RFP) to solicit proposals from Consultants interested in participating on a project to provide, assemble, and deliver bicycles and related equipment to school districts for the Bicycle and Pedestrian Safety Education program in Washington State.

3. BACKGROUND

Safe Routes to School Programs:

OSPI collaborates with the Washington State Department of Transportation to support [Safe Routes to School Bicycle and Pedestrian Safety Education programs](#). These programs enable community leaders, schools and parents across the United States to improve safety and encourage more children, including children with disabilities, to safely walk and bicycle to school. In the process, programs are working to reduce traffic congestion and improve health and the environment, making communities more livable for everyone.

The Safe Routes to School Bicycle and Pedestrian Safety Education Program will provide bicycle and pedestrian safety education to students in grades 5-8 in approximately twenty-five (25) to forty (40) school districts across the state through two-year grant funding from the Washington State Department of Transportation (WSDOT).

The grant funds districts to purchase approximately two (2) dozen bicycles, sized for middle school-aged children, plus a large, enclosed trailer to store and transport them, as needed. It also funds substitutes for up to ten (10) teachers per district to attend the mandatory two-day training program, Bicycle & Pedestrian Safety Education program, offered by the Bicycle Alliance of Washington, in conjunction with Feet First. Additional funds are available for helmets, bike maintenance contracts, and other equipment. Grants to individual districts will be in the range of \$20,000 to \$25,000 to cover activities from January 2011 through May 2012.

In Year 2 of the grant, all participating districts (other than the five (5) that have already procured bicycles) will be required to procure bicycles (and trailers) directly from the master contract arranged by OSPI.

Federal Buy America Requirements:

Federal Funding Requirements and Buy America standards for American steel per 23 CFR 635.410 apply; all bicycles and bicycle equipment must meet Buy America standards. American-made material is defined as material having all manufacturing processes occurring domestically. Except the material contained in the above foreign structural steel item(s) for which alternate bids were submitted and accepted as a basis of award, the steel and iron construction material that is permanently incorporated into the project shall consist of American-made materials only. Buy America does not apply to temporary steel items, e.g., temporary sheet piling, temporary bridges, steel scaffolding and falsework.

Steel Materials definitions:

1. Domestic Steel Materials: A manufactured steel material will be considered domestic if it has been manufactured in the United States.
2. Manufactured in the United States: A material will be considered as manufactured in the United States if all manufacturing processes have occurred in the United States.
3. United States: To further define the coverage, a domestic product is a manufactured steel material that was produced in one of the fifty (50) states, the District of Columbia, Puerto Rico, or in the territories and possessions of the United States.

Bidding and Award

The bidder shall submit a bid for Bicycles and Bicycle Equipment containing only domestic steel.

The bidder may also submit a bid for Bicycles and Bicycle Equipment containing foreign steel.

All bidders must submit a bid for Bicycles and Bicycle Equipment containing only domestic steel. If a bid is received only for Bicycles and Bicycle equipment containing foreign steel, the bid will be considered irregular.

Note: In the case where the bidder cannot supply Bicycles and Bicycle Equipment containing only domestic steel or minor amounts of foreign steel and iron that would not exceed \$2,500.00 for the total contract a “NOT AVAILABLE” bid in that category must be used.

Subject to the provisions of Section 1-03, all bidders are advised that the contract will be awarded to the bidder who submits the lowest total bid based on furnishing domestic steel materials as specified, unless such total bid exceeds the lowest total bid based on furnishing foreign steel materials as

specified, by more than 25 percent. In that event, the contract will be awarded to the bidder who submits the lowest total bid based on furnishing the specified foreign steel material.

Except for the bicycle and bicycle equipment contained in the above foreign structural steel item(s) for which alternate bids were submitted and accepted as a basis of award, the steel and iron material that is included in this project shall consist of American-made materials only. American-made material is defined as material having all manufacturing processes occurring domestically.

Manufacturing begins with the initial melting and mixing, and continues through the coating stage. Any process which modifies the chemical content, the physical size or shape, or the final finish is considered a manufacturing process. The processes include rolling, extruding, machining, bending, grinding, drilling, welding, and coating. The action of applying a coating to steel or iron is deemed a manufacturing process. Coating includes epoxy coating, galvanizing, aluminizing, painting, and any other coating that protects or enhances the value of steel or iron. Any process from the original reduction from ore to the finished product constitutes a manufacturing process for iron.

1. Production of steel by any of the following processes:
 - a. Open hearth furnace.
 - b. Basic oxygen.
 - c. Electric furnace.
 - d. Direct reduction.
2. Rolling, heat treating, and any other similar processing.
3. Fabrication of the products.
 - a. Spinning wire into cable or strand.
 - b. Corrugating and rolling into culverts.
 - c. Shop fabrication.

Due to a nationwide waiver, Buy America does not apply to raw materials (iron ore and alloys), scrap (recycled steel or iron), and pig iron or processed, pelletized, and reduced iron ore.

The bidder may utilize minor amounts of foreign steel and iron in this project provided the cost of the foreign material used does not exceed one-tenth of one percent of the total contract cost or \$2,500.00 whichever is greater.

A certification of materials origin will be required for any items comprised of, or containing, steel or iron construction materials prior to such items being incorporated into the project. The certification shall be on DOT Form 350-109EF attached as Exhibit E to this RFP.

4. OBJECTIVE AND SCOPE OF WORK

The Contractor shall provide four hundred and fifty (450) to seven hundred and fifty (750) bicycles for middle school aged children that meet the following specifications:

- Frame Type: one that gives rider an upright position such as a mountain, comfort, or cruiser bike.
- Frame Material: aluminum
- Fork: straight blade fork
- Rim: 36 spokes
- Tire: 1.5" to 2" hybrid or mountain bike tread
- Gears: 1 to 7 speed; no front derailleur
- Wheel: 26" preferred if model comes small enough for smallest students; 24" also appropriate
- Sizing: needs to range from a 15" frame with a low step through up towards a 21" frame

- Color: all the bikes should be the same color or a neutral palette

Additionally, the bikes must be installed with a kickstand, thorn proof tubes, ~~ten (10) extra long seat posts per district~~, and derailleur guard. Slime must be installed on approximately three hundred (300) of the bicycles (approximately twelve (12) districts). Fully-assembled (ready-to-ride) bicycles must be delivered to schools/districts within thirty (30) days after a school/district submits a request for the items.

The Contractor shall be prepared to ship fully-assembled (ready-to-ride) bicycles to schools/districts in Washington. Districts may be located statewide, in urban or rural locations such as Spokane, Goldendale, Omak, or Port Angeles. School districts may choose to utilize the consultant's shipping method, or pick up on site. Thus, the consultant's proposal must reflect estimated state-wide shipping and handling fees.

5. STATE'S ROLE

OSPI shall procure a "master contract" with a contractor as a result of this RFP, and will provide the Contractor's information to schools/districts so that schools/districts can have direct contact with the distributor. OSPI shall provide Project Management oversight and will be available to the Apparently Successful Contractor as needed.

6. CONSULTANT QUALIFICATIONS

Consultants shall:

- Be licensed to do business in the State of Washington. If not licensed, provide a written intent to become licensed in Washington within thirty (30) calendar days of being selected as the Apparently Successful Contractor.
- Have the ability to deliver fully-assembled bicycles to schools/districts within 30 days.

7. PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFP is tentatively scheduled to begin on or about August 19, 2011, and end on or about June 30, 2012. The option to extend any contract resulting from this procurement shall be at the sole discretion of OSPI. OSPI may renew the contract resulting from this RFP for up to two (2) additional one (1)-year periods if there is additional need and funding.

Additional services that are appropriate to the scope of this RFP, as determined by OSPI, may be added to the resulting contract by a written amendment mutually agreed to and executed by both parties.

8. FUNDING

OSPI has budgeted an amount not to exceed \$350,000 for this project. Proposals in excess of \$350,000 will be rejected as non-responsive and will not be evaluated.

Any contract awarded as a result of this procurement is contingent upon the availability of funding. The Consultant shall provide their most favorable and competitive cost estimate to perform the work.

9. ADA

OSPI complies with the Americans with Disabilities Act (ADA). Consultants may contact the RFP Coordinator to receive this Request for Proposals in Braille or on tape.

Section B. GENERAL INFORMATION FOR CONSULTANTS

1. RFP COORDINATOR

The RFP Coordinator is the sole point of contact in OSPI for this procurement. All communication between the Consultant and OSPI upon receipt of this RFP shall be with the RFP Coordinator, as follows:

Name:	Kyla Ballentine
Physical Address:	600 Washington Street South
Mailing Address:	Post Office Box 47200
City, State, Zip Code:	Olympia, WA 98504-7200
Email Address:	contracts@k12.wa.us

All communications concerning this RFP must be directed only to the RFP Coordinator via email. Any other communication will be considered unofficial and non-binding on OSPI. Consultants are to rely on written statements issued by the RFP Coordinator. Communication directed to parties other than the RFP Coordinator may result in disqualification of the Consultant.

2. ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Item	Action	Date
1.	OSPI Issues RFP	July 15, 2011
2.	Question and Answer Period	July 15-25, 2011
3.	Last Date for Questions Regarding RFP	July 25, 2011
4.	Final Question and Answer Addendum or Amendment Posting	July 27, 2011
5.	Proposals Due	August 1, 2011
6.	Evaluation of Written Proposals	August 2-3, 2011
7.	Announce "Apparently Successful Contractor" and Send Notification to Unsuccessful Proposers	August 5, 2011
8.	Debriefing Conferences (if requested)	August 8-12
9.	Contract Negotiation	August 5-12, 2011
10.	Contract Start Date	August 19, 2011

OSPI reserves the right to revise the above schedule.

3. SUBMISSION OF PROPOSALS

Proposals must be submitted via email only. Proposals may not be transmitted via facsimile.

Consultants shall submit proposals as an attachment to an email to the RFP Coordinator listed above in Section B.1. Proposals must arrive by 4:30 p.m. in Olympia, WA, on Monday, August 1, 2011. Attachments to the email shall be Microsoft Word format or in Portable Document Format (PDF). Zipped files may be received by OSPI and can be used for submission of proposals. Consultants submitting proposals via email shall also send hard copies of the cover submittal letter and the certifications and assurances form with original signatures to the RFP Coordinator on or before the proposal due date. OSPI does not assume responsibility for any problems with the electronic delivery of Applicant materials.

Those applications not received by the deadline will not be reviewed. Late proposals will not be accepted and will be automatically disqualified from further consideration. Proposals must respond to the procurement requirements. Do not respond by referring to material presented elsewhere. The proposal must be complete and must stand on its own merits.

Failure to respond to any portion of the procurement document may result in rejection of the proposal as non-responsive. All proposals and any accompanying documentation become the property of OSPI and will not be returned.

4. PROPRIETARY INFORMATION/PUBLIC DISCLOSURE

Proposals submitted in response to this competitive procurement shall become the property of OSPI.

All proposals received shall remain confidential until the contract, if any, resulting from this RFP is signed by the Assistant Superintendent/designee and the apparently successful Contractor; thereafter, the proposals shall be deemed public records as defined in RCW 42.56.

Any information in the proposal that the Consultant desires to claim as proprietary and exempt from disclosure under the provisions of RCW 42.56 must be clearly designated. The page and the particular exception from disclosure upon which the Consultant is making the claim must be identified. Each page claimed to be exempt from disclosure must be clearly identified by the word "Confidential" printed on the lower right hand corner of the page.

OSPI will consider a Consultant's request for exemption from disclosure; however, OSPI will make a decision predicated upon RCW 42.56. Marking the entire proposal exempt from disclosure will not be honored. The Consultant must be reasonable in designating information as confidential. If any information is marked as proprietary in the proposal, such information will not be made available until the affected proposer has been given an opportunity to seek a court injunction against the requested disclosure.

A charge will be made for copying and shipping, as outlined in RCW 42.56. No fee shall be charged for inspection of contract files, but twenty-four (24) hours' notice to the RFP Coordinator is required. All requests for information should be directed to the RFP Coordinator.

5. ADDENDUMS AND AMENDMENTS TO THE RFP

In the event it becomes necessary to revise any part of this RFP, addenda will be published on the OSPI website, at <http://www.k12.wa.us/RFP/>. For this purpose, the published Consultant questions and answers, the published consultant questions and agency answers, and any other pertinent information shall be considered an addendum to the RFP and also placed on the agency website. Additionally, all addenda referred to above will be released on WEBS for all Consultants who are registered. It will be the responsibility of interested Consultants to check the website periodically for RFP addenda and updates.

6. MINORITY & WOMEN-OWNED BUSINESS PARTICIPATION

OSPI in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, Part 21, nondiscrimination in federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any master contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color or national origin in consideration for an award.

In accordance with the legislative findings and policies set forth in chapter 39.19 RCW, the State of Washington encourages participation in all of its contracts by 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 or on a subcontractor basis. However, no preference will be included in the evaluation of proposals, no minimum level of MWBE participation shall be required as a condition for receiving an award, and 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.

7. ACCEPTANCE PERIOD

Proposals must provide ninety (90) days for acceptance by OSPI from the due date for receipt of proposals.

8. RESPONSIVENESS

All proposals will be reviewed by the RFP Coordinator to determine compliance with administrative requirements and instructions specified in this RFP. The Consultant is specifically notified that failure to comply with any part of the RFP may result in rejection of the proposal as non-responsive.

OSPI also reserves the right, however, at its sole discretion to waive minor administrative irregularities.

9. MOST FAVORABLE TERMS

OSPI reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially on the most favorable terms which the Consultant can propose. There will be no best and final offer procedure. OSPI does reserve the right to contact a Consultant for clarification of its proposal.

The Consultant should be prepared to accept this RFP for incorporation into a contract resulting from this RFP. Contract negotiations may incorporate some or all of the Consultant's proposal. It is understood that the proposal will become a part of the official procurement file on this matter without obligation to OSPI.

10. CONTRACT AND GENERAL TERMS & CONDITIONS

The apparently successful Contractor will be expected to enter into a contract which is substantially the same as the sample contract and its general terms and conditions attached as Exhibit B and Exhibit C, respectively. In no event is a Consultant to submit its own standard contract terms and conditions in response to this solicitation. The Consultant may submit exceptions as allowed in the Certifications and Assurances section, Exhibit A, to this solicitation. OSPI will review requested exceptions and accept or reject the same at its sole discretion.

11. COSTS TO PROPOSE

OSPI will not be liable for any costs incurred by the Consultant in preparation of a proposal submitted in response to this RFP, in conduct of a presentation, or any other activities related to responding to this RFP.

12. NO OBLIGATION TO CONTRACT

This RFP does not obligate the State of Washington or OSPI to contract for services specified herein. OSPI also reserves the right to cancel or to reissue the RFP in whole or in part, prior to execution of a contract without penalty.

13. REJECTION OF PROPOSALS

OSPI reserves the right at its sole discretion to reject any and all proposals received without penalty and not to issue a contract as a result of this RFP.

14. COMMITMENT OF FUNDS

The Contracts Administrator or Director of Financial Resources are the only individuals who may legally commit OSPI to the expenditures of funds for a contract resulting from this RFP. No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

15. STATEWIDE VENDOR PAYMENT REGISTRATION

Consultants awarded contracts as a result of this RFP will be required to register as a Statewide Vendor (SWV). The SWV file is a central vendor file maintained by the Office of Financial Management for use by Washington State agencies in processing vendor payments. This allows you, as a vendor, to receive payments from all participating state agencies by direct deposit, the State's preferred method of payment. Effective April 30, 2011, all OSPI contractors will be required to register as a Statewide Vendor. Participation in direct deposit is optional. Please go to <http://www.ofm.wa.gov/isd/vendors.asp> for online registration.

16. INSURANCE COVERAGE

The Apparently Successful Bidder must comply with the insurance requirements identified in the Sample Contract General Terms and Conditions, Exhibit C.

The Contractor shall, at its own expense, obtain and keep in force insurance coverage which shall be maintained in full force and effect during the term of the contract. The Contractor shall furnish evidence in the form of a Certificate of Insurance that insurance shall be provided, and a copy shall be forwarded to OSPI within fifteen (15) days of the contract effective date.

Section C. PROPOSAL CONTENTS

Consultants shall submit a proposal for bicycles and bicycle equipment containing only domestic steel.

In the case where the bidder cannot supply bicycles and bicycle equipment containing only domestic steel or minor amounts of foreign steel and iron that would not exceed \$2,500 for the total contract a "NOT AVAILABLE" bid in that category must be used. Consultants may submit a proposal for bicycles and bicycle equipment containing foreign steel.

The Letter of Submittal, excluding the signed Certifications and Assurances shall be a maximum of one (1) page. The four major sections of the proposal are to be submitted in the order noted below:

1. Letter of Submittal, including signed Certifications and Assurances (Exhibit A to this RFP)
2. Technical Proposal
3. Cost Proposal

Proposals must provide information in the same order as presented in this document with the same headings. This will not only be helpful to the evaluators of the proposal, but should assist the Consultant in preparing a thorough response.

1. LETTER OF SUBMITTAL

The Letter of Submittal, the attached Certifications and Assurances form (Exhibit A to this RFP), and attached Contractor Intake Form (Exhibit D to this RFP) must be signed and dated by a person authorized to legally bind the Consultant to a contractual relationship, (e.g., the President or Executive Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship).

Along with introductory remarks, the Letter of Submittal is to include by attachment the following information about the Consultant and any proposed subcontractors:

1. Name, address, principal place of business, telephone number, fax number and email address of legal entity or individual with whom contract would be written;
2. The name of the contact person for this RFP;
3. Name, address, and telephone number of each principal officer (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.);
4. Legal status of the Consultant (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business as the entity now substantially exists;
5. Location of the facility from which the Consultant would operate; and
6. A detailed list of all materials and enclosures included in the Proposal.

2. TECHNICAL PROPOSAL

The Technical Proposal must contain a comprehensive description of services including the following elements:

- A. Project Approach/Methodology** – Include a complete description of the Consultant’s proposed approach and methodology for the project. This section should convey Consultant’s understanding of the proposed project.
- B. Work Plan** – Include confirmation that all bicycle and bicycle equipment specifications noted in Section A.4. Objective and Scope of Work will be met.

Proposals must address the Federal Funding and Buy America standards. A certification of materials origin will be required for any items comprised of, or containing, steel or iron construction materials prior to such items being incorporated into the permanent work. The certification shall be on WSDOT Form 350-109EF Exhibit E to this RFP, or such other form the Consultant chooses, provided it contains the same information as WSDOT Form 350-109EF.

- C. Project Schedule** – Include confirmation that fully-assembled bicycles will be delivered to schools/districts within thirty (30) days after a school/district submits a request for the items.
- D. Contractor Intake Form** – Consultants must submit a completed Contractor Intake Form, Exhibit D. Please sign and include any attachments that are necessary.

3. COST PROPOSAL

Identification of Costs

Identify all costs including expenses to be charged for performing the services necessary to accomplish the objectives of the contract. The Consultant is to submit a fully detailed budget including staff costs, administrative costs, travel costs, and any other expenses necessary to accomplish the tasks and to produce the deliverables under the contract. Consultants are required to collect and pay Washington State sales tax, if applicable.

Costs for subcontractors are to be broken out separately. Please note if any subcontractors are certified by the Office of Minority and Women’s Business Enterprises.

All cost proposals must include three (3) separate totals:

1. Total cost without shipping.
2. Total cost including estimated shipping and handling fees for delivery of fully-assembled bikes to each school district. (School districts are located across the state in cities such as Spokane, Goldendale, Omak, or Port Angeles.).
3. Total cost including shipping and handling fees for delivery of packed bikes (not fully-assembled) to each school district.
4. **OPTIONAL:** Cost including another delivery plan not specified above. Please describe in detail.

Section D. EVALUATION AND CONTRACT AWARD

1. EVALUATION PROCEDURE

Responsive proposals will be evaluated strictly in accordance with the requirements stated in this solicitation and any addenda issued. The evaluation of proposals shall be accomplished by an evaluation team, to be designated by OSPI, which will determine the ranking of the proposals.

OSPI, at its sole discretion, may elect to select the top-scoring firms as finalists for an oral presentation.

2. EVALUATION WEIGHTING AND SCORING

Any contract resulting from this RFP will be awarded to the Consultant who submits the lowest total cost based on furnishing domestic steel and iron materials unless such total cost exceeds the lowest total cost based on furnishing foreign steel and iron materials by more than 25 percent. In that event, the contract will be awarded to the Consultant who submits the lowest total cost based on furnishing the specified foreign structural steel material.

3. NOTIFICATION TO PROPOSERS

Proposals that have not been selected for further negotiation or award will be notified via email by the RFP Coordinator.

4. DEBRIEFING OF UNSUCCESSFUL PROPOSERS

Upon request, an individual debriefing conference will be scheduled with an unsuccessful Proposer. The request for a debriefing conference must be received by the RFP Coordinator within three (3) business days after the Notification of Unsuccessful Consultant letter or e-mail is sent to the Consultant. The debriefing must be held within three (3) business days of the request, unless otherwise agreed upon by the RFP Coordinator and Proposer.

Discussion will be limited to a critique of the requesting Consultant's proposal. Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of thirty (30) minutes.

5. PROTEST PROCEDURE

This protest procedure is available to Consultants who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completion of the debriefing conference, the Consultant is allowed three (3) business days to file a protest of the acquisition with the RFP Coordinator. Protests may be submitted by fax or email, but should be followed by a hard copy document.

Consultants protesting this procurement shall follow the procedures described below. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Consultants under this procurement.

All protests must be in writing and signed by the protesting party or an authorized Agent. The protest must state the grounds for the protest including specific facts and complete statements of the action(s) being protested. The protesting party may submit with the protest any documents or

information deemed relevant. A description of the relief or corrective action being requested should also be included. All protests shall be addressed to the RFP Coordinator.

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A matter of bias, discrimination or conflict of interest on the part of the evaluator/evaluation team;
- Errors in computing the score; and/or
- Non-compliance with procedures described in the procurement document or OSPI policy.

Protests not based on procedural matters will not be considered. Protests will be rejected as without merit if they address issues such as: 1) an evaluator's professional judgment on the quality of a proposal, or 2) OSPI's assessment of its own and/or other agencies needs or requirements.

Upon receipt of a protest, a protest review will be held by OSPI. OSPI Contracts Administrator or an employee delegated by the Contracts Administrator who was not involved in the procurement will consider the record and all available facts and issue a decision within five business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event a protest may affect the interest of another Consultant that submitted a proposal, such Consultant will be given an opportunity to submit its views and any relevant information on the protest to the RFP Coordinator.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold OSPI's action; or
- Find only technical or harmless errors in OSPI's acquisition process and determine OSPI to be in substantial compliance and reject the protest; or
- Find merit in the protest and provide OSPI options which may include:
 - Correct the errors and re-evaluate all proposals, and/or
 - Reissue the solicitation document and begin a new process, or
 - Make other findings and determine other courses of action as appropriate.

If OSPI determines that the protest is without merit, OSPI will enter into a contract with the apparently successful Contractor. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

Section E. RFP EXHIBITS

- Exhibit A Certifications and Assurances
- Exhibit B Sample Contract
- Exhibit C General Terms and Conditions (GT&Cs)
- Exhibit D Contractor Intake Form
- Exhibit E WSDOT Form 350-109EF

**EXHIBIT A
CERTIFICATION AND ASSURANCES**

I/we make the following certifications and assurances as a required element of the proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract(s):

1. I/we declare that all answers and statements made in the proposal are true and correct.
2. The prices and/or cost data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single proposal.
3. The attached proposal is a firm offer for a period of 60 days following receipt, and it may be accepted by OSPI without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60-day period.
4. In preparing this proposal, I/we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this proposal or prospective contract, and who was assisting in other than his or her official, public capacity. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)
5. I/we understand that OSPI will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of OSPI, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
6. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by him/her prior to opening, directly or indirectly to any other Proposer or to any competitor.
7. I/we agree that submission of the attached proposal constitutes acceptance of the solicitation contents and the attached sample contract and general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document.
8. No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.
9. I/we grant OSPI the right to contact references and others, who may have pertinent information regarding the Proposer's prior experience and ability to perform the services contemplated in this procurement.

On behalf of the firm submitting this proposal, my name below attests to the accuracy of the above statements.

Signature of Proposer

Title

Date

EXHIBIT B

CONTRACT FOR PERSONAL SERVICES

Contract No. _____

between

SUPERINTENDENT OF PUBLIC INSTRUCTION, STATE OF WASHINGTON

(hereinafter referred to as Superintendent)
Old Capitol Building, P.O. Box 47200
Olympia, WA 98504-7200

and

[CONTRACTOR NAME]

(hereinafter referred to as Contractor)

[Contractor Address]

Federal Identification # [REDACTED] - [REDACTED]

and

Unified Business Identifier # [REDACTED] - [REDACTED] - [REDACTED]

In consideration of the promises and conditions contained herein, Superintendent and Contractor do mutually agree as follows:

I. DUTIES OF THE CONTRACTOR

A. The general objective(s) of this contract is/are as follows:

[A brief description of the agreed upon services will be included here]

B. In order to accomplish the general objective(s) of this contract, Contractor shall perform the following specific duties to the satisfaction of the Superintendent's designee, [name of designee]:

[Describe the work to be performed by Contractor in detail, including a breakdown of the quantifiable steps or components of what the Contractor is to do.]

As included in the Superintendent's Request for Proposals No. [RFP#] attached as Exhibit B, and the Contractor's proposal dated [date], attached as Exhibit C, and any subsequent amendments as identified in Section [section number]: Incorporation of Attachments and Order of Precedence.

C. The Contractor shall produce the following written reports or other written documents (deliverables) by the dates indicated below:

[List deliverables]

All written reports required under this contract must be delivered to the Superintendent's designee in accordance with the schedule above.

II. CONDITIONS OF COMMENCEMENT OF PERFORMANCE AND SCHEDULE OF PERFORMANCE

Contractor shall not commence performance, or be entitled to compensation or reimbursement for any services rendered, prior to the occurrence of each of the following conditions: (1) This contract must be executed by a representative of the Contractor and the Superintendent; (2) This contract must be filed with, and approved by, the Office of Financial Management, if and to the extent required by state personal service contract laws; and, (3) Superintendent's designee must confirm the occurrence of conditions number one and two and notify the Contractor to commence performance.

The schedule of performance of Contractor's duties is as follows subject, however, to the three prior conditions to commencement of performance set forth immediately above:

The period of performance under this contract will be from [start date] or date of execution, whichever is later, through [end date].

III. DUTIES OF THE SUPERINTENDENT

- A. In consideration of Contractor's satisfactory performance of the duties set forth herein, Superintendent shall compensate Contractor at a rate not to exceed a total of [write out full dollar amount] dollars (\$ []). Payment for satisfactory performance shall not exceed this amount unless the parties mutually agree to a higher amount prior to the commencement of any work, which will cause the maximum payment to be increased.

In addition, Contractor shall be entitled to reimbursement in accordance with the terms set forth in Section III.C. below.

Funds for the payment of this contract are provided by federal program(s) [program title], Catalog of Federal Domestic Assistance #(s) [CFDA#].

- B. Payment shall be made to the Contractor as follows:

>Periodically in the form of progress payments in the amounts and for the stages of partial performance set forth below:

Schedule of Payments

>Periodically based on invoices submitted by the Contractor for actual costs incurred to date based on receipts or other documentation.

Invoice(s) will be paid only after approval by the Superintendent's designee and Agency Financial Services, OSPI. The invoice shall include an original signature, the contract number, and document to the Superintendent's designee's satisfaction a description of the work performed and payment requested. Within approximately thirty (30) working days of the Superintendent's designee receiving and approving the invoice, payment will be mailed or electronically transferred to the Contractor by Agency Financial Services, OSPI.

C. Contractor shall be entitled to reimbursement for expenses incurred, as follows:

1. Travel and per diem expenses for [#] person(s) in the amounts and for the purposes otherwise established for state employees at the time of incurrence by the rules and regulatory policies of the Office of Financial Management (OFM) not to exceed [write out full dollar amount] dollars (\$ []). Contractor's "official duty station" (i.e., the origin of reimbursable travel and/or per diem) shall be [official duty station].

and/or

2. Expenses incurred for the following specified purposes not to exceed a total of [write out full dollar amount] dollars (\$ []). Contractor must submit receipts or other documentation.

IV. RENEWAL (OPTIONAL CLAUSE)

Superintendent has the right to renew this contract in whole or in part for the year(s) [renewal year(s)] by giving notice on or before [date] to the Contractor. If Superintendent provides such notice to the Contractor, the Contractor shall be obligated to enter into a contract with the same fiscal obligations as the previous contract year, provided that Superintendent and Contractor shall negotiate any revision of additional services or goals beyond those encompassed in the previous contract.

V. CONTRACT MANAGEMENT

The following Contract Manager for each of the parties shall be the contact person for all communications and billings regarding the performance of this contract.

Contract Manager for OSPI	Contract Manager for [Contractor Name]
[Contract Manager's Name]	[Contract Manager's Name]
[Contract Manager's Title]	[Contract Manager's Title]
Old Capitol Building, P.O. Box 47200 Olympia, WA 98504-7200	[Contract Manager's Address]
Phone: ([]) []-[]	Phone: ([]) []-[]
Fax: ([]) []-[]	Fax: ([]) []-[]
Email: [Contract Manager's Email Address]	Email: [Contract Manager's Email Address]

VI. INCORPORATION OF ATTACHMENTS AND ORDER OF PRECEDENCE

Each of the attachments listed below is by this reference hereby incorporated into this contract. In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable Federal and state of Washington statutes and regulations
- Special Terms and Conditions as contained in this basic contract instrument
- Attachment A – Contract for Personal Services, General Terms and Conditions
- Attachment B – Request for Proposals No. [RFP#] with any formal RFP amendments that change scope of work, etc.
- Attachment C – Contractor's Proposal
- *Any other provision, term or material incorporated herein by reference or otherwise incorporated.*

VII. APPROVAL

This contract shall be subject to the written approval of the Superintendent's authorized representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

We the undersigned agree to the terms of the foregoing contract.

[Contractor Name]

Superintendent of Public Instruction
State of Washington

Signature Title

Sheryl Turner, Contracts Administrator

Print Name Date

Date

Who certifies that he/she is the Contractor identified herein, OR a person duly qualified and authorized to bind the Contractor so identified to the foregoing Agreement.

Approved as to FORM ONLY
by the Assistant Attorney General

Non-profit organization? yes* no
*If yes, under what IRS section? Please attach a copy.

Exhibit C

Attachment A Contract for Personal Services GENERAL TERMS AND CONDITIONS

- 1. Access to Data.** In compliance with Chapter 39.29 RCW, the Contractor shall provide access to data generated under this contract to the Superintendent, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.
- 2. Alterations and Amendments.** This Agreement may be amended only by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.
- 3. Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, also referred to as the "ADA" 28 CFR Part 35.** The Contractor 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.
- 4. Assignment.** Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of the Superintendent.
- 5. Assurances.** The Superintendent and the Contractor agree that all activity pursuant to this Contract will be in accordance with all applicable current federal, state and local laws, rules and regulations.
- 6. Attorney's Fees.** In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney's fees and costs.
- 7. Budget Revisions.** Any monetary amount budgeted by the terms of this contract for various activities and line item objects of expenditure may be revised without prior written approval of Superintendent, so long as the revision is no more than ten percent (10%) of the original line item amount and the increase in an amount is offset by a decrease in one or more other amounts equal to or greater than the increase. All other budget revisions exceeding ten percent (10%) shall only be made with the prior written approval of the Superintendent.
- 8. Certification Regarding Debarment, Suspension, and Ineligibility.** If federal funds are the basis for this contract, the Contractor certifies that neither it nor its principals are debarred, suspended, proposed for debarment, or voluntarily excluded from participation in transactions by any federal department or agency. The Contractor further certifies that they will ensure that potential subcontractors or any of their principals are not debarred, suspended, proposed for debarment, or voluntarily excluded from participation in "covered transactions" by any federal department or agency. "Covered transactions" include procurement contracts for goods that are expected to equal or exceed \$25,000. Contractor may do so by obtaining a certification statement from the potential subcontractor or subrecipient or by checking the "List of Parties Excluded from Federal Procurement and Non-Procurement Programs" provided on-line by the General Services Administration.
- 9. Change in Status.** In the event of substantive change in the legal status, organizational structure, or fiscal reporting responsibility of the Contractor, Contractor agrees to notify the

Superintendent of the change. Contractor shall provide notice as soon as practicable, but no later than thirty (30) days after such a change takes effect.

10. Confidentiality. The Contractor acknowledges that all of the data, material and information which originates from this contract, and the student assessment data, material and information which will come into its possession in connection with performance under this contract, consists of confidential data owned by the Superintendent or confidential personally identifiable data subject to the federal Family Educational Rights and Privacy Act or other privacy laws, and that disclosure to or use by third parties would be damaging. The Contractor, therefore, agrees to hold all such material and information in strictest confidence, not to make use thereof other than for the performance of this contract, to release it only to authorized employees and agents requiring such information and not release or disclose it to any other party. The Contractor agrees to release such information or material only to employees and agents who have signed a written agreement expressly prohibiting disclosure.

11. Copyright 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 the Superintendent. The Superintendent shall be considered the author of such Materials. If Materials are not considered "works for hire", Contractor hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to the Agency effective from the moment of creation of such Materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the contract, but that incorporate pre-existing materials not produced under the contract Contractor hereby grants to the Agency 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 Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the Agency.

The Contractor shall exert all reasonable effort to advise the Agency, at the time of delivery of data furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this contract. The Agency shall receive prompt written notice of each notice or claim of infringement received by the Contractor with respect to any data delivered under this contract. The Agency shall have the right to modify or remove any restrictive markings placed upon the data 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 agent maintained by the Contractor for the purpose of securing business. The Agency 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 fees.

13. Disputes. In the event that a dispute arises under this contract, it shall be determined by a Dispute Board in the following manner: (1) The Superintendent shall appoint a member to the Dispute Board; (2) the Contractor shall appoint a member to the Dispute Board; (3) the

Superintendent and the Contractor shall jointly appoint a member to the Dispute Board; (4) the Dispute Board shall evaluate the dispute and make a determination of the dispute; and, the determination of the Dispute Board shall be final and binding on the parties hereto.

As alternatives to the above Dispute Board process: (1) if the dispute is between two or more state agencies, any one of the agencies may request intervention by the Governor, as provided by 43.17.330 RCW, in which event the Governor's process shall control; and, (2) if the dispute is between a non-state agency and another state agency or non-state agency party to this contract, all the disputing parties may mutually agree to mediation prior to submitting the dispute to a Dispute Board in the event the dispute is not resolved pursuant to mediation within an agreed-upon time period.

- 14. Duplicate Payment.** The Superintendent shall not pay the Contractor, if the Contractor has charged or will charge the state or Washington or any other party under any other contract or agreement, for the same services or expenses.
- 15. Entire Agreement.** This contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.
- 16. Ethical Conduct.** Neither the Contractor nor any employee or agent of the Contractor shall participate in the performance of any duty or service in whole or part under this contract in violation of, or in a manner that violates any provision of the Ethics in Public Service law at Chapter 42.52 RCW, RCW 42.17.130 and 41.06.250 prohibiting the use of public resources for political purposes.
- 17. Governing Law.** This contract shall be construed and interpreted in accordance with the laws of the State of Washington and the venue of any action brought hereunder shall be in Superior Court for Thurston County.
- 18. Indemnification.** To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless the Superintendent and all officials, agents, and employees of the Superintendent, from and against all claims for injuries or death arising out of or resulting from the performance of this contract. "Claim" as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom. Additionally, "claims" shall include but not be limited to, assertions that the use or transfer of any software, book, document, report, film, tape or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, or otherwise results in an unfair trade practice or in unlawful restraint of competition. Contractor's obligation to indemnify, defend and hold harmless includes any claim by Contractor's agents, employees, representatives, or any subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the Superintendent for any claim out of or incident to Contractor's or subcontractor's performance or failure to perform the contract. Contractor's obligation to indemnify, defend, or hold harmless the Superintendent shall not be eliminated or reduced by any actual or alleged concurrent negligence by Superintendent or its agents, employees, or officials.

Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless Superintendent and its agents, employees, or officials.

19. Independent Capacity of the Contractor. The parties intend that an independent Contractor relationship will be created by this contract. The Contractor and his/her employees or agents performing under this contract are not employees or agents of the Superintendent. The Contractor will not hold himself/herself out as nor claim to be an officer or employee of the Superintendent or of the state of Washington by reason hereof, nor will the Contractor make any claim or right, privilege, or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with the Contractor.

20. Insurance.

a. Worker's Compensation Coverage. The Contractor shall at all times comply with all applicable worker's compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the fullest extent applicable. This requirement includes the purchase of industrial insurance coverage for the Contractor's employees, as may now hereafter be required of an "employer" as defined in Title 51 RCW. Such worker's compensation and occupational disease requirements shall include coverage for all employees of the Contractor, and for all employees of any subcontract retained by the Contractor, suffering bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this contract. Satisfaction of these requirements shall include, but shall not be limited to:

- 1) Full participation in any required governmental occupational injury and/or disease insurance program, to the extent participation in such a program is mandatory in any jurisdiction;
- 2) Purchase worker's compensation and occupational disease insurance benefits to employees in full compliance with all applicable laws, statutes, and regulations, but only to the extent such coverage is not provided under mandatory governmental program in "a" above, and/or;
- 3) Maintenance of a legally permitted and governmentally approved program of self-insurance for worker's compensation and occupational disease.

Except to the extent prohibited by law, the program of the Contractor's compliance with worker's compensation and occupational disease laws, statutes, and regulations in 1), 2), and 3) above shall provide for a full waiver of rights of subrogation against the Superintendent, its directors, officers, and employees.

If the Contractor, or any subcontractor retained by the Contractor, fails to effect and maintain a program of compliance with applicable worker's compensation and occupational disease laws, statutes, and regulations and the Superintendent incurs fines or is required by law to provide benefits to such employees, to obtain coverage for such employees, the Contractor will indemnify the Superintendent for such fines, payment of benefits to Contractor or subcontractor employees or their heirs or legal representatives, and/or the cost of effecting coverage on behalf of such employees. Any amount owed the Superintendent by the Contractor pursuant to the indemnity may be deducted from any payments owed by the Superintendent to the Contractor for the performance of this contract.

b. Proof of Insurance. Certificates and or evidence satisfactory to the Superintendent confirming the existence, terms and conditions of all insurance required above shall be delivered to the Superintendent within five (5) days of the Contractor's receipt of Authorization to Proceed.

- c. **General Insurance Requirements.** Contractor shall, at all times during the term of the contract and at its cost and expense, buy and maintain insurance of the types and amounts listed above. Failure to buy and maintain the required insurance may result in the termination of the contract at the Superintendent's option. By requiring insurance herein, Superintendent does not represent that coverage and limits will be adequate to protect Contractor and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to the Superintendent in this contract.

Contractor shall include all subcontractors as insureds under all required insurance policies, or shall furnish proof of insurance and endorsements for each subcontractor. Subcontractor(s) must comply fully with all insurance requirements stated herein. Failure of subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

- 21. Licensing and Accreditation Standards.** The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary to the performance of this contract.
- 22. Limitation of Authority.** Only the Superintendent or the Superintendent's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the Superintendent.
- 23. Non-Discrimination.** The Contractor shall comply with all the federal and state non-discrimination laws, regulations and policies, which are otherwise applicable to the Superintendent. Accordingly, no person shall, on the ground of race, creed, color, national origin, sex, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability, be unlawfully excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any activity performed by the Contractor and its agents under this contract. The Contractor shall notify the Superintendent immediately of any allegations, claims, disputes, or challenges made against it under the Americans with Disabilities Act. In the event of the Contractor's noncompliance or refusal to comply with this nondiscrimination provision, this contract may be rescinded, cancelled or terminated in whole or part, and the Contractor may be declared ineligible for further contracts with the Superintendent.
- 24. Overpayments.** Contractor shall refund to Superintendent the full amount of any overpayment under this contract within thirty (30) calendar days of written notice. If Contractor fails to make a prompt refund, Superintendent may charge Contractor one percent (1%) per month on the amount due until paid in full.
- 25. Payments.** No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the Superintendent. All payments to the Contractor are conditioned upon (1) Contractor's submission of a properly executed and supported voucher for payment, including such supporting documentation of performance and supporting documentation of costs incurred or paid, or both as is otherwise provided for in the body of this contract under Duties of the Superintendent, and (2) Acceptance and certification by the Superintendent or designee of satisfactory performance by the Contractor.

Except as otherwise provided in this contract, (1) All approvable vouchers for payment due to the Contractor shall be paid within thirty (30) calendar days of their submission by the

Contractor, and (2) All expenses necessary to the Contractor's performance of this contract not specifically mentioned in the contract shall be borne in full by the Contractor.

26. Public Disclosure. Contractor acknowledges that the Agency is subject to Chapter 42.17 RCW, the Public Disclosure Act and that this contract shall be a public record as defined in RCW 42.17.250 through 42.17.340. Any specific information that is claimed by the Contractor to be confidential or proprietary must be clearly identified as such by the Contractor. To the extent consistent with chapter 42-17 RCW, the Agency shall maintain the confidentiality of all such information marked confidential or proprietary. If a request is made to view the Contractor's information, the Agency will notify the Contractor of the request and the date that such records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If the Contractor fails to obtain the court order enjoining disclosure, the Agency will release the requested information on the date specified.

27. Publicity. The Contractor agrees to submit to the Agency all advertising and publicity matters relating to this Contract which in the Agency's judgment, Agency's name can be implied or is specifically mentioned. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of the Agency.

28. Records Maintenance. The Contractor shall maintain all books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by the Agency, personnel duly authorized by the Agency, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

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.

29. Registration with Department of Revenue. The Contractor shall complete registration with the Department of Revenue and be responsible for payment of all taxes due on payments made under this contract.

30. Right of Inspection. The Contractor shall provide right of access to its facilities to the Superintendent or any of its officers at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract on behalf of the Superintendent. All inspections and evaluations shall be performed in such a manner that will not unduly interfere with the Contractor's business or work hereunder.

31. Severability. The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

32. Site Security. While on Agency premises, Contractor, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

33. Subcontracting. Neither the Contractor nor any subcontractor shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of

the Superintendent. In no event shall the existence of the subcontract operate to release or reduce liability of the Contractor to the Superintendent for any breach in the performance of the Contractor's duties. This clause does not include contracts of employment between the Contractor and personnel assigned to work under this contract.

- 34. Taxes.** All payments accrued on account of 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.
- 35. Termination for Convenience.** Except as otherwise provided in this contract, the Superintendent or Superintendent's Designee may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this contract in whole or in part. The notice shall specify the date of termination and shall be conclusively deemed to have been delivered to and received by the Contractor as of midnight the second day of mailing in the absence of proof of actual delivery to and receipt by the Contractor. If this contract is so terminated, the Superintendent shall be liable only for payment required under the terms of the contract for services rendered or goods delivered prior to the effective date of termination.
- 36. Termination for Default.** In the event the Superintendent determines the Contractor has failed to comply with the conditions of this Contract in a timely manner, the Superintendent has the right to suspend or terminate this Contract. The Superintendent shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 days, the Contract may be terminated. The Superintendent reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by the Superintendent to terminate the Contract. In the event of termination, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time. The termination shall be deemed to be a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of the Superintendent provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.
- 37. Termination Due to Funding Limitations.** In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the Superintendent may, without advance notice and without liability for damages, terminate the contract under the "Termination for Convenience" clause. The Superintendent and Contractor may, however, renegotiate this contract under any such new funding limitations and conditions.
- 38. Termination Procedure.** Upon termination of this contract the Superintendent, in addition to other rights provided in this contract, may require the Contractor to deliver to the Superintendent any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The Superintendent shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the Superintendent and the amount agreed upon by the Contractor and the Superintendent for (a) completed work and services for which no separate price is stated, (b) partially completed work and services, (c) other property or services which are accepted by the Superintendent, and (d) the protection and preservation of

the property, unless the termination is for default, in which case the Superintendent shall determine the extent of the liability. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause for this contract. The Superintendent may withhold from any amounts due to the Contractor such sum as the Superintendent determines to be necessary to protect the Superintendent against potential loss or liability.

The rights and remedies of the Superintendent provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Superintendent, 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 subcontractors for materials, services or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
- c. Assign to the Superintendent, in the manner, at the times, and to the extent directed by the Superintendent, all rights, title, and interest of the Contractor under the orders and subcontracts in which case the Superintendent 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 the Superintendent to the extent the Superintendent may require, which approval or ratification shall be final for all the purposes of this clause;
- e. Transfer title to the Superintendent and deliver, in the manner, at the times and to the extent as directed by the Superintendent, any property which, if the contract had been completed, would have been required to be furnished to the Superintendent;
- f. Complete performance of such part of the work not terminated by the Superintendent; and
- g. Take such action as may be necessary, or as the Superintendent may direct, for the protection and preservation of the property related to this Agreement which, in is in the possession of the Contractor and in which the Superintendent has or may acquire an interest.

39. Treatment of Assets. Except as otherwise provided for in the contract, the ownership and title to all real property and all personal property purchased by the Contractor in the course of performing this contract with moneys paid by the Superintendent shall vest in the Superintendent, except for supplies consumed in performing this contract. The Contractor shall (1) maintain a current inventory of all the real and personal property; (2) label all the property "State of Washington, Superintendent of Public Instruction"; and, (3) surrender property and title to the Superintendent without charge prior to settlement upon completion, termination or cancellation of this Agreement.

Any property of the Superintendent furnished to the Contractor shall, unless otherwise provided herein, or approved by the Superintendent, be used only for the performance of the contract.

The Contractor shall be responsible for any loss or damage to property of the Superintendent which results from the negligence of the Contractor which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.

If any property is lost, destroyed, or damaged, the Contractor shall notify the Superintendent and take all reasonable steps to protect the property from further damage.

All reference to the Contractor under this clause shall include Contractor's employees, agents and subcontractors.