

**STATE OF WASHINGTON
STATE BOARD OF EDUCATION
OLYMPIA, WASHINGTON**

**REQUEST FOR PROPOSALS
RFP #SBE – 07**

If you download this Request for Proposals (RFP) from the State Board of Education (SBE) Web site located at <http://www.sbe.wa.gov> or the Office of Superintendent of Public Instruction (OSPI) Web site located at <http://www.k12.wa.us/RFP/>, you will be responsible for sending your name, address, email address, and telephone number to the RFP Coordinator in order for your organization to receive any RFP amendments or bidder questions/agency answers.

PROJECT TITLE: INDEPENDENT REVIEW OF WASHINGTON STATE K-12 MATHEMATICS INSTRUCTIONAL MATERIALS FOR WASHINGTON STATE BOARD OF EDUCATION

PROPOSAL DUE DATE:

Proposals must be received by 4:30 p.m. Pacific Standard Time (PST), Monday July 14th. Proposals received after this time will be considered non-responsive.

EXPECTED TIME PERIOD FOR CONTRACT:

August 10, 2008 to March 1, 2009. SBE reserves the right at its discretion to renew or extend the contract for up to an additional one-year period.

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.

CONTENTS OF THE REQUEST FOR PROPOSALS:

1. Introduction
2. General Information for Consultants
3. Proposal Contents
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 - A. Certifications and Assurances
 - B. Personal Service Contract with General Terms and Conditions

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1. INTRODUCTION

1.1. PURPOSE AND BACKGROUND

The Washington State Board of Education hereafter called "SBE," is initiating this Request for Proposals (RFP) to solicit proposals from Consultants interested in assisting the SBE and its Math Panel to review the Office of the Superintendent of Public Instructions' (OSPI) proposed instructional materials menus to meet the new K-12 mathematics standards. Additional information is as follows:

Washington has a standards-based system of accountability, instructional leadership, and support that has evolved over more than a decade. The continuity and consistency of this system over time represents major investments in funding, teaching, and learning in the K–12 system. Due to concerns that only fifty eight percent (58%) of the students who took the 10th grade mathematics Washington Assessment of Student Learning (WASL) in 2006 met the standards needed for high school graduation, the SBE, OSPI, and Professional Educator Standards Board (PESB) created a Joint Mathematics Action Plan to address ways to examine and improve the educational system for our mathematics students.

In 2007, the SBE hired a national consultant to work with its Math Panel to conduct the independent review of the current K-12 mathematics standards, with recommendations to OSPI for changes in rigor, specificity, clarity, etc. See the Board's Web site for information from that report and other reports on the standards review at www.sbe.wa.gov. Based on that report, OSPI conducted a revision of the mathematics standards with Washington educators and a national consultant group.

In the spring of 2008, the legislature charged the SBE with finalizing those recommendations on the new mathematics standards. OSPI will be adopting those standards this spring and summer and then begin a review of instructional materials that meet the standards. By law, OSPI is required to adopt three "curricular menus" for elementary, middle, and high school grade spans, six months after the mathematics standards are adopted. The SBE is charged with providing recommendations to the Superintendent on the proposed instructional material menus within two months after OSPI completes its work.

1.2. OBJECTIVE

The purpose of this proposal is to review the recommendations of OSPI on instructional materials for the K-12 mathematics standards with the SBE Math Panel to ensure that these materials conform to the newly adopted Washington mathematics standards. The ultimate goal is to ensure that school districts will have access to quality instructional materials to facilitate student learning. The SBE will also consider in which cases to require or incentivize school districts to use these instructional materials.

1.3. STATE'S ROLE

The SBE shall provide the Consultant(s) with access to prior SBE and OSPI studies of the standards as well as OSPI studies of the instructional materials review. The SBE will convene the Washington State SBE Math Panel members for meetings with the Consultant(s) for three-four meetings in the Seattle area.

1.4. MINIMUM QUALIFICATIONS

- The Consultant must be licensed to do business in the state of Washington.
- The Consultant must have successfully completed K–12 mathematics instructional reviews in other states with a panel of involved mathematics educators and community members.

- The Consultant and members of the Consultant's team must have mathematics credentials and knowledge of international, national, and Washington State's 2008 mathematics standards.
- The Consultant must not be affiliated with any publishers of mathematics instructional materials.

1.5. FUNDING

The Consultant shall provide their best competitive cost estimate to perform the work.

Any contract awarded as a result of this procurement is contingent upon the availability of funding.

The evaluation process is designed to award this procurement not necessarily to the Consultant of least cost, but rather to the Consultant whose proposal best meets the requirements of this RFP. However, Consultants are encouraged to submit proposals that are consistent with State government efforts to conserve state resources.

1.6. PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFP is tentatively scheduled to begin on or about August 10, 2008 and end on March 30, 2009. SBE reserves the right at its discretion to renew or extend the contract for up to an additional one-year period.

1.7. DEFINITIONS

Definitions for the purposes of this RFP include:

Consultant – Individual or company submitting a proposal in order to attain a contract with the SBE.

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

OSPI – Washington State Office of Superintendent of Public Instruction

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.

SBE – The State Board of Education is the agency of the state of Washington that is issuing this RFP.

Washington Panel – A panel appointed by the State Board of Education of mathematics teachers, school and district curriculum leaders, higher education faculty, parents, and business and community leaders. See Exhibit C for more information.

1.8. ADA

The SBE complies with the Americans with Disabilities Act (ADA). Consultants may contact the RFP Coordinator to receive this RFP in Braille or on tape.

2. GENERAL INFORMATION FOR CONSULTANTS

2.1. RFP COORDINATOR

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

Name	Loy McColm
Address	P. O. Box 47206
City, State, Zip Code	Olympia, WA 98504-7206
Phone Number	360-725-6027
Fax Number	360-586-2357
Email Address	loy.mccolm@k12.wa.us

Any other communication will be considered unofficial and non-binding on the SBE. 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.

2.2. ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue Request for Proposals	June 11, 2008
Question and answer period	June 12-July 2, 2008
Issue addendum to RFP	As necessary
Proposals due	July 14, 2008
Evaluate proposals	July 16, 2008
Announce "Apparent Successful Contractor" and send notification via fax or email to unsuccessful proposers	July 18, 2008
Hold debriefing conferences (if requested)	July 21-22, 2008
Negotiate and finalize contract	July 21-22, 2008
File contract with the Office of Financial Management (if required)	July 28, 2008
Begin contract work	August 10, 2008

The SBE reserves the right to revise the above schedule.

2.3. 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 **Loy McColm at loy.mccolm@k12.wa.us**. Proposals must arrive by 4:30 p.m. local time in Olympia, Washington on Monday July 14, 2008. Attachments to the email shall be Microsoft Word format or in Portable Document Format (PDF). Zipped files may be received by the SBE 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. The SBE does not assume responsibility for any problems with emails.

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 the SBE and will not be returned.

2.4. PROPRIETARY INFORMATION/PUBLIC DISCLOSURE

Materials submitted in response to this competitive procurement shall become the property of the SBE.

To the extent allowed by state law, all proposals received shall remain confidential until the contract, if any, resulting from this RFP, is signed by the Executive Director of the SBE and the apparent successful Contractor; thereafter, the proposals shall be deemed public records as defined in the Revised Code of Washington (RCW) 42.17.250 to 42.17.340, "Public Records."

Any information in the proposal that the Consultant desires to claim as proprietary and exempt from disclosure under the provisions of RCW 42.17.250 to 42.17.340 must be clearly designated. The page must be identified and the particular exception from disclosure upon which the Consultant is making the claim. 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.

The SBE will consider a Consultant's request for exemption from disclosure; however, the SBE will make a decision predicated upon Chapter 42.17 RCW and Chapter 143-06 of the Washington Administrative Code. 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 42.17.300. 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.

2.5. REVISIONS TO THE RFP

In the event it becomes necessary to revise any part of this RFP, addenda will be provided via email and will be published on the SBE Web site located at <http://www.sbe.wa.gov/> and the OSPI Web site located at <http://www.k12.wa.us/RFP/>.

It will be the responsibility of interested Consultants to check the Web site periodically for RFP addenda and updates. For this purpose, the published bidder questions/agency answers and any other pertinent information shall be considered and addendum to the RFP and also placed on the Web site.

If you downloaded this RFP from the SBE Web site located at <http://www.sbe.wa.gov/> or the OSPI Web site located at <http://www.k12.wa.us/RFP/>, you are responsible for sending your name, address, email address and telephone number to the RFP Coordinator in order for your organization to receive any RFP amendments or bidder questions/agency answers.

The SBE also reserves the right to cancel or reissue the RFP in whole or in part, prior to execution of a contract.

2.6. MINORITY & WOMEN-OWNED BUSINESS PARTICIPATION

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.

The established annual procurement participation goal for Minority Business Enterprises is ten percent (10%), and for Woman Business Enterprises, it is four percent (4%) for this type of project. These goals are voluntary. Bidders may contact Office of Minority and Women Business Enterprises (OMWBE) at 360-753-9693 to obtain information on certified firms.

2.7. ACCEPTANCE PERIOD

Proposals must provide sixty (60) days for acceptance by SBE from the due date set for receipt of proposals.

2.8. 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.

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

2.9. MOST FAVORABLE TERMS

The SBE 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 that the Consultant can propose. There will be no best and final offer procedure. The SBE does reserve the right to contact a Consultant for clarification of its proposal during the evaluation process. In addition, if the Consultant is selected as the apparent successful contractor, the SBE reserves the right to enter into contract negotiations with the apparent successful Contractor, which may include discussion regarding the terms of the proposal. Contract negotiations may result in incorporation of some or all of the Consultant's proposal. The Consultant should be prepared to accept this RFP for incorporation into a contract resulting from this RFP. It is also understood that the proposal will become part of the official procurement file.

2.10. CONTRACT AND GENERAL TERMS & CONDITIONS

The apparent successful Contractor will be expected to enter into a contract that is substantially the same as the sample contract and its general terms and conditions attached as Exhibit B. 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 Exhibit A: Certifications and Assurances. The SBE will review requested exceptions and accept or reject the same at its sole discretion.

2.11. COSTS TO PROPOSE

The SBE 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.

2.12. NO OBLIGATION TO CONTRACT

This RFP does not obligate the state of Washington or the SBE to contract for services specified herein.

2.13. REJECTION OF PROPOSALS

The SBE 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.

2.14. COMMITMENT OF FUNDS

The Executive Director of the SBE or their delegate are the only individuals who may legally commit the SBE 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.

2.15. STATEWIDE VENDOR REGISTRATION AND ELECTRONIC PAYMENT

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 the Consultant to receive payments from the SBE by direct deposit, the State's preferred method of payment. While registration in the SWV is mandatory, the Consultant is NOT required to participate in the direct deposit program and therefore is not required to submit banking information. Please go to <http://www.ofm.wa.gov/accounting/vendors.asp> for online registration and additional information.

2.16. INSURANCE COVERAGE

The Contractor is to furnish the SBE with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth below.

The Contractor shall, at its own expense, obtain and keep in force insurance coverage that 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 the SBE within fifteen (15) days of the contract effective date.

Liability Insurance

Commercial General Liability Insurance: Contractor shall maintain general liability (CGL) insurance and, if necessary, commercial umbrella insurance, with a limit of not less than \$1,000,000 per each occurrence. If CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit. CGL insurance shall be written on ISO occurrence from CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insured's (cross liability) condition.

Additionally, the Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts. Business Auto

Policy: As applicable, the Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto." Business auto coverage shall be written on ISO form CA 00 01, 1990 or later edition, or substitute liability form providing equivalent coverage.

Additional Provisions

Above insurance policy shall include the following provisions:

Additional Insured. The state of Washington, SBE, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State.

Cancellation. The state of Washington, SBE, shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications. Insurers subject to Chapter 48.18 RCW (Admitted and Regulation by the Insurance Commissioner): The insurer shall give the State forty five (45) days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the State shall be given ten (10) days advance notice of cancellation. Insurers subject to 48.15 RCW (Surplus lines): The State shall be given twenty (20) days advance notice of cancellation. If cancellation is due to non-payment of premium, the State shall be given ten (10) days advance notice of cancellation.

Identification. Policy must reference the State's contract number and the agency name.

Insurance Carrier Rating. All insurance and bonds should be issued by companies admitted to do business within the state of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by the State Board of Education Contract Administrator/Risk Manager or the Risk Manager for the State of Washington, before the contract is accepted or work may begin. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and Chapter 284-15 WAC.

Excess Coverage. By requiring insurance herein, the State 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 State in this contract.

Worker's Compensation Coverage

The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. The State will not be held responsive in any way for claims filed by the Contractor or their employees for services performed under the terms of this contract.

3. PROPOSAL CONTENTS

Proposals must be submitted electronically on eight and one-half by eleven (8 1/2 x 11) inch paper with tabs separating the major sections of the proposal. The four (4) major sections of the proposal are to be submitted in the order noted below:

1. Signed or Certified Letter of Submittal, including signed Certifications and Assurances (Exhibit A to this RFP). **These documents must be submitted as hardcopy originals and electronically.**
2. Technical Proposal. Submit electronically.
3. Management Proposal. Submit electronically.
4. Cost Proposal. Submit electronically.

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.

Items in this section marked "mandatory" must be included as part of the proposal for the proposal to be considered responsive; however, these items are not scored. Items marked "scored" are those that are awarded points as part of the evaluation conducted by the evaluation team.

3.1. LETTER OF SUBMITTAL (MANDATORY)

The Letter of Submittal and Exhibit A: Certifications and Assurances form, 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, and fax number/email address of legal entity or individual with whom contract would be written.
2. Name, address, and telephone number of each principal officer (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.).
3. 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.
4. Federal Employer Tax Identification number or Social Security number and the Washington Uniform Business Identification (UBI) number issued by the state of Washington Department of Revenue.
5. Location of the facility from which the Consultant would operate.
6. Identify any State employees or former State employees employed or on the firm's governing board as of the date of the proposal. Include their position and responsibilities within the Consultant's organization. If following a review of this information, it is determined by the SBE that a conflict of interest exists, the Consultant may be disqualified from further consideration for the award of a contract.

3.2. TECHNICAL PROPOSAL (SCORED/MANDATORY)

Scope of Work. The Consultant(s) shall review the OSPI instructional materials of “three curricular menus per elementary, middle, and high school grade spans to determine their conformity with the new K-12 mathematics standards. The final product will be a report on the conformity and whether there are other instructional materials not considered that conform to Washington’s K-12 mathematics standards.

In formulating the standards review recommendations, the Consultant(s) shall work with the SBE Math Panel. The purpose of the panel is to: 1) analyze issues arising from the instructional materials review; and 2) assist the Consultant(s) and the SBE in developing a meaningful process for public input. The Consultant(s) and panel shall be supported by appropriate OSPI and SBE staff. The panel will meet approximately three (3) or four (4) times over the course of the work.

Project Estimated Milestones (this schedule may be changed for the high school instructional materials)

Early August 2008 – Begin work on OSPI proposed elementary and middle school instructional materials review and meet with Washington math panel.

August 30, 2008 – Submit progress report to the SBE on OSPI proposed elementary and middle instructional materials review.

September 15, 2008 – Submit draft report and meet with Washington Math Panel.

September 24-25, 2008 – Present to SBE at its meeting in Pasco, Washington

September 30, 2008 – Submit final report, with recommendations, to SBE on OSPI proposed elementary and middle school instructional materials.

Early December 2008 – Begin work on high school instructional materials (if OSPI work is completed) and meet with math panel.

December 20, 2008 - Submit progress report to the SBE on OSPI proposed high school instructional materials review.

January 9, 2009 - Draft report to SBE.

January 14-15, 2009 - Present to SBE at its meeting in Olympia, Washington

January 31, 2009- Submit final report, with recommendations, to SBE on OSPI proposed high school instructional materials.

February 1-March 31, 2009- Prepare responses to SBE to share with legislators as needed on the curricular menu.

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 the Consultant’s understanding of the proposed project.
- B. Work Plan** – Include all project requirements and the proposed tasks, services, activities, etc. necessary to accomplish the scope of the project defined in this RFP. This section of the technical proposal must contain sufficient detail to convey to members of the evaluation team the Consultant’s knowledge of the subjects and skills necessary to successfully complete the project. Include any required involvement of SBE staff. The Consultant may also present any creative approaches that might be appropriate and may provide any pertinent supporting documentation.

- C. Project Schedule** – Include a project schedule indicating when the elements of the work will be completed and when deliverables, if any, will be provided.
- D. Deliverables** – Fully describe deliverables to be submitted under the proposed contract.
- E. Outcomes and Performance Measurement** – Describe the impacts/outcomes the Consultants propose to achieve as a result of the delivery of these services including how these outcomes would be monitored, measured and reported to the SBE.

Please Note: Mere repetition of the work statement above will not be considered responsive. The SBE is seeking creative responses for organizing and implementing the K-12 mathematics standards review.

3.3. MANAGEMENT PROPOSAL

A. Project Management (SCORED/MANDATORY)

1. **Project Team Structure/Internal Controls** – Provide a description of the proposed project team structure and internal controls to be used during the course of the project, including any subcontractors. Provide an organizational chart of your firm indicating lines of authority for personnel involved in performance of this potential contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of management. Include who within the firm will have prime responsibility and final authority for the work.
2. **Staff Qualifications/Experience** – Identify staff, including subcontractors, who will be assigned to the potential contract, indicating the responsibilities and qualifications of such personnel, and include the amount of time each will be assigned to the project. Provide résumés for the named staff, which include information on the individual's particular skills related to this project, education, experience, significant accomplishments, mathematics credentials, and any other pertinent information. The Consultant must commit that staff identified in its proposal will actually perform the assigned work. Any staff substitution must have the prior approval of the SBE.

B. Experience of the Consultant (SCORED/MANDATORY)

1. Indicate the experience the Consultant and any subcontractors have in the following areas:
 - Performing mathematics standards reviews in other states, working with a panel of mathematics educators and community members.
 - Knowledge of and experience with international, national, and state mathematics standards.
2. Indicate other relevant experience that indicates the qualifications of the Consultant, and any subcontractors, for the performance of the potential contract.
3. Include a list of contracts the Consultant has had during the last five (5) years that relate to the Consultant's ability to perform the services needed under this RFP. List contract reference numbers, contract period of performance, contact persons, telephone numbers, and fax numbers/email addresses.

C. References (SCORED/MANDATORY)

List names, addresses, telephone numbers, and fax numbers/email addresses of three (3) business references for whom work has been accomplished and briefly describe the type of service provided. The Consultant and staff proposed to provide the services must grant permission to the SBE to contact references, and others for whom services have been provided. Do not include current SBE staff as references. References will be contacted and scored for the top-ranking proposal(s) only.

D. Related Information (MANDATORY)

1. If the Consultant or any subcontractor contracted with the state of Washington during the past twenty four (24) months, indicate the name of the agency, the contract number and project description and/or other information available to identify the contract.
2. If the Consultant's staff or subcontractor's staff was an employee of the state of Washington during the past twenty four (24) months, or is currently a Washington State employee, identify the individual by name, the agency previously or currently employed by, job title or position held and separation date.
3. If the Consultant has had a contract terminated for default in the last five (5) years, describe such incident. Termination for default is defined as notice to stop performance due to the Consultant's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer, or (b) litigated and such litigation determined that the Proposer was in default.
4. Submit full details of the terms for default including the other party's name, address, and phone number. Present the Consultant's position on the matter. The SBE will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience. If no such termination for default has been experienced by the Consultant in the past five (5) years, so indicate.

3.4. COST PROPOSAL

The evaluation process is designed to award this procurement not necessarily to the Consultant of least cost, but rather to the Consultant whose proposal best meets the requirements of this RFP. However, Consultants are encouraged to submit proposals that are consistent with state government efforts to conserve state resources.

A. Identification of Costs (SCORED)

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.

B. Computation

The score for the cost proposal will be computed by dividing the lowest cost bid received by the Consultant's total cost. Then the resultant number will be multiplied by the maximum possible points for the cost section.

4. EVALUATION AND CONTRACT AWARD

ALL MANDATORY REQUIREMENTS MUST BE MET IN ORDER TO BE EVALUATED.

4.1. 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 the SBE, which will determine the ranking of the proposals.

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

4.2. CLARIFICATION OF PROPOSAL

The RFP Coordinator may contact the Consultant for clarification of any portion of the Consultant's proposal.

4.3. EVALUATION WEIGHTING AND SCORING

The following weighting and points will be assigned to the proposal for evaluation purposes:

Technical Proposal – 40%	100 points
Project Approach/Methodology	25 points (maximum)
Quality of Work Plan	35 points (maximum)
Feasibility of Proposed Schedule	15 points (maximum)
Description of Project Deliverables	25 points (maximum)
Management Proposal – 40%	100 points
Project Team Support and Capacity	50 points (maximum)
Project Team Qualifications/Experience	50 points (maximum)
Cost Proposal – 20%	50 points
Sub-Total	250 points
References [top-scoring proposer(s) only]	10 points
GRAND TOTAL FOR WRITTEN PROPOSAL	260 points

References will be contacted for the top-scoring proposer(s) only and will then be scored and added to the total score.

4.4. NOTIFICATION TO PROPOSERS

Firms whose proposals have not been selected for further negotiation or award will be notified via FAX or by email.

4.5. DEBRIEFING OF UNSUCCESSFUL PROPOSERS

Upon request, a debriefing conference will be scheduled with an unsuccessful Proposer. The request for a debriefing conference must be received by the RFP Coordinator by Friday, 4:30 p.m., July 18, 2008. Debriefings will be held July 21-22, 2008. Exceptions to this schedule will be considered on a case-by-case basis. Under no circumstances will debriefings take place later than July 22nd, 2008.

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 one hour.

4.6. PROTEST PROCEDURE

This procedure is available to Consultants who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing 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 facsimile, but should be followed by the original 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 with specific facts and complete statements of the action(s) being protested. 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.
- Errors in computing the score.
- Non-compliance with procedures described in the procurement document or SBE 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) SBE's assessment of its own and/or other agencies needs or requirements.

Upon receipt of a protest, a protest review will be held by the SBE. The SBE Executive Director or an employee delegated by the Executive Director 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 the SBE's action; or

- Find only technical or harmless errors in the SBE's acquisition process and determine the SBE to be in substantial compliance and reject the protest; or
- Find merit in the protest and provide the SBE 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 the SBE determines that the protest is without merit, the SBE 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.

5. RFP EXHIBITS

Exhibit A: Certifications and Assurances

Exhibit B: Personal Service Contract Format including General Terms and Conditions (GT&Cs)

EXHIBIT A

CERTIFICATIONS 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 sixty (60) days following receipt, and it may be accepted by the SBE without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the sixty (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 the SBE will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of the SBE, 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 the SBE 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.

Signature of Proposer

Title

Date

EXHIBIT B
CONTRACT FOR PERSONAL SERVICES
Contract No. _____

between

THE STATE BOARD OF EDUCATION
STATE OF WASHINGTON
(hereinafter referred to as AGENCY)
Old Capitol Building, P. O. Box 47200
Olympia, WA 98504-7200

and

NAME OF CONTRACTOR
(hereinafter referred to as Contractor)
Address of Contractor

Social Security #
or
Federal Identification #
and
Unified Business Identifier #

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

I. DUTIES OF THE CONTRACTOR

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

(Enter a brief description of the agreed upon services 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 AGENCY's designee, _____:

(Describe the work to be performed by Contractor in detail, including a breakdown of the quantifiable steps or components of what Contractor is to do or attach and incorporate proposal)

**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 AGENCY; (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) AGENCY'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:

> (Insert beginning and ending date here)

III. DUTIES OF THE AGENCY

- A. In consideration of Contractor's satisfactory performance of the duties set forth herein, AGENCY shall compensate Contractor > at an hourly rate of \$> not to exceed a total of > dollars (\$>) OR > not to exceed a total of > dollars (\$>) as noted below in part B, Schedule of Payments OR > in an amount equal to Contractor's actual cost, plus overhead or indirect costs at a rate of > percent of actual costs not to exceed a total of > dollars (\$>) as per Attachment B, Budget, attached hereto and incorporated by this reference.

>Funds for the payment of this contract are provided by federal program(s) _____, CFDA #(s) _____.

- 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.

- 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 > dollars (\$>). Contractor's "official duty station" (i.e., the origin of reimbursable travel and/or per diem) shall be > and /or,
2. Expenses incurred for the following specified purposes not to exceed a total of > dollars (\$>). Contractor must submit receipts or other documentation.

IV. RENEWAL (OPTIONAL CLAUSE)

AGENCY has the right to renew this contract in whole or in part for the year(s)_____ by giving notice on or before _____ to the Contractor. If AGENCY 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 AGENCY and Contractor shall negotiate any revision of additional services or goals beyond those encompassed in the previous contract.

V. INCORPORATION OF GENERAL TERMS AND CONDITIONS

This contract includes and incorporates as if fully set forth herein the GENERAL TERMS AND CONDITIONS, which are attached hereto and marked "Attachment A".

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

CONTRACTOR

STATE BOARD OF EDUCATION
State of Washington

Melanie S. Buechel, Contracts Administrator

(type name)

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.

Signed this ____ day of _____, 2008.

Signed this ____ day of _____, 2008.

Approved as to FORM ONLY
Assistant Attorney General

Non-profit organization? ☐ yes* ☐ no
If yes, under what IRS section?

EXHIBIT B
Attachment A
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 AGENCY, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This included 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 the AGENCY nor the Contractor shall assign this Contract, either in whole or in part, without the prior written consent of the other party, which shall not be unreasonably withheld. Any assignment permitted under this clause does not relieve either party from its duties or obligations under this contract.
5. **Budget Revisions.** Any monetary amount of an interlocal agreement budgeted by the terms of this contract for various activities and line item objects of expenditure may be revised without prior written approval of AGENCY, 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 AGENCY.
6. **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 presently debarred, declared ineligible, or voluntarily excluded from participation in transactions by any federal department of agency.
7. **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 AGENCY of the change. Contractor shall provide notice as soon as practicable, but no later than thirty (30) days after such a change takes effect.
8. **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 AGENCY 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.
9. **Disputes.** In the event that a dispute arises under this contract, it shall be determined in the following manner: (1) The AGENCY shall appoint a member to the Dispute Board; (2) the Contractor shall appoint a member to the Dispute Board; (3) the AGENCY 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.

10. **Entire Agreement.** This written contract constitutes the mutual agreement of the Contractor and the AGENCY in whole. No alteration or variation of the terms of this contract and no oral understandings or agreements not incorporated herein shall be binding.
11. **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.
12. **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.
13. **Indemnification.** To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless the AGENCY and all officials, agents, and employees of the AGENCY, from and against all claims for injuries or death arising out of or resulting from the performance of this contract. 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 AGENCY 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 AGENCY shall not be eliminated or reduced by any actual or alleged concurrent negligence by AGENCY 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 AGENCY and its agents, employees, or officials.

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

14. **Independent Capacity.** 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 AGENCY. The Contractor will not hold himself/herself out as nor claim to be an officer or employee of the AGENCY 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.
15. **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 an 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 AGENCY, 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 AGENCY incurs fines or is required by law to provide benefits to such employees, to obtain coverage for such employees, the Contractor will indemnify the AGENCY 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 AGENCY by the Contractor pursuant to the indemnity may be deducted from any payments owed by the AGENCY to the Contractor for the performance of this contract.

- b. **Proof of Insurance.** Certificates and or evidence satisfactory to the AGENCY confirming the existence, terms and conditions of all insurance required above shall be delivered to the AGENCY within five (5) days of the Contractor's receipt of Authorization to Proceed. The policy (ies) of insurance required to be maintained in accordance with this contract shall not be cancelled or given notice of non-renewal nor shall the terms and conditions thereof be altered or amended without forty-five (45) days written notice being given to the AGENCY.
- c. **Public Liability Insurance.** The Contractor shall at all times during the term of this contract, at its cost and expense, carry and maintain general public liability insurance, including contractual liability, against claims for bodily injury, personal injury, death, or property damage occurring or arising out of services provided under this contract. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or servants. The limits of liability insurance, which may be increased from time to time as deemed necessary by the AGENCY, with the approval of the Contractor (which shall not be unreasonable withheld), shall not be less than as follows:

Each Occurrence	\$1,000,000
General Aggregate Limits (other than products-completed operations)	\$2,000,000
Products-Completed Operations Limit	\$2,000,000
Personal and Advertising Injury Limit	\$1,000,000
Fire Damage Limit (any one fire)	\$50,000
Medical Expense Limit (any one person)	\$10,000

- d. **Additional Insured.** The State of Washington and the AGENCY shall be specifically named as an additional insured on all policies, and all policies shall be primary to any other valid and collectible insurance. At its option, the AGENCY may waive this requirement where insurance carriers will not under any circumstances extend secondary insurance coverage for physicians'

professional liability, or Architects' and Engineers' insurance. The AGENCY may also waive this requirement where insurance carriers will not under any circumstances extend secondary fidelity bonding coverage for private non-profit organizations.

16. **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.
17. **Non-Discrimination.** The Contractor shall comply with all the federal and state non-discrimination laws, regulations and policies, which are otherwise applicable to the AGENCY. Accordingly, no person shall, on the ground of race, creed, color, national origin, sex, marital status, 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 AGENCY 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 AGENCY.
18. **Payments.** No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the AGENCY. 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 AGENCY, and (2) Acceptance and certification by the AGENCY 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 shall be borne in full by the Contractor.

19. **Registration with Department of Revenue.** The Contractor shall complete registration with the Department of Revenue, General Administration Building, Olympia, WA, 98504, and be responsible for payment of all taxes due on payments made under this contract.
20. **Rights in Data.** Data that originates under this contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the AGENCY. In the event any data which originates under this contract is not considered a "work for hire" under the U.S. Copyright laws, Contractor hereby, irrevocably assigns all rights, title, and interest in such data, including all intellectual rights, to the AGENCY effective from the moment of creation of such data. Data shall include, but not be limited to, notes, minutes, reports, documents, pamphlets, articles, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, photographs, and other items in any format, form, or medium. Ownership includes ownership of all intellectual concepts and properties embodied in data, the right to copyright, patent or register data, and the right to transfer these rights.

Data which is delivered under this contract, but which does not originate thereunder, shall be transferred to the AGENCY with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so: PROVIDED, that such a license shall be limited to the extent which the contractor has a right to grant such a license. 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 that was not produced in the performance of this contract. The AGENCY shall receive prompt written notice of each notice or claim of copyright 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.

21. **Records, Documentation and Reports.** The Contractor shall maintain complete financial records relating to this contract and complete records documenting the services rendered under the contract,

including all books, records, documents, magnetic media, receipts, invoices, and all other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. These records shall be subject to all reasonable times to inspection, review, or audit by personnel duly authorized by the AGENCY, the Office of the State Auditor, and state and federal officials so authorized by law, rule, regulation, or agreement. The Contractor will retain all books records, documents, and other materials relevant to this contract for seven (7) years after the date of final payment by the AGENCY, and make them available for inspection by persons authorized under this provision.

If any litigation, claim or audit is started before the expiration of the seven (7) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

22. **Right of Inspection.** The contractor shall provide right of access to its facilities to the AGENCY 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 AGENCY. All inspections and evaluations shall be performed in such a manner that will not unduly interfere with the Contractor's business or work hereunder.
23. **Severability.** If any provision of this contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect other provisions of this contract which can be given effect without the invalid provision, and to this end the provisions of this contract are declared to be severable.
24. **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 AGENCY. In no event shall the existence of the subcontract operate to release or reduce liability of the Contractor to the AGENCY 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.
25. **Termination for Convenience.** Except as otherwise provided in this contract, the AGENCY or AGENCY'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 AGENCY 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.
26. **Termination for Default.** The AGENCY or AGENCY's Designee may terminate this contract for default, in whole or in part, by written notice to the Contractor if the AGENCY has a reasonable basis to believe that the Contractor has:
 - a. Failed to meet or maintain any requirement for contracting with the AGENCY;
 - b. Failed to ensure the health or safety of any client for whom services are being provided under this contract;
 - c. Failed to perform under, or otherwise breached, any term or condition of this contract; and/or
 - d. Violated any applicable law or regulation.

In such event, 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 contract, e.g., cost of the competitive bidding, mailing, advertising and staff time; provided that if (i) it is determined for any reason the Contractor was not in default, or (ii) the Contractor's failure to perform is without Contractor's and/or subcontractor's control, fault or negligence, then the termination shall be deemed a "Termination for Convenience."

27. **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 AGENCY may, without advance notice and without liability for damages, terminate the contract under the "Termination for Convenience" clause. The AGENCY and Contractor may, however, renegotiate this contract under any such new funding limitations and conditions.

28. **Termination Procedure.** Upon termination of this contract the AGENCY, in addition to other rights provided in this contract, may require the Contractor to deliver to the AGENCY 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 AGENCY shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the AGENCY and the amount agreed upon by the Contractor and the AGENCY 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 AGENCY, and (d) the protection and preservation of the property, unless the termination is for default, in which case the AGENCY 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 AGENCY may withhold from any amounts due to the Contractor such sum as the AGENCY determines to be necessary to protect the AGENCY against potential loss or liability.

The rights and remedies of the AGENCY 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 AGENCY, the Contractor shall:

1. Stop work under this contract on the date and to the extent specified, in the notice;
2. 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 this is not terminated;
3. Assign to the AGENCY, in the manner, at the times, and to the extent directed by the AGENCY, all rights, title, and interest of the Contractor under the orders and subcontracts in which case the AGENCY has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the AGENCY to the extent the AGENCY may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to the AGENCY and deliver, in the manner, at the times and to the extent as directed by the AGENCY, any property which, if the contract had been completed, would have been required to be furnished to the AGENCY;
6. Complete performance of such part of the work not terminated by the AGENCY; and
7. Take such action as may be necessary, or as the AGENCY 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 AGENCY has or may acquire an interest.

29. **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 AGENCY shall vest in the AGENCY, 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, State Board of Education"; and, (3)

surrender property and title to the AGENCY without charge prior to settlement upon completion, termination or cancellation of this agreement.

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

The Contractor shall be responsible for any loss or damage to property of the AGENCY 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 AGENCY 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.