

**STATE OF WASHINGTON
OFFICE OF FINANCIAL MANAGEMENT
OLYMPIA, WASHINGTON**

**REQUEST FOR QUALIFICATIONS
RFQ NO. 17-600**

Note to Vendors: This RFQ and amendments will be available on the Office of Financial Management (OFM) website at http://ofm.wa.gov/contracts_procurements/default.asp. Vendors are also encouraged to register on the Department of Enterprise Services (DES), Washington Electronic Business Solution (WEBS) Procurement Website at <http://des.wa.gov/services/ContractingPurchasing/Business/Pages/WEBSRegistration.aspx>. All RFQ amendments or bidder questions/OFM answers will be posted on the OFM website and on WEBS.

PROJECT TITLE: Personnel Resources Board – Mediation & Hearing Officers

PROPOSAL DUE DATE: October 3, 2017, 3:30 PM, Local Time, Olympia, Washington, USA

EXPECTED TIME PERIOD FOR CONVENIENCE CONTRACTS: November 1, 2017 – June 30, 2020.

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

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1. INTRODUCTION

1.1 PURPOSE AND BACKGROUND

The purpose of this Request for Qualifications (RFQ) is to prequalify Hearing Officers to conduct hearings and make recommended decisions or to conduct mediation in appeals filed with the Personnel Resources Board under [Chapters 41.06 RCW](#) and the merit system rules under [Titles 357](#) of the Washington Administrative Code (WAC).

All Hearing Officers and Mediators granted a Convenience Contract and then selected to provide specific services will be responsible for scheduling their own mediation sessions.

1.2 SCOPE AND OBJECTIVES FOR THIS ACQUISITION

OFM initiates this RFQ to solicit responses from Proposers to award and enter into Convenience Contracts that may be between multiple pre-qualified Mediators and Hearings Officers and OFM in order to provide services as described in Section 1.1 of this RFQ.

The fee schedule for the services will be as follows:

Appeal Review – Scheduling:	\$75 flat fee
Mediation Services:	\$100 per hour (\$600 max per day)
Hearings:	\$100 per hour (\$600 max per day)
Decision Writing:	\$25 per hour (not to exceed \$200 per decision)
Travel Time:	\$12.50 per hour

Reimbursement for other costs incurred in connection with assigned appeals shall be limited to the following items: long-distance telephone charges, postage, copying expense, purchase of cassettes and batteries for audio recording.

Reimbursement for travel, lodging and subsistence shall be paid on the same basis as employees of the State of Washington.

1.3 MINIMUM QUALIFICATIONS

Mediators and Hearings Officers with the following knowledge and experience will be eligible to contract with the PRB to provide mediation services and to conduct hearings as required:

- a) Licensed to do business in the State of Washington; or able and willing to become licensed to do business.
- b) Three (3) or more years of experience in public sector employee/management relations such as collective bargaining, contract administration or related work as a union or management representative, mediator, arbitrator or educator in the above areas.
- c) Bachelor's degree in labor relations, Human Resources; Law, Psychology, or closely related field. Additional qualifying experience may substitute, year for year, for education.

- d) Knowledge of the principles and laws governing the state merit system of employment in general government and higher education.
- e) Understanding of the relationship between the merit system and labor/management relations in state agencies and institutions of higher education, including economics, human resources, collective bargaining and negotiations
 - Ability to preside at hearings or conduct mediation in personnel appeals with impartiality; and patiently assist parties in resolving disputes.
 - Experience with diverse work structures and types of public employers.

1.4 CONTRACT TERM

The resulting Convenience Contracts will have an initial term of approximately three (3) years, with the potential for two additional one-year. However, because it is difficult to anticipate future needs, OFM cannot guarantee that the Contractors will actually receive work off these contracts.

1.5 DEFINITIONS

Definitions for the purposes of this RFQ include:

Agency. The Office of Financial Management (OFM) is the agency of the state of Washington that is initiating this RFQ and executing any contract resulting from this RFQ.

Apparently Successful Consultant. The Consultant selected as an entity to perform the anticipated services, subject to completion of contract negotiations and execution of a written contract.

Acquisition. This Request for Qualifications used to competitively acquire Hearing Officers to conduct hearings and make recommended decisions or to conduct mediation in appeals filed with the Personnel Resources Board under Chapters 41.06 RCW and the merit system rules under Titles 357 of the Washington Administrative Code (WAC).

Bidder. The individual or company that submits a proposal in order to attain a contract from OFM. Also known as "Proposer."

Consultant. Individual or company awarded a Convenience Contract as a result of this procurement.

Contract. The contract(s) if any, that may result from this acquisition, including all Attachments, Exhibits, Statement(s) of Work, all amendment, and the Bidder's Response to this Acquisition.

Contractor. Individual whose proposal has been accepted by the AGENCY and is awarded a fully executed, written contract.

OFM. The Office of Financial Management.

PRB. Personnel Resources Board.

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

Proposer. Individual who submits a proposal in order to attain a contract with the AGENCY.

Request for Qualifications (RFQ). Formal procurement document in which services needed are identified and firms are invited to provide their qualifications and the cost to provide the services.

1.6 ACQUISITION PROCESS

Based on the evaluation process described in this document, OFM will create an unranked list of pre-qualified vendors to provide PRB Hearing Officer and Mediator services on an as-needed basis. Pre-qualified vendors will be expected to sign a Convenience Contract with OFM. The Pre-Qualified Vendors List may be utilized by OFM to select vendors for work on an as-needed basis. Receiving a contract through this competition does not guarantee a Contractor will receive work.

As the need for PRB Hearing Officer and Mediator services arises, all Contractors on the Pre-Qualified Vendors List will be invited to submit a response to a second-tier review that meets OFM's business requirements. The second-tier process will primarily consist of a review of the Contractor's availability to provide the services. OFM will in its sole discretion, select Contractor(s) to provide those services for OFM.

1.7 ADA

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

1.8 CONTRACTING WITH CURRENT OR FORMER STATE EMPLOYEES

Specific restrictions apply to contracting with current or former state employees pursuant to Chapter 42.52 RCW. Consultants should familiarize themselves with the requirements prior to submitting a proposal that includes current or former state employees.

2. GENERAL INFORMATION FOR BIDDERS

2.1 RFQ COORDINATOR

The RFQ Coordinator is the sole point of contact for this procurement. All communication between the Consultant and the state of Washington upon release of this RFQ shall be with the RFQ Coordinator, as follows:

Name	Bonnie Lindstrom
E-Mail Address	Bonnie.lindstrom@ofm.wa.gov
Mailing Address	PO Box 43113, Olympia, WA 98504
Physical Address	302 Sid Snyder Ave. SW, Olympia, WA 98501-1342
Telephone	(360) 902.0568

Any other communication will be considered unofficial and non-binding on the OFM and the state of Washington. Bidders are to rely on written statements issued by the RFQ Coordinator. Communication directed to parties other than the RFQ Coordinator will result in disqualification of the Bidder.

2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue Request for Qualifications	July 28, 2017
Bidder may submit written questions until 3:30 pm Pacific Time	September 15, 2017
OFM will issue responses	September 22, 2017
Complaints due	September 29, 2017
Bidder must submit Proposal by 3:30 Pacific Time	October 6, 2017
OFM evaluation of proposals	October 10, 2017
OFM announces "Apparent Successful Bidders" and begins contract negotiations	October 12, 2017
OFM notifies Unsuccessful Bidders	October 12, 2017
Unsuccessful Bidders may request Debriefing until 3:30 Pacific Time	October 18, 2017
OFM holds Debriefing Conferences, if requested	October 20, 2017
Sign Convenience Contracts	October 31, 2017

OFM reserves the right to revise the above schedule.

2.3 QUESTIONS AND ANSWERS

Bidders may fax, e-mail, or mail written questions to the RFQ Coordinator. Questions will be accepted until the date set forth in the Procurement Schedule. Early submission of questions is encouraged. Questions and answers will be posted by addenda on WEBS. Bidders may only rely on written statements issued by the RFQ Coordinator. Any oral communications are unofficial and are not binding on OFM.

2.4 SUBMISSION OF PROPOSALS

Bidders are required to submit four (4) copies of their qualifications. One copy must be marked "Original" and the other three (3) marked "Copy". The "Original" must have original signatures and the copies can have photocopied signatures. All copies must be identical in content to the "Original" as the evaluators will only be evaluating the copies. The Bidder must identify on the "Original" and each copy of its proposal the RFP #17-600 and Title, Personnel Resources Board – Mediation & Hearing Officers. *Bidder must also include one "soft" copy of the proposal, provided on a thumb drive.*

Late proposals will not be accepted and will be automatically disqualified from further consideration. All proposals and any accompanying documentation become the property of the AGENCY and will not be returned.

2.5 PROPRIETARY INFORMATION/PUBLIC DISCLOSURE

Proposals submitted in response to this solicitation shall become the property of the AGENCY. All proposals received shall remain confidential until the Apparently Successful Bidder has been announced; thereafter, the proposals shall be deemed public records as defined in Chapter 42.56 of the Revised Code of Washington (RCW).

Any information in the proposal that the Bidder desires to claim as proprietary and exempt from disclosure under the provisions of Chapter 42.56 RCW must be clearly designated. The information must be clearly identified and the particular exemption from disclosure upon which the Bidder is making the claim must be cited. Each page containing the information claimed to be exempt from disclosure must be clearly identified by the word "Confidential" printed on the lower right hand corner of the page. Marking the entire proposal exempt from disclosure or as confidential will not be honored.

If a public records request is made for the information that the Bidder has marked as proprietary, the AGENCY will notify the Bidder of the request and of the date that the records will be released to the requester unless the Bidder obtains a court order enjoining that disclosure. If the Bidder fails to obtain the court order enjoining disclosure, the AGENCY will release the requested information on the date specified. If a Consultant obtains the court order enjoining disclosure, to the extent consistent with Chapter 42.56 RCW, the AGENCY shall maintain the confidentiality of the Consultant's information identified as proprietary.

2.6 REVISIONS TO THE RFQ

In the event it becomes necessary to revise any part of this RFQ, addenda will be published on the Washington Electronic Business System (WEBS) at <http://www.ga.wa.gov/webs/>. For this purpose, the published questions and answers and any other pertinent information shall be provided as an addendum to the RFQ and will be placed on the website.

The state of Washington also reserves the right to cancel or to reissue the RFQ in whole or in part, prior to execution of a contract.

2.7 MINORITY & WOMEN-OWNED BUSINESS PARTICIPATION

In accordance with Chapter 39.19 of the Revised Code of Washington (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.

The established annual procurement participation goals for MBE is 10% and for WBE, 4%, for this type of project. These goals are voluntary. Bidders may contact OMWBE at (360) 753-9693 to obtain information on certified firms.

2.8 ACCEPTANCE OF RFQ TERMS

The Bidder acknowledges that the submission of a Bid which includes a signed Bidder Certification and Assurance Form, attached as Exhibit A, constitutes a binding offer that is valid for 60 days from the due date for receipt of proposals.

2.9 RESPONSIVENESS

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

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

2.10 MOST FAVORABLE TERMS

The state of Washington 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 Proposer can propose. There will be no best and final offer procedure. The state of Washington does reserve the right to contact a Bidder for clarification of its proposal.

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

2.11 CONTRACT AND GENERAL TERMS AND CONDITIONS

An Apparently Successful Consultant will be expected to enter into a contract which will include 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 Bidder may submit exceptions as allowed in the Certifications and Assurances form, Exhibit A to this solicitation. All exceptions to the contract terms and conditions must be submitted as Track Changes to Exhibit B. Bidder must explain the reason for each requested exception, identifying the language in Exhibit B found problematic, the reason Bidder finds the language to be problematic, and any recommended methods/alternate language of mitigating or limiting the perceived negative consequences.

The AGENCY will review requested exceptions and accept or reject the same at its sole discretion. Requested exceptions may be grounds for disqualification from further consideration in the award of a Contract, at the AGENCY's discretion.

2.12 COSTS TO PROPOSE

The AGENCY will not be liable for any costs incurred by the Consultant in preparation of a proposal submitted in response to this RFQ or any other activities related to responding to this RFQ.

2.13 NO OBLIGATION TO CONTRACT

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

2.14 REJECTION OF PROPOSALS

The AGENCY 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 RFQ.

2.15 COMMITMENT OF FUNDS

The Director of the AGENCY or the Director's delegate are the only individuals who may legally commit the AGENCY to the expenditures of funds for a contract resulting from this RFQ. No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

2.16 INSURANCE COVERAGE

The Contractor shall, at Contractor's 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 the RFQ Coordinator within fifteen (15) days of the contract effective date.

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.

2.17 ELECTRONIC PAYMENT

The state of Washington prefers to utilize electronic payment in its transactions. Proposers who are awarded a contract as a result of this RFQ must register in the Statewide Vendor Payee Registration System. The Department of Enterprise Services (DES) maintains a central contractor registration file for Washington State agencies to process Contractor payments. To obtain registration materials and instructions for registration go to

<http://des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>

2.18 COMPLAINTS

This procedure is available to potential Bidders who are contemplating submitting a bid in response to this RFQ. Only complaints concerning the following subjects shall be considered:

- A claim that the solicitation unnecessarily restricts competition;
- A claim the solicitation evaluation or scoring process is unfair or flawed, or
- A claim the solicitation requirements are inadequate or insufficient to prepare a response.

Consultants complaining about this procurement shall follow the procedures described below. Complaints that do not follow these procedures shall not be considered. If a Consultant registers a complaint against this solicitation, the complaint cannot be raised again during the protest period.

All complaints must be in writing and signed by the complaining party or an authorized Agent. The complaint must be received by the Procurement Coordinator, or designee, by the time/date specified in Section 2.2, and must clearly articulate the basis for the complaint. The consultant submitting the complaint must also include a proposed remedy.

Upon receipt of a complaint, a complaint review will be held by the AGENCY. The AGENCY procurement coordinator will respond to complaints in writing and the AGENCY director will be notified of all complaints and provided a copy of the AGENCY'S response. A copy of the response to the complaint, including any changes to the solicitation, will also be posted to WEBS.

The complaint process does not include an appeal process.

3. PROPOSAL CONTENTS

The proposal must be written in English and submitted on 8½" x 11" paper with tabs separating the major sections of the proposal. The font throughout the entire proposal shall be no smaller than 10. The two major sections of the proposal are to be submitted in the order noted below:

- 3.1 Administrative Requirements (Section 1 of Proposal)
- 3.2 Qualifications

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 Bidder in preparing a thorough response.

3.1 ADMINISTRATIVE REQUIREMENTS (Section 1 of Proposal)

- A. Letter of Submittal. The Letter of Submittal and the attached Certifications and Assurances form (Exhibit A to this RFQ) 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 of a corporation, the managing partner of a partnership, or the proprietor of a sole proprietorship. Signing the Letter of Submittal indicates that the Bidder accepts the terms and conditions of the RFQ. The Letter of Submittal shall contain the following information:
 - (1) Name, address, principal place of business, telephone number, fax number, and e-mail address of the legal entity or the individual with whom the contract would be written.
 - (2) The name of the contact person for this RFQ.
 - (3) Legal status of Consultant (sole proprietorship, partnership, corporation, etc.) and the year the entity was established to do business as it now substantially exists.
 - (4) Name, address, and telephone number of each principal officer (President, Vice-President, Treasurer, Chairperson of the Board of Directors, etc.)
 - (5) 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. If the Consultant does not have a UBI number, the Consultant must state that it will become licensed in Washington within thirty (30) calendar days of being selected as the Apparently Successful Contractor.
 - (6) Location of the facility from which the Consultant would operate.
 - (7) Identify any state employees or former state employees employed by the Consultant or on the Consultant'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 AGENCY that a conflict of interest exists, the Consultant may be disqualified from further consideration for the award of a contract.

- (8) If the Consultant's staff or subcontractor's staff was an employee of the state of Washington during the past 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.
- (9) If the Consultant has had a contract terminated for default in the last five 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.
- (10) 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 AGENCY 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 years, so indicate.
- (11) A list of all RFQ addenda downloaded by the Bidder from WEBS and listed in order by addenda number and date. If there are no RFQ addenda, the Bidder must include a statement to that effect.
- (12) A statement substantiating that the person who signs the letter is authorized to contractually bind the Bidder's firm.
- (13) Identification of the page numbers on the Bidder's Proposal that are marked "Proprietary Information".
- (14) If the Consultant has a license to do business in the state of Washington, identify that number. If the Consultant does not have a license to do business in the state of Washington at the time of the bid submission, but still wants to be considered for an award of a Convenience Contract, Consultant must include the following statement: "I understand a Uniform Business Identifier (UBI) is necessary to conduct business in Washington State. I certify that a UBI will be provided within thirty (30) calendar days of being selected as an Apparently Successful Bidder." If the Consultant does not have a UBI and fails to include the above statement, that Consultant's proposal will not be considered further

B. Bidder Certification & Assurance Form

Bidders must submit a completed Bidder Certification and Assurances Form, Exhibit A. Please sign and include any attachments that are necessary.

C. References

List names, addresses, telephone numbers, and fax numbers/e-mail addresses of three (3) business references for the Bidder and three (3) business references for the lead staff person for whom work has been accomplished and briefly describe the type of service provided. Do not include current AGENCY staff as references. By submitting a proposal in response to this RFQ, the Bidder and team members grant permission to AGENCY to contact these references and others, who from AGENCY's perspective, may have pertinent information. AGENCY may or may not, at AGENCY's discretion, contact references. The AGENCY may evaluate references at the AGENCY'S discretion.

D. OMWBE Certification

If you are certified as a minority-owned firm and/or women-owned firm, include proof of certification issued by the Washington State Office of Minority and Women's Business Enterprises (OMWBE).

3.2 QUALIFICATIONS (Section 2 of Proposal)

The qualifications section of the proposal must contain information that will demonstrate to the evaluation committee the Consultant's understanding of the types of services proposed, the Consultant's ability to accomplish them, and the ability to meet tight timeframes. The Qualifications Section must also demonstrate the capabilities of the staff to perform the services.

Numbering of Responses. Please number each response so that it corresponds to the question number. The response must begin with a restatement of the question followed by the Bidder's response to the question. A reference to another section will not suffice, each answer must stand alone.

Attachments. Attachments must be labeled and tabbed and the question number to which it responds must be indicated.

Points Awarded for Responses. The number in parentheses after each question or requirement represents the maximum number of points that may be awarded for the Bidder's response to that question or requirement.

- a) Describe the experience you have in public sector employee/management relations such as collective bargaining, contract administration or related work as a union or management representative, mediator, arbitrator or educator in the above areas.

Points available: 4

- b) Do you have a Bachelor's degree in labor relations, Human Resources; Law, Psychology, or closely related field? If not, what additional qualifying experience have you had?

Points available: 4

- c) Describe your knowledge of the principles and laws governing the state merit system of employment in general government and higher education.

Points available: 4

- d) Describe your understanding of the relationship between the merit system and labor/management relations in state agencies and institutions of higher education, including economics, human resources, collective bargaining and negotiations.

Points available: 4

- e) Describe your ability to preside at hearings or conduct mediation in personnel appeals with impartiality; and patiently assist parties in resolving disputes.

Points available: 4

- f) Describe your experience with diverse work structures and types of public employers.

Points available: 4

4. EVALUATION AND SELECTION AS AN APPARENTLY SUCCESSFUL CONTRACTOR

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 AGENCY, which will determine the ranking of the proposals for selection as Apparently Successful Contractors for OFM Convenience Contracts.

The RFQ Coordinator reserves the right to contact the Consultant for clarification of any portion of the Consultant's proposal.

4.2 EVALUATION WEIGHTING AND SCORING

The maximum number of evaluation points available is 130. The Administrative Requirements are evaluated on a pass/fail basis. The following points will be assigned to the Proposal for evaluation purposes:

WRITTEN PROPOSAL

Qualifications	24 Points
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Total (for Written Proposal)	24 Points
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Section 3.2. Qualifications Section, will be consensus scored by evaluators. OFM will decide to which bidders to award Convenience Contracts in its sole discretion.

4.3 NOTIFICATION TO BIDDERS

The AGENCY will notify by e-mail the Apparently Successful Bidders of their selection for Convenience Contracts upon completion of the evaluation process. Individuals or firms whose proposals have not been selected as an Apparently Successful Bidder will be notified separately by e-mail.

4.4 DEBRIEFING OF UNSUCCESSFUL BIDDERS

Any Bidder who has submitted a proposal and been notified that they were not selected as an Apparently Successful Bidder may request a debriefing. The request for a debriefing conference must be **received** by the RFQ Coordinator no later than 3:30 PM, local time, Olympia, Washington, on the date specified in Section 2.2.

Discussion at the debriefing conference will be limited to the following:

- Evaluation and scoring of the Consultant's proposal;
- Critique of the requesting Consultant's proposal based on the evaluation; and
- Review of proposer's final score in comparison with other final scores without identifying the other firms.

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.

4.5 PROTEST PROCEDURE

Protests may be made only by Bidders who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the Bidder is allowed five (5) business days to file a protest of the acquisition with the RFP Coordinator. Protests must be received by the RFP Coordinator no later than 3:30 PM, local time, in Olympia, Washington on the fifth business day following the debriefing. Protests may be submitted by email, but must then be followed by the document with an original signature.

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, addressed to the RFQ Coordinator, and signed by the protesting party or an authorized Agent. The protest must state the RFQ number, 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.

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 AGENCY 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) AGENCY'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 AGENCY. The AGENCY director or an employee delegated by the Director who was not involved in the procurement, will consider the record and all available facts and issue a decision within five (5) 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 RFQ Coordinator.

The final determination of the protest shall:

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

If the AGENCY determines that the protest is without merit, the AGENCY 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. RFQ EXHIBITS

- Exhibit A Certifications and Assurances
- Exhibit B Sample General Terms and Conditions

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. 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.)
3. I/we understand that the OFM will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of the OFM, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
4. I/we agree that submission of the attached proposal constitutes acceptance of the solicitation contents and the attached sample contract with 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.
5. 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.
6. I/we grant OFM the right to contact references and others, who may have pertinent information regarding the ability of the Consultant and the lead staff person to perform the services contemplated in this procurement.
7. If any staff member(s) who will perform work on this contract has retired from the State of Washington under the provisions of the 2008 Early Retirement Factors legislation, his/her name(s) is noted on a separately attached page.

We (*circle one*) **are/are not** submitting proposed Contract exceptions (See Section 2.10, Contract with General Terms and Conditions). If Contract exceptions are being submitted, I/we have attached them to this form.

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

Signature of Proposer¹

Title

Date

EXHIBIT B
SAMPLE GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

As used throughout this contract, the following terms shall have the meaning set forth below:

- a. "AGENCY" shall mean the Office of Financial Management of the State of Washington, any division, section, office, unit or other entity of the AGENCY, or any of the officers or other officials lawfully representing that AGENCY.
- b. "AGENT" shall mean the Director, and/or the delegate authorized in writing to act on the Director's behalf.
- c. "CONTRACTOR" shall mean that firm, provider, organization, individual or other entity performing service(s) under this contract, and shall include all employees of the CONTRACTOR.
- d. "SUBCONTRACTOR" shall mean one not in the employment of the CONTRACTOR, who is performing all or part of those services under this contract under a separate contract with the CONTRACTOR. The terms "SUBCONTRACTOR" and "SUBCONTRACTORS" means SUBCONTRACTOR(s) in any tier.

2. ACCESS TO DATA

In compliance with RCW 39.26.180(2), the CONTRACTOR shall provide access to data generated under this contract to AGENCY, 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.

3. ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by the AGENCY.

4. AMENDMENTS

With the exception of administrative changes, this contract may be amended 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. In the case of administrative changes, both parties agree that changes can be memorialized by letter.

5. 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.

6. 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 AGENCY.

7. ATTORNEYS' FEES

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

8. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

The CONTRACTOR shall not use or disclose any information concerning the AGENCY, or information that may be classified as confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of the AGENCY, or as may be required by law.

9. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the AGENCY may, in its sole discretion, by written notice to the CONTRACTOR terminate this contract if it is found after due notice and examination by the AGENT that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the CONTRACTOR in the procurement of, or performance under this contract.

In the event this contract is terminated as provided above, the AGENCY shall be entitled to pursue the same remedies against the CONTRACTOR as it could pursue in the event of a breach of the contract by the CONTRACTOR. The rights and remedies of the AGENCY provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the AGENT makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

10. 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 AGENCY. The AGENCY shall be considered the author of such materials. In the event the materials are not considered "works for hire" under the U.S. Copyright laws, 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 materials 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 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.

11. COVENANT AGAINST CONTINGENT FEES

The CONTRACTOR warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the CONTRACTOR for 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 fee.

12. DEBARMENT: CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION—PRIMARY AND LOWER TIER COVERED TRANSACTIONS

- a. Contractor, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:
 - 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
 - 2) Have not within a three-year period preceding this Contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;

- 3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
 - 4) Have not within a three-year period preceding the signing of this Contract had one or more public transactions (Federal, State, or local) terminated for cause of default.
- b. Where the Contractor is unable to certify to any of the statements in this Contract, the Contractor shall attach an explanation to this Contract.
 - c. The Contractor agrees by signing this Contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by AGENCY.
 - d. The Contractor further agrees by signing this Contract that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

LOWER TIER COVERED TRANSACTIONS

- 1) The lower tier contractor certifies, by signing this Contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
 - 2) Where the lower tier contractor is unable to certify to any of the statements in this Contract, such contractor shall attach an explanation to this Contract.
- e. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact AGENCY for assistance in obtaining a copy of these regulations.

13. DISALLOWED COSTS

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

14. DISPUTES

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with AGENT.

- a. The request for a dispute hearing must:
 - Be in writing;
 - State the disputed issue(s);
 - State the relative positions of the parties;
 - State the CONTRACTOR'S name, address, and contract number; and
 - Be mailed to the AGENT and the other party's (respondent's) contract manager within 3 working calendar days after the parties agree that they cannot resolve the dispute.
- b. The respondent shall send a written answer to the requester's statement to both the agent and the requester within 5 working calendar days.
- c. The AGENT shall review the written statements and reply in writing to both parties within 10 working days. The AGENT may extend this period if necessary by notifying the parties.
- d. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution method in addition to the dispute resolution procedure outlined above.

15. DUPLICATE PAYMENT

The AGENCY shall not pay the CONTRACTOR, if the CONTRACTOR has charged or will charge the State of Washington or any other party under any other contract or agreement, for the same services or expenses.

16. 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 the Superior Court for Thurston County.

17. INDEMNIFICATION

To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend, and hold harmless State, agencies of State and all officials, agents and employees of State, from and against all claims for injuries or death arising out of or resulting from the performance of the 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.

CONTRACTOR'S obligations to indemnify, defend, and hold harmless includes any claim by CONTRACTORS' agents, employees, representatives, or any subcontractor or its employees.

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

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

18. INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this contract. The CONTRACTOR and his or 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 or 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 of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with the CONTRACTOR.

19. INDUSTRIAL INSURANCE COVERAGE

The CONTRACTOR shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the CONTRACTOR fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, AGENCY may collect from the CONTRACTOR the full amount payable to the Industrial Insurance accident fund. The AGENCY may deduct the amount owed by the CONTRACTOR to the accident fund from the amount payable to the CONTRACTOR by the AGENCY under this contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the CONTRACTOR.

20. LICENSING, ACCREDITATION AND REGISTRATION

The CONTRACTOR shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this contract.

21. LIMITATION OF AUTHORITY

Only the AGENT or AGENT'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 AGENT.

22. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

In the event of the CONTRACTOR'S non-compliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the CONTRACTOR may be declared ineligible for further contracts with the AGENCY. The CONTRACTOR shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

23. NONDISCRIMINATION

During the performance of this contract, the CONTRACTOR shall comply with all federal and state nondiscrimination laws, regulations and policies.

24. PRIVACY

Personal information including, but not limited to, "Protected Health Information," collected, used, or acquired in connection with this contract shall be protected against unauthorized use, disclosure, modification or loss. CONTRACTOR shall ensure its directors, officers, employees, subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein. CONTRACTOR and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as otherwise required by law.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The CONTRACTOR agrees to indemnify and hold harmless the AGENCY for any damages related to the CONTRACTOR'S unauthorized use of personal information.

25. PUBLICITY

The CONTRACTOR agrees to submit to the AGENCY all advertising and publicity matters relating to this contract wherein the AGENCY'S name is mentioned or language used from which the connection of the AGENCY'S name may, in the AGENCY'S judgment, be inferred or implied. The CONTRACTOR agrees not to publish or use such advertising and publicity matters without the prior written consent of the AGENCY.

26. RECORDS MAINTENANCE

The CONTRACTOR shall maintain 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 that 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.

27. REGISTRATION WITH DEPARTMENT OF REVENUE

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

28. RIGHT OF INSPECTION

The CONTRACTOR shall provide right of access to its facilities to the AGENCY, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

29. SAVINGS

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 terminate the contract under the "Termination for Convenience" clause, without the ten-day notice requirement, subject to renegotiation at the AGENCY'S discretion under those new funding limitations and conditions.

30. 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.

31. 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.

32. 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 the liability of the contractor to the

Department 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.

Additionally, the CONTRACTOR is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subcontracts. CONTRACTOR and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as provided by law.

33. TAXES

All payments accrued because 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.

34. TERMINATION DUE TO CHANGE IN FUNDING

If the funds OFM relied upon to establish this Contract are withdrawn or reduced, or if additional or modified conditions are placed on such funding, OFM may immediately terminate this Contract by providing written notice to the Contractor. The termination shall be effective on the date specified in the notice of termination.

35. TERMINATION FOR CAUSE

In the event the AGENCY determines the CONTRACTOR has failed to comply with the conditions of this contract in a timely manner, the AGENCY has the right to suspend or terminate this contract. Before suspending or terminating the contract, the AGENCY shall notify the CONTRACTOR in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, 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 AGENCY 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 AGENCY to terminate the contract. A termination shall be deemed 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 AGENCY provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

36. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this contract, the AGENCY may, by 10 calendar days written notice, beginning on the second day after the mailing, terminate this contract, in whole or in part. If this contract is so terminated, the AGENCY shall be liable only for payment required under the terms of this contract for services rendered or goods delivered prior to the effective date of termination.

37. TERMINATION PROCEDURES

Upon termination of this contract, the AGENCY, in addition to any 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 contract 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 (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by the AGENCY, and (iv) the protection and preservation of property, unless the termination is for default, in which case the AGENT shall determine the extent of the liability of the AGENCY. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The AGENCY may withhold from any amounts due the CONTRACTOR such sum as the AGENT 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 or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the AGENT, the CONTRACTOR shall:

- a. Stop work under the contract on the date, and to the extent specified, in the notice;
- b. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
- c. Assign to the AGENCY, in the manner, at the times, and to the extent directed by the AGENT, all of the rights, title, and interest of the CONTRACTOR under the orders and subcontracts so terminated, 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;
- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the AGENT to the extent AGENT may require, which approval or ratification shall be final for all the purposes of this clause;

- e. Transfer title to the AGENCY and deliver in the manner, at the times, and to the extent directed by the AGENT any property which, if the contract had been completed, would have been required to be furnished to the AGENCY;
- f. Complete performance of such part of the work as shall not have been terminated by the AGENT; and
- g. Take such action as may be necessary, or as the AGENT may direct, for the protection and preservation of the property related to this contract, which is in the possession of the CONTRACTOR and in which the AGENCY has or may acquire an interest.

38. TREATMENT OF ASSETS

- a. Title to all property furnished by the AGENCY shall remain in the AGENCY. Title to all property furnished by the CONTRACTOR, for the cost of which the CONTRACTOR is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the AGENCY upon delivery of such property by the CONTRACTOR. Title to other property, the cost of which is reimbursable to the CONTRACTOR under this contract, shall pass to and vest in the AGENCY upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the AGENCY in whole or in part, whichever first occurs.
- b. 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 this contract.
- c. The CONTRACTOR shall be responsible for any loss or damage to property of the AGENCY that results from the negligence of the CONTRACTOR or which results from the failure on the part of the CONTRACTOR to maintain and administer that property in accordance with sound management practices.
- d. If any AGENCY property is lost, destroyed or damaged, the CONTRACTOR shall immediately notify the AGENCY and shall take all reasonable steps to protect the property from further damage.
- e. The CONTRACTOR shall surrender to the AGENCY all property of the AGENCY prior to settlement upon completion, termination or cancellation of this contract
- f. All reference to the CONTRACTOR under this clause shall also include CONTRACTOR'S employees, agents or SUBCONTRACTORS.

39. U.S. Department of Treasury, Office of Foreign Assets Control

The agency complies with U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC) payment rules. OFAC prohibits financial transactions with individuals or organizations, which have been placed on the OFAC Specially Designated Nationals (SDN) and Blocked Persons sanctions list located at

<http://www.treas.gov/offices/enforcement/ofac/index.html>. Compliance with OFAC payment rules ensures that the agency does not conduct business with individuals or organizations that have been determined to be supporters of terrorism and international drug dealing or that pose other dangers to the United States.

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

40. WAIVER

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