

Audit Services Bid Solicitation Amendment 2

Request for Proposal: 1212-RFP-K345-A2

February 4, 2013

Washington Grain Commission

Correction in Sample Contract

Deleted: In addition, this audit must include tests of the Commission's compliance with Washington State laws and regulations.

Proposal Deadline, Change in due date

All proposals must be received by **February 19, 2013 at 2:00 p.m.** Proposals arriving after that time will not be considered

Please submit your proposal to:

Kevin Greene
Washington State Auditor's Office
Financial Audit of the Washington Grain Commission
Town Square
621 – 8th Ave S.E., Suite 201
PO Box 40022
Olympia WA 98504-0022

Physical Address for Hand Delivery or Courier Service:

Washington State Auditor's Office
Town Square
621 – 8th Ave S.E., Suite 201
Olympia WA 98504-0022

Telephone Number: (360) 725-9730

Fax Number: (360) 586-0008

E-mail Address; contractmanager@sao.wa.gov

We've receive number of questions regarding the work we want done. As stated in the Statement of Work we are accepting proposals for Financial Audit of the Grain Commission. We are not soliciting bids for Accountability Audit.

Questions and Answers provided

Q. Is the audit fieldwork going to be completed at the Spokane offices of the Commission?

A. We expect the fieldwork will be done in the Spokane area.

Q. Please provide a copy of the most recent audited financial statement to allow us to best estimate our fees.

A. You can find the latest Grain Commission audit reports at our State Auditor's Office website:

<http://www.sao.wa.gov/EN/Pages/default.aspx> Go to the Reports tab and in the SEARCH window type in Grain Commission. It will provide a list of reports back through 08-09.

Q. On the solicitation details it refers to the American Recovery & Reinvestment Act funding. Will the Washington Grain Commission have more than \$500,000 of Federal expenditures for the year ended June 30, 2013?

A. Based on recent audit history the Grain Commission has not had to have a Federal Single audit. I don't know about the current year.

Q. Is it possible to get some information about the prior period audit such as the total cost, number of auditors, and / or total number of hours the prior auditors spent on the project?

A. Last year's total audit cost was \$4,700. The work was bid and paid on a fixed price so we do not have hour or number

of auditor's involved information.

If you have already submitted a proposal you have the option to maintain your already submitted proposal or cancel your proposal and resubmit a new proposal by the due date and time. Proposals received are not opened until the Due Date.

Request for Proposal: 1212-RFP-K345

January 18, 2013

Audit Services Bid Solicitation

Washington Grain Commission

The Washington State Auditor's Office (SAO) is currently soliciting proposals for Audit Services to provide an audit of the Washington Grain Commission. SAO reserves the ability to amend any contract awarded through this process to accommodate additional hours, dollars and geographic locations associated with a particular work engagement or need as deemed necessary by the SAO. Outlined below are the engagement, required information, selection criteria and proposal deadline.

Your proposal should be brief and address the listed required information with a resume for each staff member offered.

Contracting Authority

RCW 43.09.045 authorizes the State Auditor to contract with CPAs certified in Washington to perform audit work in state and local governments. Firms interested in performing contract work for the State Auditor's Office shall be registered and in good standing with the State Board of Accountancy pursuant to WAC 4-25-750. Under this legislation, the State Auditor's Office retains responsibility for audits of all public accounts as provided in the state constitution, including publication of results.

Statement of Work

The contractor will perform a Financial Audit for the Washington Grain Commission each fiscal year starting with the fiscal year ending June 30, 2013 and each successive year through 2015. The draft audit report is to be delivered no later than December 31st each year.

- Financial audit with sufficient audit work necessary to express an opinion on the fair presentation of the Commission's financial statements under generally accepted auditing standards (GAAS) as established by the Auditing Standards Board of the American Institute of Certified Public Accountants (AICPA).

The State Auditor's Office will review the work of the CPA firm to determine sufficient audit work has been performed. Work product will include an electronic file of the draft financial statement and footnotes.

The State Auditor's Office will issue the annual audit reports based on the above mentioned standards and standards established in its Audit Report Standards Manual.

General Information

The Contractor agrees that the State Auditor's Office is not responsible for providing transportation to and from the audit site and that any travel costs, insurance costs, or other out-of-pocket costs are the responsibility of the Contractor. Any additional services provided by the Contractor and/or Subcontractors would require a written contract amendment approved and processed through the State Auditor's Office prior to beginning the additional services.

The proposed staff must possess adequate professional proficiency for the tasks required, including, but not limited to prior governmental audit experience. SAO may issue more than one contract under this RFP.

The original working papers, including electronic files, generated in connection with this engagement, will be the property of the State Auditor's Office.

Independent Contractor

Contractor warrants that staff performing work under this contract are free from personal and external impairments to independence as described in generally accepted government auditing standards (GAGAS).

Proposal Required Information

The proposal should be concise and contain the following information:

- Name, address, e-mail address, phone number and a primary contact person.
- Proposed fees for the services to be performed, by year

Fiscal Year	Proposed Yearly Fee for Financial Audit (in US Dollars)
2013	
2014	
2015	

- Statements that the proposed staff members are free from personal and external impairments to independence per AICPA and GAGAS.
- Staff member(s) qualifications, relevant experience, total audit experience, including recent CPE and other professional proficiency for the tasks required.
- A resume for each staff member offered.
- Assurance that the start dates and work hours can be met.
- The firm's state UBI No. and Federal Employer ID No.
- A statement that the firm is registered and in good standing with the State Board of Accountancy pursuant to WAC 4-25-750 and the firm participates, as applicable, in the AICPA practice-monitoring or an equivalent peer review program and has had a peer review during the last three years.
- A statement that the firm is willing to comply with the terms and conditions of the accompanying sample audit services contract and exhibits.
- A statement that the firm can provide proof of insurance as required in this RFP.

Proposals, which are not postmarked or received by the deadline, exceed the maximum hourly rate or do not contain all required information will be considered unresponsive and will not be evaluated.

PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFP is tentatively scheduled to begin on or about July 1, 2013 or date of execution, whichever is later, through July 30, 2016, with the draft audit report to be submitted no later than December 31 each year. Amendments extending the period of performance, if any, shall be at the sole discretion of State Auditor's Office. State Auditor's Office reserves the right at its discretion, to extend the contract for up to three additional years.

INSURANCE

The Contractor shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or

intentional act or omission of the Contractor or subcontractor, or agents of either, while performing under the terms of this contract.

The Contractor shall provide insurance coverage, which shall be maintained in full force and effect during the term of this Contract, as follows:

1. Commercial General Liability Insurance Policy – Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence. Additionally, the Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.
2. Accountants' professional liability coverage's with limits of not less than \$1 million for any one occurrence. Workers' Compensation and employer's liability coverages with Washington statutory limit and limits of not less than \$500,000 for employer's liability.
3. Automobile Liability. In the event that services delivered pursuant to this contract involve the use of vehicles, either owned or unowned by the Contractor, automobile liability insurance shall be required. The minimum limit for automobile liability is: \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.
4. The insurance required shall be issued by an insurance company/ies authorized to do business within the State of Washington, and shall name the state of Washington, its agents and employees as additional insureds under the insurance policy/ies. All policies shall be primary to any other valid and collectable insurance. Contractor shall instruct the insurers to give AGENCY 30 days advance notice of any insurance cancellation.

Contractor shall submit to AGENCY within 15 days of the contract effective date, a certificate of insurance which outlines the coverage and limits defined in the *Insurance* section. Contractor shall submit renewal certificates as appropriate during the term of the contract.

Minority, Small, Women and Veteran Owned Businesses

The Washington State Auditor' Office is an equal opportunity employer. Minority, Small, Women and Veteran owned businesses are encouraged to reply.

Selection Criteria

The following criteria will be used to evaluate the proposals:

• Proposed fees, including travel costs.	20 pts
• Qualifications, training and experience of the firm/proposed auditors.	30 pts
• Government audit experience of proposed staff.	30 pts
• Availability during contract period.	20 pts

Each criterion will be rated as noted with maximum points awarded for the most favorable option. A maximum of 100 points is possible.

The proposal with the highest total score may be awarded the contract.

Submission of Proposals

The proposal, whether emailed, mailed or hand delivered, must be received by the SAO no later than 2:00 p.m. local time in Olympia, Washington, on February 19th, 2013. The proposal is to be sent to the Contract Manager at the address noted below. The envelope should be clearly marked to the attention of the Contract Manager, who is the SAO's sole point of contact for this procurement.

The electronic version of the proposal must be submitted in Word, Excel or PDF format. Proposals may not be submitted via facsimile.

Firms should allow normal mail delivery time to ensure timely receipt of their proposals by the Contract Manager. The SAO assumes no responsibility for delays caused by any delivery service.

Late proposals will not be accepted and will be automatically disqualified from further consideration. The proposals must respond to the procurement requirements.

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 SAO and will not be returned.

Proposal Deadline

All proposals must be received by **February 19, 2013 at 2:00 p.m.** Proposals arriving after that time will not be considered

Please submit your proposal to:

Kevin Greene
Washington State Auditor's Office
Financial Audit of the Washington Grain Commission
Town Square
621 – 8th Ave S.E., Suite 201
PO Box 40022
Olympia WA 98504-0022

Physical Address for Hand Delivery or Courier Service:

Washington State Auditor's Office
Town Square
621 – 8th Ave S.E., Suite 201
Olympia WA 98504-0022

Telephone Number: (360) 725-9730
Fax Number: (360) 586-0008
E-mail Address; contractmanager@sao.wa.gov

Questions concerning this solicitation may be directed to the Contract Manager, at contractmanager@sao.wa.gov or 360-725-9730. We reserve the right to reject any and all bids/proposals. Thank you for your interest. We anticipate making the selection in February, 2013.

Debriefing of Unsuccessful Proposers

Proposers who submitted a proposal and were not selected will be given the opportunity for a debriefing conference. The Solicitation Coordinator must receive a written request from the unsuccessful proposer for a debriefing conference within three (3) business days after the Notification of Unsuccessful Proposer letter is e-mailed or faxed. The request for a debriefing can be in hard copy or via e-mail. The debriefing will be held within three (3) business days of the request unless the State Auditor's Office schedules otherwise.

Discussion will be limited to a critique of the requesting proposer'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.

Protest Procedure and Format

This procedure is available to proposers who (1) submitted a response to this solicitation document and (2) have participated in a debriefing conference. Upon completing the debriefing conference, the proposer is allowed three (3) business days to file a protest of the procurement with the Solicitation Coordinator. Protests may be submitted by facsimile or e-mail, but must be followed by the original document.

Proposers protesting this procurement will follow the procedures described below. Protests that do not follow these procedures will not be considered. This protest procedure constitutes the sole administrative remedy available to proposers 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 will be addressed to the Solicitation Coordinator.

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

- A matter of bias, discrimination or conflict of interest on the part of the evaluator.
- Errors in computing the score.
- Noncompliance with procedures described in the procurement document.

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) State Auditor's Office'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 State Auditor's Office. The State Auditor's Office will designate three individuals who were not involved in the procurement to 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 proposer that submitted a proposal, such proposer will be given an opportunity to submit its views and any relevant information on the protest to the Solicitation Coordinator. The final determination of the protest will:

- Find the protest lacking in merit and uphold the State Auditor's Office's action; or
- Find only technical or harmless errors in the State Auditor's Office's acquisition process and determine the State Auditor's Office to be in substantial compliance and reject the protest; or
- Find merit in the protest and provide State Auditor's Office 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 State Auditor's Office determines that the protest is without merit, the State Auditor's Office will enter into a contract with the apparent successful contractor. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

Exhibit A

SAMPLE
AUDIT SERVICES CONTRACT

STATE OF WASHINGTON

CONTRACT NO.

**State Auditor's Office
Legislative Building
PO Box 40021
Olympia WA 98504-0021
(360) 902-0370**

THIS CONTRACT is made and entered into by and between the Washington State Auditor's Office, hereinafter referred to as the "State Auditor's Office", and the below named firm, hereinafter referred to as the "CONTRACTOR".

CONTRACTOR

Name:

Address:

Phone:

E-mail:

Federal Employer Identification No.:

Washington Uniform Business Identification No.:

SCOPE OF ENGAGEMENT

The CONTRACTOR will provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

Perform Financial audit for the Washington Grain Commission each fiscal year starting with the fiscal year ending June 30, 2013 and each successive year through fiscal year 2015. The draft audit report is to be delivered no later than December 31 each year.

The audit will be performed in accordance with generally accepted auditing standards and generally accepted government auditing standards.

The work product will be a draft audit report provided in electronic format and supporting working papers. The audit must be complete with delivery of the draft report, draft management letter points (if any), and original working papers no later than December 31, of each year.

The audit will be coordinated with and progress monitored by the State Auditor's Office.

The State Auditor's Office will review the draft audit report and any draft management letter points generated and the support evidenced in the working papers to determine audit standards were met, including but not limited to generally accept auditing standards (GAAS) and generally accepted government auditing standards (GAGAS). GAAS is set forth in the AICPA's *Statement on Auditing Standards*. GAGAS is set forth in the *Government Auditing Standards*, issued by the Comptroller General of the United States.

It is understood the State Auditor's Office is the principle auditor and all reports and any management letter points will be issued and approved by the State Auditor's Office.

CONTRACTOR QUALIFICATIONS AND STAFFING

It is agreed that CONTRACTOR'S management staff performing work under this contract are as listed below:

It is understood that staff named above will be responsible throughout the period of this contract. Any changes in management personnel assigned to this engagement require a written contract amendment.

CONTRACTOR warrants that staff performing work under this contract are free from personal and external impairments to independence.

CONTRACTOR warrants that staff performing work under this contract possess adequate professional proficiency for the tasks required including, but not limited to, governmental auditing standards (yellow book) requirements.

CONTRACTOR warrants that it is registered to practice public accounting and in good standing with the State Board of Accountancy, State of Washington in accordance with WAC 4-25-750 and has had a peer review during the last three years.

CONTRACTOR agrees that working papers prepared in connection with this engagement will conform to the State Auditor's Office standards, are considered public documents, and are the property of the State Auditor's Office. The firm performing the contract work may retain copies of the working papers as required by professional standards. The retention of working papers must be maintained in accordance with established retention schedules or as specifically required in the circumstances. Public requests for copies or viewing of work papers must be done through the State Auditor's Office.

If irregularities, fraud, or other significant audit issues, which may impact the audit, are suspected, the Contractor must immediately notify Deborah Pennick, Audit Manager (509) 335-5868.

All instances of noncompliance with state and local laws will be disclosed to the Audit Manager.

The State Auditor's Office's contract manager is Kevin Greene (360) 725-9730. Contractor's contract coordinator is ---.

The State Auditor's Office shall have the authority to monitor the performance of the CONTRACTOR, approve actions by the CONTRACTOR, and accept or reject any work product provided by the CONTRACTOR.

In the event the CONTRACTOR fails to deliver the work product by December 31 of each year the CONTRACTOR shall pay liquidated damages to the State Auditor's Office in the amount of \$100 per day.

PERIOD OF PERFORMANCE

Subject to other contract provisions, the period of performance under this contract will be from date of signing through July 30, 2016 unless sooner terminated as provided herein.

SPECIAL TERMS AND CONDITIONS

All rights and obligations of the parties to this contract shall be subject to and governed by those Special Terms and Conditions contained in the text of this contract and the General Terms and Conditions attached as Exhibit A, all hereby incorporated as part of this contract.

COMPENSATION AND PAYMENT

The State Auditor's Office shall pay an amount not to exceed \$ for the performance of work as set forth in the Scope of Work.

For each succeeding renewal year the audit must be completed with delivery of the report by December 31, as follows

The CONTRACTOR agrees that the State Auditor's Office is not responsible for providing transportation to and from the audit site and that any travel costs, insurance costs, or other out-of-pocket costs are the responsibility of the Contractor. Any additional services provided by the Contractor and/or Subcontractors would require a written contract amendment approved and processed through the State Auditor's Office prior to beginning the additional services.

The CONTRACTOR shall submit invoices at least monthly by the fifth business day. The invoice shall show the name of the Contractor staff performing services under the contract and the hours worked. Each voucher will clearly indicate that it is for services rendered in performance under State Audit Contract No. . The invoice shall be for all services rendered in the previous calendar month.

All invoices must be submitted for payment to:

Washington State Auditor's Office

Attn: Kevin Greene

Town Square

621 – 8th Ave S.E., Suite 201

Olympia WA 98504-0022

Payment shall be considered timely if made by the State Auditor's Office within 30 days.

The State Auditor's Office may, in its sole discretion, terminate the contract or withhold payments claimed by the CONTRACTOR for services rendered if the CONTRACTOR fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the State Auditor's Office.

Fifteen percent (15%) of the contract amount shall be retained subject to the acceptance of the work product by the State Auditor's Office. Notification of acceptance or rejection shall be made by the State Auditor's Office within five business days of receipt of the work product.

INSURANCE

The Contractor shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the Contractor or subcontractor, or agents of either, while performing under the terms of this contract.

The Contractor shall provide insurance coverage, which shall be maintained in full force and effect during the term of this Contract, as follows:

1. Commercial General Liability Insurance Policy – Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence. Additionally, the Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.
2. Accountants’ professional liability coverage’s with limits of not less than \$1 million for any one occurrence. Workers’ Compensation and employer’s liability coverages with Washington statutory limit and limits of not less than \$500,000 for employer’s liability.
3. Automobile Liability. In the event that services delivered pursuant to this contract involve the use of vehicles, either owned or unowned by the Contractor, automobile liability insurance shall be required. The minimum limit for automobile liability is: \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.
4. The insurance required shall be issued by an insurance company/ies authorized to do business within the State of Washington, and shall name the state of Washington, its agents and employees as additional insureds under the insurance policy/ies. All policies shall be primary to any other valid and collectable insurance. Contractor shall instruct the insurers to give AGENCY 30 days advance notice of any insurance cancellation.

Contractor shall submit to AGENCY within 15 days of the contract effective date, a certificate of insurance which outlines the coverage and limits defined in the Insurance section. Contractor shall submit renewal certificates as appropriate during the term of the contract.

ASSURANCES

The State Auditor’s Office and the CONTRACTOR agree that all activity pursuant to this Contract will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

ORDER OF PRECEDENCE

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

- Applicable Federal and State of Washington statutes and regulations
- Special Terms and Conditions as contained in this basic contract instrument
- Exhibit A – General Terms and Conditions

Any other provision, term or material incorporated herein by reference or otherwise incorporated

ENTIRE AGREEMENT

This contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind any of the parties hereto.

CONFORMANCE

If any provision of this contract shall be deemed in conflict with any statute or rule of law, such provision shall be deemed modified to be in conformance with said statute or rule of law.

APPROVAL

This contract shall be subject to the written approval of the State Auditor, Director of Audit, or designee and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

THIS CONTRACT, consisting of _ pages and Exhibit A (General Terms and Conditions) and Exhibit B (the Work Request), is executed by the persons signing below who warrant that they have the authority to execute the contract.

IN WITNESS WHEREOF: The State Auditor's Office and the Contractor have signed this contract.

STATE OF WASHINGTON

CONTRACTOR

STATE AUDITOR'S OFFICE

Signature

Chuck Pfeil, CPA

Director of Audit/Designee

Title Date

Signature

Title Date

Exhibit B**GENERAL TERMS AND CONDITIONS****1. Definitions**

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

- A. "State Auditor's Office" (SAO) shall mean any division, section, office, unit or other entity of the State Auditor's Office, or any of the officers or other officials lawfully representing the State Auditor's Office.
- B. "Agent" shall mean the State Auditor's Office Contract Manager, and/or the delegate authorized in writing to act on the Manager'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 39.29.080, the contractor shall provide access to data generated under this contract to the State Auditor's Office, 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 State Auditor's Office.

4. Amendments

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.

5. Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, 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 State Auditor's Office.

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

Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other state or federal statutes (“Confidential Information”). Confidential information may include, but is not limited to, employee information such as residential addresses, e-mail addresses, and telephone numbers, Social Security Numbers, financial profiles, credit card information, driver’s license numbers, medical data or protected health information, law enforcement records, agency source code or object code, or agency security data. Contractor agrees to hold confidential information in strictest confidence and not to make use of confidential information for any purpose other than the performance of this contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this contract, and not to release or disclose it to any other party. Contractor and any subcontractors agree to sign a non-disclosure statement with the State Auditor’s Office and said non-disclosure agreements shall be binding on all Contractor and subcontracted personnel. The Contractor will be responsible to communicate the terms and requirements of the non-disclosure agreement to the entire team/all Contractor and subcontracted personnel working on the contract prior to releasing such information or material only to employees or subcontractors. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

Contractor will maintain a log documenting the following: the Confidential Information received in the performance of this contract; why the Confidential Information was received; who received, maintained and used the Confidential Information; the purposes for which the Confidential Information was received; and the final disposition of the Confidential Information.

Immediately upon expiration or termination of this contract, contractor will, at the State Auditor’s Office’s option: Certify to the State Auditor’s Office that contractor has destroyed all Confidential Information not required to be retained by professional standards, and take whatever other steps State Auditor’s Office requires of contractor to protect Confidential Information.

The contractor will not use or disclose any information concerning the State Auditor’s Office, the audit or information which may be classified as confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of the State Auditor’s Office, or as may be required by law. Any breach of this provision may result in termination of the contract and the demand for return of all confidential information. The contractor agrees to indemnify and hold harmless the State Auditor’s Office for any damages related to the contractor’s unauthorized use of confidential information.

9. Conflict Of Interest

The State Auditor’s Office 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 State Auditor’s Office that there is a violation of GAO’s Government Auditing Standards 2011, General Standards for Independence (RCW 43.09.470 requires that performance audits will be conducted in accordance with the United States General Accounting Office’s Government Auditing Standards.)

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 State Auditor’s Office. The State Auditor’s Office 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 State Auditor’s Office 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 State Auditor’s Office 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 State Auditor's Office. The contractor will maintain its ownership of its pre-existing materials, such as methodologies, including any improvements or enhancements the contractor makes to its pre-existing materials.

The State Auditor's Office recognizes that: (A) valuable formulae, designs, drawings, and research data obtained by the State Auditor's Office within five years of the request for disclosure are exempt from disclosure when disclosure would produce private gain and public loss (RCW 42.56.270(1)); and (B) intellectual property and proprietary information may also be covered by the Washington Trade Secrets Act, chapter 19.108 RCW.

Where a request for documents potentially protected under these laws is made, the State Auditor's Office shall notify the contractor that the request has been made and provide the Contractor an opportunity to seek a court injunction against the requested disclosure. The Contractor will have five (5) business days to respond to the State Auditor's Office's notice with its intent to seek a court injunction against the requested disclosure. If the State Auditor's Office receives no response from the Contractor within five (5) business days, the materials and information will be released consistent with the State Auditor's Office policies and procedures under State law. Once notified of the contractor's intent to seek a court injunction, the contractor shall have ten (10) business days to obtain an injunction and provide a copy to the State Auditor's Office. If the State Auditor's Office does not receive a copy of an injunction within these ten(10) business day, it may release the requested documents.

Contractor shall exert all reasonable effort to advise the State Auditor's Office at the time of delivery of all known or potential copyright provisions or intellectual property or proprietary information protections applicable to any document or portion of any document produced in the performance of this contract. Contractor may mark any documents furnished to the State Auditor's Office as follows:

NOTICE: The information herein has been prepared for the use of the State Auditor's Office and no others. The information contains data that is copyrighted by © _____, all rights reserved, or may be subject to intellectual property or proprietary information protections.

Nothing contained in this section affects or modifies the State Auditor's Office obligation to disclose public records under Chapter 42.56 RCW or other applicable law.

The contractor shall exert all reasonable effort to advise the State Auditor's Office, 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 State Auditor's Office 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 State Auditor's Office shall have the right to modify or remove any restrictive markings placed upon the data by the contractor.

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 State Auditor's Office 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.

11. Disallowed Costs

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

12. Disputes

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved, either party may request a dispute hearing with a team of three (which shall be comprised of one independent individual selected by the contractor, one independent individual selected by the State Auditor's Office Director of Audit, and one shall be a State Auditor's Office Director not responsible for the contract.) Disputes shall be resolved as quickly as possible.

The request for a dispute hearing must:

- A. Be in writing;
- B. State the disputed issue(s);
- C. State the relative positions of the parties;
- D. State the contractor's name, address, and contract number; and
- E. Be mailed or sent electronically to the State Auditor's Office Contract Manager within 3 working days after the parties agree that they cannot resolve the dispute.

The Contract Manager shall send a written answer to the contractor's statement to the contractor within 5 working days.

The panel shall review the written statements and reply in writing to both parties within 10 working days. The panel may extend this period if necessary by notifying the parties.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

The State Auditor's Office and contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this contract, which are not affected by the dispute. Both parties agree to exercise good faith in the dispute resolution and to settle disputes prior to using the dispute resolution panel whenever possible.

13. Duplicate Payment

The State Auditor's Office 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.

14. 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.

15. Indemnification

To the fullest extent permitted by law, the 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 there from. The contractors' obligations to indemnify, defend, and hold harmless includes any claim by the contractors' agents, employees, representatives, or any subcontractor or its employees.

The contractor expressly agrees to indemnify, defend and hold harmless the State for any claim arising out of or incident to the contractor's or any subcontractor's performance or failure to perform the contract. The 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 the State or its agents, agencies, employees and officials.

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

16. 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 State Auditor's Office. The contractor will not hold himself/herself out as or claim to be an officer or employee of the State Auditor's Office 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.

17. 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, the State Auditor's Office may collect from the contractor the full amount payable to the Industrial Insurance accident fund. The State Auditor's Office may deduct the amount owed by the contractor to the accident fund from the amount payable to the contractor by the State Auditor's Office 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 right to collect from the contractor.

18. 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.

19. 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.

20. 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 State Auditor's Office. 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.

21. Nondiscrimination

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

22. Publicity

The contractor agrees to submit to the State Auditor's Office all advertising and publicity matters relating to this contract wherein the State Auditor's Office's name is mentioned or language used from which the connection of the State Auditor's Office's name may, in the State Auditor's Office'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 State Auditor's Office.

23. 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 State Auditor's Office, personnel duly authorized by the State Auditor's Office, 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.

24. 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.

25. Right of Inspection

The contractor shall provide right of access to its facilities to the State Auditor's Office, 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 of the work performed.

26. 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 State Auditor's Office may terminate the contract under the "Termination for Convenience" clause, without the ten day notice requirement, subject to renegotiation at the State Auditor's Office's discretion under those new funding limitations and conditions.

27. 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.

28. Site Security

While on the State Auditor's Office premises, contractor, its agents, employees or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

29. Subcontracting

All subcontractors must abide by all GAO Yellow Book standards.

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 State Auditor's Office. In no event shall the existence of the subcontract operate to release or reduce the liability of the contractor to the State Auditor's Office 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.

The contractor is solely responsible and liable for ensuring that all of the terms, conditions, assurances and certifications set forth in this contract are incorporated into any partnering or subcontracting relationships with other entities for work related to this contract. Liability includes management responsibility and quality assurance for work performed and financial responsibility for payments to and by partner organizations or subcontractor to others. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to information obtained during performance of this contract without the express written consent of the State Auditor's

Office or as provided by law.

30. 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.

31. Termination for Cause

In the event the State Auditor's Office determines the contractor has failed to comply with the conditions of this contract in a timely manner, the State Auditor's Office has the right to suspend or terminate this contract. Before suspending or terminating the contract, the State Auditor's Office 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 State Auditor's Office 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 State Auditor's Office 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 State Auditor's Office provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

32. Termination for Convenience

Except as otherwise provided in this contract, the State Auditor's Office 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 State Auditor's Office 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.

33. Termination Procedures

Upon termination of this contract, the State Auditor's Office, in addition to any other rights provided in this contract, may require the contractor to deliver to the State Auditor's Office 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 State Auditor's Office shall pay to the contractor the agreed upon price, if separately stated, for completed work and services accepted by the State Auditor's Office, and the amount agreed upon by the contractor and the State Auditor's Office 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 State Auditor's Office, 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 State Auditor's Office. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract.

The State Auditor's Office may withhold from any amounts due the contractor such sum as the agent determines to be necessary to protect the State Auditor's Office against potential loss or liability. The rights and remedies of the State Auditor's Office 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 State Auditor's Office, 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 State Auditor's Office 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 State Auditor's Office 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 State Auditor's Office;
- 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 State Auditor's Office has or may acquire an interest.

34. Treatment of Assets

- A. Title to all property furnished by the State Auditor's Office shall remain in the State Auditor's Office. 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 State Auditor's Office 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 State Auditor's Office 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 State Auditor's Office in whole or in part, whichever first occurs.
- B. Any property of the State Auditor's Office furnished to the contractor shall, unless otherwise provided herein or approved by the State Auditor's Office, be used only for the performance of this contract.
- C. The contractor shall be responsible for any loss or damage to property of the State Auditor's Office that results from the negligence of the contractor or that 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 the State Auditor's Office's property is lost, destroyed or damaged, the contractor shall immediately notify the State Auditor's Office and shall take all reasonable steps to protect the property from further damage.
- E. The contractor shall surrender to the State Auditor's Office all property of the State Auditor's Office 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.

35. 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 State Auditor's Office.