# Request for Quotation and Qualification

for

# Computerized Maintenance Management Systems

for the

# Community & Technical Colleges

of the

# State of Washington

Released by

# Center for Information Services
## 3101 Northup Way
## Bellevue, WA. 98004-1449

**October 16, 2006**

# Contents

# SECTION 1 – OVERVIEW

## 1.1    Introduction

The Center for Information Services (CIS) is a state agency responsible for providing a variety of information technology services including technology procurement and various administrative computing systems for the thirty-four (34) community and technical colleges (Colleges) located throughout the State of Washington.

CIS currently supports a Facilities Management (CMMS) system for the colleges with a full time Support Consultant.  All communication between the current vendor and the Colleges is conducted via the CIS Support Consultant.  CIS is also the single point of contact for billing.

## 1.2    Purpose

CIS is releasing this Request for Quotes and Qualifications (RFQQ) on behalf of the Colleges' Facilities Managers to acquire CMMS software.   Three models may be considered; Client-Server (software and data resides at each participating college), CIS Hosted (software and data resides at CIS), ASP (software and data resides at an Application Service Provider site).

The Apparent Successful Vendor will be awarded a contract with CIS.  In the case of a Client Server model, the contract will be a licensing agreement directly with CIS under which CIS will sublicense to the colleges for installation on the individual campuses.  In the case of a CIS Host model, the contract will be a licensing agreement directly with CIS and all campuses may have access to the single hosted site. In the case of an Application Service Provider (ASP) model, the contract will be an Optional Use contract under which the colleges will interact directly with the vendor for implementation, support and licensing.  In all cases, the Vendor will bill CIS.

## 1.3.    Objectives

The Colleges' Facility Managers are looking for CMMS products that are available to help meet the following objectives:

   a. Take maximum advantage of funding opportunities and optimize fund management.
   b. Maximize efficiency of facilities management processes.
   c. Provide a database with application software that provides on-line inquiry and reporting, on-line update, and batch capabilities such as standard or ad hoc reporting.

The Facilities Managers seek a CMMS system that will support the physical plant management of college campuses.  They anticipate that any CMMS system will include the following functionality:

- Work control planning and scheduling
- Work order management
- Minor projects planning process
- Work order billing
- Labor tracking
- Space management
- Equipment inventory control
- Materials inventory and purchasing
- Preventive maintenance
- Reporting

## 1.4.   Acquisition Authority

The Revised Code of Washington (RCW) amended, Chapter 43.105, established the Washington State Information Services Board (ISB). While the ISB does not purchase for agencies, it regulates the manner in which state agencies may acquire information technology equipment, software, and services. ISB publishes policies and standards that determine when goods must be competitively acquired. The ISB has delegated its purchasing approval authority to the Center for Information Services (CIS) on behalf of the community and technical colleges of the State of Washington. Authority for the establishment of Contracts is in accordance with ISB Information Technology Policies and Procedures.

CIS is releasing this Request for Quotation and Qualification under the delegated authority of the ISB.  CIS is referred to as CIS or the State throughout this document and potential resulting Contract.

## 1.5   Quantity/Usage

It is possible that all 34 colleges may use the software, with varying usage levels at each campus.

Due to the nature of variable uses across multiple college campuses, it is preferred that the software be modular with options to implement some modules and not others. Submit a diagram exhibiting all of the available modules, their individual features, and their relationship to the base system as well as to each of the other modules, i.e. which are necessary and which may be turned off if not needed.  Indicate which of these modules are included in the base system price and which may be purchased separately.

No guarantee of volume or usage can be given.

## 1.6. RFQQ Process

The process begins with the announcement of the solicitation on the Department of Information Services (DIS) listserve. The solicitation document will be published on the CIS website http://www.cis.ctc.edu/pub/Procurement.htm. Vendors will be responsible for downloading the solicitation document as well as checking the website for amendments to the RFQQ. Vendor questions and answers will also be posted on the website.

Cost is an important consideration in this procurement. The State Community and Technical Colleges currently spend approximately $70,000 for its facility management system. It is the intent of this RFQQ to seek proposals that are economically viable for the system while meeting its diverse functional requirements as stated in this RFQQ. Please see the Evaluation and Scoring Section for details about the evaluation process.

See Section 2 for an estimated Schedule.

## 1.7. Master Contract

Any contract that may result from this acquisition process will not be a Department of Information Services (DIS) Master Contract.

## 1.8. Vendor Comments and Questions

Vendors may submit comments and questions to the RFQQ Coordinator prior to responding to the RFQQ by the date indicated in the RFQQ schedule in Section 2. CIS will accept comments and questions via fax or e-mail. Responses to vendor questions will be dated and posted on the website and will be considered addendums to the RFQQ. Modifications to the RFQQ that may result from Vendor comments will be posted to the CIS Web site (see above). Where there appears to be a conflict between the RFQQ and any amendment or addenda issued, the last amendment or addendum issued will prevail.

## 1.9. CIS Not Responsible for Delays

CIS assumes no responsibility for delays caused by the US Postal Service or other delivery systems regarding Vendor correspondence relating to this procurement.

## 1.10. Term of Contract

The initial term will be three (3) years commencing upon the date of execution of the contract. CIS may extend the Contract for subsequent three (3) year extensions. The decision to extend will be based on Customer satisfaction with software, service performance, and agreement to price with vendor.

Extensions will be executed by giving written notice to Vendors not less than thirty (30) days prior to the expiration date of the term of the Contract, subject to any revised terms and conditions that may then be in effect.

## 1.11. CIS Contract Administration Fee

A CIS Contract Administration Fee will not be applied to any contract that may result from this solicitation.

# SECTION 2 – RFQQ SCHEDULE

| | |
|---|---|
| Publish RFQQ | October 16, 2006 |
| Vendor Question and Answer Period | October 16 – 27, 2006 |
| Vendor Proposals Due | November 3, 2006 |
| Vendor Evaluation Period | November 3–November 9 |
| Vendor Evaluation and Scoring Team Meeting<br>    Select Finalists | November 10, 2006 |
| Notify Finalists (send scripts) | November 10, 2006 |
| Reference Interviews | November 13, 2006 |
| Vendor Demonstration and Selection | December 1, 2006 |
| Visit Site of Selected Vendor's User | December 15, 2006 |
| Apparent Successful Vendor Announced | December 18, 2006 |
| Begin Contract Negotiation | December 18, 2006 |
| End of debriefing period | December 22, 2006 |
| Last Date of Protest Period | January 23, 2007 |

| | |
|---|---|
| End of protest filing period | December 29, 2006 |
| End of protest decision period | January 8, 2007 |
| End of appeal filing period | January 16, 2007 |
| End of appeal decision period | January 23, 2007 |

| | |
|---|---|
| Execute Contract (earlier if no protests are filed) | January 23, 2007 |
| CMMS implementation sequence begins | January 23, 2007 |

**CIS reserves the right to revise the above schedule.**

# SECTION 3 - ADMINISTRATIVE REQUIREMENTS

## 3.1.  RFQQ Coordinator

Upon release of this RFQQ, all Vendor communications concerning this acquisition must be directed to the RFQQ Coordinator listed below.

> Deb Poarch, RFQQ Coordinator,
> Center for Information Services
> 3101 Northup Way
> Bellevue, WA. 98004-1449
> Telephone: 425-803-9783
> E-mail: dpoarch@cis.ctc.edu

A Q&A document and RFQQ Amendments will be posted on the CIS Procurement Announcement web page at: http://www.cis.ctc.edu/pub/Procurement.htm. It is the Vendors' responsibility to check the web page often to view the Q&A document and RFQQ Amendments.

Unauthorized contact regarding the RFQQ with other state employees may result in disqualification. Any oral communications will be considered unofficial and non-binding. Vendors should rely only on written statements issued by the RFQQ Coordinator. Responses to verbal requests for information or clarification will be considered unofficial until received in writing.

## 3.2.  Mandatory Requirements

There are a few requirements in this section that must be fulfilled by the Vendor or they will be eliminated from consideration.  These Mandatory Items are indicated as **(Mandatory).**

## 3.3.  Response Template (Mandatory)

A Response Template (Appendix A) is provided as part of this RFQQ and must be used as Vendors' response to this RFQQ. Vendors' response must be inserted electronically after each item listed on this template. Failure to provide the requested information for any one of the items in the Response Template may result in elimination.  The space between each item may be expanded to accommodate the response. Please proof your responses *in hard copy* to see that the entire entry is visible.  If responses are not visible in hard copy format, they will be returned to Vendor for modification.  Where indicated, Vendors will attach documents to the template. Each of these documents will include the section number and the title of the RFQQ item it is meant to respond to. No other material will be considered in the evaluation of the vendor's response.

### 3.4. Priority Requirements (Mandatory)

Priority requirements on the Response Template are indicated as such beside the item number.   These items have been deemed to be necessary for the successful use of the software.  The Vendors' responses to these items will be scored in the Second Filter of the evaluation process.  At the VEST's sole discretion, if the Vendor's response does not satisfy the requirement, the Vendor may be eliminated from further consideration.

### 3.5. Desired Items (Mandatory)

Desired Items are those line items in the Response Template without the "Priority" designation. Vendors must respond to each item. Failure of a Vendor's response to address any of the items or provide an Acceptable Alternative may cause their entire proposal to be deemed non-responsive and therefore rejected from further consideration. (Reference 3.7, Acceptable Alternative Responses Defined.)

The evaluation team will assign a numeric score from 0 to 4 based on the quality of the Vendor's response for both Priority and Desired Items. A score of 2 will be assigned if the evaluation team deems a response to minimally fulfill the requirement. A score of 4 will be assigned if the evaluation team deems a response to exceed the minimum requirement. If a score for any item is 0, the Vendor may be disqualified.

Note:  Responses will be evaluated only on the material entered in and attached to the template contained in this RFQQ as Appendix A. Vendors are to disregard any previous draft material and any oral representations they may have received.

### 3.6. Price (Mandatory)

Provide pricing for one or more of the possible software delivery models; Client-Server, CIS Host, ASP.  A form for each of these has been provided for the vendor to fill out in the Response Template, Appendix A.  CIS reserves the right to calculate the total dollar quote from the information given by a Vendor if the format of these forms is not used.

### 3.7. Acceptable Alternative Responses Defined

Vendors may propose an alternative to any item in the Response Template. The VEST, at its sole discretion, will determine if the proposed alternative meets the intent of the original item. To be acceptable, the alternative must be one that VEST considers satisfactory in meeting the specification.

### 3.8. Letter of Intent

Vendors wishing to participate in this acquisition process should provide a Letter of Intent. The RFQQ Coordinator should receive the Letter of Intent at the address specified in Subsection 3.1 no later than 3:00 PM, local time on the date specified in the

Acquisition Schedule. In addition to US Postal Service and hand-delivery to the CIS office, Letters of Intent may be e-mailed to the RFQQ Coordinator at the email address referenced in Subsection 3.1.

## 3.9.   Number of Response Copies Required (Mandatory)

Vendors must submit one (1) electronic copy of their proposal by e-mail.  It is the Vendors responsibility to be sure the Response Template is delivered successfully to the RFQQ Coordinator.

## 3.10.   Cost of RFQQ Response Preparation

CIS will not reimburse Vendor costs associated with preparing or presenting any response to this RFQQ.

## 3.11.   Response Property of CIS

All materials submitted in response to this RFQQ become the property of CIS.  CIS has the right to use any of the ideas presented in any response to the RFQQ. Selection or rejection of a response does not affect this right.

## 3.12.   Proprietary Information

By submitting a response to this RFQQ, the Vendor acknowledges that state agencies are subject to RCW 42.17 (the Public Disclosure Act) and that all information submitted as part of the Vendor's response will be public record as defined in RCW 42.17.250 through 42.17.340.

The Vendor must clearly identify specific information claimed to be exempt from public disclosure (such as certain valuable formulae, designs, drawings, research data, or trade secrets).   Pricing is not exempt.  Any proposals marked as confidential in their entirety will be rejected as non-responsive.

To the extent consistent with RCW 42.17, CIS will maintain the confidentiality of all information marked confidential or proprietary.  If, after any Contract that may be signed as a result of this RFQQ, a request is made to view the Vendor's information, CIS will notify the Vendor of the request and the date that such records will be released unless the Vendor obtains a court order enjoining that disclosure.  If the Vendor fails to obtain the court order enjoining disclosure, CIS will release the requested information on the date specified.

Failure to label information as exempt from public disclosure or failure to respond timely after notice of request for public disclosure has been given, shall be deemed a waiver by Vendor of any claim that such materials are exempt from disclosure.

### 3.13. Waive Minor Administrative Irregularities

CIS reserves the right to waive minor administrative irregularities contained in any Vendor response.

### 3.14. Errors in Response

CIS is not liable for any errors in Vendors' responses. Vendors will not be allowed to alter response documents after the deadline for response submission. Vendors are liable for all errors or omissions contained in their responses. CIS reserves the right to contact Vendors for clarification of proposal documentation.

### 3.15. RFQQ Amendments, Addendums, and Q&A Responses

CIS reserves the right to change the acquisition schedule or to issue amendments to the RFQQ at any time.

CIS reserves the right to refine the RFQQ timeline or other portions of the RFQQ at any time. Any changes will be posted on the CIS Procurement Announcements web site at: http://www.cis.ctc.edu/pub/Procurement.htm. Vendors' questions and their official answers will also be posted on this website. It is the Vendors' responsibility to check this website for amendments to the RFQQ.

### 3.16. Right to Cancel

CIS, in its sole discretion, reserves the right to cancel or reissue this RFQQ at any time without obligation or liability.

### 3.17. Contract Terms and Conditions (Mandatory)

Under no circumstances are Vendors to submit their own standard Contract Terms and Conditions as a response to this RFQQ. Vendors need to address the specific language in Appendix C and submit whatever exceptions or exact Contract modifications that their firm may desire. These must be attached to the Certification and Assurances document in Appendix B, which must be signed by a representative of the Vendor authorized to make obligations committing the Vendor to the proposal. CIS expects that the final Contract to be signed with the Apparent Successful Vendor will be substantially the same as the Contract in Appendix C.

The foregoing should not be interpreted to prohibit CIS from proposing additional Contract Terms and Conditions during negotiation of the final Contract.

### 3.18. Subcontracting (Mandatory)

CIS will accept proposals that include third party involvement only if the Vendors submitting the proposal assume complete responsibility for all actions of subcontractors in relation to any Contract that may result from this RFQQ.

Vendors must disclose whether subcontractors are being used, and if they are being used, list them in response to this subsection. CIS reserves the right to reject any or al subcontractors.

Any subcontractor engaged after award of the contract must be approved, in advance, by CIS.

## 3.19. Multiple Award

There will not be more than one Apparent Successful Vendor identified by this RFQQ.

## 3.20. Incorporation of RFQQ into Contract

This RFQQ, in addition to the Vendor's response, will be incorporated into any resulting Contract.

## 3.21. No Costs Chargeable

No costs chargeable to the proposed Contract may be incurred before receipt of a fully executed Contract.

## 3.22. No Obligation to Buy

CIS reserves the right to refrain from contracting with any and all Vendors. Neither the release of this RFQQ nor the consequent execution of Contracts hereunder obligates the State to make any purchases.

## 3.23. Non-Endorsement

As a result of the selection of a Vendor to supply CMMS Software and Services to the CTC's, the State is neither endorsing nor suggesting that the Vendor's services are the best or only solution. The Vendors agree to make no reference to CIS, the CTC's, or the State of Washington in any literature, promotional material, brochures, sales presentation, or the like, without the express written consent of CIS.

## 3.24. Withdrawal of Response

Vendors may withdraw a response that has been submitted at any time up to the response due date and time (identified on the Acquisition Schedule, RFQQ Section 2). To accomplish this, a written request signed by an authorized representative of the Vendor must be submitted to the RFQQ Coordinator. It is also acceptable to transmit the letter of withdrawal via e-mail. After withdrawing a previously submitted response, the Vendor may submit another response at any time up to the response due date and time.

### 3.25.  Announcement of Invitation to Demo Software

All Vendors responding to the RFQQ will be notified by fax or e-mail when the selection of Vendors to demonstrate their software has been made. The tentative schedule for the announcement is identified in the Acquisition Schedule (RFQQ Section 2).  Vendors invited to demonstrate their software will be provided with a demonstration script and instructions at the time of this announcement.

### 3.26.  Announcement of Apparent Successful Vendor

All Vendors responding to the RFQQ will be notified by fax or e-mail when the Apparent Successful Vendor has been selected. The date of announcement of the Apparent Successful Vendor will be the date the announcement letter is sent. The tentative schedule for the announcement is identified in the Acquisition Schedule (RFQQ Section 2).  If Vendor fails to sign the contract within five (5) business days of delivery of the final contract, CIS may elect to cancel the award and award the contract to the next-highest ranked Vendor.

### 3.27.  Optional Vendor Debriefing

Vendors who submit a response and are not selected as the Apparent Successful Vendor may request an optional debriefing conference to discuss the evaluation of their response.  The requested debriefing conference must occur on or before the date specified in the Acquisition Schedule.  The request must be in writing and addressed to the RFQQ Coordinator.  CIS will accept the request via fax or e-mail.  The debriefing will not include any comparison between the Vendor's response and any other responses submitted.  Debriefing conferences will be conducted by phone and will be scheduled for a maximum of one (1) hour.

### 3.28.  Protest Procedures

Protests may be made after CIS has announced the Apparent Successful Vendor and after the protesting Vendor has had a debriefing conference with CIS.  Vendors are allowed five (5) business days after the debriefing conference to file a formal protest of the acquisition with CIS. Such protest is allowed only if it is based on alleged irregularities as specified below.

- The agency failed to follow procedures established in the solicitation document, the ISB policy, *Acquisition and Disposal of Information Technology Resources*, or applicable state or federal laws or regulations.
- There is evidence of bias, discrimination, or conflict of interest on the part of an evaluator.

Protests not based on these criteria will not be considered. Further information regarding the filing and resolution of protests is contained in Appendix D, Protest Procedures.

## 3.29. RFQQ Available Electronically

The RFQQ is available for download at  http://www.cis.ctc.edu/pub/Procurement.htm

## 3.30. Vendor Complaints Regarding Requirements and Specifications

Vendors may submit complaints to the RFQQ Coordinator prior to responding to the RFQQ if the Vendor believes the RFQQ unduly constrains competition or contains inadequate or improper criteria. The complaint must be made in writing to the RFQQ Coordinator before the due date of the RFQQ response.  Complaints may be delivered via fax or e-mail. The RFQQ Coordinator may work with the Department of Information to resolve the complaint. CIS reserves the right to amend the RFQQ should the Vendor complaint identify a change that is in the best interest of the State.

# SECTION 4 - EVALUATION PROCEDURES

## 4.1.   Evaluation Methodology

Only one Apparent Successful Vendor will be named. This will be the Vendor who responds as required to all of the items in the Response Template (Appendix A) and achieves the highest total score.

## 4.2.   Evaluation Process

### 4.2.1.  Basis for Evaluation

The Preferred and Desired Items will be evaluated only on the basis of the information contained in the Vendor's response using the attached Response Template (Appendix A) and any attachments that have been requested.

### 4.2.2.  Evaluation Team

The RFQQ Coordinator and the Vendor Evaluation and Selection Team (VEST), including selected personnel from CIS and its member institutions, will perform the evaluation procedures.

### 4.2.3.  Evaluation and Scoring

The evaluation process is designed to award acquisitions not necessarily to Vendors of least cost, but rather to Vendors with the best combination of attributes based upon the evaluation criteria.

Evaluation and scoring will be based on the information provided by the Vendors in the Response Template provided as Appendix A in this RFQQ. If a vendor response is unclear, the VEST may, at their discretion and acting through the RFQQ Coordinator, contact a responding Vendor to clarify specific points in a response. However, under no circumstances will the responding Vendor be allowed to make changes to the proposed items after the deadline stated for receipt of responses.

Vendors should understand that a score of zero (0) on any item may result in Vendors' disqualification from the competition unless an Acceptable Alternative has been proposed and accepted by the VEST.

VEST will assign points on a scale of zero (0) to four (4), generally defined as follows:

| | |
|---|---|
| 0 | Response is missing or does not fully comply with the requirement. |
| 2 | Response meets the expectation stated in the requirement. |
| 4 | Response exceeds expectations. |

The following process will be used to select the Apparent Successful Vendor:

### First Filter

Cost:

The three lowest bidders for each of the three models will be selected. All responses with an average annual cost equal to or below the highest cost response in these nine responses will be added to this pool of nine responses. A maximum of twelve (12) vendors will progress to the second filter. The goal is to have at least one vendor for each of the three models advance to the Second Filter.

### Second Filter

Score the Priorities: A maximum of five (5) top scoring vendors based on a combined score for Lowest Cost Quote and Priority Score, to be weighted 70% and 30% respectively, will be chosen to progress to the Third Filter.

### Third Filter

Score Desired Items: Vendor responses will be scored on their responses to the Physical Plant, Technical, and Vendor Qualification elements. Vendors' quotes will not be a factor in the final score. The top scoring three vendors with the highest total Priority and Desired Item scores will advance to the Fourth Filter.

### Fourth Filter

Demo and References:

References of the three (3) top scoring Vendors selected by the third filter will be interviewed via conference calls by a team prior to the demos. Each reference will be asked the same scripted questions. The team will score reference responses. This score will be 50% of each vendor's final score.

Demo:

The top scoring Vendors selected by the third filter will be sent invitations to demonstrate their software. Demonstrations will be limited to 60 minutes, plus 30 minutes for Q&A. These Vendors will be provided with a demonstration script and a database with approximately 2,500 work orders attached to buildings, rooms, activities and all of the attendant information/data from the existing CMMS data base to be used in their demonstration. Vendors will be asked to indicate how much time they will spend on each section of the demonstration. The CMMS Committee is most interested in Vendors' Query and Reporting capabilities. Vendors will be informed that they are expected to spend at least a third of their 60 minute presentations demonstrating their query and reporting functions. Vendors' Demo scores will be 50% of their final score.

### Fifth Filter

Site Visit: The highest scoring Vendor from the fourth filter will provide two or three names of local clients who are willing to host a site visit. If the site visit team is satisfied with the performance of this installation of the software, the Vendor will become the

Apparent Successful Vendor and contract negotiations will begin.  If the team is not satisfied with the Site Visit, the second highest scoring vendor may become the Apparent Successful Vendor following a site visit to their clients' installations, and so forth.

# APPENDIX LIST

# APPENDIX A – Response Template

## See separate Excel spreadsheet

# APPENDIX B - Certifications and Assurances
## Center for Information Services
### Request for Quotation and Qualification and Qualification
#### for
### CMMS Software and Services

We make the following certifications and assurances as a required element of the Response to which it is attached, understanding the truthfulness of the facts affirmed here and the continuing compliance with these requirements and all requirements of the Request for Quotation and Qualification (RFQQ) are conditions precedent to the award or continuation of the related Contract(s).

The prices and/or cost and/or service charges data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition.

The attached Response is a firm offer for a period of 120 days following the Response Due Date specified in the RFQQ, and it may be accepted by CIS without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 120-day period. In the case of protest, our Response will remain valid for 120 days or until the protest is resolved, whichever is later.

In preparing this Response, we have not been assisted by any current or former employee of the State of Washington whose duties relate (or did relate) to the State's RFQQ, or prospective Contract, and who was assisting in other than his or her official, public capacity. Neither does such a person nor any member of his or her immediate family have any financial interest in the outcome of this Response. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)

We understand that the State will not reimburse us for any costs incurred in the preparation of this Response. All Responses become the property of the State, and we claim no proprietary right to the ideas, writings, items, or samples unless so stated in the Response. Submission of the attached Response constitutes an acceptance of the evaluation criteria and an agreement to abide by the procedures and all other administrative requirements described in the RFQQ document.

We understand that any Contract awarded as a result of this Response will incorporate all the RFQQ requirements. Submission of a response and execution of this Certifications and Assurances document certify Vendor's willingness to comply with the Contract terms and conditions appearing in Appendix B of the RFQQ, or substantially similar terms, if selected as a Contractor. It is further understood that a Vendor submitted Contract will not be considered as a replacement for the terms and conditions appearing in Appendix B of the State's RFQQ.


_____          _____
Signature                                Vendor


_____          _____
Title                                    Date

# APPENDIX C - Terms and Conditions

**Contract #xxxxxx**

for

**Computerized Maintenance Management System**

**Between the**

**Center for Information Services**

**And**

**Vendor**

**Effective Date:** _____

# SOFTWARE LICENSE CONTRACT

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## Contract Execution

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## Exhibits

Exhibit A:  Recruitment Software Request for Quotation

Exhibit B:  Vendor's Proposal

***Note:  Exhibits A and B are not attached but are available upon request from the CIS Contract Administrator***

# CONTRACT NUMBER XXXXXX

### For

## Computerized Maintenance Management System

## PARTIES

This Contract is entered into by and between the State of Washington, acting by and through the Center for Information Services, an agency of Washington State government (hereinafter referred to as "CIS") located at 3101 Northup Way, Bellevue, WA 98004-1449 and MegaMation LLC located at 2810 Sweet Home Road, Amherst, New York 14228, a corporation, with TIN 16-1494025 licensed to conduct business in the State of Washington under UBI number [UBI number] **(Don will send 3-20)** (hereinafter referred to as "Vendor"), located at [Vendor Address] for the purpose of providing Computerized Maintenance and Management System (hereinafter referred to as "CMMS") software products.

## RECITALS

The State of Washington, acting by and through CIS, conducted a competitive solicitation (Exhibit A) as specified in the State of Washington Information Services Board (ISB) Information Technology Investment Standards to procure products in accordance with its authority under chapter 43.105 RCW.

[Vendor Name] submitted a timely proposal to CIS's competitive solicitation (Exhibit B).

CIS evaluated all proposals properly submitted in response to the above-referenced competitive solicitation and has identified [Vendor Name] as the apparent successful Vendor.

CIS has determined that entering into a Contract with [Vendor Name] will meet the needs of the Purchaser and will be in the Purchaser's best interest;

NOW THEREFORE, CIS awards to [Vendor Name] this Contract which shall govern Vendor's furnishing the software products and other related services as indicated on Schedule A titled, Authorized Product and Price List (attached hereto), in accordance with the terms and conditions of this Contract.  This Contract is not for personal use.

IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

## 1.     Definition of Terms

Definitions as used throughout this Contract shall have the meanings set forth below.

"**Business Days and Hours**" shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the State of Washington.

"**CIS**" shall mean the same as the Center for Information Services.

"**CIS Contract Administrator**" shall mean that person designated by the CIS to administer this Contract on behalf of Purchasers as further defined in the section titled CIS Contract Administrator.

"**Contract**" shall mean this document, all schedules and exhibits, and all amendments hereto.

"**Delivery Date**" shall mean the date by which the Software ordered hereunder must be delivered.

"**Execution Date**" shall mean the date of the last signature of a party to this Contract.

"**Exhibit A**" shall mean the competitive solicitation issued by the Washington State Center for Information Services.

"**Exhibit B**" shall mean the Vendor's response dated _____, 2006.

"**FEIN**" shall mean the Vendor's Federal Employer Identification Number.

"**License**" shall mean the right to use the Software that is granted by this Contract and governed by its terms and conditions.

"**Licensed Software**" shall mean Software that is licensed pursuant to this Contract.

"**Order Document**" shall mean any official Purchaser document and attachments thereto specifying the Software to be purchased from the Vendor under this Contract.

"**Price**" shall mean charges, costs, rates, and/or fees charged for the products and services under this Contract and shall be paid in United States Dollars.

"**Product(s)**" shall mean any Vendor-supplied equipment, services, Software, and documentation.

"**Proprietary Information**" shall mean information owned by Vendor to which Vendor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

"**Purchaser**" shall mean the State of Washington, CIS, and the community and technical colleges, including the State Board for Community and Technical Colleges, and the four-year public higher education institutions of the State of Washington.

"**RCW**" shall mean the Revised Code of Washington (Washington State Law).

"**Related Services/Services**" shall mean those services provided under this Contract and related to the products being acquired, that are appropriate to the scope of this Contract and includes such things as installation Services, maintenance, training, etc.

"RFQQ" shall mean the Request for Quotes and Qualifications used as a solicitation document to establish this Contract, including all its amendments and modifications, Exhhibit A hereto.

"**Response**" shall mean Vendor's Response to the CIS RFQQ for CMMS, Exhibit B hereto.

"**Schedule A**" Authorized Services and Price List" shall mean the attachment to this Contract that identifies the authorized Services and Prices available under this Contract.

"**Schedule B**" Statement of Work" shall mean the attachment to this Contract that provides the terms and conditions for a Statement of Work.

"**Software**" shall mean the object code version of computer programs and any related documentation, excluding maintenance diagnostics. Software also means the source code version, where provided by Vendor. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections.

"**Specifications**" shall mean the technical and other specifications set forth in the competitive solicitation, Exhibit A, and any additional specifications set forth in Vendor's Response, Exhibit B, collectively.

"**Statement of Work**" or "**SOW**" shall mean a separate statement of the work to be accomplished by Vendor under the terms and conditions of this Contract.

"**Subcontractor**" shall mean one not in the employment of Vendor, who is performing all or part of the business activities under this Contract under a separate contract with Vendor. The term "Subcontractor" means Subcontractor(s) of any tier.

"**SSN**" shall mean the Vendor's Social Security Number if used in lieu of Federal Employer Identification Number as the Vendor's Federal Tax Identification Number.

"**TIN**" shall mean the Vendor's Federal Tax Identification Number which may be either FEIN or SSN.

"**UBI**" shall mean the Vendor's Uniform Business Identifier issued by the Washington State Department of Revenue.

"**Vendor**" shall mean [Vendor Name], its employees and agents. "Vendor" also includes any firm, provider, organization, individual, or other entity performing Services under this Contract. It shall also include any Subcontractor retained by Vendor as permitted under the terms of this Contract.

"**Vendor Contract Administrator**" shall mean a representative of the Vendor who is assigned as the primary contact person with whom the CIS Contract Administrator shall work for the duration of this Contract unless replaced, with advance CIS approval, by another representative.

# CONTRACT TERM

**2.** **Term**

 2.1. License Term (if applicable)

  The License for all Software provided pursuant to this Contract shall be perpetual unless stated otherwise.

 2.2. Term of Contract for Purchases

  **a.** <u>Initial Term</u>.  The initial term for purchases under this Contract shall be three (3) years, commencing upon the date of its execution by both the parties.  The Execution Date of this Contract shall be the date of the last signature hereto.

  **b.** <u>Subsequent Term</u>.  The term of this Contract may be extended by additional three (3) year terms unless terminated by CIS by giving written notice of its decision not to renew to the Vendor not less than thirty (30) calendar days prior to the expiration of the then current Contract term.  No change in terms and conditions shall be permitted during these extensions unless specifically set forth in this Contract.

 2.3. Term of Statement of Work (SOW)

  The term of any SOW executed pursuant to this Contract shall be set forth in the SOW.  The term of the SOW shall not exceed the term of this Contract.  The SOW may be terminated in accordance with the termination sections of this Contract or as mutually agreed between the parties.

**3.** **Survivorship**

All transactions executed pursuant to the authority of this Contract shall be bound by all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof.  Further, the terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.  In addition, the terms of the sections titled Overpayments to Vendor; <u>Disputes</u>; <u>Limitation of Liability</u>; <u>Software Ownership</u>; <u>Patent and Copyright Indemnification</u>; <u>Protection of Purchaser's Confidential Information</u>; <u>Vendor Commitments, Warranties, and Representations</u>; <u>Protection of Confidential Information</u>; <u>Privacy Protection</u>; <u>Section Headings, Incorporated Documents, and Order of Precedence</u>; <u>Publicity</u>; <u>Review of Vendors Records</u>; <u>Patent and Copyright Indemnification</u>; <u>Vendor's Proprietary Information</u>; <u>Disputes</u>; and <u>Limitation of Liability</u> shall survive the termination of this Contract.

# LICENSE GRANT (if applicable)

**4. License Grant**

4.1. Vendor grants to Purchaser a non-exclusive, non-transferable, perpetual, irrevocable license to use the Software and related documentation according to the terms and conditions of this Contract unless stated otherwise.

4.2. Purchaser will not decompile or disassemble any Software provided under this Contract or modify Software which bears a copyright notice of any third party.

4.3. Purchaser may copy each item of Software to single or multiple hard drives as needed.

4.4. Purchaser will make and maintain no more than one archival copy of each item of Software, and each copy will contain all legends and notices and will be subject to the same conditions and restrictions as the original. Purchaser may also make copies of the Software in the course of routine backups of hard drive(s) for the purpose of recovery of hard drive contents.

4.5. In the event that Vendor shall, for any reason, cease to conduct business, or cease to support the Software licensed under this Contract, Purchaser shall have a right to convert the Software licenses into perpetual licenses, with rights of quiet enjoyment, but subject to payment obligations not to exceed the then current rates.

4.6. Source code shall be held in escrow. In the event that Vendor shall, for any reason, cease to conduct business, or cease to support the Software licensed under this Contract, Purchaser shall have a right to possession of the source code.

4.7. At termination of contract, all content developed by Purchaser remains the property of Purchaser.

4.8. All data is property of Purchaser.

4.9. Vendor understands that Purchaser may provide information processing Services to other users that are agencies of state government and other tax supported entities. Software delivered hereunder may be used in the delivery of these Services. Vendor acknowledges and agrees that said use of Software products is acceptable under the licensing agreements contained herein.

4.10. Purchaser may move Software from one device to another provided such Software is completely removed from the first device after a reasonable testing period on the new device.

# PRICING, INVOICE, AND PAYMENT

**5.    Pricing**

5.1.    The Vendor agrees to provide the Software and (or) Related Services at the costs, rates, and fees set forth in the Authorized Product and Price List attached as Schedule A to this Contract.  No other costs, rates, or fees shall be payable to the Vendor.

5.2.    Prices may not be increased during the initial term of the Contract.

5.3.    If Vendor reduces its Prices for any of the Services during the term of this Contract, Purchaser shall have the immediate benefit of such lower Prices for new purchases.  Vendor shall send notice to the Purchaser Contract Administrator with the reduced Prices within fifteen (15) Business Days of the reduction taking effect.

5.4.    At least one hundred-twenty (120) days before the end of the then current term of this Contract, license term, or term of maintenance and support, the Vendor may propose license fees and maintenance and support (Service) rate increases by written notice to the CIS Contract Administrator.  Price adjustments will be taken into consideration by the CIS Contract Administrator when determining whether to extend this Contract.

5.5.    Vendor agrees all the Prices, terms, warranties, and benefits provided in this Contract are comparable to or better than the terms presently being offered by Vendor to any other governmental entity purchasing the same quantity under similar terms.  If during the term of this Contract Vendor shall enter into contracts with any other governmental entity providing greater benefits or more favorable terms than those provided by this Contract, Vendor shall be obligated to provide the same to Purchase for subsequent purchases.

5.6.    Purchaser shall reimburse Vendor for travel and other expenses as identified in this Contract or the SOW, or as authorized in writing, in advance by Purchaser in accordance with the then-current rules and regulations set forth in *the Washington State Administrative and Accounting Manual* (http://www.ofm.wa.gov/policy/poltoc.htm).  Vendor shall provide a detailed itemization of expenses, including description, amounts and dates, and receipts for amounts of fifty dollars ($50) or more when requesting reimbursement.  The amount reimbursed to Vendor is included in calculating the total amount spent under this Contract.

**6.    Taxes**

The Purchaser will pay sales and use taxes imposed on the Software, Maintenance or Related Services acquired hereunder.  The Vendor must pay all other taxes including, but not limited to, Washington Business and Occupation

Tax, taxes based on the Vendor's income, or personal property taxes levied or assessed on the Vendor's personal property to which the Purchaser does not hold title.

## 7. Invoice and Payment

Invoices for work performed shall be submitted, in writing to the Purchaser, in a format designated by the Purchaser. Each college will submit a purchase order to vendor and be invoiced directly. In addition to agreed-upon charges, invoices shall include such information as is necessary for Purchaser to determine the exact nature of all expenditures and shall reference this Contract number XXXXXX. Additional payment terms or invoice instructions may be agreed upon by the Purchaser and the Vendor. Each college will submit a purchase order to vendor and be invoiced directly.

7.1. The Vendor will submit properly itemized invoices and/or vouchers to the Purchaser. Invoices shall provide and itemize, as applicable:

   a) Contract number XXXXXX;
   b) Vendor name, address, phone number, and Fedreal Tax Identification Number;
   c) Description of Software, including quantity ordered;
   d) Net invoice price for each item;
   e) Applicable taxes;
   f) Shipping costs;
   g) Other applicable charges;
   h) Total invoice price; and
   i) Payment terms including any available prompt payment discounts.

7.2. If expenses are invoiced, Vendor must provide a detailed itemization of those expenses that are reimbursable, including description, amounts and dates. Any single expense in the amount of fifty dollars ($50) or more must be accompanied by a receipt in order to receive reimbursement (see subsection 5.6 above).

7.3. Such payments shall be due and payable within thirty (30) calendar days after receipt of properly prepared invoices.

7.4. Incorrect or incomplete invoices will be returned by the Purchaser to the Vendor for correction and reissue.

7.5. This Contract number XXXXXX must appear on all invoices, bills of lading, packages, and correspondence relating to this Contract. The Purchaser shall not honor drafts, nor Accept goods on a sight draft basis.

7.6. If the Purchaser fails to make timely payment, Vendor may invoice the Purchaser one percent (1%) per month on the amount overdue or a

minimum of $1.00. Payment will not be considered late if a check or warrant is postmarked within thirty (30) calendar days of receipt of Vendor's properly prepared invoice.

7.7.    Purchaser shall withhold ten percent (10%) from each payment until acceptance by Purchaser of the agreed upon interim deliverables and final project closeout.

## 8.    Overpayments to Vendor

Upon notice thereof, Vendor shall promptly refund to Purchaser the full amount of any erroneous payment or overpayment to which Vendor is not entitled pursuant to this Contract.


# VENDOR RESPONSIBILITIES


## 9.    Software Ownership

Vendor shall maintain all title, copyright, and other proprietary rights in the Software.  Purchaser does not acquire any rights, express or implied, in the Software, other than those specified in this Contract.  Vendor, as Licensor, hereby warrants and represents to Purchaser as licensee that Vendor is the owner of the Software licensed hereunder or otherwise has the right to grant to Purchaser the licensed rights to the Software provided by Vendor through this Contract without violating any rights of any third party, and that there is currently no actual or threatened suit by any such third party based on an alleged violation of such right by Vendor.

## 10.    Software Delivery (if applicable)

10.1    The Vendor shall deliver the Software ordered pursuant to this Contract on or before the date specified in the Purchase Order.  For any exception to this Delivery Date, the Vendor must notify the Purchaser and obtain prior approval in writing.  Time is of the essence with respect to delivery and the Vendor may be subject to termination of this Contract and/or other damages available under law for failure to deliver on time.

10.2    All Software deliveries made pursuant to this Contract must be complete. Unless the Vendor has obtained prior written approval from Purchaser, which shall not be withheld unreasonably, incomplete deliveries or backorders will not be Accepted.  All packages must be accompanied by a packing slip which identifies all items included with the shipment and the Purchaser's Purchase order number.  The Vendor's delivery receipt must be signed by an authorized representative of Purchaser for all deliveries made hereunder.

## 11. Risk of Loss and Shipping

The Vendor shall ship all Software purchased pursuant to this Contract, freight prepaid, FOB Purchaser's destination.  The method of shipment shall be consistent with the nature of the goods and hazards of transportation.  Regardless of FOB point, Vendor agrees to bear all risks of loss, damage, or destruction of the Software ordered hereunder which occurs prior to delivery, except loss or damage attributable to the Purchaser's fault or negligence; and such loss, damage, or destruction shall not release Vendor from any obligation hereunder.  After delivery, the risk of loss or damage shall be borne by the Purchaser, except loss or damage attributable to the Vendor's fault or negligence.

## 12. Installation of Software by Purchaser

All installation of the Licensed Software purchased pursuant to this Contract for use by Purchaser will be by, and at the sole expense of Purchaser.

## 13. Software Maintenance and Support Services

Vendor shall provide a replacement copy or correction service at no additional cost to the Purchaser for any error, malfunction, or defect, if any, in the Vendor-supplied Software which, when used as delivered, fails to perform in accordance with Vendor's officially announced technical specifications or Vendor's proposal and which the Purchaser shall bring to Vendor's attention.  Vendor shall undertake such correction service as set forth below and shall use its best efforts to make corrections in a manner that is mutually beneficial.  Vendor shall disclose all known defects and their detours or workarounds to the Purchaser

In addition, Vendor shall provide the following Services:

13.1.  Telephone Support.  Vendor will provide telephone support, toll-free in the United States, to Purchaser during Business Days and Hours.  Vendor's telephone service shall include but is not limited to the following Services:

   a)   Assistance related to questions on the use of the subject Software;

   b)   Assistance in identifying and determining the causes of suspected errors or malfunctions in Software;

   c)   Advice on detours or workarounds for identified errors or malfunctions, where reasonably available;

   d)   Information on errors previously identified by Purchaser and reported to Vendor and detours to these where available; and

   e)   Advice on the completion and authorization for submission of the required form(s) reporting identified problems in the Software to Vendor.

13.2. Error and Malfunction Service.  Within two (2) Business Days of receiving oral or written notification by the Purchaser of identified errors or malfunctions in the Software, Vendor will either:

a)      Provide Purchaser with detour or code correction to the Software error or malfunctions.  Each detour or code correction will be made available in the form of either a written correction notice or machine-readable media and will be accompanied by a level of documentation adequate to inform Purchaser of the problem resolved and any significant operational differences resulting from the correction which is known by Vendor, or

b)      Provide Purchaser with a written response describing Vendor's then existing diagnosis of the error or malfunction and generally outlining Vendor's then existing plan and timetable, subject to Purchaser's approval, for correcting or working around the error or malfunction.

13.3. Maintenance Release Services.  Vendor will provide error corrections and maintenance releases to the Software that have been developed by Vendor.  Such releases shall be licensed to Purchaser pursuant to the terms and conditions of this Contract.  Each maintenance release will consist of a set of programs and files made available in the form of machine-readable media and will be accompanied by a level of documentation adequate to inform Purchaser of the problems resolved including any significant differences resulting from the release that are known by Vendor.  Vendor agrees that each maintenance release of Software will be compatible with the then current unaltered release of Software applicable to the computer system.

13.4. When Vendor performs Services pursuant to this Contract which require the use of the Purchaser's computer system(s), the Purchaser agrees to make it available at reasonable times and in reasonable time increments, and in no event will the Purchaser charge the Vendor for such system use.

## 14.    Reauthorization Code Required

If a reauthorization code must be keyed in by Vendor for the Licensed Software to remain functional upon movement to another computer system, Vendor shall provide the reauthorization code to Purchaser within one (1) Business Day after receipt of Purchaser's notice of its machine upgrade or movement.

## 15.    Software Documentation

15.1. Vendor will provide Software documentation at the earlier of installation of this Software or within thirty (30) calendar days after execution of this Contract or as otherwise mutually agreed, adequate for use of Software ordered under the sections of this Contract.  Manual upgrades will be

provided on a no-charge basis through the Vendor's local sales and service office.

15.2.　For all Vendor Software furnished to the Purchaser within the scope of this Contract, the Vendor agrees that in the event it withdraws its support, if any, from such Software, it will immediately furnish to the Purchaser, if requested, at no additional cost, sufficient documentation to permit the Purchaser to maintain, modify or enhance such purchased or Licensed Software.

15.3.　Vendor grants to the Purchaser the right to copy or otherwise reproduce manuals and documentation furnished pursuant to this section, for use within the scope of this Contract at no additional charge.

## 16.　Software Code Escrow

> **Software Code Escrow – This section will rarely be useful. It protects users' right to continuity of use and access to source code for Software. This section is meant to provide protection for mission critical Software, not routine coverage for all Software. If this section is used, it should be accompanied by an attached escrow agreement with Vendor, Purchaser, and third party signatures (Schedule B). This section may also be used to provide Purchaser with source code to Software when Vendor warranty or Vendor maintenance expires.**

*[Use this section when Purchaser is acquiring license but not ownership AND when there is a valid concern that Purchaser's business operations would not be able to continue were the Software product no longer supported, marketed, or allowed to be used.]*

16.1　Source Code Escrow Package Definition. The term "Source Code Escrow Package" shall mean:

   a)  A complete copy in machine-readable form of the source code and executable code of the licensed Software;

   b)  A complete copy of any existing design documentation and user documentation; and/or

   c)  Complete instructions for compiling and linking every part of the source code into executable code for purposes of enabling verification of the completeness of the source code as provided below. Such instructions shall include precise identification of all compilers, library packages, and linkers used to generate executable code.

16.2　Delivery of Source Code into Escrow. Vendor shall deliver a Source Code Escrow Package to Escrow Agent, provided that Vendor, Purchaser, and Escrow Agent shall first enter into a supplementary escrow agreement attached as Schedule B – *Escrow Agreement*. Vendor and Purchaser

shall use best efforts to enter into such an Escrow Agreement as soon as possible after the Effective Date of this Contract, but not later than *[thirty (30) days or other appropriate time period]* after the Effective Date of this Contract.

16.3   Delivery of New Source Code into Escrow. If during the term of this Contract, term of license, or term of maintenance and support, Vendor provides Purchaser with a maintenance release or upgrade version of the licensed Software, Vendor shall within ten (10) Business Days deposit with Escrow Agent a Source Code Escrow Package for the maintenance release or upgrade version and give Purchaser notice of such delivery.

16.4   Verification of Source Code Escrow Package. At its option and expense, Purchaser may request that the completeness and accuracy of any Source Code Escrow Package be verified.

a)   Such verification may be requested once per Source Code Escrow Package.

b)   Such verification will be conducted by Escrow Agent or, upon at least ten (10) Business Days' prior notice to Vendor, by another party ("Verifier") acceptable to Vendor, after full disclosure to Vendor of information reasonably requested by Vendor about Verifier.

c)   Prior to conducting the verification, Verifier shall first execute a confidentiality agreement prepared by Vendor that precludes Verifier from disclosing any information to Purchaser about the Source Code Escrow Package other than whether the Source Code Escrow Package was found to be complete and accurate.

d)   Unless otherwise agreed at the time by Vendor and Purchaser, verification will be performed on-site at Vendor's premises, utilizing Vendor's equipment and software, at a time reasonably acceptable to Vendor. Vendor shall make technical and support personnel available as reasonably necessary for the verification.

e)   At its discretion, Vendor may designate a representative to accompany the Source Code Escrow Package at all times, and to be present at the verification. Verifier will be Purchaser's sole representative at the verification.

f)   Verifier is solely responsible for the completeness and accuracy of the verification. Neither the Escrow Agent, if different from the Verifier, nor Vendor shall have any responsibility or liability to Purchaser for any incompleteness or inaccuracy of any verification.

16.5    Escrow Fees. All fees and expenses charged by Escrow Agent will be borne by Vendor.

16.6    Release Events for Source Code Escrow Packages. The Source Code Escrow Package may be released from escrow to Purchaser, temporarily or permanently, solely upon the occurrence of one or more of the following "Escrow Release Events:"

   a) Vendor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign;

   b) Vendor has wound up or liquidated its business voluntarily or otherwise and Purchaser has compelling reasons to believe that such events will cause Vendor to fail to meet its warranties and maintenance obligations in the foreseeable future; or

   c) Vendor has voluntarily or otherwise discontinued support of the Software or fails to support the Software in accordance with its warranties and maintenance obligations.

16.7    Release Event Procedures. If Purchaser desires to obtain the Source Code Escrow Package from Escrow Agent:

   a) Purchaser shall comply with the procedures set forth in the Escrow Agreement to document the occurrence of the Release Event;

   b) Purchaser shall maintain all materials and information comprising the Source Code Escrow Package in confidence in accordance with the Contract section titled Vendor's Proprietary Information;

   c) If the release is temporary, Purchaser shall promptly return all released materials to Vendor when the circumstances leading to the release are no longer in effect; and

   d) Purchaser shall promptly, fully, and completely respond to any and all requests for information from Vendor concerning Purchaser's use or contemplated use of the Source Code Escrow Package.

## 17.    Installation (Site) Security

While on the Purchaser's premises, Vendor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations communicated to Vendor.

## 18. Use of Purchaser's Property and Facilities

18.1 Any property of the Purchaser furnished to the Vendor shall be used only for the performance of this Contract.

18.2 The Vendor shall be responsible for any loss or damage to property of the Purchaser which results from willful misconduct or negligence on the part of the Vendor or which results from the failure on the part of the Vendor to maintain and administer that property in accordance with sound management practices to ensure that the property will be returned to the Purchaser in like condition to that in which it was furnished to the Vendor. Upon the happening of loss, or destruction of, or damage to any Purchaser property, the Vendor shall notify the Purchaser thereof and shall take all reasonable steps to protect that property from further damage.

18.3 The Vendor shall surrender to the Purchaser all property belonging to the Purchaser upon completion, termination, or cancellation of this Contract. All reference to the Vendor under this section shall include any of its employees, agents, or Subcontractors.

## 19. Vendor Commitments, Warranties, and Representations

19.1 Any written commitment by the Vendor within the scope of this Contract shall be binding. Failure of either party to fulfill such a commitment may constitute breach.

19.2 For purposes of this Contract, a commitment by the Vendor, which must be in writing, includes:

a) Prices, discounts, and options committed to remain in force over a specified period of time;

b) Any warranty or representation made by the Vendor in a proposal as to Software performance or any other physical, design or functional characteristics of a machine, Software package, system, training, Services, or other products within the scope of this Contract;

c) Any warranty or representation made by the Vendor concerning the characteristics or items above, contained in any literature, descriptions, drawings or specifications accompanying or referred to in a proposal;

d) Any modification of or affirmation or representation as to the above which is made by Vendor in writing during the course of negotiation whether or not incorporated into a formal amendment to the proposal in question; and

e)     Any representation by the Vendor in a proposal, supporting documents or negotiations subsequent thereto as to training to be provided, Services to be performed, prices and options committed to remain in force over a fixed period of time or any other similar matter regardless of the fact that the duration of such commitment may exceed the duration of this Contract.

## 20.   Year 2000 Compliance Warranty

Vendor warrants that the Software provided pursuant to this Contract is Year 2000 compliant.  This warranty includes a representation that dates on and after the year 2000 do not cause computational problems nor do these dates diminish the functionality of the Software including, but not limited to, date data century recognition, calculations that accommodate same century and multi-century formulas and date values, year 2000 leap year calculations, and date data interface values that reflect the century.  Failure to comply with Year 2000 requirements shall entitle Purchaser to a refund of three (3) times the initial license fee.  Vendor has no liability for any failure to comply with this provision that is caused solely by failure of an interconnected third-party product to be Year 2000 compliant.

## 21.   Physical Media Warranty

21.1   Vendor warrants to Purchaser that each licensed copy of the Licensed Software provided by Vendor is and will be free from physical defects in the media that tangibly embodies the copy (the "Physical Media Warranty").  The Physical Media Warranty does not apply to defects discovered more than ninety (90*)* calendar days after the date of receipt of the Software copy by the Purchaser.

21.2   The Physical Media Warranty does not apply to defects arising from acts of non-Vendor employees, agents, or Subcontractors after the media has left Vendor's control in cases of theft, vandalism, fire, water, acts of God or other perils beyond the control of Vendor.

21.3   Purchaser shall be entitled to replacement by Vendor, at Vendor's expense including shipping and handling costs, of any Software copy provided by Vendor that does not comply with this warranty.

## 22.   No Surreptitious Code Warranty

22.1   Vendor warrants to Purchaser that no copy of the Licensed Software provided to Purchaser contains or will contain any Self-Help Code nor any Unauthorized Code as defined below.  The warranty is referred to in this Contract as the "No Surreptitious Code Warranty."

22.2   As used in this Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other Software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than a licensee of the Software.  Self-

Help Code does not include Software routines in a computer program, if any, designed to permit an Owner of the computer program (or other person acting by authority of the Owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

22.3    As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, worm or other Software routines or components designed to permit unauthorized access to disable, erase, or otherwise harm Software, Equipment, or data; or to perform any other such actions.  The term Unauthorized Code does not include Self-Help Code.

22.4    Vendor will defend Purchaser against any claim, and indemnify Purchaser against any loss or expense arising out of any breach of the No Surreptitious Code Warranty.

## 23.    Protection of Confidential Information

23.1    Both parties acknowledge that some of the material and information which may come into its possession or knowledge in connection with this Contract or its performance, may consist of confidential data, the disclosure of which to, or use by, third parties could be damaging. Therefore, access to information concerning individual recipients of the parties' services or individual clients, among other items, shall not be granted except as authorized by law or agency rule.  Both parties agree to hold all such information in strictest confidence, not to make use thereof for other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information, and not to release or disclose it to any other party.  Both parties agree to release such information or material only to Subcontractors who have signed a written agreement expressly prohibiting disclosure.  Both parties further agree to either destroy or return all such information at the end of the term of this Contract.

23.2    This section does not impose any obligation on either party if the information is: (1) publicly known at the time of disclosure; (2) already known to the receiving party at the time it is furnished; (3) furnished by either party to others without restrictions on its use or disclosure; or (4) independently developed by the receiving party without use of the proprietary information.

## 24.    Privacy Protection

24.1    Personal information collected, used or acquired in connection with this Contract shall be used solely for the purposes of this Contract.  Vendor 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 Purchaser or as provided by

law. Vendor agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

24.2 The Purchaser reserves the right to monitor, audit, or investigate the use of personal information collected, used or acquired by the Vendor through this Contract. The monitoring, auditing or investigating may include but is not limited to "salting" by the Purchaser. Vendor shall certify return or destruction of all personal information upon expiration of this Contract. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

24.3 Any breach of this provision may result in termination of the Contract and the demand for return of all personal information. The Vendor agrees to indemnify and hold harmless the Purchaser for any damages related to the Vendor's unauthorized use of personal information. For purposes of this provision, personal information includes but is not limited to information identifiable to an individual that relates to a natural person's health, finances, education, business, use or receipt of governmental services, or other activities, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and other identifying numbers.

## 25. Subpoena

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Software or Related Services provided pursuant to this Contract is served upon Vendor or Purchaser, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Vendor and Purchaser further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

# CONTRACT TERMINATION

## 26. Termination for Default

26.1 If the Vendor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its obligations under this Contract, then the CIS Contract Administrator or the affected Purchaser shall give Vendor written notice of such failure or violation which shall be corrected by Vendor within thirty (30) calendar days or as otherwise mutually agreed. If Vendor's failure or violation is not so corrected, this Contract may be terminated immediately by written notice from the CIS Contract Administrator to the Vendor or the Purchaser's order may be

terminated by written notice from the Purchaser to the Vendor. The option to terminate this Contract shall be at the sole discretion of CIS.

26.2    In the event CIS terminates the Contract for default by the Vendor, CIS shall have the right to procure the Software or Services that are the subject of this Contract on the open market, and the Vendor shall be liable for all damages including, but not limited to: (1) the cost difference between the original Contract price for the Software or Services and the replacement costs of such Software or Services acquired from another Vendor; (2) if applicable, all administrative costs directly related to the replacement of the Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, and staff time costs; (3) any other costs to the Purchaser or CIS resulting from the Vendor's breach. The Purchaser or CIS shall have the right to deduct from any monies due to the Vendor, or that thereafter become due, an amount for damages that the Vendor will owe the Purchaser or CIS for the Vendor's default.

26.3    If either CIS or the Purchaser violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its performance obligations under this Contract, then the Vendor shall give the CIS Contract Administrator or the Purchaser, whichever is appropriate, written notice of such failure that shall be corrected by CIS or the Purchaser within thirty (30) calendar days. If Vendor's failure to perform is not so corrected, this Contract may be terminated by written notice from the Vendor to the CIS Contract Administrator. The Vendor will notify the CIS Contract Administrator of any notices given to any Purchasers for violations of the material terms and conditions before taking any action.

26.4    If it is determined for any reason the failure to perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a Termination for Convenience.

26.5    This section shall not apply to any failure(s) to perform that result from the willful or negligent acts or omissions of the aggrieved party.

## 27.    Termination for Convenience

27.1    When it is in the best interest of the Purchaser, the CIS Contract Administrator may terminate this Contract, in whole or in part, by thirty (30) calendar days written notice to the Vendor. Invocation of the Termination for Withdrawal of Authority or Termination for Non-Allocation of Funds sections shall be deemed a termination for convenience but will not require such thirty (30) calendar days notice.

27.2    If this Contract is so terminated, the Purchaser is liable only for payments required by the terms of this Contract for Software and Related Services received by the Purchaser prior to the effective date of termination.

**28.  Termination for Withdrawal of Authority**

In the event that the authority of the Purchaser or CIS to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, CIS may terminate this Contract under the Termination for Convenience section.  This section shall not be construed so as to permit CIS to terminate this Contract in order to acquire similar Software from a third party.

**29.  Termination for Non-Allocation of Funds**

If funds are not allocated to continue this Contract in any future period, the Purchaser will not be obligated to pay any further charges for Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then current period.  The Purchaser or CIS agrees to notify the Vendor of such non-allocation at the earliest possible time.  No penalty shall accrue to the Purchaser or CIS in the event this section shall be exercised.  This section shall not be construed so as to permit the Purchaser or CIS to terminate this Contract in order to acquire similar Software or Services from a third party.  In the event a Purchaser has Software or Services on order at the time of the termination of the Contract for convenience, the Purchaser shall have the option of taking delivery of the products on order at the original Contract price.

**30.  Termination for Conflict of Interest**

30.1  CIS may terminate this Contract by written notice to the Vendor if it is found, after due notice and examination, that there is a violation by any of the parties hereto of:

a)  Ethics in Public Service, chapter 42.52 RCW; or

b)  Any other laws regarding ethics in public acquisitions and procurement and performance of contracts.

30.2  In the event this Contract is terminated as provided above pursuant to a violation by the Vendor, CIS shall be entitled to pursue the same remedies against the Vendor as it could pursue in the event of a breach of this Contract by the Vendor.

**31.  Termination Procedure**

31.1  Upon termination of this Contract, CIS, in addition to any other rights provided in this Contract, may require the Vendor to deliver to the Purchaser or CIS any property or Software specifically produced or acquired for the performance of such part of this Contract as has been terminated.  The sections for the Treatment of Assets shall apply in such property transfer.

31.2 Unless otherwise provided herein, the Purchaser shall pay to the Vendor the agreed-upon price, if separately stated, for the Software or Services received by the Purchaser: PROVIDED THAT, In no event shall the Purchaser pay to the Vendor an amount greater than the Vendor would have been entitled to if this Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the Disputes section of this Contract. Purchaser may withhold from any amounts due the Vendor for such completed work or Services such sum as the Purchaser determines to be necessary to protect the Purchaser from potential loss or liability.

31.3 After receipt of a notice of termination, and except as otherwise directed by the CIS Contract Administrator, the Vendor shall:

a) Stop work under this Contract on the date, and to the extent specified, in the notice;

b) If termination is to the Software license purchase sections of this Contract, then Purchaser shall place no further orders and Vendor shall accept no further orders for additional Software license;

c) If termination is to the Software license, then except as otherwise agreed to by the parties, Purchaser shall, at its option, surrender to Vendor or destroy and provide Vendor with a certificate signed by the Purchaser attesting to the destruction of all copies of the Licensed Software purchased pursuant to this Contract and terminated by this section, remaining in the possession of Purchaser, its employees, or agents;

d) If termination is to the Maintenance and Support sections, Vendor shall complete all maintenance and support requests made prior to the date of notice of termination, notwithstanding the effective date of termination;

e) As soon as practicable, but in no event longer than thirty (30) calendar days after termination, terminate its orders and subcontracts related to the work which has been terminated and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Purchaser to the extent required, which approval or ratification shall be final for the purpose of this section;

f) Complete performance of such part of this Contract as shall not have been terminated by the CIS Contract Administrator;

g) Take such action as may be necessary, or as the Purchaser or CIS Contract Administrator may direct, for the protection and preservation

of the property related to this Contract which is in the possession of the Vendor and in which the Purchaser has or may acquire an interest;

h) Transfer title, excluding Licensed Software, to Purchaser and deliver in the manner, at the times, and to the extent directed by the CIS Contract Administrator, any property which is required to be furnished to Purchaser; and

i) Provide written certification to the Purchaser that the Vendor has surrendered to the Purchaser all said property.

31.4   The Vendor shall pay within thirty (30) calendar days of notice the damages due Purchaser or CIS as the result of termination.

# DISPUTES AND REMEDIES

## 32.   Disputes

Disputes arising between any Purchaser and Vendor shall be referred to the CIS Contract Administrator for resolution.  In the event the CIS Contract Administrator cannot resolve the dispute, then the dispute will be forwarded to the formal dispute resolution process:

- CIS shall appoint a member to the Dispute Panel.

- Vendor shall appoint a member to the Dispute Panel.

- CIS and the Vendor shall jointly appoint a member to the Dispute Panel.

- The Dispute Panel shall evaluate the dispute and make a determination of the dispute.

- The determination of the Dispute Panel shall be final and binding on the parties hereto.

- Each party shall bear the cost of its panel member and share equally the cost of the third panel member.

## 33.   Attorneys' Fees and Costs

33.1   If any litigation is brought to enforce any term, condition, or section of this Contract, or as a result of this Contract in any way, the prevailing party shall be awarded its reasonable attorneys' fees together with expenses and costs incurred for such litigation, including necessary fees, costs, and expenses for Services rendered at both trial and appellate levels, as well as subsequent to judgment in obtaining execution thereof.

33.2 In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

## 34. Non-Exclusive Remedies

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

## 35. Failure to Perform

If the Vendor fails to perform any substantial obligation under this Contract, the Purchaser shall give the Vendor written notice of such failure to perform. If after thirty (30) calendar days from the date of the written notice Vendor still has not performed, then the Purchaser may withhold all monies due and payable to Vendor, without penalty to the Purchaser, until such failure to perform is cured or otherwise resolved.

## 36. Limitation of Liability

36.1 The parties agree that neither the Vendor nor the Purchaser shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except for a claim or demand based on patent or copyright infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections or any other such conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled OSHA/WISHA, Termination for Default and Review of Vendor's Records are not consequential, incidental, indirect, or special damages as that term is used in this section.

36.2 Neither the Vendor nor the Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either the Vendor or the Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of the Vendor, the Purchaser, or their respective Subcontractors.

36.3 If delays are caused by a Subcontractor without its fault or negligence, neither the Vendor nor the Purchaser shall be liable for damages for delays, unless the Software or Services to be furnished by their Subcontractors were obtainable on comparable terms from other sources

in sufficient time to permit the Vendor or the Purchaser to meet its required performance schedule.

36.4    Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

# CONTRACT ADMINISTRATION

## 37.    Legal Notices

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except notice of malfunctioning Software) shall be effective if and only if it is in writing, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class certified mail, postage prepaid and return receipt requested, to the parties at the following addresses:

> to **Vendor** at:  [Vendor Name]
> Attention:  [Vendor's Representative]
> [Vendor's Address]
> [Vendor's Phone Number]
>
> to CIS at:    CIS
> Attention:  Procurement Services Manager
> 12401 SE 320th Street
> 3101 Northup Way
> Bellevue, WA 98004-1449
> 425-803-9783
> 425-803-9650 fax
> dpoarch@cis.ctc.edu

Notwithstanding RCW 1.12.070, such communications shall be effective upon the earlier of receipt or four (4) calendar days after mailing.  The notice address as provided herein may be changed by written notice given as provided above.

## 38.    Section Headings, Incorporated Documents, and Order of Precedence

The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.

Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.  In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:

a) Applicable federal and state statutes, laws, and regulations;
b) Sections of this Contract XXXXXX;
c) Schedule A - Authorized Product and Price List, to this Contract;
d) Schedule B – Statement of Work
e) Exhibit A - State of Washington, CIS competitive solicitation;
f) Exhibit B - Vendor's Response to the Purchaser, dated _____, including all written information provided with Vendor's response;
g) All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, and other written representations the Vendor made available to the Purchaser and used to effect the sale of Software to the Purchaser, or purports the Software is fit for a particular purpose or attests to the Software's engineering level, operating condition, functions, capabilities, or merchantability.

## 39. Entire Agreement

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled <u>Vendor Commitments, Warranties, and Representations,</u> understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party.  Except as provided herein, no alteration of any of the terms, conditions, delivery, price, quality, or Specifications of this Contract will be effective without the written consent of both parties.

## 40. Additional Services and Software

Purchaser and Vendor agree that additional Services and/or Software, which are appropriate to the scope of this Contract, may be added to this Contract (Schedule A hereto) by an instrument in writing, with the mutual consent of both parties.  Such writing shall include a specific description of the additional Services and/or Software, pricing and additional terms and conditions as relevant.  The additional Services and/or Software shall be available under the same terms and conditions established herein, unless otherwise agreed to in a signed writing.

## 41. Authority for Modifications and Amendments

No modification, amendment, alteration, addition, or waiver of any section or condition of this Contract shall be effective or binding unless it is in writing and signed by an authorized representative of the Vendor and the CIS Contract Administrator.  Only the CIS Contract Administrator or delegate by writing shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Contract on behalf of the Purchaser.

## 42. CIS Contract Administrator

CIS shall appoint a Contractor Administrator who will be the CIS Contract Administrator for this Contract and will provide oversight of the activities

conducted hereunder.  The CIS Contract Administrator will manage this Contract on behalf of the Purchaser and will be the principal point of contact for the Vendor concerning Vendor's performance under this Contract.

43.     **Vendor Contract Administrator**

The Vendor shall appoint a Vendor Contract Administrator for the Purchaser's account.  The Vendor Contract Administrator will be the principal point of contact for the CIS Contract Administrator concerning the Vendor's performance hereunder and for receipt of notices.  The Vendor Contract Administrator will also serve as the focal point for business matters, support coordination, and administrative activities.

44.     **Independent Status of Vendor**

The parties hereto, in the performance of this Contract, will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another.  The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever, nor will the Vendor make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW, chapter 23B.16 RCW, or Title 51 RCW.

45.     **Governing Law**

This Contract shall be governed in all respects by the law and statutes of the state of Washington.  The jurisdiction for any action hereunder shall be the Superior Court for the state of Washington.  The venue of any action hereunder shall be in the Superior Court for King County, Washington.

46.     **Subcontractors**

Vendor may, with prior written permission from Purchaser Contracting Officer, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of Vendor's duties and obligations.  In no event shall the existence of a subcontract operate to release or reduce the liability of Vendor to Purchaser for any breach in the performance of Vendor's duties.  For purposes of this Contract, Vendor agrees that all Subcontractors shall be held to be agents of Vendor.  Vendor shall be liable for any loss of damage to Purchaser, including but not limited to personal injury, physical loss, harassment of Purchaser employee, or violations of the <u>Patent and Copyright Indemnification</u> and <u>Protection of Purchaser's Confidential Information</u> sections of this Contract occasioned by the acts or omissions of Vendor's Subcontractors, their agents or employees.  The <u>Patent and Copyright Indemnification</u>, <u>Protection of Purchaser's Confidential Information</u>, and <u>Review of Vendor's Records sections of this Contract</u> shall apply to all Subcontractors.

## 47.    Assignment

With the prior written consent of CIS, which consent shall not be unreasonably withheld, the Vendor may assign this Contract including the proceeds hereof: PROVIDED, That such assignment shall not operate to relieve the Vendor of any of its duties and obligations hereunder, nor shall **such assignment affect any** remedies available to the Purchaser or CIS that may arise from any breach of the sections of this Contract, its supplements, or warranties made herein including but not limited to, rights of setoff.

With the prior written consent of the Vendor, which consent shall not be unreasonably withheld, CIS may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the state of Washington:  PROVIDED, That such assignment shall not operate to relieve CIS of any of its duties and obligations hereunder.

## 48.    Publicity

The Vendor agrees to submit to CIS all advertising, sales promotion, and other publicity matters relating to this Contract or any Product furnished by the Vendor wherein the Purchaser's or CIS's name is mentioned or language used from which the connection of the Purchaser's or CIS's name therewith may, in CIS's judgment, be inferred or implied.  The Vendor further agrees not to publish or use such advertising, sales promotion, or publicity matter without the prior written consent of CIS.

## 49.    Review of Vendor's Records

The Vendor and its Subcontractors shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract and shall retain all such records for six (6) years after the expiration or termination of this Contract.  Records involving matters in litigation related to this Contract shall be kept for one (1) year following the termination of litigation, including all appeals if the litigation has not terminated within five (5) years from the date of expiration or termination of this Contract.

All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the CIS Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable.  During the term of this Contract, access to these items will be provided within King County.  During the six (6) year period after this Contract term or five (5) year term following litigation, delivery of and access to these items will be at no cost to the State.  The Vendor shall be responsible for any audit exceptions or disallowed costs incurred by the Vendor or any of its Subcontractors.

The records retention and review requirements of this section shall be incorporated by the Vendor in any of its subcontracts.

It is agreed that books, records, documents and other evidence of accounting procedures and practices related to the Vendor's cost structure, to include overhead, general and administrative expenses, and profit factors shall be excluded from the Purchaser's review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

**50.** **Right of Inspection**

Vendor shall provide right of access to its facilities and those of its Subcontractors to Purchaser, or any of Purchaser's 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.

# GENERAL

**51.** **Patent and Copyright Indemnification**

51.1 Vendor, at its expense, shall defend, indemnify, and save Purchaser harmless or settle any claim against the Purchaser that Software or work products supplied hereunder infringe any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide.  Vendor will pay resulting costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by Purchaser provided that Purchaser:

a) Promptly notifies Vendor in writing of the claim, but Purchaser's failure to provide timely notice shall only relieve Vendor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Vendor; and

b) Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Vendor sole control of the defense and all related settlement negotiations.

51.2 If such claim has occurred, or in Vendor's opinion is likely to occur, Purchaser agrees to permit Vendor at its option and expense, either to procure for Purchaser the right to continue using the Software or to replace or modify the same so that they become non-infringing and functionally equivalent.  If use of the Software is enjoined by a court and the Vendor determines that none of these alternatives is reasonably available, Vendor, at its risk and expense, will take back the Software and refund its depreciated value.  No termination charges will be payable on such returned Software, and Purchaser will pay only those charges that

were payable prior to the date of such return. Depreciated value shall be calculated on the basis of a useful life of five (5) years commencing on the date of purchase and shall be an equal amount per year over said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of 365 days per year. In the event the Software has been installed less than one (1) year, all costs related to the initial installation paid by Purchaser shall be refunded by Vendor.

51.3 Vendor has no liability for any claim of infringement arising from:

a) Vendor's compliance with any designs, specifications or instructions of the Purchaser;

b) Modification of the Software by Purchaser or a third party without the prior knowledge and approval of Vendor; or

c) Use of the Software in a way not specified by Vendor unless the claim arose against Vendor's Software or Services independently of any of these specified actions.

51.4 Vendor passes through and assigns to CIS and Purchaser any and all Patent and Copyright Indemnification provided by [Vendor Name].

## 52. Indemnification

Vendor shall defend, indemnify, and save Purchaser harmless from and against any claim, damage, cost, or liability, including reasonable attorneys' fees resulting from any claims, and for any or all injuries to persons or damage to property arising from intentional, willful or negligent acts or omissions of its officers, employees, agents, or subcontractors.

## 53. Industrial Insurance Coverage

Prior to performing work under this Contract, the Vendor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Contract. The Purchaser will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for the Vendor, or any Subcontractor or employee of the Vendor, which might arise under the industrial insurance laws during the performance of duties and Services under this Contract.

## 54. Licensing Standards

The Vendor shall comply with all applicable local, state, and federal licensing requirements and standards necessary in the performance of this Contract. (See, for example, chapter 19.02 RCW for state licensing requirements and definitions.)

### 55. OSHA/WISHA

Vendor represents and warrants that its products, when shipped, are designed and manufactured to meet then current federal and state safety and health regulations.  Vendor further agrees to indemnify and hold CIS and Purchaser harmless from all damages assessed against the CIS and Purchaser as a result of the failure of the items furnished under this Contract to so comply.

### 56. UCC Applicability

Except to the extent the sections of this Contract are clearly inconsistent, this Contract shall be governed by any applicable sections of the Uniform Commercial Code (UCC) as set forth in Title 62A RCW.

To the extent this Contract entails delivery or performance of Services, such Services shall be deemed "goods" within the meaning of the UCC, except when to do so would result in an absurdity.

Notwithstanding the <u>Section Headings, Incorporated Documents and Order of Precedence</u> section of this Contract, in the event of any clear inconsistency or contradiction between this Contract and the UCC, the terms and conditions of this Contract take precedence and shall prevail unless otherwise provided by law.

### 57. Antitrust Violations

Vendor and CIS recognize that in actual economic practice overcharges resulting from antitrust violations are in fact usually borne by the Purchaser.  Therefore, the Vendor hereby assigns to CIS any and all claims for such overcharges as to goods and Services purchased in connection with this Contract, except as to overcharges not passed on to the Purchaser resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the price under this Contract.

### 58. Compliance with Civil Rights Laws

During the performance of this Contract, the Vendor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to:  Title VII of the Civil Rights Act, 42 U.S.C. 12101 et seq.; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination.  In the event of the Vendor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled or terminated in whole or in part under the <u>Termination for Default</u> section of this Contract, and the Vendor may be declared ineligible for further contracts with the Purchaser.  The Vendor shall be given a reasonable time in which to cure noncompliance.  In addition to the cancellation of this Contract, Vendor may be subject to penalties under federal and state law.

**59.  Quiet Possession and Usage**

Vendor warrants that the Purchaser, upon paying the amounts due hereunder and performing all other covenants, terms, and conditions on its part to be performed hereunder, may and shall peacefully and quietly have, hold, possess, and enjoy the Software for the term provided without suit, molestation, or interruption.

**60.  Severability**

If any term or condition of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

**61.  Waiver**

Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach.  No term or condition of this Contract shall be held to be waived, modified or deleted except by a written instrument signed by the parties hereto.

**62.  Treatment of Assets**

Title to all property furnished by the Purchaser shall remain in the Purchaser. Title to all property furnished by the Vendor, for which the Vendor is entitled to reimbursement, other than rental payments, under this Contract, shall pass to and vest in the Purchaser pursuant to the section titled <u>Software Ownership</u>.  As used in this section <u>Treatment of Assets</u>, if the "property" is the Vendor's proprietary, copyrighted works, only the applicable license, not title, is passed to and vested in the Purchaser.

Any property of the Purchaser furnished to the Vendor shall, unless otherwise provided herein or approved by the Purchaser, be used only for the performance of this Contract.

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

Upon loss, or destruction of, or damage to any Purchaser property, the Vendor shall notify the Purchaser thereof and shall take all reasonable steps to protect that property from further damage.

The Vendor shall surrender to the Purchaser all property of the Purchaser prior to settlement upon completion, termination, or cancellation of this Contract.

All reference to the Vendor under this section shall also include Vendor's employees, agents, or Subcontractors.

## 63.    Vendor's Proprietary Information

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

# CONTRACT EXECUTION

**64.** **Authority to Bind**
The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

**65.** **Counterparts**
This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

*In Witness Whereof*, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

**Approved**
State of Washington,
Center for Information Services

**Approved**
[Vendor Name]

_____
Signature

_____
Signature

_____
Print or Type Name

_____
Print or Type Name

_____
Title                                        Date

_____
Title                                        Date

**Approved as to Form**

_____
Signature

_____
Print or Type Name

_____
Assistant Attorney General

_____
Title                                        Date

# SCHEDULES

# Schedule A
## Authorized Product and Price List
## as of _____, 2006
## for
## Contract No. XXXXXX
## with
## [Vendor Name]

Vendor is authorized to sell **only the products identified in this Schedule A at the prices set forth in this Schedule A** under the above-referenced Contract.

**Insert products/services list and costs along with maintenance fees**

This Schedule may only be modified in writing by the CIS Contract Administrator.

# Schedule B
# Statement of Work
#### for
## CMMS Contract Number XXXXXX

This Statement of Work (SOW) is made and entered by and between the Center for Information Services ("CIS") and *[Vendor]* ("Vendor"), for the purchase and implementation of a Computerized Maintenance Management System ("CMMS"). This SOW incorporates by reference the terms and conditions of Contract Number XXXXXX in effect between CIS and the Vendor. In case of any conflict between this SOW and the Contract, the Contract shall prevail. Purchaser and Vendor agree as follows:

1. **Project or Task Objectives**

2. **Scope of Work and Deliverables**

3. **Timeline and Period of Performance**

4. **Compensation and Payment**

5. **Vendor Staff, Roles and Responsibilities**

6. **Purchaser Staff Roles and Responsibilities**

7. **Application Service Provider Security (if applicable)**

   In addition to the following, vendors may be asked to sign a Data Sharing Agreement. The template for this agreement is attached to this SOW.

   **Definition of Terms:**

   **"ASP"** shall mean Application Service Provider, which is synonymous with the term Hosted Services.

   **"Data Exchange"** shall mean data sharing, transfer, entering, providing, and sending any data from any college campus to any other entity by any means made available at the college campuses.

   **"Data Sensitivity Levels"** shall mean classification of data according to varying levels of sensitivity, i.e. SSNs vs. course catalogs.

   **"Electronic Data Storage Facility"** Vendors and the facilities they contract to store electronic data.

   **"Hosting Facility"** shall mean the facility that houses the servers that the software runs on and the electronic data is stored on.

   **"Hosted Services"** shall mean software accessed remotely via the web and other related support services.

**"Social Engineering"** Phishing (e-mail scams), divulging passwords, convincing someone to do something under false pretenses, convincing someone they have to do something in their own best interest.

**"Subscriber"** shall mean Washington State's community and technical colleges or students, whichever is appropriate.

**"Subscription"** shall mean the right to receive hosted services as specified under the Contract.

## Data Category Definitions:

Classification schemas may classify data standing alone at one classification level, yet when combined with other data may require a stronger classification for the group of data. Data will be classified as Normal, Sensitive, or Confidential.

**Normal:** The least restrictive category of data. Although it must be protected from unauthorized disclosure and/or modification, it is often public information or generally releasable under college procedures for processing public records requests. Examples of this class of data are: class schedules, course catalogs, general ledger data, and employee demographic statistics.

**Sensitive:** This category includes data which is required by law to provide specific protections or for which agencies are obligated to prevent identity theft or similar crimes or abuses. Examples of this category of data are: people's names in combination with any of the following: driver's license numbers, birth date, employee ID number (EID), address, e-mail addresses, telephone numbers. Also included are: agency source code or object code, agency security data, education records including papers, grades, and test results, or information identifiable to an individual that relates to any of these types of information.

**Confidential:** These data elements are those that either are passwords in the traditional sense or function in the role of an access control such as a credit card number, expiration date, PIN, and card security code. All data classified as confidential will be encrypted in storage and in transit. Access to these elements are tightly controlled and audited. Examples of this data are: Social Security Numbers (SSN), credit card numbers, expiration dates, PINs, and card security codes, financial profiles, bank routing numbers, medical data, law enforcement records.

## Data Handling Requirements by Category:

**Normal:** ASP Vendors must define data retention and data disposal procedures; train their staff on data handling procedures; acquaint their

staff with the threat posed by Social Engineering attacks and provide suggestions on how to respond.

**Sensitive:** In addition to the above:

a. Vendor's staff must be informed of legal requirements associated with protection of Sensitive and Confidential data and of Vendor's site policies and procedures.

b. Vendor's staff who have access to Sensitive and Confidential data must be limited to those with a well-defined business need.

**Confidential:** In addition to the two previous data handling sections:

a. Transmission and storage of Confidential data must be encrypted.

b. Confidential data in storage must be encrypted. Access to this data may only be via authorized access controls and authentication. The vendor may provide an internal account for maintenance and management of the contracted applications. Use of this account should not provide unencrypted access to the confidential data in any way. However, if this level of separation of access control cannot be accommodated, the vendor will contact the CIS or the college when this account is used for management or maintenance of the contracted applications. A complete log of activities while using the account in this manner will be maintained and provided to the CIS or the college on a monthly or quarterly basis.

At the time of the RFQQ, it was assumed that the data to be collected falls under the Sensitive category. The following requirements are appropriate for this category of data collection and storage.

### 7.1. Data Elements (Required)

Collection of personal data will be limited to the following elements: *(List data elements).* If any other information is to be collected, Vendor agrees to notify CIS. Vendor and CIS will modify security requirements in the SOW to accommodate the new data to be collected. Under no circumstances shall Vendor collect any other personal information without the express written approval of CIS.

**7.2. Web Security**

a.      Data Transmission (Required)

Username, passwords, and all personal information as well as any other data transmitted to and within the Vendor system must be encrypted using, at minimum, an external, 1024 bit key length and 128 bit Secure Socket Layer certificate, an industry standard means of encrypting Web site traffic.

b.      Technology

Vendor must disclose whether and where the application uses Java, Javascript, ActiveX, PHP or ASP (active server page) technology.

c.      Back-end Language

Vendor must disclose what language the application back-end is written in.  (C, Perl, Python, VBScript, etc.)

d.      Quality Assurance

Vendor must describe their process for doing security Quality Assurance testing for the application.  For example, testing of authentication, authorization, and accounting functions, as well as any other activity designed to validate the security architecture.

e.      Code Review

Vendor must describe their web code review process for the explicit purposes of finding and remediating security vulnerabilities.  Who performed the review? What were the results? And what remediation activity has taken place?

**7.3     Data Access by Vendor Personnel (Required)**

Access to accounts, applications, or data stored on vendor's systems shall be via secure channel using SSH or VPN technologies with a minimum of AES-128 encryption. This access will use separate, managed administration accounts requiring complex passwords or two-factor authentication and access will be limited to only those employees of the client with a defined need for management and maintenance of the applications, data, or services.  Under no circumstances will data be stored on mobile devices or removable storage apparatus.

### 7.4. Data Access by Users (Required)

Vendor's system must provide strong password protected access for users. Vendors must provide mechanisms to ensure that users will only have access to their own data. Administrative toolsets will require password authentication, and provide a User Management module to enforce user security levels within the administration section of the system based on defined user groups and roles. This module may be used to control administrative user access to all modules within Vendor's system.

### 7.5. Account Management

Vendor must provide information on the account generation, maintenance and termination process, for both maintenance as well as user accounts. Include information as to how an account is created, how account information is transmitted back to the user, and how accounts are terminated when no longer needed.

### 7.6. Strong Passwords

Strong passwords can be defined as passwords or pass phrases complicated by length, upper and lower case letters, numbers and symbols in some combination. Length must be a minimum of 8 characters, and the password or pass phrase must be comprised of characters and numbers, with the addition of at least one upper case character or one symbol (such as # or &). Passwords or pass phrases of less than 8 characters are not allowed, and longer phrases should be encouraged. The vendor must describe the standard followed for strong passwords or pass phrases.

### 7.10. Attack Prevention and Response

Vendor should utilize technology for the prevention of network attacks varies across the industry. Tools such as firewalls, web application firewalls, anti-virus gateway scanners, spyware gateway scanners, SPAM filters on email gateways, and procedures for log analysis and network traffic monitoring help prevent or identify attacks on networks. The vendor must provide information about the kind and types of tools and procedures used to prevent attacks, as well as standard procedures used to respond to attacks.

### 7.11 Data Backup

*This is a significant requirement that may not be warranted except in mission critical applications. Sponsors of the procurement will need to determine whether the backup facility needs to be "hot", "warm" or "cold".*

The Hosting Facility must maintain a fully redundant backup site located at some distance from the main facility.

Data stored on backup media (drives, tapes, disks, etc.) shall be encrypted.  In the case of on-line backup strategies that employ the Internet for transport, the transmission of backup data shall be encrypted.  Security protocols and procedures shall be in place to prevent the loss or destruction of backup media. The physical security and environmental requirements at the storage facility shall be the same as those required for the primary site.

## 7.12.  Network Diagram

Vendors must provide a proposed architecture document that includes a full network diagram of the application environment, illustrating the relationship between the environment and any other relevant networks, with a full data flowchart that details where college data will reside, the applications that manipulate it, and the security thereof.

## 7.13.  Firewalls (Required)

While firewalls are not the only answer to site security, the vendor must include firewalls as part of an overall, defense-in-depth network security plan. Use of firewalls to create a DMZ, isolate the corporate production network, provide an isolated development and testing network are all excellent ways to make effective use of firewalls. It is understood that public release of specific information about firewall locations, configurations and architecture can be detrimental to the overall security of the vendor network. It is expected that the vendor provide general information about firewalls deployed, policies and processes for maintenance and network strategy in the use of firewalls.

## 7.14.  Physical Security

Hosting Facility

Vendor must identify its Hosting Facility, providing the corporate name, address, and detailing the regional risks (geologic, weather, etc.) of its location and how they are mitigated.

a.      Physical Access to Hosting Facility

The Hosting Facility must maintain a security system with cameras that record all entries and exits.  There must be security controlled access which requires badge access at a minimum.   A vestibule between the

public area and the Hosted Facility's operations is required.  Each entry door must have its own access code.

     b.     Equipment Security

The infrastructure (hosts, network equipment, etc.) hosting the application must be located in a locked cage-type environment.

     c.     Employee Security

Vendors must disclose their background check procedures.

     d.     Facility Status (S,C) (Required)

Vendor will communicate any changes in the status of the Hosting facility to the CIS Contract Administrator.

## 7.15.  Host Security

     a.     Hardening

Vendors must disclose how and to what extent the hosts (Unix, NT, etc.) comprising the application infrastructure have been hardened against attack.  If the ASP has hardening documentation for the CAI, provide that as well.

     b.     Patches

Vendors must provide a listing of current patches on hosts, including host OS patches, web servers, databases, and any other material application. Information on how and when security patches will be applied must be provided.  How does the Vendor keep up on security vulnerabilities, and what is the policy for applying security patches?

     c.     Host Monitoring

Vendor must disclose their processes for monitoring the integrity and availability of the hosts.

## 7.16.  Relocation of Electronic Data Storage Facility  (Required)

Vendor shall notify CIS in the event Vendor plans to relocate the Electronic Data Storage Facility or move their data storage to a new Hosting Facility.  Such notification shall be sent to CIS at least 30 days prior to moving data or servers to

the new location. The notification will include all of the information required to demonstrate the new Hosting Facility's compliance with the contract. CIS must have an opportunity to review these specifications. CIS retains the option of canceling the contract if the new Hosting Facility does not meet with CIS approval.

## 7.17. Facility Monitoring

Vendor should monitor environmental, internet connectivity, power, and facility metrics measured with alarms via pager, SMS and e-mail to "24/7 on call" Vendor staff if operational parameters are breached.

## 7.18 Notification (Required)

Washington State law requires that affected individuals be notified of security breaches. Pursuant to RCW 19.255.010, Disclosure, notice – Definitions – Rights, remedies, Vendor agrees that, in the event of any breach in data security where unencrypted personal information of a College's client was, or is reasonably believed to have been, acquired by an unauthorized person, Vendor will notify CIS of the security breach within 24 hours and assist CIS with the notification action required under the law. Vendor shall be responsible for financial expenses associated with said notification and any consequence of the breach including but not limited to financial restitution to affected individuals and costs of any resulting legal action.
http://search.leg.wa.gov/pub/textsearch/ViewRoot.asp?Action=Html&Item=2&X=609162151&p=1

## 7.19. Indemnification (Required)

Vendor shall indemnify and hold harmless CIS and the Colleges for all costs and damages related in any way to the misuse of data or breach of security that occurs while data is in the possession or control of the Vendor including, without limitation, all notification costs and requirements as set forth in RCW 42.17.31922

## 7.20. Compliance with Laws and Regulations (Required)

Vendor agrees to maintain FERPA compliance (see http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html) as well as compliance with HIPPA and Federal Security regulations. Any breach of this provision may result in termination of the Contract and the demand for return of all personal information.

### 7.21.   Browsers  (Required)

Both the public side (registration, student portal, etc.) and administrative side of the application must be accessible from anywhere using a standard web browser.  Standard internet protocols are used within the software, including HTTP, HTTPS, and SMTP.

### 7.22.   ADA Compliance (Required)

Vendor's software conforms to Section 508 of the Rehabilitation Act, the Americans with Disabilities Act (ADA), and meets or exceeds Priority Level 1 of W3C's "Web Content Accessibility Guidelines 1.0", available at http://www.w3.org/TR/1999/WAI-WEBCONTENT-19990505.

### 7.23.   Data Importing and Exporting

Vendor's system should support a wide variety of data importing and exporting capabilities.  Vendor's support should also be available for any manual data imports that are not automatically handled within the system. Vendor will import data into their system.  Vendor will export system data to colleges within 48 hours of request in a mutually agreed format.

### 7.24.   Support and Maintenance (Required)

Vendor must provide full support and maintenance of the server hardware, server software, and databases, and installation.

### 7.25.   Future Integration (Required)

Vendor's system must support the following database platforms for customer implementations: MySQL, Oracle and Microsoft SQL.

### 7.26.   Upgrades (Required)

Vendor provides a NO COST UPGRADE GUARANTEE for all its clients while under an active support agreement.  Any improvements to current software as well as any minor or major upgrades of the software are provided at NO COST to the institution. Releases of updates, new versions, etc. occur typically once a quarter.  These updates are usually installed and configured by Vendor directly. All updates will be scheduled with the Purchaser and will not be performed without agreement on timing.   All training and support for new upgrades are included and training will be provided via webinar training sessions. Should on-

site training be preferred, Vendor is able to conduct multi-session training at a designated central location(s) as determined by the State of Washington.

## 7.27. FTEs

Vendors must estimate the amount of time that will be required for college staff to implement and support the system.

## 7.28. Annual Assurance (Required)

Vendor must agree to sign an Annual Assurance document as provided by CIS reiterating their commitment to the security provisions of the contract.  The document may be a vehicle for detailing mutually agreed to changes in the contract's security provisions.  The document will assure the Purchaser that the data remains in the location originally agreed to in the contract, or will provide the new location and information related to the new Electronic Data Storage Facility.

## 7.29. Escrow (Required)

Source code shall be held in escrow. In the event that Vendor shall, for any reason, cease to conduct business, or cease to support the Software licensed under this Contract, Purchaser shall have a right to possession of the source code.

## 8. Additional Terms and Conditions Specific to this SOW

# Schedule C
## Authorized Purchasers
## Center for Information Services
## Member Institutions

| College | Address | City, State Zip |
|---|---|---|
| Bates Technical College | 1101 S Yakima Avenue | Tacoma WA 98405 |
| Bellevue Community College | 3000 Landerholm Circle SE | Bellevue WA 98007 |
| Bellingham Technical College | 3028 Lindbergh Avenue | Bellingham WA 98225 |
| Big Bend Community College | 7662 Chanute Street | Moses Lake WA 98837 |
| Cascadia Community College | 19017 120th Avenue NE, Suite 102 | Bothell WA 98011 |
| Centralia College | 600 W Locust Street | Centralia WA 98531 |
| Clark College | 1800 E McLoughlin | Vancouver WA 98663 |
| Clover Park Technical College | 4500 Steilacoom Boulevard SW | Tacoma WA 98499 |
| Columbia Basin College | 2600 N 20th | Pasco WA 99301 |
| Center for Information Services | 3101 Northup Way, Suite 100 | Bellevue WA 98004 |
| Edmonds Community College | 20000 68th Avenue W | Lynnwood WA 98036 |
| Everett Community College | 2000 Tower Street | Everett WA 98201 |
| Grays Harbor College | 1620 Edward P. Smith Drive | Aberdeen WA 98520 |
| Green River Community College | 12401 SE 320th Street | Auburn WA 98092 |
| Highline Community College | PO Box 98000 | Des Moines WA 98198 |
| Lake Washington Technical College | 11605 132nd Avenue NE | Kirkland WA 98034 |
| Lower Columbia College | PO Box 3010 | Longview WA 98632 |
| North Seattle Community College | 9600 College Way N | Seattle WA 98103 |
| Olympic College | 1600 Chester Avenue | Bremerton WA 98337 |
| Peninsula College | 1502 E Lauridsen Boulevard | Port Angeles WA 98362 |
| Pierce College District | 9401 Farwest Drive SW | Lakewood WA 98498 |
| Renton Technical College | 3000 NE 4th Street | Renton WA 98056 |
| Seattle Central Community College | 1701 Broadway | Seattle WA 98122 |
| Seattle District | 1500 Harvard Road | Seattle WA 98122 |
| Shoreline Community College | 16101 Greenwood N | Shoreline WA 98133 |
| Skagit Valley College | 2405 E College Way | Mount Vernon WA 98273 |
| South Puget Sound Community College | 2011 Mottman Road SW | Olympia WA 98512 |
| South Seattle Community College | 6000 16th Avenue SW | Seattle WA 98106 |
| Spokane Community College | 1810 N Greene Street | Spokane WA 99217 |
| Spokane District | 2000 N Greene Street | Spokane WA 99217 |
| Spokane Falls Community College | W 3410 Fort George Wright Drive | Spokane WA 99224 |
| State Board for Community & Technical Colleges | 319 7th Avenue | Olympia WA 98504 |
| Tacoma Community College | 6501 S 19th Street | Tacoma WA 98466 |
| Walla Walla Community College | 500 Tausick Way | Walla Walla WA 99362 |
| Wenatchee Valley College | 1300 Fifth Street | Wenatchee WA 98801 |
| Whatcom Community College | 237 W Kellogg Road | Bellingham WA 98226 |
| Yakima Valley College | PO Box 22520 | Yakima WA 98907 |

# APPENDIX D - Protest Procedures

**Procedure**
This protest procedure is available to Vendors who have submitted a response to this solicitation and have received a debriefing conference. Protests are made:

A.      To CIS after CIS has announced the Apparent Successful Vendor. Vendor protests shall be received, in writing, by CIS within five (5) business days after the Vendor debriefing conference.

(The protest should be sent to the attention of the RFQQ Coordinator. The name and address of the Coordinator are provided in RFQQ Section 3.1)

B.      To the DIS for acquisitions conducted by CIS only after protesting first to CIS and the CIS resolution is not satisfactory to the protesting party. Protests to the DIS shall be made within five (5) business days after the Vendor has received notification of the CIS decision.

**Grounds for Protest**
A.      Arithmetic errors were made in computing the score.

B.      The agency failed to follow procedures established in the solicitation document, the ISB policy *Acquisition and Disposal of Information Technology Resources*, or applicable state or federal laws or regulations.

C.      Bias, discrimination, or conflict of interest on the part of an evaluator.

Protests not based on these criteria will not be considered.

**Format and Content**
Vendors making a protest shall include, in their written protest to CIS, all facts and arguments upon which the vendor relies. Vendors shall, at a minimum, provide:

A.      Information about the protesting Vendor; name of firm, mailing address, telephone number, and name of individual responsible for submission of the protest.

B.      Information about the acquisition; issuing agency, acquisition method.

C.      Specific and complete statement of the agency action(s) being protested.

D.      Specific reference to the grounds for the protest.

E.      Description of the relief or corrective action requested.

F.      For protests to the DIS, a copy of the CIS written decision on the protest.

**The CIS Review Process**
Agencies conducting competitive acquisitions of Information Technology Resources shall provide the protest process to the Vendor. The agency review shall precede all other reviews.

Upon receipt of a Vendor protest, CIS will postpone further steps in the acquisition process until the protest has been resolved.

CIS will perform an objective review of the protest by individuals not involved in the acquisition process being protested. The review shall be based on the written protest material submitted by the Vendor and all other facts known to CIS.

CIS will render a written decision to the Vendor within five (5) business days after receipt of the Vendor protest, unless more time is needed. The protesting Vendor shall be notified if additional time is necessary.

**Final Determination**
The final determination shall:

A.   Find the protest lacking in merit and uphold the agency's action; or

B.   Find only technical or harmless errors in the agency's acquisition process conduct, determine the agency to be in substantial compliance, and reject the protest, or

C.   Find merit in the protest and provide the agency with options that may include:

- Correct its errors and reevaluate proposals; and/or
- Reissue the Vendor solicitation document; or
- Make other findings and determine other courses of action as appropriate.
- Not require the agency to award the Contract to the protesting party or any other Vendor, regardless of the outcome.

**CIS Review Process**
Protests to the CIS may be made for acquisitions conducted by CIS. Protests of the decisions of CIS shall be made by letter to the Director of CIS, who may establish procedures to resolve the protest. Protests shall be received by the Director of CIS within five (5) business days after the decision of CIS in order to be considered. The resulting decision is final, with no further administrative appeal available.