

Request for Proposal

**PENINSULA COLLEGE MARKETING
AND ADVERTISING SERVICES**

RFP # 201211-R

State of Washington

December 11, 2020

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SUMMARY INFORMATION AND PROPOSAL RETURN COVER PAGE

RFP NUMBER 201211-R
 WEBS # 44759

ISSUE DATE: December 11, 2020

TITLE: MARKETING AND ADVERTISING SERVICES

ISSUING AGENCY: Peninsula College
 1502 E. Lauridsen BLVD.
 Port Angeles, WA 98362

RFP Coordinator: Chris Wood, Procurement Specialist
 Phone: 360-417-6233
 Email: cwood@pencol.edu

CLOSING DATE: February 12, 2021

CONTRACT PERIOD: The contract term will be a 1-year period, commencing on
 or before April 1, 2021, and ending March 31, 2022. At the
 option of Peninsula College, and upon mutual agreement,
 this contract may be extended for six 1-year periods, or a
 portion thereof. Total contract period with extensions shall
 not exceed seven years.

SECTION I - GENERAL INFORMATION

1. Introduction

Peninsula College, hereinafter referred to as the College, has a need for marketing and advertising services. The College is requesting qualified vendors to submit proposals to provide the needed services in accordance with the specifications, terms and conditions contained herein. The Request for Proposal (hereinafter referred to as RFP) includes desired services used by the College.

Within this RFP are instructions for submitting the proposal, the evaluation and award criteria by which a Vendor will be selected, and the contractual terms that will govern the relationship between the College and the selected Vendor. The terms and conditions contained in this Request for Proposal will govern the performance of any contract resulting from this solicitation. Proposals submitted shall remain in effect a minimum of 45 days from the RFP due date.

Responses to the RFP must conform to the format provided in this document. Vendors wishing to provide alternative proposals should demonstrate the vendor's unique, cost-effective, or innovative approach to the requested services where feasible, or additional services offered which may not be specifically requested.

2. Background

Peninsula College is located in Port Angeles, Washington with other locations in Forks, Washington and Port Townsend, Washington. The College service district encompasses Clallam and Jefferson Counties—an area of over 3,600 square miles of land—and extends from the Pacific Ocean at Neah Bay to Brinnon on the Hood Canal, a distance of about 140 miles.

The area's topography is notable for its forests, mountains, rivers, lakes, and numerous watersheds, which have been central to its history and culture. The region is home to six Native American tribal reservations, which are dispersed across the North Olympic Peninsula.

Peninsula College served approximately 3,362 students (1,857 FTE) in the 2019-20 academic year. It offers numerous associate degrees in arts, sciences, and professional/technical specialties, as well as a bachelor's degree of applied science. The college recently launched a new accelerated associate in arts degree, and students may pursue a variety of certificates.

3. PURPOSE/OBJECTIVES

Peninsula College is requesting proposals from advertising and marketing contractors or agencies to provide marketing, digital advertising, and possible graphic design services. The college is the client and makes no guarantee as to the number and size of projects which may be awarded under this proposal. The college may elect to use in-house services and resources, including students and staff, for all or part of any project. The college's Strategic Marketing and Community Engagement team will be the agency's point of contact throughout the contract and will coordinate the professional services required of the agency/firm. The term for the agreement will be one (1) year with an option to renew for six (6) additional one-year terms if mutually agreed upon by the college and agency/firm. Either party may terminate the contract upon thirty (30) days written notice to the other party. The purpose of this RFP is to provide a fair evaluation for all candidates and to provide the candidates with the evaluation criteria and submission requirements

4. RFP COORDINATOR

Upon release of this RFP, all communications must be directed to the RFP Coordinator listed below:

RFP Coordinator: Chris Wood, Procurement Specialist
 Peninsula College
 1502 E. Lauridsen BLVD.
 Port Angeles, WA 98362

Phone: 360-417-6233
 FAX: 360-417-6218
cwood@pencol.edu

5. RFP SCHEDULE

<u>Event</u>	<u>Date</u>
• Issue Request for Proposal (RFP)	December 11, 2020
• Deadline for Questions	February 3, 2021
• Deadline for Proposals	February 12, 2021
• Evaluation Complete	March 12, 2021
• Name Apparent Successful Vendor	March 12, 2021
• Execute Contract Activity On or Before	April 1, 2021

6. RFP MODIFICATION

The COLLEGE reserves the right to change the RFP Schedule or issue addenda to the RFP at any time. The COLLEGE also reserves the right to cancel or reissue the RFP in whole or in part, and for any reason, at the sole discretion of the COLLEGE, at any time prior to the execution of the contract.

If it is necessary to revise any part of this RFP prior to the due date for submission of the proposals, addenda will be provided to all individuals and organizations that received the RFP.

All responses to this RFP shall be based on the material contained in this RFP, and any amendments which may be made to the RFP.

7. APPARENT SUCCESSFUL VENDOR

An Evaluation Committee will select the Apparent Successful Vendor who most closely meets the requirements of this RFP, on the basis of the evaluation points included in Section IV of this RFP. After successful contract negotiations have been completed, the Apparent Successful Vendor will be awarded an Agreement for Marketing and Advertising Services for the COLLEGE.

The Agreement will be a contract incorporating by reference all the requirements, terms, and conditions of this RFP and the Apparent Successful Vendor's proposal as negotiated. If the COLLEGE fails to negotiate a contract with the Apparent Successful Vendor, the COLLEGE reserves the right to negotiate a contract with the next most qualified vendor. The award of a contract pursuant to this RFP is expressly conditional upon the execution of a contract document deemed acceptable by the COLLEGE.

8. PERIOD OF PERFORMANCE

The contract term will cover a one-year period, commencing on or before April 1, 2021 through March 31, 2022. At the option of the COLLEGE, and upon mutual agreement, this contract may be extended for six 1-year periods or a portion thereof. Total contract period with extensions shall not exceed seven years.

9. RENEGOTIATION OF FEES

Fees must be guaranteed for the initial one-year period but will be subject to renegotiation at each one-year extension period, or portions thereof, upon terms mutually agreeable to the COLLEGE and the successful vendor.

10. FINAL SELECTION

The COLLEGE reserves the right, at its sole discretion, to reject any or all proposals for any reason prior to the execution of a contract with no penalty to the COLLEGE.

The COLLEGE reserves the right to refrain from contracting with any vendor. The issuance of this RFP does not compel the COLLEGE to purchase services. The final selection, if any, will be the proposal that, in the opinion of the COLLEGE, best meets the requirements set forth in this RFP and is in the best interest of the State of Washington.

11. SINGLE RESPONSE

A single response to this RFP may be deemed a failure of competition and, at the sole option of the COLLEGE, the RFP may be canceled. Likewise, receipt of only one response may allow the COLLEGE to claim it as a valid sole source acquisition of services.

12. ERRORS IN RESPONSE

The COLLEGE will not be liable for any errors in proposals from vendors. Vendors will not be allowed to alter proposal documents after the deadline for submission of the proposals. The COLLEGE reserves the right to waive minor irregularities in the responses.

The COLLEGE reserves the right to make corrections or amendments to the response due to errors identified by the COLLEGE or the vendor. This type of amendment will only be allowed for such errors as typing, transposition, omission, or any other obvious error. The COLLEGE also reserves the right to request clarification or additional information as deemed necessary by the RFP Coordinator. Any changes will be date and time stamped and attached to the response. All changes must be coordinated in writing with, authorized by, and made by the RFP Coordinator. Vendors are liable for all errors or omissions contained in their responses.

SECTION II - SCOPE OF SERVICES

13. MINIMUM SERVICES REQUIRED

13.1 The college is seeking an advertising and/or marketing vendor to:

- Strengthen the competitive position of Peninsula College
- Increase interest and applications from diverse communities
- Support recruitment and retention efforts
- Promote pathways to careers and other college programs
- Assist in building community awareness and engagement

13.2 Professional Services (will include the following but are not limited to):

- Market research, data-driven analysis and recommendations
- Custom-built marketing plans and creative solutions
- Paid and unpaid advertising: concept, planning, design, development, production, and evaluation
- Content creation for various platforms: graphic design, video production, writing
- Media buying, placement, and monitoring
- Data tracking, evaluation, and reporting
- Monitor and advise on emerging marketing trends and technologies

13.3 Target markets

1. High school students seeking and parents of high school students seeking
 - a. A degree and/or certificate for a trade or occupation
 - b. To transfer to a four-year university to obtain a bachelor's degree
 - c. To obtain a bachelor's degree without leaving the North Olympic Peninsula by completing an AA at Peninsula College and either a Bachelor of Applied Science in Applied Management at Peninsula College or a bachelor's degree with a partner university
2. Adult learners seeking
 - a. New career opportunities or switching careers
 - b. Completing the college education they started, but didn't finish
 - c. Upskilling or advancing a career
 - d. Adult basic education/GED® prep
3. Underserved students
4. Community members seeking
 - a. Workforce development
 - b. Community education
 - c. Arts and Culture programs

13.4 How the college currently gets its message across

Paid digital and traditional marketing and advertising:

- Local newspapers: print and digital
- Local radio and audio streaming apps
- Streaming TV
- Direct mail
- SEM (search engine marketing)
- Social media channels/social media marketing and optimization
- Location-based display advertising on mobile devices
- Digital media advertising
- Outdoor: billboard, gas station toppers

Unpaid media (owned and earned)

- College website, blog, social media channels
- Publicity

13.5 The selected contractor would be expected to:

- Collaborate with the college's Strategic Marketing and Community Engagement team to develop an integrated marketing plan to position the college as a first-choice college for target audiences and as an educational leader in the region
- Analyze demographic data to determine primary, secondary, and tertiary marketing targets for purposes of recruiting students who will apply and register for courses at Peninsula College
- Identify both traditional and innovative ways to reach target audiences in an effective way
- Develop an advertising placement/purchasing strategy for contract period that is designed primarily to recruit students and secondarily to enhance the reputation of Peninsula College. Said strategy can include, but is not limited to, a combination of traditional and non-traditional channels. Said strategy should include a detailed calendar of media placements and data compilations built around the college's enrollment periods and ongoing recruitment efforts.
- Negotiate competitive rates to maximize effectiveness of placements and provide Peninsula College with consolidated billing for all ad placements that also specifies costs per campaign or program as needed
- Provide detailed written specifications of all media buys and media placement recommendations to the college for approval prior to placing any media buy
- Purchase media on behalf of the college during the contract period

- Manage projects effectively and communicate clearly and regularly
- Assist in, or solely develop creative designs based on strategic plan goals
- Resize, rearrange, add to, and otherwise alter advertisements as needed. All creative content should be fresh and modern graphic design and adhere to Peninsula College's brand standards.
- Brand promise clarification and effective communication of coordinated, consistent brand execution messages.
- Provide ongoing return on investment information that specifically demonstrates the effectiveness of every facet of the ad strategy. The ROI data should be provided regularly in an easy-to-understand, easy-to-access manner (i.e. dashboard concept or report form) and include comparisons to industry standards/expectations in each medium.
- Make data-informed recommendations to continually improve marketing effectiveness
- Advise the department and college on rapidly changing market conditions, marketing, marketing technologies, and media consumption

SECTION III - PROPOSAL PREPARATION AND CONTENT REQUIREMENTS

14. SUBMISSION OF PROPOSAL

Interested vendors will submit an electronic proposal including, but not limited to, the following components:

- Detailed description of tasks to be done by vendor including a specific description of media plans and tactics that will best help Peninsula College achieve its marketing goals and objectives.
- Description of how success would be measured and how effectiveness would be evaluated.
- Detailed cost breakdown, including cost breakouts for:
 - Strategy, market research, marketing plan, and analysis
 - Traditional marketing
 - Digital marketing
 - Creative direction
 - Digital design and development services
 - Advertising: conception, planning, design, development, production, and evaluation
 - Media buying, placement, and monitoring
 - Graphic design
- An outline of the vendor's background and experience
- A list of personnel who would be assigned to the project and detailing of their training and work experience related to the proposed project
- A minimum of three references, with contact information, and a brief description of work done for those clients
- Portfolio including samples of similar types of work for other
- The proposals must be received by the RFP Coordinator by 4:00 p.m., February 12, 2021.
- Terms and prices included in the response must be guaranteed for 120 days from the date of receipt.
- Signed copies of Attachments A – C (Attachment D is optional).

- **Late proposals will not be accepted, nor will time extensions be granted. It is the sole responsibility of the vendor to ensure receipt of proposals by the RFP Coordinator by the specified date and time and at the specified location.**
- All proposals and accompanying documentation become the property of the COLLEGE and will not be returned.
- Proposals which are substantially incomplete will be disqualified from further consideration.

15. PROPRIETARY RESPONSE MATERIAL

All responses received shall remain confidential until the Apparent Successful Vendor, if any, is announced by the COLLEGE. Thereafter, responses shall be deemed to be disclosable pursuant to Chapter 42.56 RCW (the Washington State statute pertaining to accessibility to public records) except as exempted in that chapter. Vendors are advised that the permissible exemptions from public disclosure pursuant to RCW 42.56 are very narrow in scope and strictly construed. Vendors should identify any materials which they believe constitute “valuable formulae, designs, drawings, and research data”, or any materials otherwise claimed to be exempt, along with a statement of the basis for such claim of exemption in a Response Transmittal letter. The transmittal letter must identify the page and particular exemption(s) from disclosure upon which it is making its claim. Further, each page claimed to be exempt must be clearly identified by the word “CONFIDENTIAL” printed on the lower right-hand corner of the page.

DESIGNATING THE ENTIRE RESPONSE AS CONFIDENTIAL IS NOT ACCEPTABLE AND WILL NOT BE HONORED.

If an official request is made to view a vendor’s response, the COLLEGE will respond in accordance with RCW 42.56.040 et seq. If any of the specifically requested information is marked as “confidential” in the response but in the opinion of the COLLEGE does not clearly fall within any one of the enumerated exemptions from disclosure, such information will be made available five (5) business days after the affected vendor has been given telephonic notice that the information has been requested unless the affected vendor obtains, within that five day period, a court order restraining the COLLEGE from disclosing the “confidential” information requested.

The RFP response of the successful vendor will be attached to the resulting contract and incorporated therein by that attachment. Therefore, as part of a public state agency contract, the entirety of the vendor’s response will be subject to public disclosure regardless of any claim of confidentiality or previously applicable statutory exemption. Nevertheless, should the vendor obtain a court order from a Washington State court of competent jurisdiction prohibiting disclosure of parts of its Response, the COLLEGE will comply with the court order. The burden is upon

the vendor to evaluate and anticipate its need to maintain confidentiality and to proceed accordingly.

The COLLEGE's sole responsibility shall be limited to maintaining the above data in a secure area and to notify vendor of any request(s) for disclosure within a period of six (6) years from date of award. Failure to label materials "confidential" as required above, or failure to timely respond after notice of request for public disclosure has been given, shall be deemed a waiver by the vendor of any claim that such materials are exempt from disclosure.

16. CONTRACTUAL REQUIREMENTS

The successful vendor(s) is/are expected to enter into an agreement that contains substantially the same general terms and conditions as shown in Section V (24). To be responsive to this RFP, vendors must indicate, in writing, their complete acceptance of all provisions. However, vendors may propose revisions to the contract terminology for clarification and procedural purposes ONLY. The substantive and philosophical aspects of the agreement are non-negotiable.

To be considered responsive to this RFP, vendors must include a copy of any standard agreements that the vendor proposes to become a part of the final contract, as well as any language the vendor requires specific to the services provided under this agreement.

In the event of a conflict between the clauses required by PENINSULA COLLEGE and the clauses submitted with the proposal, the clauses required by PENINSULA COLLEGE will govern.

17. CLARITY OF PROPOSAL

Proposals should be prepared simply and economically, providing straightforward, concise descriptions of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.

SECTION IV – EVALUATION OF RESPONSES

18. EVALUATION PROCEDURES

It is the intent of this section to indicate the basic methodology that will be used to evaluate all proposals.

The vendor must satisfy the requirements of this RFP to qualify for further consideration. Staff from the COLLEGE will perform a technical and financial evaluation of each vendor's response. The evaluation process will determine the merits of the vendor's approach and relative competitive position.

After the initial evaluation of responses and prior to the final award of a contract, the COLLEGE's evaluation team shall have the option to invite the top finalists to make oral presentations, or to make facilities available for on-site inspection and/or demonstration by the evaluation committee. The presentation will be limited to the material contained in the bidder's proposal, with the limited exception that a bidder may address specific questions posed by the evaluation team or provide clarification of information contained in its response. Such presentations will be at the vendor's expense.

Vendor is specifically notified that failure to comply with any part of the RFP may result in rejection of the proposal as non-responsive. Responsive proposals will then be reviewed by a Peninsula College evaluation committee. Responses that do not meet all of the requirements listed in Section III will be eliminated from further consideration. All remaining responses will be reviewed and scored according to the Scoring Criteria and Assignment of Points stated in Section IV.21.

Scoring will be on a scale of zero to one hundred. The scoring and judgment as relates to the vendor responses shall rest solely on the College evaluation committee and disputing a given score, or comparison of scores, will not be allowed. The highest scoring response will be the apparent successful vendor.

Upon completion of the evaluation process, the RFP Coordinator will notify the Apparently Successful Vendor of the College's selection. Vendors whose proposals were not selected for further negotiation or award will be notified separately.

The College reserves the right, at its sole discretion, and based solely on its determination of the respondents' qualifications, to accept or reject any or all responses to this RFP, to postpone the selection process for its own convenience at any time, to waive any defects in the RFP, and to re-advertise for proposals.

The College also reserves the right to accept or reject any individual sub-contractors that a respondent proposes to use.

This RFP shall not in any way create a binding contract of any kind between the College and any respondent. The respondents acknowledge and agree that in submitting a response to this RFP, the preparation of all materials for submittal and all presentations or interviews are at their sole cost and expense, and the College shall not, under any circumstances, be responsible for any cost or expense incurred by the respondent in this regard. In addition, the respondent acknowledges and agrees that all submitted responses shall remain the property of the College.

19. BASIS FOR EVALUATION

The General Qualifications, Deliverables, and Pricing responses will be evaluated on the basis of information provided in the proposal and any subsequent interviews and clarification responses.

20. EVALUATION COMMITTEE

All proposals will be reviewed by the Evaluation Committee. The Committee will consist of COLLEGE personnel familiar with contracting and the services requested. The Committee will consider how well the vendor's response meets all requirements as described. It is important that the responses be clear and complete so that the evaluators can adequately understand all aspects of the proposal.

21. EVALUATION CRITERIA

The following criteria will be used by the evaluation committee to evaluate each written proposal:

Initial Score	Criteria Points
Work Plan/Project Approach/Schedule	50
Experience of the Firm	20
Firms' Contract References	20
Price	10
Total	100

SECTION V – CONTRACT SPECIFICATIONS

22. CONTRACT INFORMATION

The “Standard Terms and Conditions” of the Agreement for Concentration Account Services, located in Attachment A, must be included in the final negotiated contract with the successful vendor(s).

23. AWARD OF CONTRACT(S) – (See Section One)

The COLLEGE shall conduct contract negotiations with the vendor(s) that has/had most closely met the requirements set forth in this RFP on the basis of the evaluation points. If the COLLEGE and the Apparent Successful Vendor(s) fail to negotiate an agreement/agreements deemed acceptable by the COLLEGE, the COLLEGE reserves the right to negotiate a contract with the next most qualified vendor(s).

After successful contract negotiations have been completed, the Apparent Successful Vendor(s) will be awarded a Master Agreement(s) for Marketing Services for the COLLEGE which will include all requirements, terms and conditions of this solicitation and the vendor’s response.

24. PROPOSED CONTRACT TERMS

The following terms and conditions are what the College wants to use in a contract with the selected vendor(s). Vendors may propose other language or additional clauses. Vendors who have reservations or concerns about any of the terms and conditions need to make them known with their proposal.

A violation of these terms and conditions will be cause for cancellation or suspension of the contract.

24.1 EFFECTIVE CONTRACT DATES

The Contract term shall be for one year effective April 1, 2020 or before through March 31, 2022 with six additional one-year option renewals by the College, based on the same terms and conditions. Prices shall remain in effect until changed by mutual agreement at which point the following applies: The Vendor submits a price listing prior to July 1, 2022, and each July 1 thereafter, if applicable, stating the prices that will be in effect for the additional one-year period.

24.4 MINORITY AND WOMEN BUSINESS ENTERPRISES

In accordance with legislative findings and policies set forth in Chapter 39.19 RCW, the State of Washington encourages participation in all its contracts by MWBE firms certified by the Office of Minority and Women’s Business Enterprises (OMWBE). Participation may be either on a direct

basis in response to this solicitation/invitation or as a subcontractor to a bidder/proposer.

Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the contract documents will apply. Bidders may contact OMBWE at (360) 753-9693 to obtain information on certified firms for potential subcontracting arrangements.

24.5 CONFLICT OF INTEREST

Neither the Vendor, nor any employee or agent of the Vendor shall participate in the performance of any duty, in whole nor in part, pursuant to this Agreement to the extent that participation is prohibited by Chapter 42.18 RCW, the Executive Conflict of Interest Act and/or Chapter 42.22 RCW, Code of Ethics for Public Officers and Employees.

24.6 ASSIGNMENT

Neither party to this Agreement shall have the right to assign this Agreement in whole nor in part without prior written consent of the other.

24.7 AMENDMENTS

No amendment of this Agreement shall be effective unless it is in writing and executed by the College's Purchasing Manager and by the selected Vendor and delivered as specified in Section 24.8 NOTICES.

24.8 NOTICES

All notices provided relevant to this RFP/contract shall be delivered and addressed to the following parties:

If to the College:

Peninsula College
ATTN: Business Services
1502 E. Lauridsen BLVD., Port Angeles, WA 98362
Phone: 360.417.6233 Fax: 360.417.6218
Email: cwood@pencol.edu

If to the selected Vendor:

The person signing the Vendor's proposal in response to the College's Request for Proposal. Or to another designated person or address as may be assigned in writing and provided to the other party.

24.9 INDEMNIFICATION:

The Vendor shall indemnify, defend, and hold the COLLEGE, the Board of Trustees of the COLLEGE, and their officers, employees, students and agents, harmless from and against all claims for damages, costs (including attorney's fees), or liability, relating to the death or injury to any persons or the damage of any property resulting from or arising out of the acts or omissions of the Vendor or its employees, agents, or subcontractors in connection with this CONTRACT. The Vendor expressly agrees to indemnify, defend, and hold harmless the COLLEGE for any claim arising out of or incident to the Vendor's or any subcontractor's performance or failure to perform this CONTRACT. The Vendor shall be required to indemnify, defend and hold harmless the COLLEGE only to the extent claim is caused in whole or in part by negligent acts or omissions of the Vendor. The Vendor waives its immunity under Title 51 RCW to the extent it is required to indemnify the COLLEGE, the Board of Trustees of the COLLEGE, and their officers, employees, students and agents as provided herein.

24.10 GOVERNING LAW

This contract is subject to the law and statutes of the State of Washington, with venue set in the Superior Court of Clallam County.

24.11 TERMINATION

If the Vendor fails to provide services as stipulated in this Agreement, and upon receipt of notice from the College, does not correct the deficiency within a reasonable period of time (not to exceed sixty (60) calendar days unless otherwise agreed to by both parties), the College reserves the right to terminate this contract for cause (including but not limited to non-appropriation) by giving written notification to the Vendor.

24.12 INTERPRETATION OF CONTRACT

This contract, including referenced Addenda, represents all the terms and conditions agreed upon by the parties. No other interpretation or representation, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind any of the parties hereto.

24.13 CONFORMANCE

If any provision of this contract violates any statute or rule of law of the State of Washington, it is considered modified to conform to that statute or rule of law.

24.14 APPROVAL

This contract shall be subject to the written approval of the College's authorized representative **as specified in SECTION 24.8 NOTICES, and** shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

24.15 GENERAL TERMS AN CONDITIONS OF THE COLLEGE



PENINSULA COLLEGE

Standard Terms and Conditions

DEFINITIONS – As used throughout this CONTRACT, including these Standard Terms and Conditions, the following terms shall have the meaning set forth below:

"COLLEGE" means PENINSULA COLLEGE, any division, section, office, unit, campus or other entity of PENINSULA COLLEGE, or any of the officers or other officials lawfully representing PENINSULA COLLEGE.

"CONTRACT" means purchase order and/or the entire written agreement between the COLLEGE and the CONTRACTOR, including any Exhibits, Attachments, documents, and materials incorporated by reference.

"CONTRACTOR" means that firm, provider, organization, individual or other entity providing goods and/or performing service(s) under this CONTRACT, and shall include all employees, assigns, successors in interest and authorized agents of the CONTRACTOR.

"Debarment" means an action taken by a Federal or Washington State official to exclude a person or business entity from participating in transaction involving certain federal funds.

"Improper influence" means any influence that induces or tends to induce a COLLEGE employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

"Law" means any Federal, State, Local or COLLEGE regulation, law, rule, policy, or ordinance.

"Materials" means all products and information in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, software, digital file, computer programs, films, tapes, and sound reproductions.

"Ownership" includes the right to copyright, patent, and register, and the ability to transfer, these rights.

"Party" or **"Parties"** Party, when capitalized, shall mean an individual generic reference to the CONTRACTOR or the COLLEGE. Parties, when capitalized, shall mean both the CONTRACTOR and the COLLEGE.

"Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, Social Security Numbers, driver license numbers, other identifying numbers, and any financial identifiers.

"RCW" means the Revised Code of Washington. All references in this CONTRACT to RCW chapters or sections shall include any successor, or replacement statute.

"Special Terms and Conditions" means terms and conditions other than these General Terms and Conditions.

"Subcontract" means any separate agreement or contract between the CONTRACTOR and an individual or entity ("Subcontractor") to perform all or portion of the duties and obligations that the CONTRACTOR is obligated to perform pursuant to this CONTRACT.

"Subcontractor" means one not in the employment of the CONTRACTOR, who is performing all or part of those services under this CONTRACT under a separate contract with the CONTRACTOR. The terms "Subcontractor" and "Subcontractors" means Subcontractor(s) in any tier.

1. **ADVANCE PAYMENTS PROHIBITED:** – No payments in advance of or in anticipation of goods or services to be provided under this CONTRACT shall be made by the COLLEGE, except as authorized by law.
2. **AMENDMENTS:** – This CONTRACT may only be amended by the mutual written agreement of the Parties. No material alterations in any of the terms, conditions, delivery, price, quality, quantity, or specifications shall be effective unless the alteration is expressly acknowledged and accepted in writing by an authorized person at the COLLEGE.
3. **AMERICANS WITH DISABILITIES ACT (ADA):** – The CONTRACTOR must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.
4. **ANTITRUST ASSIGNMENTS:** – The CONTRACTOR hereby assigns to the COLLEGE any and all claims for price fixing or overcharges relating to goods, products, services and/or materials purchased under this CONTRACT, except as to overcharges that result from antitrust violations commencing after the price is established under this CONTRACT and that are not passed on to the COLLEGE under an escalation clause.
5. **ASSIGNMENT:** – The work to be provided under this CONTRACT, and any claim arising thereunder, is not assignable or delegable by the CONTRACTOR without prior written consent by the COLLEGE. Provision of monies due under this CONTRACT shall only be assignable with prior written permission of the COLLEGE.
6. **ATTORNEYS' FEES:** – In the event of litigation or other action brought to enforce the CONTRACT terms; each party shall bear its own attorneys' fees and costs.
7. **BRANDS:** – Special brands, when named, are to indicate the standard or quality, performance, or use desired. Bids on CONTRACTOR's equal will be considered provided CONTRACTOR specifies brand, model, and the necessary descriptive literature. In the event the COLLEGE elects to contract for an alternate purported to be an equal by the CONTRACTOR, the acceptance of the item will be conditioned on the COLLEGE's inspection and testing after receipt. If, in the sole judgment of the COLLEGE, the item is determined not to be an equal, the material shall be returned at the CONTRACTOR's expense and this contract terminated.

8. BREACH, DEFAULT, TERMINATION:

a. Breach: A breach of a term or condition of this CONTRACT shall mean any one or more of the following events:

- (1) The CONTRACTOR fails to perform the services by the date required or by a later date as may be agreed to in a written amendment to this CONTRACT signed by the COLLEGE;
- (2) The CONTRACTOR breaches any warranty or fails to perform or comply with any term or provision in this CONTRACT;
- (3) The CONTRACTOR makes any general assignment for the benefit of creditors;
- (4) In the COLLEGE's sole opinion, the CONTRACTOR becomes insolvent or in an unsound financial condition so as to endanger performance hereunder;
- (5) The CONTRACTOR becomes the subject of any proceeding under any law relating to Bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors;
- (6) Any receiver, trustee, or similar official is appointed for the CONTRACTOR or any of the CONTRACTOR's property;
- (7) The CONTRACTOR is determined to be in violation of any rules or Laws and that such determination, in the COLLEGE's sole opinion, renders the CONTRACTOR unable to perform any aspect of this CONTRACT.

b. Default: The CONTRACTOR may be declared in default for a material breach of any term or condition.

c. In the event of termination or suspension for cause, CONTRACTOR will be entitled to receive compensation for satisfactory work completed prior to the effective date of such termination/suspension. Such compensation shall be based on the value of such work to COLLEGE.

In the event of termination, COLLEGE shall have the right to procure any replacement materials, supplies, services and/or equipment that are the subject of this Contract on the open market. In addition, CONTRACTOR shall be liable for all damages as authorized by law including, but not limited to, any price difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

d. Termination for Convenience: The COLLEGE may terminate this CONTRACT, in whole or in part, at any time and for any reason by giving thirty (30) calendar days written termination notice to the CONTRACTOR. Termination charges shall not apply unless they are subsequently agreed upon by both Parties. Where termination charges are applicable, both Parties agree to negotiate in good faith and to limit the extent of negotiations to valid documented expenses incurred by the CONTRACTOR prior to date of termination. Should the Parties not agree to a satisfactory settlement, the matter may be subjected to mediation and/or legal proceedings.

A termination shall be deemed a "Termination for Convenience" if it is determined that the CONTRACTOR: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of the COLLEGE provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

e. Termination for Breach and/or Default: Except in the case of delay or failure to perform resulting from circumstances beyond the control and without the fault or negligence of the CONTRACTOR or of the CONTRACTOR's suppliers or subcontractors, the COLLEGE shall be entitled, by written or oral notice, to cancel and/or terminate this CONTRACT in its entirety or in part for breach and/or for default of any of the terms herein and to have all other rights against the CONTRACTOR by reason of the CONTRACTOR's breach as provided by Law.

f. Funding Contingency: In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion, the COLLEGE may terminate this Agreement under the "Termination for Convenience" clause without advance notice, subject to renegotiation under those new funding limitations and conditions.

g. Termination by Mutual Agreement: The COLLEGE or the CONTRACTOR may terminate this CONTRACT in whole or in part, at any time by giving sixty (60) calendar days' notice, by mutual written agreement signed by authorized persons.

h. Termination for Withdrawal of Authority: – In the event that COLLEGE'S authority 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, COLLEGE may terminate this Contract by seven (7) calendar day's written notice to CONTRACTOR. No penalty shall accrue to COLLEGE in the event this section shall be exercised. This section shall not be construed to permit COLLEGE to terminate this Contract in order to acquire similar Services from a third party.

i. Termination for Cause by CONTRACTOR: – This Contract may be terminated by CONTRACTOR if after reasonable notice and an opportunity to cure, COLLEGE should fail substantially to perform in accordance with a material term of this

Contract through no fault of CONTRACTOR. CONTRACTOR shall give written notice to COLLEGE of such termination at least thirty (30) days before the date of termination. If the project is suspended by COLLEGE for more than ninety (90) consecutive days, CONTRACTOR may terminate this Contract by giving written notice. Upon termination by CONTRACTOR, COLLEGE shall be liable only for payment required under the terms of this Contract for services actually rendered or materials delivered prior to the effective date of termination. In no event shall CONTRACTOR be entitled to consequential or indirect costs associated with termination. There shall be no payment for anticipated profit, unperformed services, or unabsorbed overhead.

9. **CHANGES:** – No alteration in any of the terms, conditions, delivery, price, quality, quantities, or specifications of orders under this Agreement will be effective without prior written consent of the COLLEGE.
10. **COMPLIANCE WITH APPLICABLE LAW:** – At all times during the term of this CONTRACT, the CONTRACTOR shall comply with all Laws, including but not limited to, nondiscrimination laws, anti-kickback laws, fraudulent claims law and export controls.
11. **CONFIDENTIALITY:** – The CONTRACTOR may use Personal Information and any other information gained by reason of this CONTRACT only for the purpose of this CONTRACT. The CONTRACTOR shall not disclose, transfer, or sell any such information to any third party, except as provided by law or, in the case of Personal Information, without the prior written consent of the person to whom the Personal Information pertains. The CONTRACTOR shall maintain the confidentiality of all confidential information gained by reason of this CONTRACT, and shall return or certify the destruction of such information if requested in writing by the COLLEGE.
12. **CONFLICT OF INTEREST:** – Notwithstanding any determination by the Executive Ethics Board or other tribunal, the COLLEGE may, in its sole discretion, by written notice to the CONTRACTOR, terminate this CONTRACT if it is found after due notice and examination by the COLLEGE that there is a violation of the Ethics in Public Service Act, [Chapter 42.52 RCW](#), or any similar statute involving the CONTRACTOR in the procurement of this CONTRACT, or the provision of goods or services under this CONTRACT. If this CONTRACT is terminated as provided above, the COLLEGE shall be entitled to pursue the same remedies against the CONTRACTOR as it could pursue in the event of a breach of this CONTRACT by the CONTRACTOR. The rights and remedies of the COLLEGE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law.
13. **COPYRIGHT AND INTELLECTUAL PROPERTY PROVISIONS:** – Unless otherwise provided, all Materials produced under this CONTRACT shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the COLLEGE. The COLLEGE shall be considered the author of such Materials. If the Materials are not considered "works for hire" under the U.S. Copyright laws, the CONTRACTOR hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to the COLLEGE effective from the moment of creation of such Materials. For Materials that are delivered under this CONTRACT, but that incorporate pre-existing materials not produced under this CONTRACT, the CONTRACTOR grants to the COLLEGE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The CONTRACTOR warrants and represents that the CONTRACTOR has all rights and permissions, including intellectual property rights, moral rights, and rights of publicity, necessary to grant such a license to the COLLEGE. The COLLEGE shall receive prompt written notice of each notice or claim of copyright infringement received by the CONTRACTOR with respect to any Materials delivered under this CONTRACT. The COLLEGE shall have the right to modify or remove any restrictive markings placed upon the Materials by the CONTRACTOR.
14. **COVENANT AGAINST CONTINGENT FEES:** – The CONTRACTOR warrants that no person or selling agent has been employed or retained to solicit or secure this CONTRACT upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established agents, as defined in the [FAR Subpart 3.4](#), maintained by the CONTRACTOR for the purpose of securing business. The COLLEGE shall have the right, in the event of breach of this clause by the CONTRACTOR, to annul this CONTRACT without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage, or contingent fee.
15. **DEBARMENT CERTIFICATION:** – The CONTRACTOR, by accepting the terms of this CONTRACT, certifies that the CONTRACTOR is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal or Washington State department or agency from participating in transactions. The CONTRACTOR shall include the above mentioned requirement in any and all subcontracts into which it enters. In the event that the CONTRACTOR becomes debarred, suspended or ineligible from participating in transactions, the CONTRACTOR shall notify the COLLEGE in writing within three working days of such an event.
16. **DELIVERY AND ACCEPTANCE:** – Delivery shall be accomplished by the date and time in the CONTRACT, and noncompliance may be construed as grounds for termination for cause for failure to deliver on time. Partial delivery will not be construed as acceptance of goods, including failure to deliver related software, materials or documentation. Unless otherwise provided in writing, the COLLEGE shall have ninety (90) days after delivery to accept software and equipment.
17. **DELIVERY RESTRICTIONS:** – Parking on campus sidewalks, grounds, or roadways is strictly prohibited.
18. **DISPUTES:** – Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with COLLEGE.
 - a. The request for a dispute hearing must:
 - (1) Be in writing;

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

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

19. **DUPLICATE PAYMENT:** – The COLLEGE shall not pay the CONTRACTOR, if the CONTRACTOR has charged or will charge the State of Washington or any other party under any other contract or agreement, for the same services or expenses.
20. **FORCE MAJEURE:** – Neither the CONTRACTOR nor the COLLEGE shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either the CONTRACTOR or the COLLEGE. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than the COLLEGE acting in either its sovereign or contractual capacity, war, acts of terrorism, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or other force majeure; but in every case the delays must be beyond the reasonable control and without fault or negligence of the CONTRACTOR, the COLLEGE, or their respective Subcontractors.
21. **GOVERNING LAW:** – This CONTRACT shall be interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Clallam County.
22. **INDEMNIFICATION:** – The CONTRACTOR shall indemnify, defend, and hold the COLLEGE, the Board of Trustees of the COLLEGE, and their officers, employees, students and agents, harmless from and against all claims for damages, costs (including attorney's fees), or liability, relating to the death or injury to any persons or the damage of any property resulting from or arising out of the acts or omissions of the CONTRACTOR or its employees, agents, or subcontractors in connection with this CONTRACT. The CONTRACTOR expressly agrees to indemnify, defend, and hold harmless the COLLEGE for any claim arising out of or incident to the CONTRACTOR's or any subcontractor's performance or failure to perform this CONTRACT. The CONTRACTOR shall be required to indemnify, defend and hold harmless the COLLEGE only to the extent claim is caused in whole or in part by negligent acts or omissions of the CONTRACTOR. The CONTRACTOR waives its immunity under [Title 51 RCW](#) to the extent it is required to indemnify the COLLEGE, the Board of Trustees of the COLLEGE, and their officers, employees, students and agents as provided herein.
23. **INDEPENDENT CONTRACTOR:** – The Parties intend that an independent contractor relationship is created by this CONTRACT. The CONTRACTOR and his or her employees or agents performing under this CONTRACT are not employees or agents of the COLLEGE. The CONTRACTOR, his or her employees, or agents performing under this CONTRACT will not hold himself/herself out as, nor claim to be, an officer or employee of the COLLEGE or of the State of Washington during the term of this CONTRACT, or act as attorney in fact, nor will the CONTRACTOR make any claim of right, privilege or benefit that would accrue to such employee. Conduct and control of the work will be solely with the CONTRACTOR.
24. **INDUSTRIAL INSURANCE COVERAGE:** – The CONTRACTOR shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the CONTRACTOR fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, COLLEGE may collect from the CONTRACTOR the full amount payable to the Industrial Insurance accident fund. The COLLEGE may deduct the amount owed by the CONTRACTOR to the accident fund from the account payable to the CONTRACTOR by the COLLEGE under this contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the CONTRACTOR.
25. **INFRINGEMENTS:** – The CONTRACTOR agrees to defend, indemnify and hold harmless the COLLEGE against all claims for patent, copyright, or franchising infringements arising from the purchase, installation, or use of software, documentation, material or product ordered on this CONTRACT, and to assume all expense and damage arising from such claims.
26. **INSPECTION:** – In addition to any rights of access or inspection that may be included in any Special Terms and Conditions, the CONTRACTOR shall provide reasonable access to the CONTRACTOR's place of business, the CONTRACTOR records, and client records, to the COLLEGE and to any authorized agent of the state of Washington or the federal government in order to monitor, audit, and evaluate the CONTRACTOR's performance and compliance with applicable Laws, and these CONTRACT terms during the term of this CONTRACT and for one (1) year following termination or expiration of this CONTRACT, six (6) years in relation to all records maintained per Records Maintenance clause at the termination or expiration of this CONTRACT.
27. **LICENSING, ACCREDITATION AND REGISTRATION:** – The CONTRACTOR shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this contract

28. **LIENS, CLAIMS AND ENCUMBRANCES:** – The CONTRACTOR warrants and represents that all software, documentation, materials, equipment or services delivered under this CONTRACT are free and clear of all liens, claims, or encumbrances of any kind.
29. **LIMITATION OF AUTHORITY:** – Only the COLLEGE or COLLEGE'S delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the AGENT.
30. **LIMITATION OF LIABILITY:** – The COLLEGE shall not be liable to the CONTRACTOR or to any Subcontractor, regardless of the form of action, for any consequential, incidental, indirect, special or punitive damages, or for any claim or demand based on a Date Compliance issue, release of information, or patent, copyright, or other intellectual property right infringement. This section does not modify any specific agreement regarding liquidated damages or any other conditions as are elsewhere expressly agreed to between the Parties.
31. **NO DISCRIMINATION:** - There will be no discrimination in the performance of this CONTRACT on the basis of race, religion, creed, color, national origin, sex, marital status, sexual orientation (including gender identity), age, genetic history, honorably discharged veteran or military status, the presence of any sensory, mental, or physical disability, the use of a trained dog guide or service animal by a person with a disability, or any other protected status, in compliance with applicable state and federal law.
32. **ORDER IDENTIFICATION:** – All invoices, packing lists, packages, shipping notices, and other written documentation affecting any goods delivered under this CONTRACT shall contain the applicable order number. Packing lists shall be enclosed in each and every box or package shipped pursuant to this CONTRACT indicating the contents therein. Invoices will not be processed for payment until all items invoiced are received. Shipments received without order numbers may be refused, at the CONTRACTOR's expense.
33. **ORDER OF PRECEDENCE:** – In the event of any inconsistencies or conflicting terms and conditions in this CONTRACT, such inconsistency or conflict shall be resolved by giving precedence in the following order: Federal, State, or Local laws, the COLLEGE's Special Terms and Conditions, the COLLEGE's Standard Terms and Conditions; the CONTRACTOR's terms proposed are rejected, unless otherwise provided in writing by the COLLEGE's Purchasing Department.
34. **OVERPAYMENTS AND ASSERTION OF LIEN:** – In the event that the COLLEGE establishes overpayments or erroneous payments made to the CONTRACTOR under this CONTRACT, the COLLEGE may secure repayment, plus interest, if any, through the filing of a lien against the CONTRACTOR's real property or by requiring the posting of a bond, assignment of deposit or some other form of security acceptable to the COLLEGE or by doing both.
35. **PACKING:** – No charges will be allowed for special handling, packing, wrapping, bags, containers, reels, etc. unless otherwise provided herein.
36. **PAYMENT, CASH DISCOUNT:** – the COLLEGE shall not process invoices for payment, and the period of computation for cash discount will not commence, until the COLLEGE receives a properly completed invoice or receives and accepts invoiced items, whichever is later and a valid [IRS W-9 Form](#) is on-file. If an adjustment in payment is necessary due to damage or dispute, the cash discount period shall commence on the date final approval for payment is authorized. If the COLLEGE fails to make a timely payment, vendor may invoice for a minimum of \$1 or maximum of 1% per month on the amount overdue ([RCW 39.76.011\(1\)](#)). Payment shall not be considered late if a check or warrant is available or mailed within the time specified, or, if no terms are specified, within 30 days from date of receipt of a properly completed invoice or goods, whichever is later. The COLLEGE shall not honor drafts nor accept goods on a sight draft basis.
37. **PRICES:** – If price is not stated on this CONTRACT, it is agreed that the goods shall be billed at the price last quoted or paid, or the prevailing market price, whichever is lower.
38. **PROPRIETARY INFORMATION:** – Supplier should clearly identify any material such as, but not restricted to, valuable formulae, design, drawing, and research data claimed to be exempt from public records request, as allowable by law ([RCW 42.56.270](#)), along with a statement of the basis for such claim of exemption. Pricing and entire bid packages are not considered proprietary and are subject to public record. The COLLEGE will give notice to the supplier of any request for disclosure of such information. Failure to so label such materials or to timely respond after notice of request for public disclosure has been given shall be deemed a waiver by the submitting supplier of any claim that such materials are, in fact, exempt.
39. **PUBLICITY:** – The CONTRACTOR agrees to submit to the COLLEGE for prior approval, all advertising and publicity matters relating to this CONTRACT wherein the COLLEGE's name is mentioned or language used from which the connection of the COLLEGE's name may, in the COLLEGE's judgment, be inferred or implied. The CONTRACTOR agrees not to publish or use such advertising and publicity matters without the prior written consent of the COLLEGE.
40. **RECORD MAINTENANCE:** – The CONTRACTOR shall maintain, at no additional cost, all records and other materials relevant to this CONTRACT for a period of six (6) years following the date of termination or expiration of this CONTRACT. At no additional cost, these records shall be subject at all reasonable times to inspection, review or audit by the COLLEGE, personnel duly authorized by the COLLEGE, the Office of the State Auditor, and any federal and state officials so authorized by Law or this CONTRACT. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

41. **REJECTION:** – All goods or materials purchased under this CONTRACT are subject to approval by the COLLEGE. Any rejection of goods or material resulting from nonconformity to the terms, conditions, or specifications of this CONTRACT, whether held by the COLLEGE or returned, will be at the CONTRACTOR's risk and expense.
42. **RIGHTS AND REMEDIES:** – Failure of the COLLEGE to insist upon the strict performance of any term or condition of this CONTRACT or to exercise or delay the exercise of any right or remedy provided in this CONTRACT or by law, or the acceptance of (or payment for) materials, equipment or services, shall not release the CONTRACTOR from any responsibilities or obligations imposed by this CONTRACT or by law, and shall not be deemed a waiver of any right of the COLLEGE to insist upon the strict performance of this CONTRACT.
43. **RIGHT OF INSPECTION:** – The CONTRACTOR shall provide right of access to its facilities to the COLLEGE, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.
44. **SAFETY AND HEALTH REQUIREMENTS:** – CONTRACTOR agrees to comply with the conditions of the Federal Occupational Safety and Health Act of 1970 (OSHA), the Washington Industrial Safety and Health Act of 1973 (WISHA), and the standards and regulations issued thereunder and certifies that all items furnished and purchased under this CONTRACT will conform to and comply with said standards and regulations. CONTRACTOR further agrees to indemnify and hold harmless the COLLEGE from all damages assessed against the COLLEGE as a result of CONTRACTOR's failure to comply with the Acts and the standards issued thereunder and for failure of the items furnished under this order to so comply.
45. **SEVERABILITY:** – If any term or condition of this CONTRACT is held invalid by any court, such invalidity shall not affect the validity of the other terms or conditions of this CONTRACT.
46. **SHIPPING INSTRUCTIONS:** – Unless otherwise instructed, all goods procured under this contract are to be shipped prepaid, FOB Destination, as defined in [RCW Title 62A.2-319](#). Where specific authorization is granted to ship goods FOB Shipping Point, the CONTRACTOR agrees to prepay all shipping charges, to route via the cheapest common carrier, and to bill the COLLEGE as a separate item on the invoice for the charges. The COLLEGE reserves the right to refuse COD shipments. Regardless of FOB point, the CONTRACTOR agrees to bear all risks of loss, injury, or destruction of goods and materials ordered pursuant to this CONTRACT that occurs prior to delivery to the COLLEGE, and such loss, injury, or destruction shall not release the CONTRACTOR from any obligation hereunder.
47. **TAXES:** – All payments accrued on account of property taxes, payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the CONTRACTOR or its staff shall be the sole responsibility of the CONTRACTOR. Where required by state statute or Law, the CONTRACTOR shall pay for and maintain in current status all taxes that are necessary for CONTRACT performance. Unless otherwise indicated, the COLLEGE agrees to pay State of Washington sales or use taxes on all applicable consumer services and materials purchased. No charge by the CONTRACTOR shall be made for federal excise taxes and the COLLEGE agrees to furnish the CONTRACTOR with an exemption certificate where appropriate. The CONTRACTOR shall calculate and enter the appropriate Washington State and local sales tax on the invoice. Tax is to be computed on new items after deduction of any trade-in in accordance with [WAC 458-20-247](#).
48. **TERMINATION PROCEDURES:** – Upon termination of this Contract, the COLLEGE, in addition to any other rights provided in this contract, may require the CONTRACTOR to deliver to the COLLEGE any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The COLLEGE shall pay to the CONTRACTOR the agreed upon price, if separately stated, for completed work and services accepted by the COLLEGE, and the amount agreed upon by the CONTRACTOR and the COLLEGE for;

- (i) Completed work and services for which no separate price is stated,
- (ii) Partially completed work and services,
- (iii) Other property or services that are accepted by the COLLEGE, and
- (iv) The protection and preservation of property, unless the termination is for default, in which case the COLLEGE shall determine the extent of the liability of the COLLEGE.

Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The COLLEGE may withhold from any amounts due the CONTRACTOR such sum as the College determines to be necessary to protect the COLLEGE against potential loss or liability.

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

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

- a. Stop work under this CONTRACT on the date, and to the extent specified, in the notice;
- b. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under this CONTRACT that is not terminated;

- c. Assign to the COLLEGE, in the manner, at the times, and to the extent directed by the COLLEGE, all of the rights, title, and interest of the CONTRACTOR under the orders and subcontracts so terminated, in which case the COLLEGE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
 - d. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the COLLEGE to the extent the COLLEGE may require, which approval or ratification shall be final for all the purposes of this clause;
 - e. Transfer title to the COLLEGE and deliver in the manner, at the times, and to the extent directed by the COLLEGE any property which, if this CONTRACT had been completed, would have been required to be furnished to the COLLEGE;
 - f. Complete performance of such part of the work as shall not have been terminated by the COLLEGE;
 - g. Take such action as may be necessary, or as the COLLEGE may direct, for the protection and preservation of the property related to this CONTRACT which is in the possession of the CONTRACTOR and in which the COLLEGE has or may acquire an interest.
49. **TREATMENT OF ASSETS:**
- a. Title to all property furnished by the COLLEGE shall remain in the COLLEGE. Title to all property furnished by the CONTRACTOR, for the cost of which the CONTRACTOR is entitled to be reimbursed as a direct item of cost under this CONTRACT, shall pass to and vest in the COLLEGE upon delivery of such property by the CONTRACTOR. Title to other property, the cost of which is reimbursable to the CONTRACTOR under this CONTRACT, shall pass to and vest in the COLLEGE upon:
 - i. issuance for use of such property in the performance of this CONTRACT.
 - ii. commencement of use of such property in the performance of this CONTRACT.
 - iii. reimbursement of the cost thereof by the COLLEGE in whole or in part, whichever first occurs.
 - b. Any property of the COLLEGE furnished to the CONTRACTOR shall, unless otherwise provided herein or approved by the COLLEGE, be used only for the performance of this CONTRACT.
 - c. The CONTRACTOR shall be responsible for any loss or damage to property of the COLLEGE that result from the negligence or misconduct of the CONTRACTOR or from the failure on the part of the CONTRACTOR to maintain and administer that property in accordance with sound management practices.
 - d. If any the COLLEGE property is lost, destroyed or damaged, the CONTRACTOR shall immediately notify the COLLEGE and shall take all reasonable steps to protect the property from further damage.
 - e. The CONTRACTOR shall surrender to the COLLEGE all property of the COLLEGE before settlement upon completion, termination or cancellation of this CONTRACT.
 - f. All references to the CONTRACTOR under this clause shall also include CONTRACTOR's employees, agents or Subcontractors.
50. **U.S. DEPARTMENT OF TREASURY, OFFICE OF FOREIGN ASSETS CONTROL:** – The COLLEGE complies with U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC) payment rules. OFAC prohibits financial transactions with individuals or organizations, which have been placed on the OFAC Specially Designated Nationals (SON) and Blocked Persons sanctions list located at <http://www.treas.gov/offices/enforcement/ofac/index.html>. Compliance with OFAC payment rules ensures that the COLLEGE does not conduct business with individuals or organizations that have been determined to be supporters of terrorism and international drug dealing or that pose other dangers to the United States.

Prior to making payment to individuals or organizations, the COLLEGE will download the current OFAC SON file and compare it to COLLEGE's and statewide vendor files. In the event of a positive match, the COLLEGE reserves the right to:

- a. make a determination of "reasonability" before taking the positive match to a higher authority,
- b. seek assistance from the Washington State Office of the State Treasurer (OST) for advanced assistance in resolving the positive match,
- c. comply with an OFAC investigation, if required, and/or
- d. If the positive match is substantiated, notify the contractor in writing and terminate the contract according to the Termination for Convenience provision without making payment.

The COLLEGE will not be liable for any late payment fees or missed discounts that are the result of time required to address the issue of an OFAC match.

51. **WAIVER:** – Waiver of any default or breach shall not be deemed a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this contract unless stated to be such in writing and signed by authorized representative of the COLLEGE.
52. **WARRANTY:**

- a. Product: The CONTRACTOR warrants all goods, products and services delivered under this order conform to specifications set forth in this CONTRACT and any request for proposal upon which this CONTRACT is based, shall be free from defects in material and workmanship, and shall be fit for the intended purpose. All goods, software, documentation, materials, products and services found defective shall be replaced upon notification by the COLLEGE. All costs of replacement, including shipping charges, shall be borne by the CONTRACTOR.
- b. Price: The CONTRACTOR warrants that prices of software, documentation, materials, equipment, and services set forth herein do not exceed those charged by the CONTRACTOR to any other customer purchasing the same goods or services under similar conditions and in like or similar quantities.
- c. Financial Status: The CONTRACTOR warrants that at the time of the commencement of its performance under this CONTRACT, it has not commenced Bankruptcy proceedings and that there are no judgments, liens or encumbrances of any kind affecting title to any goods that are the subject of this CONTRACT.

25. COMPLAINT AND PROTEST PROCEDURES

25.1 COMPLAINT PROCEDURES

The complaint process occurs early in the solicitation, after the question/answer period, to catch mistakes and errors before vendors submit a response. The complaint process helps Peninsula College insure an open/transparent process. The purpose is to settle unresolved vendor issues before bids are submitted.

Grounds for complaint:

A vendor may file a complaint relative to a solicitation based on the following:

- The solicitation unnecessarily restricts competition;
- The evaluation/scoring process is unfair or flawed; or
- The solicitation requirements are inadequate or insufficient to prepare a response

Vendor Complaints:

- Must be in writing (email is acceptable)
- Must be sent to the Purchasing department no later than 5 days prior to bid deadline
- Should clearly articulate the basis for the complaint
- Should include a proposed remedy

Upon receipt of a written complaint, the Purchasing department will:

- Review the complaint.
- Respond to the complaint in writing.
- Post the complaint and solution, if any, to WEBS, the state procurement website.

The agency complaint process does not include an appeal process. The complaint may not be raised again during the protest period.

25.2 PROTEST PROCEDURES

Any participant in a competitive solicitation (RFQ/RFP) may request a debriefing conference within three business days after the Notice of Intent to Award is published. During this conference, only matters relating to the submissions by the party who requested the conference may be discussed; competitor's submissions may not be discussed. This debriefing conference may take the form of an exchange of e-mails, a phone call, or a meeting in person.

Only parties who attend a debriefing conference may subsequently file a formal protest, in writing, during the next five business days. The protest shall state the cause of the action relating to one or more of these following criteria only:

- A matter of bias, discrimination or conflict of interest on the part of an evaluator;
- Errors in computing the scores or prices; or
- Non-compliance with procedures described in the solicitation document, agency policies or the Revised Code of Washington.

Peninsula College will respond to the protest within ten business days or advise when it will be adjudicated if additional time is required. The response will be provided by a Peninsula College administrator who has not been involved in the subject procurement. Aggrieved parties who wish to appeal the response may do so in the Superior Court of Clallam County, WA.

If an award is cancelled as a result of a protest filed after award, the College shall not be liable to the awardees for, and the awardees shall not claim against the College, any alleged (a) bid preparation charges, (b) cost incurred to ensure that the awardees bid is responsive, (c) claims for anticipated lost profits, or (d) claims for damages.

ATTACHMENTS

ATTACHMENT A – OMWBE
OMWBE Declaration Form
Office of Minority and Women’s Business Enterprises

 Name of Business

 Address of Business

 City

 State

 Zip

 Name of Owner

 Phone Number

Please check each category that your business qualifies for:

	<p>The business meets the criteria for a (MBE) minority business enterprise. "Minority business enterprise," "minority-owned business enterprise," or "MBE" means a small business concern, organized for profit, performing a commercially useful function, which is legitimately owned and controlled* by one or more minority individuals or minority business enterprises certified by OMWBE. The minority owners must be United States citizens or lawful permanent residents.</p>
	<p>The business meets the criteria for a (WBE) women’s business enterprise. "Women's business enterprise," "women-owned business enterprise," or "WBE" means a small business concern, organized for profit, performing a commercially useful function, which is legitimately owned and controlled* by one or more women or women's business enterprises certified by OMWBE. The women owners must be United States citizens or lawful permanent residents.</p>
	<p>The business meets the criteria for a (MWBE) minority women’s business enterprise. "Minority women's business enterprise" or "MWBE" means a small-business concern, organized for profit, performing a commercially useful function, which is legitimately owned and controlled* by one or more minority women and is certified by OMWBE. The owners must be United States citizens or lawful permanent residents.</p>
	<p>The business meets the criteria for a (CBE) combination business enterprise. "Combination business enterprise" means a small business concern organized for profit, performing a commercially useful function, that is fifty percent owned and controlled by one or more minority men or MBEs certified by the office and fifty percent owned and controlled by one or more nonminority women or WBEs certified by OMWBE. The owners must be United States citizens or lawful permanent residents.</p>
	<p>The business meets the criteria for a (SEDBE) socially and economically disadvantaged business enterprise. "Socially and economically disadvantaged business enterprise" or "SEDBE" means a small-business concern, organized for profit, performing a commercially useful function, which is legitimately owned and controlled* by one or more socially and economically disadvantaged individuals or socially and economically disadvantaged business enterprises certified by OMWBE. The socially and economically disadvantaged owners must be United States citizens or lawful permanent residents. "Socially and economically disadvantaged individual" means a person who is a citizen or lawful permanent resident of the United States and who is: (a) Found to be a socially and economically disadvantaged individual on a case-by-case basis by OMWBE; or (b)) A member of one of the following groups that are presumed to be socially and economically disadvantaged: (i) Minority; (ii) Women; (iii) Any additional groups whose members are designated as socially and economically disadvantaged by the U.S. Small Business Administration (SBA), at such time as the SBA designation becomes effective.</p>
	<p>The business meets the criteria for a veteran owned business. "Veteran Owned Business" means a small-business concern, organized for profit, performing a commercially useful function, which is legitimately owned and controlled* by one or more veteran(s) and is certified by the OMWBE. The owners must be United States citizens or lawful permanent residents.</p>
	<p>The business <u>does</u> meet one or more of the previously listed criteria, but is not certified by OMWBE. (If checked, indicate all the categories the business would qualify for _____)</p>
	<p>The business <u>does not</u> meet any of the previously listed criteria.</p>

* "legitimately owned and controlled" means an ownership position of 50% or more of the business, and actively engaged in the regular operations of the business.

 Signature

 Date

ATTACHMENT B – CERTIFICATIONS AND ASSURANCES

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

Signature of Proposer

Title

Date

ATTACHMENT C – WAGE THEFT PREVENTION

CONTRACTOR CERTIFICATION WAGE THEFT PREVENTION – RESPONSIBLE BIDDER CRITERIA WASHINGTON STATE GOODS & SERVICES CONTRACTS

Prior to awarding a contract, agencies are required to determine that a bidder is a ‘responsible bidder.’ See RCW 39.26.160(2) & (4). Pursuant to legislative enactment in 2017, the responsible bidder criteria include a contractor certification that the contractor has not willfully violated Washington’s wage laws. See Chap. 258, 2017 Laws (enacting SSB 5301).

Procurement No.: __RFP 201211-R____

Procurement Solicitation Dated: _____, 20__

I hereby certify, on behalf of the firm identified below, as follows (check one):

- NO WAGE VIOLATIONS.** This firm has NOT been determined by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in [RCW 49.48.082](#), any provision of RCW chapters [49.46](#), [49.48](#), or [49.52](#) within three (3) years prior to the date of the above-referenced procurement solicitation date.

OR

- VIOLATIONS OF WAGE LAWS.** This firm has been determined by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in [RCW 49.48.082](#), a provision of RCW chapters [49.46](#), [49.48](#), or [49.52](#) within three (3) years prior to the date of the above-referenced procurement solicitation date.

I hereby certify, under penalty of perjury under the laws of the State of Washington, that the certifications herein are true and correct and that I am authorized to make these certifications on behalf of the firm listed herein.

FIRM NAME: _____
Name of Contractor/Bidder – Print full legal entity name of firm

By: _____
Signature of authorized person Print Name of person making certifications for firm

Title: _____ Place: _____
Title of person signing certificate Print city and state where signed

Date: _____

Return Contractor Certification to Procurement Coordinator at:

cwood@pencol.edu

ATTACHMENT D – WIPHE

TERMS AND CONDITIONS SPECIFIC TO WASHINGTON INSTITUTIONS OF PUBLIC HIGHER EDUCATION (WIPHE) COOPERATIVE PURCHASING

1. **Definitions:**

WIPHE: Washington Institutions of Public Higher Education who are signatories to the Inter-local Agreement for Cooperative Purchasing.

Lead Institution: The WIPHE member that has volunteered to conduct the solicitation/ negotiation process on behalf of the WIPHE members.

Committed Participants: Those WIPHE members who respond affirmatively to the Lead Institution's request for participation, and whose estimated purchase volume will be included in the solicitation/negotiation documents.

Potential Participants: All other WIPHE member institutions who are not Committed Participants. Potential Participants may choose to use any contract awarded, provided the contractor will accept their participation.

2. **No Exclusivity Implied:** This bid provides no exclusive arrangements for obtaining product or services by any WIPHE Institution who has not specifically been identified as committed participants. Potential Participants may purchase any product or services in this bid through their own processes for competitive procurement or via other cooperative purchasing arrangements at their disposal.

3. **Contract Administration:** This contract shall be administered by the Lead Institution, the Committed Participants, and any other Potential Participant who subsequently use a resulting agreement, in the following manner:

- A. The terms and conditions contained in their entirety in any contract which results through the Lead Institution's solicitation may not be altered except as provided herein, or, unless approved in writing by the Lead Agency's Purchasing Manager/Director.
- B. WIPHE Institutions may at their sole option, individually negotiate only operational provisions specific to the needs of their Institution. These would include agreed arrangements for such operational provisions as delivery, installation, service, and invoicing processes. Such negotiated changes shall not be binding on any other Institution. These changes may, however, bind the bidder to providing similar arrangements to the other Institutions pursuant to any Best Customer provisions of a contract.
- C. WIPHE Institutions shall individually be responsible for their obligations to the awarded contractor pursuant to any purchase associated with this agreement. Likewise, the Vendor shall be responsible for their obligations to the WIPHE Institutions pursuant to this agreement. All reasonable efforts will be made by the Vendor and the WIPHE Institutions to satisfy any breach of these obligations, or, disagreements arising between the individual WIPHE Institution and the Vendor. Resolution may take several forms, including cancellation of specific arrangements between the Vendor and the Institution. Resolutions of any nature shall not have a binding effect on any other Institution.
- D. In the event a breach or disagreement cannot be resolved between the Institution(s) and the Vendor, either party may notify the Lead Institution and request the Lead Institution satisfy the dispute in accordance with this agreement, including any Dispute Resolution process identified within.
- E. The Lead Institution may at any time act on behalf of any WIPHE Institution in resolving breach of contract, or, to settle disputes in accordance with this agreement.

4. **Contract Documents:** The Vendor shall make copies of any contract that results from the Lead Institution’s solicitation available in its entirety to any WIPHE Institution expressing an interest in purchasing the product or service. The Lead Institution and the Vendor agree that a summary of this agreement, including a phone number for interested agencies to contact the Vendor, may be placed on a public access electronic home page, bulletin board, fax-on-demand network, or similar form of accessible medium.

5. **Award in Best Interest of WIPHE:** The Lead College reserves the right to award the contract in whole or in part in a manner that most effectively serves the WIPHE members, to reject any or all bids, and to otherwise proceed with the award as necessary to protect the best interests of WIPHE. After award, members of WIPHE will issue separate purchase orders to the successful vendor(s) if they choose to acquire the items pursuant to this award.

All questions regarding this bid must be directed to Peninsula College as the Lead Institution.

All information relating to this solicitation will be retained by Peninsula College as the official public record.

6. **WIPHE Cooperative Members:**

Four Year Institutions:

Central Washington University, Ellensburg
Eastern Washington University, Cheney
The Evergreen State College, Olympia

University of Washington, Seattle
Washington State University, Pullman
Western Washington University, Bellingham

Community and Technical Colleges:

Bates Technical College, Tacoma
Bellevue Community College, Bellevue
Bellingham Technical College, Bellingham
Big Bend Community College, Moses Lake
Cascadia Community College, Bothell
Centralia College, Centralia
Clark College, Vancouver
Clover Park Technical College, Lakewood
Columbia Basin College, Pasco
Edmonds Community College, Edmonds
Everett Community College, Everett
Grays Harbor College, Aberdeen
Green River College, Auburn
Highline Community College, Des Moines
Lake Washington Technical Col., Kirkland
Lower Columbia College, Longview

Olympic College, Bremerton
Pierce College, Lakewood
Peninsula College, Port Angeles
Renton Technical College, Renton
Seattle Community Colleges, Seattle
Shoreline Community College, Seattle
Skagit Valley College, Mt. Vernon
South Puget Sound Community Col., Olympia
Community Colleges of Spokane, Spokane
Tacoma Community College, Tacoma
Walla Walla Community College, Walla Walla
Wenatchee Valley College, Wenatchee
Whatcom Community College, Bellingham
Yakima Valley Community College, Yakima
State Board for Com & Tech Colleges, Olympia

I/We agree to make the bid pricing for this RFQ #201211-R available to other government entities as listed above in the WIPHE Cooperative Purchasing Program, for the duration of the contract associated with this RFQ.

Name of Company/Vendor

Signature of authorized Person

Title

Date