

WASHINGTON STATE
DEPARTMENT OF ECOLOGY

REQUEST
For
QUALIFICATIONS

For
ARCHITECTURAL/ENGINEERING AND OTHER SERVICES

ECY RFQ 1006 WR
Issued: November 3, 2009

Project Title: Water Resources Consultant Pool

Response Due Date: November 30, 2009 (4:00 p.m. local time, Lacey, Washington)

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The Department of Ecology is an Equal Opportunity and Affirmative Action Employer. If you have special needs, please contact Jim Roth at 360/407-7036 or 360/407-6006 (TDD)

I. Introduction

The Washington State Department of Ecology (Ecology) is issuing this Request for Qualifications (RFQ) to solicit responses from entities interested in providing Ecology with water rights permit processing and other water resource oriented consulting services including cost reimbursement water rights contracts. [Note: See Appendix F for a copy of RCW 43.21A.690] Successful consultants will be pre-qualified and assembled into a Water Resources Consultant Pool for task work to be assigned or competed by Ecology on an as needed basis. The state fiscal year begins on July 1 and ends on June 30 of the subsequent year. This RFQ does not guarantee any work assignments to a particular consultant. This RFQ is a mechanism to pre-qualify and build a pool of water resources oriented consultants in case consulting services are needed for water rights and other water related consulting projects.

A. Background

RCW 43.21A.690 amends the enabling legislation of the State Departments of Ecology to permit the agency to enter into voluntary cost-reimbursement agreements with a variety of permit applicants. Cost-reimbursable activities under the law include: permit coordination; environmental review; application review; technical studies and permit processing. The law also allows Ecology to enter into cost reimbursement agreements with applicants for water rights permits. Ecology can contract with consultants to assist in processing these applications.

Ecology may also issue work assignments for water resources related work that is separate from the cost reimbursement water rights process.

CONSULTANTS in the Water Resources Consultant Pool must be aware of their role as CONSULTANTS to ECOLOGY, and as such are to be responsible for providing ECOLOGY with recommendations, advice, guidance and other similar services (including expert witness and litigation services) on matters specifically requested by ECOLOGY in a signed work assignment, based upon their best professional judgment. CONSULTANTS will not have any decision or policy-making responsibility. Decision-making will rest, in all cases, solely with ECOLOGY.

B. Scope and Objectives

The scope of this procurement to establish a pool of water resources oriented consultants to provide services on an as needed basis. Ecology may, at its sole discretion, choose to extend individual consultant contracts for up to 5 additional one year periods.

- **Scope** — Consultants under contract may be given work assignments consistent with tasks outlined in Section IV, Technical Specifications, of this RFQ.
- **Objectives** — The primary objectives in building and using a pool of water resources-oriented consultants are to:
 - build a pool with sufficient depth, expertise, and experience that use of the pool will increase Ecology’s capacity to issue water rights decisions; and
 - not adversely impact Ecology’s existing workload.

C. Convenience Contract Approach/Process

□ *General Approach* —

The responses based on this procurement will be evaluated by an Ecology team. Ecology will offer convenience contracts substantially similar to the contract attached as Appendix B to approximately 6 consultants. The decision on the final number of contracts will be made at Ecology's sole discretion. When convenience contracts are signed, consultants will be placed in the Water Resources Consultant Pool. Consultant rates will be negotiated before contract signature. These rates will be incorporated into each convenience contract. Ecology anticipates using an actual cost plus fixed fee rate structure for the contracts and any subsequent work assignments

Ecology will award work assignments for the 09-11 biennium based on the requirements in the legislative budget proviso. When the budget proviso expires (on 06/30/2011 or sooner), and there is no other legislation addressing how individual work assignments are awarded, Ecology will return to awarding work assignments at its own discretion. The proviso states:

“(23) During the 2009-11 biennium, the department shall implement its cost reimbursement authority for processing water right applications using a competitive bidding process. For each cost reimbursement application, the department shall obtain cost proposals and other necessary information from at least three prequalified costs reimbursement consultants and shall select the lowest responsive bidder.”

No Formal Rotation of Work Assignments

There will not be a formal rotational order for work assignments to individual consultants.

□ *Work Assignments* —

As Ecology identifies specific work for water resources projects, Ecology will contact a consultant in the pool to verify no conflict of interest exists and that the firm has current capacity to perform the work assignment. The consultant must fully disclose any perceived, apparent or real conflict of interest. Even if the consultant does not think there is a conflict, Ecology can reassign work if it thinks that an apparent, real or perceived conflict exists or will exist connected to this particular work assignment.

For each consultant that identifies no conflict and has capacity to perform the work, Ecology will issue a request for a project scope of work and budget from them. The work assignment will be awarded under the current proviso which directs Ecology to use a competitive bidding process for cost reimbursement when processing water rights applications. The Department is further directed to obtain cost proposals from at least three pre-qualified consultants and must select the lowest responsive bidder.

1. The initial scope of work and budget for a project will be prepared by the consultant at its cost. Ecology will pay consultants for subsequent scopes of work that are prepared after we sign a work assignment.

Ecology and the consultant will agree on the number of business days that the consultant has to waive, reject, or respond to Ecology's request with a proposal detailing the work plan, personnel, and labor hours required to complete the work tasks or phases.

2. Ecology will either accept, reject, or request a resubmission of the consultant's proposal within an agreed upon number of business days of receiving the consultant's work plan and budget. Ecology may reject a proposal on the basis of information provided by the consultant, or required to be provided, on the work plan, personnel, labor hours or mix, or conflict of interest.

In the event the consultant does not resubmit its proposal or Ecology and the consultant do not reach agreement on the consultant's proposal within an agreed upon number of business days, Ecology can, at its sole discretion, offer the work to another consultant of its choice in the pool. Once a proposal is agreed upon between Ecology, the water right applicant (if a cost reimbursement project), and the consultant, and a contract is in place between Ecology and the water right applicant, Ecology will then issue a formal work assignment to authorize proceeding with the negotiated scope of work.

3. Ecology, in its sole discretion, may terminate the convenience contract, if the consultant rejects three consecutive work assignment offers for reasons other than a conflict of interest.
4. Each accepted work assignment will be signed by Ecology and the consultant before work begins. Each work assignment will be incorporated into the consultant's convenience contract.

Individual work assignments will be administered and overseen by staff located in Ecology's regional offices.

II. Funding

The amount of funding for work under this RFQ is dependent on the number of water resources projects and, for cost reimbursement, the number of applicants who choose to use the cost reimbursement process. Work assignments resulting from this procurement will be written and signed agreements with maximum amounts payable. Ecology makes no guarantee as to the amount of work that will ultimately be awarded under the convenience contracts.

III. Instructions to Respondents

A. Definitions for the Purposes of this RFQ

- **Consultant** — Entity whose qualifications have been accepted by Ecology and is awarded a formal written convenience contract per Ecology RFQ 1006 WR, Water Resources Consultant Pool.
- **Entity** — Person, company, corporation, partnership, joint venture, prime- with sub-consultant(s), organization, conglomeration, or other legal relationship.
- **Respondent** — Entity submitting a response in order to qualify and attain a convenience contract with Ecology per Ecology RFQ 1006 WR, Water Resources Consultant Pool.

B. Rejection of Response

The Respondent is specifically notified that any failure to comply with any part of the RFQ may result in rejection of the response as non-responsive.

C. Response Contents

The response must contain information regarding the entity, staff qualifications, related experience to accomplish the type of work described in Section IV of this RFQ, references, and other required information as requested in Section V of this RFQ. Additionally, the response must demonstrate that personnel who will participate in the work are licensed in their applicable professions as required by the State of Washington.

D. Submission of Responses

Two copies of the response are required. One paper copy must have original signatures and one copy must have photocopied signatures and sent as a pdf. file. The paper submission, whether mailed or hand delivered, must arrive at Ecology at the address below no later than 4:00 p.m. local time in Lacey, Washington on November 30, 2009. The electronic copy must be e-mailed to my address here at Ecology, also, no later than 4:00 p.m. local time in Lacey, Washington on November 30, 2009.

The response must be addressed in one of the following manners:

- **Mailing Address** —

Washington State Department of Ecology
 Attn: Jim Roth
 Contracts Specialist
 ECY RFQ 1006 WR
 PO Box 47600
 Olympia, Washington 98504-7600
 Email: jrot461@ecy.wa.gov

- **Physical Address** —

Washington State Department of Ecology
 300 Desmond Drive SE
 Lacey, WA 98503

Attn: Jim Roth
Contracts Specialist
ECY RFQ 1006 WR
Phone: 360/407-7036

Respondents who mail responses should budget enough days to ensure timely receipt of their responses by the Procurement Coordinator.

Late responses will not be accepted and will be automatically disqualified from further consideration.

Telegraphic, mailgrams, telex, or facsimile responses will not be accepted.

All responses and any accompanying documentation become the property of Ecology and will not be returned.

E. Procurement Coordinator

The Procurement Coordinator is the sole point of contact in Ecology for this RFQ. All communication between the Respondent and Ecology upon receipt of this RFQ shall be with the Procurement Coordinator, as follows:

Attn: Jim Roth
ECY RFQ 1006 WR
Washington State Department of Ecology
PO Box 47600
Olympia, Washington 98504-7600
360/407-7036 (tel.)
360/407-7153 (fax.)
jrot461@ecy.wa.gov (email)

F. Question and Answer Period

As stated in Section W, there will be a Question and Answer period; see Section W for timeframe. All questions or communications are to be only with the RFP Coordinator. The RFP Coordinator is the sole point of contact in Ecology for this procurement.

Written questions must be submitted in advance to the RFP Coordinator. Ecology shall be bound only to written answers to questions. Any oral responses given at anytime during the RFP process shall be considered unofficial.

Questions arising at any time during the RFP process with the RFP Coordinator will be documented and answered in written form. A copy of the questions and answers in the form of an Addendum to the solicitation will be placed on Ecology's website at same location of this solicitation (www.ecy.wa.gov) select "Business" and "Doing Business with Ecology," then the appropriate solicitation) and Department of General Administration website (<https://fortress.wa.gov/ga/webscust/>).

G. Responses

All paper responses must be on eight and one-half by eleven (8 1/2 x 11) inch recycled paper, typed, and bound/secured with tabs separating major sections. All paper and electronic responses must use Times New Roman Font, size 11. The major sections shall include the technical specifications (work plan) pursuant to Section IV of this RFQ, and the management specifications pursuant to Section V of this RFQ.

Responses must be signed and dated by the President or Executive Director if a corporation, the managing partner if a partnership, the proprietor if a sole proprietorship, or the prime or otherwise lead individual associated with the Entity’s response.

Note: In an effort to save costs, reduce waste and produce energy savings, Respondents must use double-sided printing and recycled materials. Responses must be limited to 20 double-sided pages. The page total for resumes for consultants and subconsultants together is 10 double- sided pages. Each individual resume is limited to a single side of a page. Resumes must be included as part of the overall response document, placed in a separate section at the end.

H. Review and Evaluation of Responses

Responses will be reviewed and evaluated by an Ecology evaluation committee. Written submittals and oral interviews, if necessary, will be used to select the winning responses.

Ecology reserves the right at its sole discretion to reject any and all responses received without penalty. The final selection, if any, will be those responses which, in the opinion of Ecology after review of all responses by the evaluation committee, best meet the requirements set forth in the RFQ and are in the best interests of Ecology and the state of Washington.

Responses will be evaluated strictly in accordance with this RFQ’s requirements.

When evaluation of the responses produces numerical ratings that are substantially equivalent, i.e., scores separated by 2% or less of the total available points, Ecology reserves the right to award the convenience contract to the Respondent whose response is deemed to be in Ecology's best interest. Criteria defining the best interest of Ecology and procedures to be followed will be communicated to Respondents in the event of a tie. Tied Respondents will be given an opportunity to provide additional information.

Evaluation criteria that will be used by the Ecology evaluation committee to score and rank all responses submitted in relation to this RFQ are as follows:

	<u>Max. Points</u>
<ul style="list-style-type: none"> □ Extent to which the response demonstrates the entity’s knowledge, experience, and expertise with <i>water resource engineering, planning, and management</i> in accordance with Section IV, Technical Specifications of Ecology RFQ 1006 WR. 	20
<ul style="list-style-type: none"> □ Extent to which the response demonstrates the entity’s knowledge, experience, and expertise with <i>water resource</i> 	20

science in accordance with Section IV, Technical Specifications of Ecology RFQ 1006 WR.

<ul style="list-style-type: none"> □ Extent to which the response demonstrates the entity’s knowledge, experience, and expertise with <i>water resource law and permitting</i> in accordance with Section IV, Technical Specifications of Ecology RFQ 1006 WR. □ Extent to which the response demonstrates that the entity has a <i>comprehensive array of disciplines, knowledge, experience, and expertise</i> at its disposal. □ Extent to which the entity’s response demonstrates its <i>management and organization</i> will contribute to successful and efficient completion of work assignments. □ Extent to which the Entity’s <i>response is clear and concise.</i> 	<p>30</p> <p>10</p> <p>15</p> <p>5</p>
Total	100

I. Revisions to RFQ

If it becomes necessary to revise any part of this solicitation, addenda will be published on Ecology’s web site, as follows: www.ecy.wa.gov, select “Business” and “Doing Business with Ecology,” then the appropriate solicitation, as well as at the Department of General Administration’s WEBS website <https://fortress.wa.gov/ga/webscust/>.

Ecology also reserves the right to cancel or to reissue the solicitation in whole or in part, prior to execution of a contract.

J. Submissions Deemed Nonresponsive

Submissions providing less than 60 days for acceptance by Ecology from the date set for the opening of responses will be considered non-responsive and will be rejected. Responses that do not address all areas requested by this RFQ may be deemed non-responsive and may not be considered for any possible convenience contract awarded as a result of this RFQ.

K. Submissions to Be Made on Most Favorable Terms

Ecology reserves the right to make an award without further discussion of the response submitted. Therefore, the response should be submitted initially on the most favorable terms which the respondent can propose. The respondent shall specifically state that the response is predicated upon the acceptance of all the terms and conditions contained in the Request for Qualifications.

L. Respondent's Response May Be Incorporated into Future Convenience Contract

The respondent should be prepared to accept this RFQ for incorporation into a convenience contract resulting from this RFQ. Contract negotiation may provide for the incorporation of the respondent's response. It is understood that the response will become a part of the official file on this matter without obligation to Ecology.

M. RFQ Does Not Obligate State of Washington or Ecology

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

N. Period of Performance

The period of performance of any convenience contract resulting from this RFQ is tentatively scheduled to begin on or about January 1, 2010 and the convenience contract will be in effect through December 31, 2010. Ecology may extend individual convenience contracts for up to 5 additional one year periods. Any amendments extending the period of performance shall be at the sole discretion of Ecology.

Transition from current consultant pool: Ecology anticipates that some work assignments issued under the current convenience contracts may extend past December 31, 2009. If this happens, Ecology will extend individual convenience contracts to allow for completion of work assignments.

O. Responses to be Based on Material in RFQ

Responses shall be based on the material contained in the RFQ. The Respondent is instructed to disregard any previous draft material it may have received and any oral representations.

P. Notification of Entities not Selected

Entities whose responses have not been selected for further negotiation or award shall be notified in writing at the address given in the response after the award is made.

Q. Ecology Not Liable

Ecology will not be liable for any costs incurred by the Respondent associated with the preparation of a response submitted in relation to this RFQ.

R. Respondent Minimum Qualifications

The Respondent must be licensed to do business in the State of Washington. The response must demonstrate that personnel assigned to its response are licensed in their applicable professions as required by State law, e.g., engineers must be licensed as set forth in Chapters 196-12 and 196-24 of the Washington Administrative Code. Respondents who do not meet these minimum qualifications shall be deemed non-responsive and will not receive further consideration.

Ecology will require all teams to have licensed hydrogeologists in their group to prepare technical reports necessary to complete a report of examination. Technical reports will need to be stamped by a licensed hydrogeologist, in accordance with state law. Ecology may ask the consultant staff person preparing the report of examination to jointly sign the report with an Ecology staff person.

Any respondent that proposes to be a prime contractor must be able to perform at least 60% of any work assignment in-house.

U. Minority/Women-Owned Business Participation

Minority and Women-owned Business Enterprises (MWBE) are encouraged to participate in the performance of any convenience contract which results from responses submitted in reply to this RFQ. No preference will be included in the evaluation of responses, no minimum level of MWBE participation shall be required as a condition for receiving an award, and responses will not be rejected or considered non-responsive on that basis.

For further information, see Section VII of Appendix B, Convenience Contract.

V. ADA Compliance

The consultant is required to fully comply with all applicable provisions of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101 et. seq., in performing its duties under this contract. Further information on ADA requirements may be obtained by contacting Ecology’s ADA Coordinator at 407-6000.

W. Schedule of Activities:

Issue Request for Qualifications and Quotations	November 3, 2009
Question and answer period	November 3-12, 2009
Responses to Questions Posted as addendum to RFQ by 4:00 p.m. Lacey, Washington time	November 17, 2009
Responses due by 4:00 p.m. Lacey, Washington time	November 30, 2009
Evaluate responses	December 1-4, 2009
Conduct oral interviews with finalists, if required	December 7-11, 2009
Announce “Apparent Successful Consultant and send notification via e-mail to unsuccessful consultants	December 14, 2009
Hold debriefing conferences (if requested)	December 17-22, 2009
Negotiate contract	December 15-18, 2009
Begin contract work	January 1, 2010

IV. Technical Specifications

Permit decision-making in the water resources program requires the application of knowledge, experience, and expertise in a variety of disciplines. Ecology has determined that respondents who want to be considered for inclusion in the Water Resources Consultant Pool should have knowledge, experience, and expertise in each of the following three areas:

A. Water Resource Engineering, Planning, and Management — For example:

- developing and reviewing water system/water supply plans (including dam storage), engineering reports, drawings, and supporting documents (e.g., for agriculture, irrigation, and/or municipal uses);
- developing and reviewing water reuse and water conservation plans and proposals (e.g., for golf courses); and
- applying expert knowledge and experience in the fields of water well design and construction, and water system (agricultural, irrigation, and/or municipal uses) design and construction.

B. Water Resource Science — Providing water resource decision-makers with expert services, information, and analysis regarding:

- hydrogeology and hydrology (Eastern Washington and Western Washington);
- instream flow monitoring;
- water availability and storage;
- water quality;
- groundwater flow and modeling; and
- fisheries biology.

C. Water Resource Law and Permitting — For example:

- applying, or assisting in the application of, Washington water law (e.g., RCW, WAC, case law, and Ecology policy);
- administering, or assisting in the administration of, water resources appropriation in Washington (e.g., vis-à-vis water rights, certificates, permits, claims, four-part test, “first in time, first in right,” etc.);
- addressing water quality and other environmental factors; and
- complying with the State Environmental Policy Act .

Additionally, Ecology will require a consultant to provide expert witness assistance and other litigation services in the event a water resources permit decision is appealed.

Respondents lacking knowledge, experience, and expertise in any of the three areas identified above are strongly encouraged to consider submitting team responses with other entities in order to be considered for further evaluation and possible inclusion in the FY 10-15 Water Resources Consultant Pool. Team responses must be headed by a prime entity, with the prime entity being the primary point of contact for Ecology. [Note: Consistent with RCW 43.10.040 and RCW 43.10.067, Ecology is not seeking legal representation through this procurement. The entity should not include a law firm or lawyer acting in that capacity.

V. Management Specifications

Provide all information requested below in response to the management requirements of this RFQ.

A. Identifying Information

Name, address, principal place of business, and telephone number of legal entity with which contract is to be written. Include all ownership interests in the entity.

Name, address, and telephone numbers of principal officers (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.).

Legal status of the respondent and the year entity was established.

Federal employer ID number and Washington Uniform Business Identification (UBI) number issued by the Department of Revenue.

Name of the Project Manager.

Location of the facility from which respondent will operate.

If the respondent or any party named above contracted with the state of Washington during the past 24 months, indicate the name of the agency, the contract number and description and/or other information available to identify the contract.

If the respondent or any party named above is, or was, an employee of the state of Washington during the past 24 months, indicate his/her name, job title, agency where employed, and separation date.

Respondents, which employ or have on their governing board as of the date of their response, state employees, or former state employees shall identify such persons and their position and responsibilities within the respondent's organization. If, following a review of this information, it is determined by Ecology that a conflict of interest exists, the respondent may be disqualified from further consideration for the award of a contract.

B. Project Management

Provide a description of the proposed project staffing/organization to be used, including any sub-consultants to accomplish future work assignments which may include any or all of the types of work listed in Section IV of this RFQ. Explain the respondent's proposed methodology for project management.

Identify staff who will be assigned to the potential contract indicating the responsibilities and qualifications of these personnel and the amount of time each will be assigned to the project. Provide resumes (one single side limit) for all staff to be assigned.

The respondent must commit that the staff identified in its response will actually be assigned to this project. Any substitution must have Ecology's approval.

An organizational chart of the entity is required indicating lines of authority for personnel involved in the performance of this potential contract and relationship of this staff to other programs or functions of the entity. This chart must also show lines of authority to the next senior level of management.

Each respondent shall disclose who within the entity will have prime responsibility and have final authority for the work.

C. Experience of the Respondent

List all major contracts with Ecology and/or other State of Washington agencies during the last five years, including the contract number, period of performance, and contact person. Emphasize those projects similar to this effort. For previous cost reimbursement projects/work assignments issued by Ecology, list the reports of examinations (ROEs) prepared for Ecology, the cost of preparing the individual ROE, and the number of hours spent on the ROE. Also, summarize the nature of the project and the expertise brought by the consultant to the project.

List contracts the respondent may have had during the last five years that relate to the respondent's ability to perform the services called for under this RFQ. List contract reference numbers, contract period of performance, contact persons, and telephone numbers.

Indicate any other experience that indicates the qualifications of the respondent for the performance of the potential contract.

Respondent must supply names, addresses and telephone numbers of three recent client references and briefly describe the type of service provided in the contracts. The respondent must grant permission to Ecology to contact all references provided.

Indicate if the respondent has had a contract terminated for default in the last five years. Termination for default is defined as notice to stop performance which was delivered to the respondent due to the respondent's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the respondent, or (b) litigated and determined that the respondent was in default. [Note: If the respondent has had a contract terminated for default in this period, then the

respondent shall submit full details including the other party's name, address, and phone number. Ecology will evaluate the facts and may, at its sole discretion, reject the response on the grounds of respondent's past experience.]

D. Sub-contracting by the Respondent

In the event the respondent intends to sub-contract any of the proposed work, the respondent shall submit the information required in paragraphs A, B, C, and D of Section V for each proposed sub-consultant. Ecology will be deemed to have authorized the sub-consultants listed if a convenience contract is awarded to the respondent. The respondent must be able to complete sixty (60) per cent of any work assignment with in-house staff.

VI. Miscellaneous Provisions

A. Authority to Bind Ecology

The Director of Ecology or his delegate is the only individual who may legally commit Ecology to the expenditure of public funds for a contract resulting from this RFQ. No cost chargeable to the proposed contract may be incurred before receipt of either a fully executed contract, subsequent work assignment or specific, written authorization from the Director.

B. Certification and Assurances

The "Certification and Assurances" form in Appendix A must be signed and dated by the President or Executive Director if a corporation, the managing partner if a partnership, the proprietor if a sole proprietorship, or the prime or otherwise lead individual associated with the entity's response.

C. Contract Provisions

A sample convenience contract for this type of procurement is attached in Appendix B.

D. Debriefing of Unsuccessful Respondents

Upon request, a debriefing conference will be scheduled with an unsuccessful Respondent. The request for a debriefing conference must be received by Ecology within three days after receipt by the Respondent of the notification of contract award. Discussion will be limited to a critique of the requesting Respondent's response, and how it compared with the successful Respondents. Comparisons between responses or evaluations of the other Respondent's responses will not be allowed.

E. Protest Procedure

Respondents protesting this procurement shall follow the procedures described herein. Protests that do not follow these procedures will not be considered. This protest procedure constitutes the sole administrative remedy available to respondents under this procurement.

All protests must be in writing and signed by the protesting party or an authorized agent. The protest must state all facts and arguments on which the protesting party is relying. All protests shall be addressed to the Procurement Coordinator.

Only protests stipulating an issue of fact concerning a matter of bias, discrimination or conflict of interest, or non-compliance with procedures described in the procurement document or Ecology policy shall be considered. Protests not based on procedural matters will not be considered.

In the event a protest may affect the interest of any respondents, the respondent(s) will be given an opportunity to submit its views and any relevant information on the protest to the Procurement Coordinator.

Upon receipt of a protest, a protest review will be held by Ecology to review the procurement process utilized. This is not a review of responses submitted or the evaluation scores received. The review is to ensure agency policy and procedures were followed, all requirements were met, and all respondents were treated equally and fairly.

Protests shall not be accepted by Ecology prior to the actual award of the contract. The protest must be received by Ecology within ten (10) business days from the date of the notification of award letter. The Director or his delegate will then consider all the information available to him/her and render a written decision within ten (10) business days of receipt of the protest, unless additional time is required. If additional time is required, the protesting party will be notified of the delay.

F. Proprietary Information/Public Disclosure

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

All responses received shall remain confidential until the contract, if any, resulting from this RFP is signed by Ecology and the apparent successful consultant; thereafter, the responses shall be deemed public records as defined in RCW 42.56.

Any information in the response that the respondent desires to claim as proprietary and exempt from disclosure under the provisions of RCW 42.56 must be clearly designated. The page must be identified and the particular exception from disclosure upon which the Respondent is making the claim. Each page claimed to be exempt from disclosure must be clearly identified by the word "Confidential" printed on the lower right hand corner of the page.

Ecology will consider a respondent's request for exemption from disclosure; however, Ecology will make a decision predicated upon RCW 42.56. Marking the entire response exempt from disclosure will not be honored. The respondent must be reasonable in designating information as confidential. If any information is marked as proprietary in the response, such information will not be made available until the affected proposer has been given an opportunity to seek a court injunction against the requested disclosure.

A charge will be made for copying and shipping, as outlined in RCW 42.56. No fee shall be charged for inspection of contract files, but twenty-four (24) hours' notice to the RFP

Coordinator is required. All requests for information should be directed to the RFP Coordinator.

G. Change in Consultant Personnel and Sub-consultants

Ecology understands that it is likely that over the life of the contract there will be changes in consultant personnel. The consultant may propose substitute employees to work under the contract. Ecology, at its sole discretion, may accept or reject the substitute employees. Should Ecology not accept the proposed substitutes and the consultant is unable to supply acceptable substitutes within a reasonable period of time as determined by Ecology, Ecology at its sole option may terminate the contract or work assignment.

Appendix A Certifications and Assurances

I/we make the following certifications and assurances as a required element of the response to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract(s):

1. In preparing this response, 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 response 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.)
2. I/we understand that the Department of Ecology will not reimburse me/us for any costs incurred in the preparation of this response. All responses become the property of the Department of Ecology, and I/we claim no proprietary right to the ideas, writings, items, or samples.
3. I/we understand that any contracts awarded as a result of this RFQ will contain terms and conditions substantially similar to those attached as Appendix B. I/we certify that I/we will comply with these or substantially similar Terms and Conditions if selected as a Consultant.

_____, 2009
Signature

Title

Appendix B

Sample Convenience Contract

CONTRACT NO. C1000XXX FOR ARCHITECTURAL AND ENGINEERING SERVICES
BETWEEN
STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

AND

This Contract is made and entered into by and between the State of Washington, Department of Ecology, hereinafter referred to as the "AGENCY", and the below named firm, hereinafter referred to as "CONTRACTOR,"

Contractor Name
Address
City, State & Zip Code
Phone
E-mail Address

Washington State UBI No.
Federal ID No.

PURPOSE

The purpose of this contract is to

SCOPE OF WORK

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

Option 1: Identify all tasks, work elements and objectives of the contract, and timetables by which major parts of the work are to be completed. The scope of work may be included within the text of the contract or attached as a separate exhibit as shown in Option 2 below.

Option 2: As included in the CONTRACTOR'S Proposal dated _____ attached as Exhibit B, and the AGENCY'S Request for Proposals attached as Exhibit C.

B. Exhibit A contains the General Terms and Conditions governing work to be performed under this contract, the nature of the working relationship between the AGENCY and the CONTRACTOR, and specific obligations of both parties.

C. The CONTRACTOR shall produce the following written reports or other written documents (deliverables) by the dates indicated below:

All written reports required under this contract must be delivered to _____, the Contract Manager, in accordance with the schedule above.

PERIOD OF PERFORMANCE

Subject to other contract provisions, the period of performance under this contract will be from _____ through _____.

NOTE: If the contract is required to be filed with the Office of Financial Management, in accordance with Chapter 39.29 RCW, include the following paragraph.

COMPENSATION AND PAYMENT

Specific maximum amounts payable will be identified in individual work assignments. The work assignment process is detailed in Exhibit B. Exhibit B also includes a sample work assignment. CONTRACTOR'S compensation for services rendered shall be based on the rates contained in Exhibit D.

NOTE: List detail of compensation to be paid, e.g., hourly rates, number of hours per task, unit prices, cost per task, cost per deliverable, etc. Or reference documents that specify Contractor's compensation and payment, e.g. Contractor's compensation for services rendered shall be based on the schedule set forth in Exhibit B, Fees and Expenses.

NOTE: Expenses are optional. Do not include Expenses paragraph below if expenses are not allowable. If allowable, include only expenses which are appropriate for the contract.

Expenses. CONTRACTOR shall receive reimbursement for travel and other expenses as identified below or as authorized in advance by the AGENCY as reimbursable. Expenses may include: airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during periods of required travel. CONTRACTOR shall receive compensation for travel expenses at current State travel reimbursement rates. To receive reimbursement, CONTRACTOR must provide a detailed breakdown of authorized expenses, identifying what was expended and when.

BILLING PROCEDURES

AGENCY will pay CONTRACTOR upon receipt of properly completed invoices, using form A19-1A, which shall be submitted to the Project Manager not more often than monthly. The invoices shall describe and document to the AGENCY'S satisfaction a description of the work performed, the progress of the project, and fees. If expenses are invoiced, provide a detailed breakdown of each type.

Payment shall be considered timely if made by the AGENCY within thirty (30) days after receipt of properly completed invoices. Payment shall be sent to the address designated by the CONTRACTOR.

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

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

NOTE: Optional Provision - The AGENCY shall withhold 10 percent from each payment until acceptance by the AGENCY of the final report (or completion of the project, etc.).

CONTRACT MANAGEMENT

The Contract Manager for each of the parties shall be the contact person for all communications and billings regarding the performance of this Contract.

Contract Manager for CONTRACTOR is:	Contract Manager for AGENCY is:
Contractor Name Address City, State Zip Code Phone: () Fax: () E-mail address:	Name Address City, State Zip Code Phone: () Fax: () E-mail address:

INSURANCE

The CONTRACTOR shall provide insurance coverage as set out in this section [or as set forth in the Request for Proposals No. ____]. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the CONTRACTOR or subcontractor, or agents of either, while performing under the terms of this contract.

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

1. Commercial General Liability Insurance Policy - Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$2,000,000 per occurrence. Additionally, the CONTRACTOR is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.
2. Automobile Liability. In the event that services delivered pursuant to this contract involve the use of vehicles, either owned or unowned by the CONTRACTOR, automobile liability insurance shall be required. The minimum limit for automobile liability is:
 \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage
3. The insurance required shall be issued by an insurance company/ies authorized to do business within the State of Washington, and shall name the state of Washington, its agents and employees as additional insureds under the insurance policy/ies. All policies shall be primary to any other valid and collectable insurance. CONTRACTOR shall instruct the insurers to give AGENCY 30 days advance notice of any insurance cancellation.

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

ASSURANCES

AGENCY and the CONTRACTOR agree that all activity pursuant to this Contract will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

ORDER OF PRECEDENCE

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

- Applicable Federal and State of Washington statutes and regulations
- Special Terms and Conditions as contained in this contract Exhibit A – General Terms and Conditions
- Exhibit B – Work Assignment Process and Sample Work Assignment
- Exhibit C – Request for Proposals ECY 1006 WR
- Exhibit D – Contractor’s Statement of Qualifications, dated May XX, 2009
- Exhibit E – Contractor’s rates
- Any other provision, term or material incorporated herein by reference or otherwise incorporated

ENTIRE AGREEMENT

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

CONFORMANCE

If any provision of this contract 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.

APPROVAL

This contract shall be subject to the written approval of the AGENCY'S authorized representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

THIS CONTRACT is executed by the persons signing below who warrant that they have the authority to execute the contract.

[CONTRACTOR'S NAME]

DEPARTMENT OF ECOLOGY

Signature

Signature

Title

Date

Title

Date

APPROVED AS TO FORM

Assistant Attorney General

Appendix C

GENERAL TERMS AND CONDITIONS

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

- A. "Agency" shall mean the Department of Ecology of the state of Washington, any division, section, office, unit or other entity of the Agency, or any of the officers or other officials lawfully representing that Agency.
- B. "Agent" shall mean the Director, Department of Ecology, and/or the delegate authorized in writing to act on the Director's behalf.
- C. "Contractor" shall mean that firm, provider, organization, individual or other entity performing service(s) under this contract, and shall include all employees of the Contractor.
- D. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this contract under a separate contract with the Contractor. The terms "Subcontractor" and "Subcontractors" means Subcontractor(s) in any tier.

ACCESS TO DATA -- In compliance with chapter 39.29 RCW, the Contractor shall provide access to data generated under this contract to AGENCY, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

ADVANCE PAYMENTS PROHIBITED -- No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by the Agency.

AMENDMENTS -- This contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35 -- The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

ASSIGNMENT -- The work to be provided under this contract, and any claim arising hereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

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

CONFIDENTIALITY / SAFEGUARDING OF INFORMATION -- The Contractor shall not use or disclose any information concerning the Agency, or information which may be classified as confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of the Agency, or as may be required by law.

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

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

COPYRIGHT PROVISIONS -- Unless otherwise provided, all Materials produced under this contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the Agency. The Agency shall be considered the author of such Materials. In the event the Materials are not considered “works for hire” under the U.S. Copyright laws, Contractor hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to the Agency effective from the moment of creation of such Materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the contract, but that incorporate pre-existing materials not produced under the contract, Contractor hereby grants to the Agency a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the Agency.

The Contractor shall exert all reasonable effort to advise the Agency, at the time of delivery of Materials furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this contract. The Agency shall receive prompt written notice of each notice or claim of copyright infringement received by the Contractor with respect to any data delivered under this contract. The Agency shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

COVENANT AGAINST CONTINGENT FEES -- The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business. The Agency shall have the right, in the event of breach of this clause by the Contractor, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

DISPUTES – Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved, either party may request a dispute hearing with xxx (Agent). Disputes shall be resolved as quickly as possible.

The request for a dispute hearing must:

- be in writing;
- state the disputed issue(s);

- state the relative positions of the parties;
- state the Contractor's name, address, and contract number; and
- be mailed to the Agent and the other party's (respondent's) Contract Manager within 3 working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requester's statement to both the agent and the requester within 5 working days.

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

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal. Agency and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this contract which are not affected by the dispute. Both parties agree to exercise good faith in the dispute resolution and to settle disputes prior to using the dispute resolution panel whenever possible.

GOVERNING LAW -- This contract shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

INDEMNIFICATION – To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the State of Washington, the Agency, and all officials, agents and employees of the State, from and against all claims for injuries, death and/or property damage arising out of or resulting from the performance of the contract. Contractor's obligation to indemnify, defend and hold harmless includes any claim by Contractor's agents, employees, representatives, or any subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the contract. Contractor shall be required to indemnify, defend and hold harmless the State only to the extent claim is caused in whole or in part by negligent acts or omissions of Contractor.

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

INDEPENDENT CAPACITY OF THE CONTRACTOR -- The parties intend that an independent contractor relationship will be created by this contract. The Contractor and his or her employees or agents performing under this contract are not employees or agents of the Agency. The Contractor will not hold himself/herself out as or claim to be an officer or employee of the Agency or of the State of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with the Contractor.

INDUSTRIAL INSURANCE COVERAGE – The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. Prior to performing work under this contract, the Contractor shall provide or purchase industrial insurance coverage for the Contractor's employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51RCW during the course of this contract. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, the Agency may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. The Agency may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the Agency under this contract, and transmit the deducted amount to the Department of Labor and Industries, Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

Industrial insurance coverage through the Department of Labor & Industries is optional for sole proprietors, partners, corporate officers and others, per RCW 51.12.020.

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.

LIMITATION OF AUTHORITY – Only the Agent or Agent’s delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the Agent.

NONCOMPLIANCE WITH NONDISCRIMINATION LAWS -- In the event of the Contractor'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, and the Contractor may be declared ineligible for further contracts with the Agency. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

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

PRIVACY -- Personal information collected, used or acquired in connection with this contract shall be used solely for the purposes of this contract. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as provided by law. Contractor agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information. The Agency reserves the right to monitor, audit, or investigate the use of personal information collected, used or acquired by the contractor through this contract. The monitoring, auditing or investigating may include but is not limited to “salting” by the Agency. Contractor 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.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The Contractor agrees to indemnify and hold harmless the Agency for any damages related to the Contractor’s unauthorized use of personal information.

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.

PUBLICITY -- The Contractor agrees to submit to the Agency all advertising and publicity matters relating to this Contract which, in the Agency’s judgment, Agency’s name can be implied or is specifically mentioned. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of the Agency.

RECORDS MAINTENANCE -- The Contractor shall maintain complete financial records relating to this contract and the services rendered including all books, records, documents, magnetic media, receipts, invoices and other evidence relating to this contract and performance of the services described herein,

including but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records including materials generated under the contract, shall be subject at all reasonable times to inspection, review, or audit by the Agency, the Office of the State Auditor, and federal and state officials so authorized by law, rule, regulation, or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

REGISTRATION WITH DEPARTMENT OF REVENUE -- The Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this contract.

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

SAVINGS -- In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the Agency may terminate the contract under the "Termination for Convenience" clause, without the ten day notice requirement, subject to renegotiation at the Agency's discretion under those new funding limitations and conditions.

SEVERABILITY -- The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

SITE SECURITY -- While on Agency premises, Contractor, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security regulations.

SUBCONTRACTING -- Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the Agency.

TAXES -- All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

TERMINATION FOR CAUSE -- In the event the Agency determines the Contractor has failed to comply with the conditions of this contract in a timely manner, the Agency has the right to suspend or terminate this Contract. This Agency shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 3 days, the contract may be terminated. The Agency reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by the Agency to terminate the contract.

In the event of termination, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g. cost of the competitive bidding, mailing, advertising and staff time. The termination shall be deemed to be a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default, or (2) failure to perform was

outside of his or her control, fault or negligence. The rights and remedies of the Agency provided in this contract are not exclusive and are in addition to any other rights and remedies provided by law.

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

TERMINATION PROCEDURES -- Upon termination of this contract, the Agency, in addition to any other rights provided in this contract, may require the Contractor to deliver to the Agency any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The Agency shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the Agency, and the amount agreed upon by the Contractor and the Agency for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services which are accepted by the Agency, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Agency shall determine the extent of the liability of the Agency. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The Agency may withhold from any amounts due the Contractor such sum as the Agency determines to be necessary to protect the Agency against potential loss or liability.

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

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

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
3. Assign to the Agency, in the manner, at the times, and to the extent directed by the Agent, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Agency has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Agency to the extent Agency may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to the Agency and deliver in the manner, at the times, and to the extent directed by the Agency any property which, if the contract had been completed, would have been required to be furnished to the Agency;
6. Complete performance of such part of the work as shall not have been terminated by the Agency; and
7. Take such action as may be necessary, or as the Agency may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Agency has or may acquire an interest.

TREATMENT OF ASSETS –

A. Title to all property furnished by the Agency shall remain in the Agency. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Agency upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this

contract, shall pass to and vest in the Agency upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Agency in whole or in part, whichever first occurs.

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

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

D. If any Agency property is lost, destroyed or damaged, the Contractor shall immediately notify the Agency and shall take all reasonable steps to protect the property from further damage.

E. The Contractor shall surrender to the Agency all property of the Agency prior to settlement upon completion, termination or cancellation of this contract.

F. All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

WAIVER -- Waiver of any default or breach shall not be deemed to be 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 the Agency.

Appendix D
to
(RFQ 1006 WR Appendix B Convenience Contract)
Work Assignment Process

Currently:

Ecology will award work assignments for the 09-11 biennium based on the requirements in the legislative budget proviso. When the budget proviso expires (on 06/30/2011 or sooner), and there is no other legislation addressing how individual work assignments are awarded, Ecology will return to awarding work assignments at its own discretion. The proviso states:

“(23) During the 2009-11 biennium, the department shall implement its cost reimbursement authority for processing water right applications using a competitive bidding process. For each cost reimbursement application, the department shall obtain cost proposals and other necessary information from at least three prequalified costs reimbursement consultants and shall select the lowest responsive bidder.”

If the budget proviso expires:

There will not be a formal rotational order for work assignments to individual consultants.

As Ecology identifies specific work for cost reimbursement projects, Ecology will contact a consultant in the pool to verify no conflict of interest exists and that the firm has current capacity to perform the work assignment. The consultant must fully disclose any perceived, apparent or real conflict of interest. Even if the consultant does not think there is a conflict, Ecology can reassign work if it thinks that an apparent, real or perceived conflict exists or will exist connected to this particular work assignment.

1. If the consultant identifies no conflict and has capacity to perform the work, Ecology will issue a request for a project scope of work and budget. The initial scope of work and budget for a project will be prepared by the consultant at its cost. Ecology will pay consultants for subsequent scopes of work that are prepared after a contract exists between a water right applicant and Ecology.

Ecology and the consultant will agree on the number of business days that the consultant has to waive, reject, or respond to Ecology’s request with a proposal detailing the work plan, personnel, and labor hours required to complete the work tasks or phases.

Work Plans:

Unless otherwise authorized in writing by ECOLOGY, each work plan shall include at a minimum: scope of work arranged in logical work tasks including all subcontractors to be used by the CONSULTANT and identification of their project roles; a detailed project budget for each major task and subtask (including work plan preparation) to include estimates of key staff personnel by name and assignment, direct labor (hours per person, rate, and classification), detailed travel expenses, detailed materials expenses, special testing (unit costs or hourly rates), equipment expenses (rental, hourly, and mileage rates), and subcontractors (each subcontractor budget must also be as detailed as above); a detailed list of work products (deliverables); a time-phased project schedule listing

major tasks, target dates, and delivery of work products; and a statement regarding conflict of interest in performance of work by the CONSULTANT and proposed subcontractor(s).

ECOLOGY shall review the CONSULTANTS's project work plan, including the work scope, schedule, staff assignments, and the budget. ECOLOGY may ask the CONSULTANT to revise portions or the entire work plan to its satisfaction. If agreement cannot be reached, the work plan may be rejected and the work assignment deemed terminated.

2. Ecology will either accept, reject, or request a resubmission of the consultant's proposal within an agreed upon number of business days of receiving the consultant's work plan and budget. Ecology may reject a proposal on the basis of information provided by the consultant, or required to be provided, on the work plan, personnel, labor hours or mix, or conflict of interest.

In the event the consultant does not resubmit its proposal or Ecology and the consultant do not reach agreement on the consultant's proposal within an agreed upon number of business days, Ecology can, at its sole discretion, offer the work to another consultant of its choice in the pool. Once a proposal is agreed upon between Ecology, the water right applicant, and the consultant, and a contract is in-place between Ecology and the water right applicant, Ecology will then issue a formal work assignment to authorize proceeding with the agreed upon scope of work.

3. Ecology, in its sole discretion, may terminate the convenience contract, if the consultant rejects three consecutive work assignment offers for reasons other than a conflict of interest.
4. Each accepted work assignment will be signed by Ecology and the consultant before work begins. Each work assignment will be incorporated into the consultant's convenience contract.

Individual work assignments will be administered and overseen by staff located in Ecology's regional offices.

Amendments:

ECOLOGY may change specific work assignments through issuance of work assignment amendments. Amendments will specify the reason for the change and may include any modified budgets, schedules, scope of work, or other changes. Amended work assignments and any resulting modified work plans will become part of the contract once agreed upon in writing by ECOLOGY and the CONSULTANT.

If ECOLOGY requires revisions to completed work, this work shall be considered extra work and will be paid for as agreed to by the CONSULTANT and DEPARTMENT. The scope and cost of such additional work will be based upon a written work plan and cost proposal approved by ECOLOGY prior to the initiation of the work.

ECOLOGY's Contract Officer may verbally approve work assignments and amendments to work assignments and work plans in emergencies, or in the event a cost savings would be expected to result to ECOLOGY by avoiding the time required to adhere to a written approval process. Work plans or revised work plans shall be submitted in writing to ECOLOGY within a specified time following verbal approval. Verbal approval of a work assignment or amendments to a work assignment or work plan shall be considered part of this contract only after being agreed shall be considered a upon in writing by ECOLOGY and the CONSULTANT.

The percentage allowed for fee (profit) and overhead to perform work assignment changes will not exceed the percentage of fee and overhead allowed in the original work assignment.

Appendix D, continued
Sample Work Assignment

**State of Washington
Department of Ecology
Water Resources Program
Work Assignment/Amendment**

1. Firm: 2. Contract No.:
3. Project Name:
4. Work Assignment Number:
5. Attachments:
6. SIC: PIC: Fund Code:
7. Start Date: End Date:
8. Project Description:

WORK ASSIGNMENT COSTS		
	State	Total
Previous Contract		
Amendment (1)*		
Total		

* list all amendments to contract value

AUTHORIZATIONS

A. _____
Department of Ecology Title Date

B. _____
Contractor Title Date

**Detailed scope of work is attached after this page.

Appendix E
(to RFQ 1006 WR Appendix B Convenience Contract)

GUIDELINE:
SUBMISSION OF A19-1A VOUCHER
AND SUPPORTIVE DOCUMENTS

The purpose of this appendix is to assist the CONSULTANT in submitting requests for payment. If the CONSULTANT fails to name an item of cost in the request for payment, this does not imply it is either allowable or unallowable; rather, determination of allowability shall be based upon the treatment of similar or related items of cost. The CONSULTANT should contact the contract officer for the A19-1A voucher form and for clarification of questionable items.

Factor Allowing Cost:

In order to be allowable, costs must:

- a. be necessary and reasonable and not be a general expense,
- b. not be prohibited by any laws or regulations,
- c. conform to any cost limitations or exclusions,
- d. be consistent with state and federal (when applicable) policies, regulations and procedures,
- e. be given consistent treatment through uniform accounting principles.

Certification:

To assure expenditures are proper, vouchers requesting payment must be certified by the CONSULTANT. Form A19-1A, has a certification provision which must be signed by the CONSULTANT or his/her authorized representative before payment will be allowed.

Unforeseen/Emergency Expenditures:

A contingency line item providing a specified amount for reimbursements for unforeseen expenditures may be made only with the prior written approval of ECOLOGY.

Allowable Expenditures:

No request for payment will be honored for those expenditures incurred before the effective date of the agreement, or after termination of such agreement, unless otherwise agreed upon in writing.

Contract Provisions Controlling:

Where any discrepancies between the specific provisions of the agreement and the applicable cost principles arise, the agreement provisions shall apply.

Phone Number:

The CONSULTANT must include his/her business phone number along with the documents requesting payment to expedite processing should questions arise.

Invoice Voucher - Form A19-1A:

Should be self-explanatory; however, any questions should be referred to your contract officer.

Cost Object Breakdown:

The documents supporting each request for payment should have a brief breakdown of each cost object when listed in such a manner under the agreement, along with a brief explanation for the charges.

Where any questions involving allowability of costs arise, the ECOLOGY contract officer should be consulted.

Appendix F to Ecology RFQ 1006 WR

Ecology's Specific Cost-Reimbursement Authority

1. RCW 43.21A.690 -- Cost-reimbursement agreements.

(1) The department may enter into a written cost-reimbursement agreement with a permit applicant to recover from the applicant the reasonable costs incurred by the department in carrying out the requirements of this chapter, as well as the requirements of other relevant laws, as they relate to permit coordination, environmental review, application review, technical studies, and permit processing. The cost-reimbursement agreement shall identify the specific tasks, costs, and schedule for work to be conducted under the agreement.

(2) The written cost-reimbursement agreement shall be negotiated with the permit applicant. Under the provisions of a cost-reimbursement agreement, funds from the applicant shall be used by the department to contract with an independent consultant to carry out the work covered by the cost-reimbursement agreement. The department may also use funds provided under a cost-reimbursement agreement to assign current staff to review the work of the consultant, to provide necessary technical assistance when an independent consultant with comparable technical skills is unavailable, and to recover reasonable and necessary direct and indirect costs that arise from processing the permit. The department shall, in developing the agreement, ensure that final decisions that involve policy matters are made by the agency and not by the consultant. The department shall make an estimate of the number of permanent staff hours to process the permits, and shall contract with consultants to replace the time and functions committed by these permanent staff to the project. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments. Use of cost-reimbursement agreements shall not reduce the current level of staff available to work on permits not covered by cost-reimbursement agreements. The department may not use any funds under a cost-reimbursement agreement to replace or supplant existing funding. The restrictions of chapter 42.52 RCW apply to any cost-reimbursement agreement, and to any person hired as a result of a cost-reimbursement agreement.

(3) The department may not enter into any new cost-reimbursement agreements on or after July 1, 2007. The department may continue to administer any cost-reimbursement agreement that was entered into before July 1, 2007, until the project is completed.

NOTES:

- Intent -- 2000 c 251: "It is the intent of the legislature to allow applicants for environmental permits for complex projects to compensate permitting agencies for providing environmental review through the voluntary negotiation of cost-reimbursement agreements with the permitting agency. It is the further intent of the legislature that cost-reimbursement agreements for complex projects free permitting agency resources to focus on the review of small projects permits." [2000 c 251 § 1.]
- Captions not law -- 2000 c 251: "Captions used in this act are not any part of the law." [2000 c 251 § 8.]

- Effective date -- 2000 c 251: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2000]." [2000 c 251 § 9.]
 - See → <http://www.leg.wa.gov/RCW/index.cfm?fuseaction=section§ion=43.21A.690>
 - See 2003 c 70 § 1; 2000 c 251 § 2.
2. RCW 90.03.265 -- Appropriation procedure -- Cost-reimbursement agreement for expedited review of application.

Any applicant for a new withdrawal or a change, transfer, or amendment of a water right pending before the department, may initiate a cost-reimbursement agreement with the department to provide expedited review of the application. A cost-reimbursement agreement may only be initiated under this section if the applicant agrees to pay for, or as part of a cooperative effort agrees to pay for, the cost of processing his or her application and all other applications from the same source of supply which must be acted upon before the applicant's request because they were filed prior to the date of when the applicant filed. The department shall use the process established under RCW 43.21A.690 for entering into cost-reimbursement agreements.

NOTES:

- Intent -- Captions not law -- Effective date -- 2000 c 251: See notes following RCW 43.21A.690.
- See → <http://www.leg.wa.gov/RCW/index.cfm?fuseaction=section§ion=90.03.265>
- See → 2003 c 70 § 6; 2000 c 251 § 7.