

REQUEST FOR PROPOSAL

RFP-05-03

**Snohomish County
Department of Information Services**

Project Management System

Released by:
Snohomish County Purchasing Division
2802 Wetmore Avenue
4th Floor, Henry Cogswell Building
Everett, Washington

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SECTION 1

1. INTRODUCTION

1.1 Introduction and Purpose

Snohomish County, a political subdivision of the State of Washington, (hereinafter called "The County") invites Vendors to respond to this Request for Proposal (RFP) with a sealed proposal for a technology solution to a Project Management System.

Specifically, the purpose of this RFP is to:

- Acquire a proven, integrated, comprehensive Project Management System that meets the needs of Snohomish County.
- Select a Vendor with a record of technical leadership in Information Services applications, process innovation, service delivery, and customer satisfaction.
- Select the most financially sound solution inclusive of software, installation and implementation services, training and education, maintenance, support, and tailoring services.

Please note that while this RFP may appear lengthy, the response portion is primarily "fill-in-the-blank" in nature. The County has made a concerted effort to minimize the effort required to supply the requested information.

1.2 Background

Snohomish County is the third most populous County in the State of Washington, and one of the fastest growing. The County's population as of April, 2001, was 618,600. The County employs more than 3,000 employees.

The Information Services (IS) Department purchased project management/ time accounting software and systems development methodology from POC-it Management Services, Inc. in 1989 to manage software development projects within the IS Department. Since then, the company owning the software has been purchased progressively by larger software companies, until now the product is owned by Computer Associates. Currently known as Enterprise Project Manager (EPM), it was and remains a DOS-based system, although it has a Windows front end for most functions. There is no intent to upgrade the core functionality of the product, which has become inadequate in a SQL, Windows-based world.

IS project leaders now use MS Project extensively for planning and presentation purposes, but do not find it adequate for project tracking and status/ financial reporting. A cumbersome, manually driven in-house system extracts project information from EPM for online status update and presentation.

As a result, Snohomish County is in need of a new Project Management system.

1.3 Project Goal

The primary goals of the Project Management System implementation are to:

- Install an established and well-supported project management system from a financially-stable vendor, tailor the system as necessary to support Snohomish County's needs, and train all anticipated users in its use
- Provide all project resources and stakeholders a unified, browser-based environment for accessing project-related information, entering time worked, viewing project status and generating project and portfolio performance reports
- Establish a platform for understanding and managing the performance of the Department's entire project portfolio and categories of projects within the portfolio

1.4 System Requirements Overview

It is expected that the new system will provide the following minimum benefits:

- Improve utilization of IT human resources through a shared resource pool across projects
- Enhance the Department's ability to identify and mitigate projects in danger of exceeding budget, timeline or scope
- Help managers establish a performance baseline against which future projects can be measured
- Improve the usefulness of project and resource performance reports
- Decrease the time devoted to producing project reports

- Reduce the number of separate software applications managers and resources use to manage projects, enter time worked, report status and generate reports.
- Improve managers' ability to view performance across projects or categories of projects

1.5 RFP Timelines

- RFP issuance June 4, 2003
- Written questions deadline June 18, 2003
- Proposal submission deadline July 2, 2003, 4:00 P.M., Pacific Standard Time
- Top Vendors demonstration to be held from July 30, 2003 to August 8, 2003 (tentative)
- Announcement of selected Vendor August 15, 2003 (tentative)
- County and Vendor contract negotiations finalized by October 1, 2003 (tentative)
- Commencement of Project Management System implementation October 15, 2003 (tentative)

1.6 Expected Time Period for Contract

The period of any Contract performance resulting from this RFP is expected to be no longer than one (1) year, commencing upon the date of execution of the contract by both parties. However, system maintenance and support will be required on an on-going annual basis, upon completion of a successful system implementation.

SECTION 2

2. GENERAL ADMINISTRATIVE REQUIREMENTS

2.1 Response

All proposers should submit two (2) hard copies and one (1) CD or diskette copy, as described in Section 3.0, (exclusive of any user manuals requested for evaluation) of their response to this Request for Proposal (hereafter called "response" or "proposal"). Responses must be received by the Snohomish County Purchasing Division **prior to 4:00 P.M. Pacific Standard Time, July 2, 2003.**

Mail proposals to:

Snohomish County Purchasing Division
3000 Rockefeller, M/S 507
Everett, WA 98201-4046

Hand deliver proposals to:

Snohomish County Purchasing Division
2802 Wetmore Avenue
4th Floor, Henry Cogswell Building
Everett, Washington

LATE PROPOSALS WILL NOT BE ACCEPTED. The response must be submitted in a sealed envelope with the Request for Proposals Number and the due date clearly identified on the outside.

No proposals will be accepted after the stipulated due date and time. Failure to follow all proposal preparation instructions may be cause to return the Vendor's proposal unevaluated. All expenses for the preparation of proposals are the responsibility of the Vendor.

The County assumes no responsibility for delays caused by mail delivery services regarding the proposal submittal or any Vendor correspondence related to this RFP.

Each Vendor must appoint an individual to officially represent the Vendor for this procurement. Include the following information with the response:

Name of Vendor Representative
Title
Name of Company
Address

Telephone Number
FAX Number
E-Mail Address

This RFP contains sufficient information and instructions to enable qualified Vendors to prepare and submit proposals and supporting material. To be considered responsive, Vendors must submit a complete proposal that meets all mandatory requirements and substantially satisfies the specifications as stated in this RFP. This RFP contains all system requirements, evaluation criteria and Vendor's responsibilities if a contract is negotiated. This RFP also contains a sample pro-forma contract that includes all major terms and conditions that the successful Vendor will be expected to accept.

All proposals must be submitted in writing to the office listed. No telegraphic, E-mailed, faxed, or telephone offers will be accepted.

2.2 Pre-Proposal Questions

Specific questions concerning the RFP should be submitted in writing (FAX or E-mail preferred) no later than June 18, 2003. Questions received after this date will not be considered. Questions will be researched and the official responses published in writing and sent by E-mail, facsimile and/or US Postal Service to all Vendors on the RFP mailing list by approximately June 24, 2003. This will ensure accurate, consistent responses to all Vendors. Only written responses will be considered official.

Questions regarding procurement requirements or the RFP should be directed to the following person:

Name: **Pat Scattaregia**
Telephone: 425-388-3103
E-mail: pat.scattaregia@co.snohomish.wa.us
FAX: 425-388-3999

2.3 Proprietary Information/Public Disclosure

Vendors are advised that the County is subject to RCW 42.17, the Public Disclosure Act, and that materials related to this procurement are considered a public record as defined in RCW 42.17.250 through 42.17.340. Any specific information that is claimed by the Vendor to be confidential or proprietary must be clearly identified as such by the Vendor. To the extent consistent with RCW 42.17, the County will make reasonable efforts to maintain the confidentiality of all such information marked confidential or proprietary. If a request is made to view a Vendor's proprietary information, the County will notify the Vendor of the request and of the date that such records will be released to the requester unless the Vendor obtains a court order enjoining that disclosure. If the Vendor fails to

obtain the court order enjoining disclosure, the County will release the requested information on the date specified.

2.4 Amendment to the RFP

The County reserves the right to revise the RFP and/or to issue amendments to the RFP.

In the event that it becomes necessary to revise any part of this RFP, addenda will be provided via U. S. Postal Service to all Vendors on the RFP mailing list.

Vendors are instructed to disregard any oral representations they may have received. Proposal evaluation will be based on the material contained in the RFP and on the material contained in any addenda issued to the RFP.

The County also reserves the right to cancel or to reissue the RFP in whole or in part, prior to execution of a Contract.

2.5 Publicity

The Apparent Successful Vendor may not release, without obtaining prior written approval from the County, informational pamphlets, notices, press releases, research reports, and/or similar public notices concerning this project.

2.6 Waivers

The County reserves the right to waive specific terms and conditions contained in this RFP. Vendors shall understand that the proposal is predicated upon acceptance of all terms and conditions contained in this RFP unless the Vendor has obtained such a waiver, in writing, from the County prior to submission of the proposal. Such a waiver, if granted, will be granted to all Vendors.

2.7 Waiver of Irregularities

The County reserves the right, at its sole option, to waive minor administrative irregularities contained in any Vendor response.

2.8 Pricing Information

The Vendor must itemize purchase prices, continuing fees, and support costs for all software items, products, and services proposed. All elements of recurring and non-recurring costs that must be borne by the County must be identified.

This includes, but is not limited to, software, implementation, maintenance and support.

2.9 Taxable Items To Be Separated From Non-Taxable Items

Washington State retail sales tax may apply to portions of this project as provided for in Title 82 of the Revised Code of Washington. A copy of 82.04.050 RCW is included in this RFP as Appendix D. For clarifications of tax issues, contact:

Taxpayers Services
PO Box 47478
Olympia WA 98504-7478
Phone: (360) 753-7782
FAX: (360) 664-0456

Vendors are encouraged to separate taxable elements from non-taxable elements. Bundling taxable items with non-taxable items may result in tax being assessed on the bundled price.

The County has a responsibility to pay the retail sales tax even if the Vendor has no responsibility to collect it.

SECTION 3

3. RESPONSES AND SUBMITTALS

3.1 Letter Of Submittal

Vendors must include a Letter of Submittal in the first section of their response to this RFP. The Letter must be written on the Vendor's official business letterhead stationery and must be signed and dated by an individual with full authority to legally bind the entity submitting the response to this procurement.

The Letter must include specific items in the order shown below:

- An itemization of all materials and enclosures being provided with the response.
- A reference to all procurement amendments received by the Vendor (by amendment issue date) to warrant that the Vendor is aware of all such amendments, if any. If no procurement amendments have been issued, the Vendor should so state.
- A statement that the Vendor certifies the proposed solution meets all the *mandatory requirements* (MR) set forth in Form 8 (see Section 3.4).
- A statement that the Vendor acknowledges and agrees to all of the rights of the County, including the procurement rules and procedures, terms and conditions, and all other rights and terms specified in this procurement, including any amendments.

The Vendor may include any other topics or statements in the Letter as the Vendor deems appropriate and wishes to convey to the County.

3.2 Submitting Proposals

Vendors are required to submit two (2) hard copies and one (1) CD or diskette copy of their proposal in a current version of Microsoft Word.

The proposal is to be mailed or hand-delivered as follows:

Mail proposals to:

Snohomish County Purchasing Division
3000 Rockefeller, M/S 507
Everett, WA 98201-4046

Hand deliver proposals to:
Snohomish County Purchasing Division
2802 Wetmore Avenue
4th Floor, Henry Cogswell Building
Everett, Washington.

The telephone number of the Snohomish County Purchasing Division is (425) 388-3344.

The package should be clearly marked as:
"RFP-05-03, SNOHOMISH COUNTY PROJECT MANAGEMENT SYSTEM."

Vendors assume the risk for their chosen method of delivery. Vendors mailing proposals should allow normal mail delivery time to ensure timely receipt of their proposals by the Snohomish County Purchasing Division. The County assumes no responsibility for delays caused by any delivery service.

Proposals may not be transmitted using electronic media such as facsimile transmission or E-mail. Late proposals will not be accepted and will be automatically disqualified from further consideration.

Responses shall be based only on the material contained in this RFP. Vendors are to disregard any previous draft material and any oral representations they may have received.

When responding to functional requirements, Vendors must base their responses on product functions that will be available in a production version released for general distribution as of the start date. Functions that have not been production-released by that date must be treated as "not available" unless an *acceptable alternative* is proposed.

3.2.1 Proposal Format

Responses are to be prepared on standard 8½" x 11" paper and placed in a 3-ring binder. Foldouts are permissible when necessary. Manuals, reference documentation, and other supplemental materials may consist of multiple documents and must be placed in a separate section, as noted above. All responses, as well as any reference material presented, must be written in English.

Responses should contain only the following sections, separated by tabs.

- Letter of Submittal (See Section 3.1)
- Certifications and Assurances Form (See Section 3.2.2 and Appendix A)
- Confidentiality Statement (See Section 3.2.3 and Appendix B)
- Response to RFP Forms (See Section 3.2.10)
- Proprietary Information (If needed)
- Company or Product Literature (if needed)

3.2.2 Signatures/Certifications and Assurances

The Certifications and Assurances form (Appendix A) must be signed and dated by a person authorized to legally bind the Vendor to a contractual relationship (e.g., the President or Executive Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship).

3.2.3 Confidentiality Statement

The confidentiality statement is included as Appendix B. An authorized representative of the Vendor must sign the Confidentiality Statement.

3.2.4 Contract Review

A Pro Forma Contract is presented for Vendor review in Appendix C. The County intends to use this as the template for the actual Contract drafted for the successful Vendor.

3.2.5 Supplemental Material

The Vendor may submit materials (e.g., brochures, articles, specifications, or report samples) that the Vendor believes to be helpful, subject to the following:

- Such supplemental materials will not qualify as substitutes for direct answers within the response.
- Supplemental materials may be referenced in, but must not be combined with, a required component of the response.
- Such supplemental materials are for the benefit of the evaluators, but the evaluators will not be required to use the supplemental materials; therefore, answers within the response must be complete.

3.2.6 Multiple Proposals

Vendors are encouraged to submit multiple proposals if they feel alternate solutions will better meet the needs of the County. Each proposed solution must be treated as a separate response that complies with the response submittal guidelines stated in this section. All proposals submitted will be evaluated.

3.2.7 Errors in Response

The County will not be liable for any errors in Vendor responses. Vendors will not be allowed to alter responses after the deadline for response submission unless the alterations are the result of a request by the County as noted below.

The County reserves the right to make corrections or amendments to the response due to errors identified by the County or the Vendor. This type of amendment will only be allowed for such errors as typing, transposition, omission, or any other obvious error. 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 County Purchasing Division. Vendors are liable for all errors or omissions contained in their responses.

3.2.8 Withdrawal of or Amendments to Response

Vendors may withdraw or amend a response that has been submitted at any time up to the Response Due Date and time shown in Section 2.1 (Response). To withdraw or amend a response, a written request signed by an authorized representative of the Vendor must be submitted to the County Purchasing Division. After withdrawing a previously submitted response, the Vendor may submit another response up to and until the Response Due Date and time shown in Section 2.1 (Response).

3.2.9 Response Due Date and Location

The Snohomish County Purchasing Division must receive the Vendor's response, in its entirety, at the address, date and time specified in Response Section 2.1. Responses arriving after the deadline may be returned unopened to the Vendor, or they may simply be declared invalid and not subject to evaluation. All responses and accompanying documentation become the property of the County and the County shall decide their final disposition.

Vendors assume the risk of the method of delivery chosen. The County assumes no responsibility for delays caused by any delivery service. Postmarking by the Response Due Date will not substitute for actual receipt of response, as described above. Late responses will not be evaluated nor will additional time be granted to any Vendor. All proposals must be submitted in writing to the office listed. No E-mailed, faxed, or telephone offers will be accepted.

3.2.10 Response Instructions

The County is using a forms-based format for this RFP. Vendors will be asked to fill out a series of forms, which in total will comprise their response. The objective is to normalize the responses – putting them each in a similar order and format – to better facilitate evaluation and comparison for the County.

The Proposal Response Forms chapter contains all response forms. (The one exception to this is the “Certifications and Assurances” form in Appendix A, which must be completed in hard copy form.) **Proposing vendors must respond to the forms “as-is,” and prepare responses electronically utilizing the forms in this RFP.**

Page RF-1 of the Proposal Response Forms chapter provides directions on how to complete these forms.

Note that while the forms themselves may be considered lengthy, the highly structured, fill-in-the-blank nature of most questions minimizes the effort required to supply the requested information. In effect, the County has written much of the verbiage required; the vendor is being asked to respond yes/no to most questions.

Vendors are advised that responses will be evaluated based on their overall quality and cost-effectiveness. Vendors are encouraged to provide responses that are brief and clear, and that directly address the requirement or question asked.

Vendors are also encouraged to include information in their proposal that will distinguish their solution from the competition and that will be important to the success of the project. Vendors are free to submit information on products or services not specifically requested but that, in the Vendor’s opinion, will benefit the DIS.

We strongly recommend the Vendor respond to each section. An omitted response will be scored the same as an unsatisfactory response. A response of NO to a Mandatory Requirement (MR) on Form 8, will result in immediate Vendor disqualification and elimination.

3.2.11 Retention of Proposals

All proposals submitted become the property of Snohomish County. Snohomish County will make reasonable efforts to maintain proposals in confidence and, except as required by law, will release proposals only to personnel involved with

the evaluation of the project. Proprietary information should be identified in each proposal. See Section 2.3. After contract award, Snohomish County will retain one copy of each proposal and destroy all other copies.

3.3 User Definition For Software License

For purposes of the software licenses provided in this agreement, "user" for each component of the system shall be defined as follows:

An individual that is actively accessing the operating system environment (requires an account on the system and a login to the system).

Each concurrent access to the application software is considered as one user for the application license.

3.4 Evaluation Process

The award of this contract will be made by Snohomish County, in its sole discretion, to the Contractor submitting the best proposal in accordance with the evaluation criteria contained in this section. A Vendor will be eliminated from consideration for failure to comply with all of the mandatory requirements (MR) (see Form 8), or failure to comply with RFP instructions within Section 2 and 3.

Deviations from the mandatory requirements (MR) will be evaluated to determine whether the intent of the requirement will be met. If in the opinion of the County the deviation does not meet the intent of the mandatory requirement (MR), the proposal will be determined to be non-responsive and no longer considered a valid proposal.

To help Vendors understand Snohomish County's priorities and to structure a fair evaluation of all proposals, the Selection Committee has developed the following evaluation process and criteria.

1. The County will evaluate proposals for administrative compliance.
2. The Selection Committee will evaluate proposals for compliance with mandatory requirements.
3. The Selection Committee will read and score proposals according to designated evaluation criteria and weights:

Percentage Points for Each Section	
Adherence to Functional/ Technical Requirements	25%
Cost	20%
Vendor Qualifications	10%

General Requirements	10%
Vendor References	10%
Demos (Finalists Only)	25%

4. The Selection Committee may identify three finalists based on the highest scores from the following weighted evaluation criteria: adherence to functional/technical requirements, cost, vendor qualifications, general requirements and vendor references.
5. The County will host demonstrations of the finalists' solutions and conduct interviews. The Selection Committee will score demonstrations, with input from subject matter experts (SMEs). Interview content will address key questions arising from the proposals, reference checks and demonstrations, and will likely include questions about the vendors' proposed implementation approach.
6. If necessary to further differentiate vendors, the County will conduct further reference checks or will visit client sites for each of the finalists.

Based on the results of the demonstrations and interviews, the Selection Committee will assess whether or not a clear winner has emerged from the finalists. If there is no clear winner, the County may optionally request best and final offers from the finalists, with the specifics of the request to be determined at that time. The Selection Committee will then re-evaluate the finalists' best and final offers based on the scoring criteria stated in this section. However, if there is a clear winner, the County will enter into contract negotiations. If negotiations are unsuccessful, the County may optionally enter into negotiations with the second-place vendor, and so on.

The following table outlines the scoring method for each criterion. Note that the scores for each criterion will be ultimately adjusted based on the weights discussed earlier.

Criterion	Evaluation Method
Adherence to Functional/ Technical Requirements	Scores will be initially tallied based on the vendor's response to requirements in the functional and technical requirements matrices (Forms 9 and 14). A response of '1' for a requirement will receive a score of '4'; a response of '2' will receive a score of '3', etc. Scores for each individual requirement will be summed to arrive at a total score for each requirements category. Requirements categories will be weighted to reflect relative importance. Scores may then be adjusted depending on the extent to which the vendor must customize their solution to meet the County's needs (Form 10), the extent to which future service management needs can be met by the vendor (Form 11), and the strength of the vendor's response to the County's questions about

	technical approach and architecture (Forms 12 and 13).
Cost	Vendors will submit a proposal outlining one-time and recurring costs, including software, implementation, maintenance and support. Pricing shall be checked for completeness and mathematical accuracy. Errors and inconsistencies shall be handled according to the severity of the error. Minor mathematical errors shall be called to the attention of Vendors and Vendors will make corrections. Errors of substance shall be reviewed with the Vendor or, at the option of the County, the proposal may be disqualified.
Vendor Qualifications	Each Selection Committee member will score each proposal on a scale from 0-100 for this criteria, noting strengths and limitations for each vendor. The team will then meet to discuss and combine lists of strengths and limitations, and arrive at a consensus score for each vendor on this criteria.
General	Each Selection Committee member will score each proposal on a scale from 0-100 for this criteria, noting strengths and limitations for each vendor. The team will then meet to discuss and combine lists of strengths and limitations, and arrive at a consensus score for each vendor on this criteria.
References	The County will score each response to each question asked of references. If the interviewee rates the vendor as 'poor' in a given area or otherwise does not respond, the vendor receives a score of zero for that reference/question. If the interviewee rates the vendor as 'satisfactory' in a given area, the vendor receives a score of one. If the interviewee rates the vendor as 'excellent' in a given area, the vendor receives a score of two.
Demos	Each Selection Committee member will score the vendor on individual scripts and the interviews. The team will then meet to discuss the demos and interviews, and arrive at a consensus score.

3.4.1 Mandatory Requirements

Mandatory Requirements (MR) are minimum needs that must be met by the Vendor. **These are listed in Form 8.**

Failure to meet a Mandatory Requirement (MR) is grounds for disqualification and elimination and shall be established by any of the following conditions:

- **The Vendor fails to fully respond to any Mandatory Requirement.**
- **The Vendor states that a Mandatory Requirement cannot be met and/or does not propose an Acceptable Alternative.**

3.4.2 Adherence to Functional/Technical Requirements 25%

The Selection Committee will base scores for this criterion on Vendors' responses to the following forms:

Detailed Functional Requirements	Form 9
Modification Information	Form 10
Future Service Management System Requirements	Form 11
Technical Features and Approach	Form 12
Technical Architecture	Form 13
Technical Requirements	Form 14

3.4.3 Cost 20%

Vendors will submit a cost proposal (see Form 15) outlining one-time and recurring costs including software, implementation services, maintenance and support. Pricing shall be checked for completeness and mathematical accuracy. Errors and inconsistencies shall be handled according to the severity of the error. Minor mathematical errors shall be called to the attention of Vendors and Vendors will make corrections. Errors of substance shall be reviewed with the Vendor or, at the option of the County, the proposal may be disqualified.

3.4.4 Vendor Qualifications 10%

The Selection Committee will base scores for this criterion on Vendors' responses to the following forms:

Proposal Summary	Form 1
General Vendor Information	Form 2
Software Qualifications	Form 3
Implementation Partner Qualifications	Form 4

3.4.5 General Requirements 10%

The Selection Committee will base scores for this criterion on Vendors' responses to the following forms:

Implementation Plan	Form 5
Training Summary	Form 6

3.4.6 Vendor References 10%

The Selection Committee will base scores for this criterion on references' rating of vendors in the following areas:

- Quality and performance of recommended system.
- Verification that proposed system performs as presented by Vendor.
- Installation of software.
- Effective maintenance and technical support.
- Effective end-user support.
- Review of any problems and their resolution.
- Overall opinion of Vendor's performance and personnel.
- Projected cost versus actual cost.
- Stability and performance to specifications of product line.
- Overall opinion of Vendor's training for administrators and end-users.

3.4.7 Vendor Demonstration (Finalists Only) 25%

At the sole option of the County, and as a condition precedent to contract award, three or less of the highest rated proposers may be required to participate in two-day demonstrations. The demonstrations must follow scripts provided to proposers in advance.

During the demonstrations *finalists are expected to demonstrate the functionality requested in each script in the time allotted.* There will be time for a brief marketing presentation as part of the script sessions.

The County will also interview finalists at this time. Interviews will include key questions arising from the proposals, reference checks and demonstrations.

Failure to use the products proposed or to achieve the performance proposed may disqualify the Vendor and the demonstration will be concluded. **Failure to agree to the demonstration will disqualify the Vendor.**

It is highly desirable that demonstrations occur at facilities located on-site at the County.

Any information considered to be proprietary will be scheduled for discussion outside the broadest portion of the Demonstration. Further, Vendors are advised that subject matter experts, in addition to the Selection Committee, may attend these Demonstrations and should plan accordingly.

At the option of Snohomish County, and as a condition precedent to contract award, representatives of Snohomish County may visit sites deemed similar to the County for the purpose of evaluating the product in an operational environment.

3.5 Contract Award and Payment Schedule

Snohomish County expressly reserves the following rights:

- To award the contract according to the evaluation criteria set forth in the section above called Evaluation Process that includes due regard to quality of services, experience, compliance with specifications and other factors, in addition to price.
- Not to make an award, if it is deemed that no single proposal fully meets the requirements of this RFP, or to award the contract for only a portion of the functionality identified herein.
- To reject any and/or all irregularities in the proposals submitted.
- To reject any or all proposals or portions thereof.
- To make the award to any Vendor or combination of Vendors whose proposal(s), in the opinion of the County, is in the best interest of the County.

The Vendor chosen for award should be prepared to have the proposal incorporated, along with all other written correspondence concerning the proposal, into the contract. Any false or misleading statements found in the proposal will be grounds for disqualification.

3.5.1 Payment Schedule

Contract payments will be made to the Contractor upon installation and testing of the Project Management Systems and the completion of the performance period. The Performance period is defined as ninety (90) consecutive days of successful performance of the software in production mode. (Reference Project

Management System Pro Forma Contract, Appendix C, Section 35.0). The final payment schedule will be based upon mutual agreement between the Contractor and the County prior to contract award.

3.5.2 Professional Services Fees

The County will pay the Contractor for professional service fees agreed upon in advance by the County and the Contractor i.e., training, consulting, customizing, etc. upon receipt of properly completed invoices which shall be submitted to the County's Contract Administrator not more often than monthly. The invoices shall describe and document to the County's satisfaction a description of the work performed, the progress of the project, and fees. When expenses are invoiced, a detailed breakdown of each type must be provided. A receipt must accompany any single expense in the amount of \$50.00 or more in order to receive reimbursement.

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

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

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

3.6 Cooperative Purchasing

The Washington State Interlocal Cooperative Act RCW 39.34 provides a means for governmental agencies to cooperatively purchase goods and services. The Contractor must agree that other Washington State municipalities may acquire the Project Management System software under terms equivalent to those specified in the contract.

3.7 Source Code / Software

3.7.1 Copy of Software

To protect Snohomish County in the event the Contractor quits doing business, a copy of the Software Source Code will be supplied to Snohomish County. The

Contractor will keep Software Source Code current with all customization and new release of the product(s).

3.7.2 Escrow Account for Software

In lieu of providing a copy of software, the Software Source Code will be held in escrow. The Contractor should indicate in their proposal a preferred escrow firm and associated escrow agreement that the Contractor intends to use. The escrow agreement will be subject to negotiation, if necessary. Snohomish County shall have full rights to all code in the event the Contractor quits doing business. This includes all programs, libraries, and utilities required to build and maintain the software program. The Contractor will keep the Software Source Code current with each new release of the product(s).

3.7.3 Software Upgrades

The site license(s) to be negotiated with the successful Vendor must include a provision for software upgrades for the life of the Contract.

3.7.4 Compliance with Changes in Statutory Requirement

The successful Vendor will guarantee continued compliance with Washington statutes for the life of the contract.

3.8 Cost Proposal Evaluation

The cost proposal evaluation will be based on total cost of the solution (one-time and recurring). The costs used will be those provided in the Vendor's response to this RFP.

3.9 Necessary Ancillary Equipment and Software

Unless specifically exempted by the terms of this procurement, all parts, software, or accessories ordinarily furnished or required to make the proposed procurement service complete will be furnished by the Vendor at no additional cost.

3.10 Effective Dates for Pricing

The total system prices and other costs quoted in the Vendor's proposal must be valid up to 180 days past the Response Due Date.

3.11 Pricing Adjustments

Unless otherwise stipulated, all cost proposals must include unit prices and extensions where applicable and must otherwise be in the format requested.

During the contract period, pricing shall remain firm and fixed for the initial term of the contract.

During the term of the contract, should the Contractor enter into pricing agreements with other customers providing greater benefits or pricing, the Contractor shall immediately amend the contract to provide similar pricing to the County if the contract with other customers offers similar usage quantities and similar conditions impacting pricing. The Contractor shall immediately notify the County of any such contracts entered into by the Contractor.

3.12 Right of Clarification

While the County reserves the right for its evaluation teams to contact Vendors for clarification, Vendors should not assume that deficient answers will result in clarification requests. The right of clarification is not a Vendor's right; the right of clarification is a County right that will be very stringently exercised.

3.13 Proposal Rejections

The County will make determination of clarity and completeness in the responses to any of the provisions in this RFP. The County reserves the right to require clarification, additional information, and materials in any form relative to any or all of the provisions or conditions of this RFP.

The Vendor is specifically notified that failure to comply with any part of this RFP may result in rejection of the proposal as non-responsive.

The County reserves the right, at its sole discretion, to reject any and all proposals received without penalty or to not issue a Contract as a result of this RFP. The County also reserves the right, at its sole discretion, to waive minor administrative irregularities contained in any proposal.

3.14 Apparent Successful Vendor Notifications

All Vendors will be notified of the Apparent Successful Vendor(s) selection via FAX or e-mail.

3.15 Contract Terms and Conditions

A Pro Forma Contract is presented for Vendor review in Appendix C. The County intends to use this as the template for the actual Contract drafted for the successful Vendor.

3.16 Cost of Preparing Responses

The County is not responsible for any costs incurred by Vendors in the preparation and presentation of response documents, demonstrations, presentations, and interviews related to this procurement.

3.17 Non-Endorsement

As a result of the selection of a Vendor to supply products and/or services to the County, the County is neither endorsing the Vendor nor suggesting that the Vendor's service is the best or only solution. The Vendor agrees to make no reference to the County in any literature, promotional material, brochures, sales presentation or the like, without the express written consent of the County.

3.18 Non-Discrimination

The Apparent Successful Vendor will be expected to contractually agree that no individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any program provided by the Contract between the County and the Vendor because of race, color, creed, marital status, religion, sex, sexual orientation, national origin, Vietnam Era or disabled veterans status, age, the presence of any sensory, mental or physical disability, or political affiliation or belief. The contract will provide that prohibition against discrimination in employment shall not apply if the particular disability prevents the individual from performing the essential functions of his/her position, with or without reasonable accommodations.

3.19 Third Party Vendor

The County will accept responses that include third party involvement only if the proposing Vendor agrees to act as Prime Contractor and guarantor for all proposed products and services, including all actions of sub-contractors. Vendors must disclose in their response to this RFP the use of any third party Vendor products and services, and indicate willingness to assume Prime Contractor responsibility. Any sub-contract executed after award of the prime Contract must be approved, in advance, by the County.

3.20 Incorporation of RFP into Contract

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

APPENDIX A: CERTIFICATIONS AND ASSURANCES

SNOHOMISH COUNTY

RFP Number RFP-05-03

Project Management System and Associated Services

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

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

The attached Response is a firm offer for a period of 180 days following the Response Due Date specified in the RFP, and it may be accepted by Snohomish County, without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 180-day period. In the case of protest, our Response will remain valid for 180 days or until the protest is resolved, whichever is later.

In preparing this Response, we have not been assisted by any current or former employee of Snohomish County whose duties relate (or did relate) to Snohomish County's RFP-05-03 or prospective contract, or by any current or former employee of Snohomish County who was assisting in other than his or her official, public capacity. Neither does such a person nor any member of his or her immediate family have any financial interest in the outcome of this Response. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)

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

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

Signature

Vendor

Title

Date

APPENDIX B: CONFIDENTIALITY STATEMENT

SNOHOMISH COUNTY

RFP Number RFP-05-03

Project Management System and Associated Services

As an authorized representative and/or corporate officer of the company named below, I warrant that my company and its employees will neither disclose nor fail to keep secure any documents, diagrams, information, and information storage media made available by the Snohomish County Department of Information Services (DIS) for the purpose of responding to this procurement document or in conjunction with any contract arising therefrom. I warrant that only those employees who are authorized and required to use such materials will have access to them.

I further warrant that all materials provided by DIS or representatives of Snohomish County will be returned promptly after use and that all copies or derivations of the materials will be physically and/or electronically destroyed. I will include the returned materials and a letter attesting to the complete return of materials, and document the destruction of copies and derivations. Failure to comply will subject this company to liability, both criminal and civil, including all damages to DIS and third parties. I authorize the DIS to inspect and verify the above.

I warrant that if my company is awarded the contract, the company will not enter into any agreements or discussions with a third party concerning such materials prior to receiving confirmation from the DIS that such third party has a confidentiality agreement with Snohomish County similar to this one.

Signature

Typed Name

Title

Date

Company Name

APPENDIX C: PROJECT MANAGEMENT SYSTEM PRO FORMA CONTRACT

Enclosed is a Pro Forma Contract that will be used as a guide for preparing a final agreement with the successful proposer. All proposers are advised to carefully read this Pro Forma Service and Sales Agreement, and indicate any proposed changes, if applicable, in their proposals.

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Pro Forma Contract For Project Management System

1.0 Recitals

_____ is a provider of computerized automation systems. _____ has submitted a Proposal to Snohomish COUNTY for a _____ comprised of software to be installed, implemented, and supported at the COUNTY's location.

COUNTY desires to have _____ install and support the System at COUNTY's business location.

This Agreement is awarded by COUNTY pursuant to the success of _____ in its response to the Snohomish COUNTY Request for Proposal RFP-05-03, dated _____.

It is recommended that Vendors meet the requirements of this RFP with current off-the-shelf software ("canned software ") that may be tailored, if necessary, to meet Snohomish COUNTY needs, and other currently available products and services. This approach will ensure that minimum time and effort is spent in developing new products and that the system will be competitively priced.

2.0 Term Of Agreement

This Agreement and the rights granted herein shall remain in effect until terminated in accordance with Sections 18 (Termination for Default), and 19 (Termination for Public Conveyance), or by the mutual consent of the parties which shall be in writing.

3.0 Definitions

a) Definition of System: The subject matter of this Agreement is an integrated Project Management System_("the System") to be provided by _____. The System is comprised of the software, accompanying documentation, and services set forth in Vendor response.

b) Definition of current off-the-shelf software: "Current off-the-shelf software" means executable applications or system software products which are purchased in an "off-the-shelf" manner without modification to the source code of the application. "Current off-the-shelf software" shall include products such as operating systems, and any substitute

or additional applications or operating systems (consistent with meeting the COUNTY's need as set out in RFP-05-03) which may be acquired by the COUNTY from the CONTRACTOR. Standard off-the-shelf software may require extensive modification/ tailoring, and configuration at levels other than the source code level prior to its use in business applications.

- c) Definition of Custom Software: "Custom software" means application products which are modified in a material way at the source code level prior to their normal use by the COUNTY.
- d) Definition of Services: "Services" means the labor performed by _____ or its sub-contractors identified in Section 4.0, and any substitute or additional services (consistent with meeting the COUNTY's need as set out in RFP-05-03) which may be acquired by COUNTY from _____.

4.0 CONTRACTOR'S Services

In consideration of the sum of _____ as stated in the Vendor's response, the CONTRACTOR agrees to provide to the COUNTY all services, Software and any materials set forth in Sections _(from RFP) through _(from RFP), including Appendices __ through __ of this Agreement during the period of the Agreement for a Project Management System described in RFP-05-03, in accordance with this Agreement.

The CONTRACTOR shall be the Prime Contractor under this Agreement with respect to all services, and the CONTRACTOR's Information Services Information System and Applicant Tracking application software set forth in Vendor's Response to RFP-05-03, dated _____. It is understood that the CONTRACTOR will warranty and maintenance all services subcontracted by the CONTRACTOR. The CONTRACTOR shall remain solely responsible for all performance under this Agreement with respect to all services, CONTRACTOR's products and the Information Services Information System and Applicant Tracking application software set forth in the Vendor's response.

5.0 Accounting and Payment for CONTRACTOR Services

Payment to the CONTRACTOR for services rendered under this Agreement shall be as set forth in _____. Where _____ requires payments by Snohomish COUNTY, payment shall be based upon billings, supported unless otherwise provided in _____, by documentation of units of work actually performed and amounts earned, including where appropriate, the actual number of days worked each

month, total number of hours for the month, and the total dollar payment requested. Unless specifically stated in _____ or approved in writing in advance by the official executing this Agreement for Snohomish COUNTY, (hereinafter referred to as the "Contracting Officer",) the COUNTY will not reimburse the CONTRACTOR for any costs or expenses incurred by the CONTRACTOR in the performance of this contract.

Where required, the COUNTY shall, upon receipt of appropriate documentation, compensate the CONTRACTOR, no more often than monthly, through the COUNTY voucher system for the CONTRACTOR's service pursuant to the fee schedule set forth in _____.

6.0 Assignment and Subcontracting

This Agreement shall be binding upon the successors and assigns of both parties, provided, however, that no assignment delegation or other transfer shall be made by either party without the prior written approval of the other, approval of which shall not be unreasonably withheld. The CONTRACTOR may subcontract any or all obligations under this Agreement with the prior written consent of the COUNTY so long as the CONTRACTOR remains primarily liable for work provided by the subcontractor.

This Agreement can not be excluded from any assignment, acquisition, merger, or succession of the CONTRACTOR or any portions of the assets needed to fulfill this Agreement's obligations, however the right to refusal is retained by the COUNTY.

7.0 Independent CONTRACTOR

The CONTRACTOR's services shall be furnished by the CONTRACTOR as an independent CONTRACTOR and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the CONTRACTOR as an independent CONTRACTOR.

The CONTRACTOR acknowledges that the entire compensation for this Agreement is specified in _____ and the CONTRACTOR is not entitled to any COUNTY benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to Snohomish COUNTY employees. The CONTRACTOR represents that it maintains a separate place of business, serves clients other than the COUNTY, will report all income and expense accrued under this contract with the Internal Revenue Service on a Schedule C, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.

CONTRACTOR will defend, indemnify and hold harmless the COUNTY, its officers, agents or employees from any loss or expense, including but not limited to settlements, judgments, set-offs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

8.0 No Guarantee of Employment

The performance of all or part of this contract by the CONTRACTOR shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the CONTRACTOR or any employee of the CONTRACTOR or any subcontractor or any employee of any subcontractor by the COUNTY at the present time or in the future.

9.0 Mutual Non-Solicitation

The COUNTY agrees not to approach or solicit for employment in any way CONTRACTOR's employees while this contract is in force, or for ninety (90) days thereafter. The CONTRACTOR agrees not to hire, solicit, or accept solicitation for the services, through employment or other means, of any COUNTY employee with whom the CONTRACTOR has direct contact in the course of an assignment under this contract, or for a period of ninety (90) days thereafter.

10.0 Taxes

The CONTRACTOR understands and acknowledges that the COUNTY will not withhold Federal or State income taxes. Where required by State or Federal law, the CONTRACTOR authorizes the COUNTY to make withholding for any taxes other than income taxes (i.e., Medicare). All compensation received by the CONTRACTOR will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the CONTRACTOR to make the necessary estimated tax payments throughout the year, if any, and the CONTRACTOR is solely liable for any tax obligation arising from the CONTRACTOR's performance of this Agreement. The CONTRACTOR hereby agrees to indemnify the COUNTY against any demand to pay taxes arising from the CONTRACTOR's failure to pay taxes on compensation earned pursuant to this Agreement.

The COUNTY will pay sales and use taxes imposed on goods or non-professional services acquired hereunder as required by law. The CONTRACTOR must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on the CONTRACTOR's gross or net income, or personal property to which the COUNTY does not hold title. The COUNTY is exempt from Federal Excise Tax.

11.0 Software Warranty

CONTRACTOR warrants for one year after delivery of the Software to the COUNTY, that the software delivered hereunder will be (i) free from defects in material and workmanship and (ii) conform to the specifications included in the contract documents and manuals. This warranty will expire one year from the date of software acceptance.

Year 2000 Compliance: The content is year 2000 compliant. The term "Year 2000 Compliant" means software or information technology that:

- (i) processes accurately date/time data (including, without limitation, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations; and
- (ii) when used in combination with other software or information technology, accurately processes date/time data, if the other software or information technology properly exchanges and processes date/time data.

12.0 Virus Warranty

The CONTRACTOR warrants that the software does not contain any malicious code, program, or other internal component (e.g., computer virus, computer worm, computer time bomb, or similar component), which could damage, destroy, or alter any computer program, firmware, or hardware or which could, in any manner, reveal damage, destroy, or alter any data or other information accessed through or processed by the Software in any manner. The CONTRACTOR shall immediately advise the COUNTY, in writing, upon reasonable suspicion or actual knowledge that the Software may result in the harm described above. The CONTRACTOR shall indemnify and hold the COUNTY harmless from any damage resulting from the harm described above.

13.0 Warranty against Disabling or Restrictive Code

Without limiting any other provision to the Agreement, _____ warrants that the Software does not contain and _____ will not introduce via modem or otherwise any code, date block, time-bomb, Trojan horse, encrypted software keys, back door, or remote disabling function that may restrict the County's use of or access to the Software or related data or equipment. _____ understands and agrees that the County's inability to use the Software or its related data or equipment will cause substantial injury or harm to the public health or safety or grave harm to the public interest substantially affecting third persons. No limitation of liability, whether contractual or statutory, shall apply to a breach of this warranty.

14.0 Uniform Commercial Code (UCC)

All sales of goods/ products under this Agreement shall be governed by the Uniform Commercial Code (UCC) adopted into Washington State Law, Revised Code of Washington Title 62A, RCW 62A.2-101 Sales. Implied warranties of merchantability and fitness for a particular purpose will prevail and not be disclaimed by the CONTRACTOR.

15.0 Regulations and Requirement

Regulations and Requirement

This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. CONTRACTOR, its agents, employees or subcontractors shall conform in all respects with physical, fire or other published security regulations while on the COUNTY's premises.

16.0 Right to Review

The CONTRACTOR agrees that an authorized representative of the COUNTY shall, until the expiration of three (3) years after contract termination and upon reasonable notice, have access to and the right to examine any pertinent books and records of the CONTRACTOR involving transaction(s) related to the performance of this contract.

17.0 Modifications

Either party may request changes in the Agreement. Any and all agreed modifications shall be in writing, signed by each of the parties authorized agent or company officer.

18.0 Termination for Default

If the CONTRACTOR defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the COUNTY may, if the CONTRACTOR has not cured following a thirty (30) day notice, by depositing written notice to the CONTRACTOR in the U.S. mail, postage prepaid, terminate the contract, and at the COUNTY's option, obtain performance of the work elsewhere. If the contract is terminated for default, the CONTRACTOR shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any reasonable extra cost or damage to the COUNTY resulting from such default(s) shall be deducted from any money due or coming due to the CONTRACTOR. The CONTRACTOR shall bear any reasonable extra expenses incurred by the COUNTY in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the COUNTY by reason of such default.

If a notice of termination for default has been issued and it is later determined for any reason that the CONTRACTOR was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

19.0 Termination For Public Convenience

The COUNTY may terminate the contract in whole or in part whenever the COUNTY determines, in its sole discretion, that such termination is in the best interest of the COUNTY. Whenever the contract is terminated in accordance with this paragraph, the CONTRACTOR shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this contract by the COUNTY at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the COUNTY.

20.0 Defense & Indemnity Agreement

The CONTRACTOR shall hold harmless from and indemnify Snohomish COUNTY, its elected and appointed officials, employees, and agents, against all claims, losses, suits, actions, costs, counsel fees, litigation costs, expenses, damages, judgments, or decrees by reason of damage to any property of any person or party and/or any death, injury or disability to or of any person or party, including any employee, arising out of or suffered, directly or indirectly, by reason of or in connection with the performance of this Agreement or any act, error or omission of the CONTRACTOR, CONTRACTOR's employees, agents, or subcontractors, whether by negligence or otherwise. Provided, that if the claims for damages arise out of bodily injury to persons or damage to property and caused by or result from the concurrent negligence: (1) of the COUNTY and its elected or appointed officials, employees, or agents, and (2) the CONTRACTOR and its agents, employees, or subcontractors, the hold harmless and indemnity provisions of this Agreement shall be valid and enforceable only to the extent of the negligence of the CONTRACTOR, its agents, employees, or subcontractors. The CONTRACTOR's obligation shall include, but not be limited to, investigating, adjusting, and defending all claims alleging loss from action, error, or omission or breach of any common law, statutory or other delegated duty by the CONTRACTOR, CONTRACTOR's employees, agents, or subcontractors.

21.0 Industrial Insurance Waiver

CONTRACTOR shall obtain and maintain continuously, at its own expense, general occurrence form liability insurance with limits of liability not less than \$1,000,000.00 each occurrence. Carrier is subject to approval by COUNTY. Such insurance shall include "Snohomish COUNTY, its officers, elected officials, agents and employees" as an additional insured and shall not be reduced or canceled without thirty (30) days written prior notice to the COUNTY. CONTRACTOR shall provide to COUNTY for review and approval, a duplicate of the policy as evidence of insurance protection provided, as a condition precedent to execution of this contract.

Such insurance, in its provision for additional insured, shall include a "Cross Liability Endorsement", "Severability of Interests", or "Separation of Insureds" provision indicating:

"The inclusion of more than one insured under this policy shall not affect the rights of any insured as respects any claim, suit, or judgment made or brought by or for any other insured or by or for any employee of any other insured. The policy shall protect each insured in the same manner as though a separate policy had been issued to each except that nothing herein shall operate to increase the company's liability beyond the amount or amounts for which the insurer would have been liable had only one insured been named."

With respect to the performance of this Agreement and as to claims against the COUNTY, its officers, agents and employees, the CONTRACTOR expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this Agreement extend to any claim brought by or on behalf of any employee of the CONTRACTOR. This waiver is mutually negotiated by the parties to this Agreement.

22.0 Venue And Choice Of Law

In the event that any litigation should arise concerning the construction or interpretation or any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the COUNTY of Snohomish. This Agreement shall be governed by the laws of the State of Washington.

23.0 Withholding Payment

the event the Contracting Officer determines that the CONTRACTOR has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the COUNTY may withhold from amounts otherwise due and payable to CONTRACTOR the amount determined by the COUNTY as necessary to cure the default, until the Contracting

Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling CONTRACTOR to termination or damages, provided that the COUNTY promptly gives notice in writing to the CONTRACTOR of the nature of the default or failure to perform, and in no case more than 10 days after it determines to withhold amounts otherwise due. A determination of the In Contracting Officer set forth in a notice to the CONTRACTOR of the action required and /or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the CONTRACTOR acts within the times and in strict accord with the provisions of the Disputes clause of this Agreement. The COUNTY may act in accordance with any determination of the Contracting Officer which has become conclusive under this clause, without prejudice to any other remedy under the Agreement, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the CONTRACTOR, (3) to set off any amount so paid or incurred from amounts due or to become due the CONTRACTOR. In the event the CONTRACTOR obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to CONTRACTOR by reason of good faith withholding by the COUNTY under this clause.

Future Non-Allocation Of Funds:

If sufficient funds are not appropriated or allocated for payment under this contract for any future fiscal period, the COUNTY will not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. No penalty or expense shall accrue to the COUNTY in the event this provision applies.

24.0 Contractor Commitments, Warranties And Representations

Any written commitment received from the CONTRACTOR concerning this Agreement shall be binding upon the CONTRACTOR if incorporated into this contract physically or by reference. Failure of the CONTRACTOR to fulfill such a commitment shall render the CONTRACTOR liable for damages to the COUNTY. A commitment includes, but is not limited to any representation made prior to execution of this Agreement as to performance of services or Products, prices or options for future acquisition to remain in effect for a fixed period, or warranties. Warranties for CONTRACTOR products are set forth in Section(s) 11.0 (Software Warranty and Year 2000 Compliance), 12.0 (Virus Warrant), 13.0 (Warranty against Disabling or Restrictive Code), 14.0 (Uniform Commercial Code) and the Vendor's response attached hereto and by this reference incorporated herein.

25.0 Patent/Copyright Infringement

CONTRACTOR will defend and indemnify the COUNTY from any claimed action, cause or demand brought against the COUNTY, to the extent such action is based on the claim that products furnished hereunder by the Contractor infringes any U.S. or Canadian patent or copyright. The CONTRACTOR will pay those costs and damages attributable to any such claims that are finally awarded against the COUNTY in any action. Such defense and payments are conditioned upon the following:

- a) That CONTRACTOR shall be notified promptly in writing by COUNTY of any notice of such claim.
- b) CONTRACTOR shall have the right, hereunder, at its option and expense, to obtain for the COUNTY the right to continue using the products, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the COUNTY.
- c) The right to continue using the System, replace or modify the Products so that they become non infringing or, if such remedies are not reasonably available, grant the COUNTY a credit for the products as depreciated and accept their return. CONTRACTOR shall not have any liability if the alleged infringement is based upon the COUNTY's use or sale of CONTRACTOR-furnished products, in combinations with other products or devices not furnished by the CONTRACTOR, or modifications made by the COUNTY or by the CONTRACTOR to the COUNTY's specifications, if such combinations or modifications cause the products furnished by CONTRACTOR to become infringing. This Section 26 states the entire liability and obligation of the CONTRACTOR and the exclusive remedy of the COUNTY with respect to any alleged infringement of a United States patent or copyright by the Product or any part thereof.
- d) "Product" (A.K.A "The System") is defined as The Project Management System provided hereunder by the CONTRACTOR.

26.0 Disputes

a) General

Differences between the CONTRACTOR and the COUNTY, arising under and by virtue of the Contract Documents shall be brought to the attention of the COUNTY at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the Contracting Officer, shall be final and conclusive.

b) Notice of Potential Claims

The CONTRACTOR shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Contracting Officer or the COUNTY, or (2) the happening of any event or occurrence, unless the CONTRACTOR has given the COUNTY a written Notice of Potential Claim within 10 days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the COUNTY. The written Notice of Potential Claim shall set forth the reasons for which the CONTRACTOR believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. CONTRACTOR shall keep full and complete daily records of the Work performed, labor and material used, and all costs and additional time claimed to be additional.

c) Detailed Claim

The CONTRACTOR shall not be entitled to claim any such additional compensation, or extension of time, unless within 30 days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the COUNTY, the CONTRACTOR has given the COUNTY a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

27.0 Ownership Of Items Produced

All writings, programs, data, public records or other materials prepared by the CONTRACTOR and/or its consultants or subcontractors, in connection with a performance of this Agreement shall be the sole and absolute property of the COUNTY. This paragraph does not apply to application software offered for sale, license or lease to other customers, nor to systems software.

28.0 Confidentiality

The CONTRACTOR, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the COUNTY or acquired by the CONTRACTOR in performance of this Agreement, except upon the prior written consent of the Snohomish COUNTY Prosecuting Attorney or an order entered by a court after having acquired jurisdiction over the COUNTY. CONTRACTOR shall immediately give to the COUNTY notice of any judicial proceeding seeking disclosure of such information. CONTRACTOR shall indemnify and hold harmless the COUNTY, its officials, agents or employees from all loss or expense, including, but not limited to settlements, judgments, set-offs, attorneys' fees and costs resulting from CONTRACTOR's breach of this provision.

29.0 Notice

Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice shall be given by the CONTRACTOR to (refer to addresses listed below). Notice to the CONTRACTOR for all purposes under this Agreement shall be given to the address listed below. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

Hand deliver to:	Mail to:
SNOHOMISH COUNTY INFORMATION SERVICES Mr. Pat Scattaregia Technology Contract Administrator 5 th Floor Henry Cogswell Building 2802 Wetmore Avenue Everett, WA Ph: (425) 388-3103 E-Mail: pat.scattaregia@co.snohomish.wa.us FAX: (425) 388-3999	SNOHOMISH COUNTY INFORMATION SERVICES Mr. Pat Scattaregia Technology Contract Administrator 3000 Rockefeller Ave, M/S 709 Everett, WA 98201-4046
Hand deliver copy to:	Mail copy to:
SNOHOMISH COUNTY INFORMATION SERVICES Attn.: John Hartwig, Deputy Director 5 th Floor Henry Cogswell Building 2802 Wetmore Avenue Everett, WA Ph: (425) 388-3730 E-Mail: john.hartwig@co.snohomish.wa.us FAX: (425) 388-3985	SNOHOMISH COUNTY INFORMATION SERVICES Attn.: John Hartwig, Deputy Director 3000 Rockefeller Ave, M/S 709 Everett, WA 98201-4046

30.0 Severability

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

31.0 Waiver

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

32.0 Quiet Possession And Usage

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

33.0 Software Documentation

CONTRACTOR will provide appropriate software documentation, within 30 days after execution of this Agreement or as otherwise mutually agreed, in the form of a mutually agreed number of manuals adequate for use of software ordered under the provisions of this Agreement. Manual upgrades to be provided on a no-charge basis by the CONTRACTOR as long as a maintenance Agreement is in effect for such software programs.

For all CONTRACTOR programs furnished to the COUNTY within the scope of this Agreement, and to the extent it is contractually allowed to do so, the CONTRACTOR agrees that in the event it withdraws its support (if supported) from such programs, it will immediately furnish to the COUNTY, if requested, at no additional cost, complete documentation to permit the COUNTY to maintain, modify or enhance such purchased or licensed programs.

CONTRACTOR grants to the COUNTY the right to copy or otherwise reasonably reproduce software manuals and documentation furnished pursuant to this provision, for the COUNTY's internal use only within the scope of this Agreement at no additional charge.

CONTRACTOR's own copyrighted documentation and manuals may not be reproduced, however, CONTRACTOR will provide additional copies to the COUNTY, upon COUNTY's request, at mutually agreed upon prices.

34.0 Software Upgrades & Maintenance

CONTRACTOR further agrees that CONTRACTOR will, at the sole option of the COUNTY, maintain the Project Management System software to original performance specifications in accordance with the following maintenance terms and conditions for a period of five (5) years from date of acceptance of any software purchased or licensed pursuant to this Agreement, provided that said software has been continuously maintained by the CONTRACTOR, or the CONTRACTOR's authorized Subcontractor, since its acceptance. Maintenance for purchased software may be discontinued by the COUNTY upon ninety (90) days written notice to CONTRACTOR.

Maintenance charges used in computing credits are as set forth in the Vendor's response.

- a) The COUNTY shall provide the contractor access to the system to perform maintenance service.
- b) Maintenance and upgrades shall be performed at a time convenient to the COUNTY.
- c) Major new releases shall be provided on digital media compatible with COUNTY installation, with complete instructions for a Systems Administrator to apply the upgrade.
- d) The COUNTY will be notified in advance if any change made is non-reversible, so that appropriate back-ups of programs and/or data can be taken before applying the upgrade, in case the upgrade causes a problem in the system.
- e) Any new functionality for the Project Management System software required by statute of the State of Washington or the United States of America will be provided as follows:

If the required functionality is minor in nature, such functionality will be provided in the next release of the application software at no additional charge to the COUNTY. A functionality shall be considered minor in nature if such functionality can be created in less than twenty-four (24) man hours.

If the required functionality is not minor in nature, it shall be considered an enhancement to the application software. The CONTRACTOR and its subcontractors will advise the COUNTY on the cost of providing such enhancement and shall proceed with such enhancement upon written approval from the COUNTY.

35.0 Contractor Correction Of Software Malfunction

CONTRACTOR shall provide a correction service at no additional cost to the COUNTY for any error, malfunction, or defect, if any, in the CONTRACTOR supplied software which, when used as delivered, fails to perform in accordance with this Agreement or with CONTRACTOR's officially announced technical specifications and which the COUNTY shall bring to CONTRACTOR's attention. CONTRACTOR agrees to perform remedial maintenance in accordance with the following maintenance terms and conditions for a period of five (5) years from date of acceptance of any software purchased or licensed pursuant to this Agreement, provided that said software has been continuously maintained by the

CONTRACTOR, or the CONTRACTOR's authorized Subcontractor, since its acceptance. CONTRACTOR shall undertake such correction service in a timely manner.

Remedial Software Maintenance - General Provisions:

- a) The COUNTY shall provide the CONTRACTOR access to the system to perform remedial maintenance service.
- b) The COUNTY agrees to make the system available at reasonable times and in reasonable time increments and in such event the COUNTY will not charge the CONTRACTOR for such system use.
- c) Performance of remedial maintenance shall begin within the contracted period of remedial maintenance and after notification that the Project Management System is not operating correctly. The CONTRACTOR shall provide the COUNTY with a designated point of contact and shall make arrangements to enable its maintenance representative to receive such notification. The COUNTY shall provide the CONTRACTOR with a designated representative, a description of the problem and an assessment of the severity of the problem.
- d) Contracted response time is defined as 2 hours after notification by the COUNTY that remedial maintenance service is required, within which CONTRACTOR's maintenance personnel shall make a good faith effort to reach the COUNTY contact person and begin work to correct the problem.
- e) Except for causes beyond the control of the CONTRACTOR, if the maintenance personnel fail to contact the COUNTY's designated representative within the contracted response period, the CONTRACTOR shall grant a credit to the COUNTY in the amount of 1/200th of the prorated monthly maintenance charges for the Project Management System license for each "late" hour or part thereof (prorated) beginning with the time of notification and ending with the time of contact and, within each calendar month, not to exceed 100% of the prorated monthly maintenance charge. For purpose of response time computations only hours of contracted remedial maintenance shall be included.
- f) The CONTRACTOR shall furnish a malfunction incident report to the installation upon completion of each remedial maintenance call. The report shall include, as a minimum, the following:
 - i) Date and time notified;
 - ii) Date and time COUNTY contact called;
 - iii) Module affected;
 - iv) Time spent for repair;
 - v) Description of malfunction;
 - vi) Description of problem fix or work-around.

vii)

g) Maintenance Credit for System Malfunction

- i) If a major component of the Project Management System remains inoperative due to a malfunction through no fault or negligence of the COUNTY for a total of 12 hours or more during any 24-hour period, the CONTRACTOR shall grant a credit to the COUNTY for each such hour in the amount of 1/200th of the prorated monthly license and maintenance charges for the Project Management System and, within each calendar month not to exceed 100% of the prorated monthly maintenance charge. System downtime is defined as that period of time when scheduled jobs cannot be processed on the system due to CONTRACTOR supplied software malfunction. Downtime for each incident shall start from the time the COUNTY makes a bona fide attempt to contact the CONTRACTOR's designated representative at the prearranged contact point and continue until the system is returned to good operating condition; PROVIDED THAT, time required, as a result of the malfunction, to reconstruct data stored on disks and/or other storage media, shall be considered down time for the system. Data reconstruction is defined as the process needed to return a database and its corresponding data to a state that is known to be correct, from a state that is known to be incorrect. The COUNTY wishes to have standard recovery processes available including forward recovery (restore of backup copy with application of all transactions from journal(s) to current) as well as backward recovery (undoing transactions from current using journal). The COUNTY expects the use of checkpoints (automatic database and journal reconciliation during operation periodically) to facilitate data restoral.
- ii) Exclusive of the provisions of Paragraph g)i) above, the CONTRACTOR shall grant a credit to the COUNTY whenever the system being maintained by the CONTRACTOR fails to perform at an effectiveness level of 95 percent during any month. The effectiveness level for the Project Management System is computed by dividing the operational use time by the sum of that time plus system downtime. Downtime shall be defined and computed in the same manner as provided in subparagraph g)i) above. The credit shall be a reduction of the total prorated monthly license and maintenance charges by the percentage figure determined by subtracting the actual effectiveness level percentage from 95 percent and within each calendar month, not to exceed 100% of the prorated monthly maintenance charge. For example, if the effectiveness level for the system is 82 percent, the credit would be 13 percent. Any downtime for which credit was granted in

accordance with Paragraph g)i) above shall not be included in the effectiveness level computation.

36.0 Installation And Delivery Dates

CONTRACTOR's Project Management System software is to be installed after acceptance of all required hardware for that module and prior to installation of converted COUNTY data files. Installation to be completed on or before 90 days from CONTRACT date.

COUNTY data files requiring conversion shall be converted to operate on the CONTRACTOR's software on or before 120 days from CONTRACT date.

37.0 Standard Of Performance And Acceptance Of Software

This provision establishes a standard of performance which must be met before any of the software is accepted by the COUNTY. It is also applicable to any modifications and upgrades which are added, or field modified after completion of a successful Performance Period.

To be considered ready for use, the CONTRACTOR shall demonstrate to the acceptance of the COUNTY, using a performance audit of the installed software and system data files, that the CONTRACTORs Project Management System software performs to the standards as specified elsewhere in this contract. The COUNTY shall provide written notice of acceptance. Any required software modifications to meet the requirements of the COUNTY or Regulatory Agencies shall be subject to the same acceptance audit and shall not be accepted until such time as the modifications meet the requirements.

The Performance Period shall be defined as successful performance of the software for a period of ninety (90) consecutive days in production mode following the installation and testing of the software. The system shall perform as specified in the CONTRACTOR's proposal. A component of the system that adversely affects other previously accepted components of the system will not be accepted until the performance or other problem has been resolved to the satisfaction of the COUNTY. The COUNTY shall provide written notice of successful performance.

Future modifications, upgrades and new sub-systems will be subject to Performance Period testing as applicable to those individual systems. CONTRACTOR guarantees that any future enhancements will not impact the operating performance of previously approved software.

The COUNTY shall provide the CONTRACTOR access to the system for any on-site software installation as may be required. The CONTRACTOR shall provide a means to access the COUNTY Project Management System via modem for such enhancements and for regular system and user support.

38.0 Implementation Team

The personnel listed in the Vendor implementation team(s) may not be changed without the COUNTY's permission. The team members will be mutually agreed upon and listed as the first implementation task following the signing of this contract.

39.0 Source Code Escrow

CONTRACTOR agrees to place current copies of its source code, including all relevant commentary, explanations and other documentation, as well as instructions to compile the source code, plus all revisions to the software source code encompassing all corrections, changes, modifications and enhancements made to the software by CONTRACTOR (the "Escrowed Material") into an escrow account with an escrow agent, subject to the terms of a software escrow Agreement that must first be approved by the COUNTY, and included in this contract. CONTRACTOR will update these copies within forty-five (45) calendar days of each major product release and all product fixes installed in the COUNTY software. CONTRACTOR will provide the Escrowed Material as required herein prior to the final acceptance date.

Instances of Default: The COUNTY may access the Escrowed Material upon the occurrence of any one of the following instances of default:

- a) CONTRACTOR defaults on any of the terms of its contract with the COUNTY;
- b) CONTRACTOR ceases its ongoing business operations;
- c) CONTRACTOR stops maintenance support of the software module in question;
- d) CONTRACTOR fails to perform the contract in a timely fashion;
- e) CONTRACTOR suffers any act of insolvency; or
- f) CONTRACTOR fails to maintain technical staff capable of supporting or modifying the software system.

40.0 Sale Or Transfer Of Contract

The contract between the Vendor and the customer may not be sold or transferred without the COUNTY's written permission.

41.0 Survival

The provisions of paragraphs 4.0 (CONTRACTOR's Services) through 43.0 (Entire Agreement) shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

42.0 Entire Agreement

This written contract and its corresponding documents listed below represents the entire Agreement between parties and supersedes any prior oral statements, discussions, or understanding between the parties. In the event of any conflict requiring interpretation, the precedence of documents shall be:

- a) Negotiated, signed contract.
- b) Snohomish COUNTY Request for Proposal Number RFP-05-03.
- c) Vendor's original response to RFP-05-03.
- d) Vendor's detailed design documents.

IN WITNESS WHEREOF, the CONTRACTOR has executed this agreement on the day and year first below written and Snohomish COUNTY has caused this instrument to be executed by, and in the name of said COUNTY, the day and year first below written.

Executed this _____ day of _____, 2003.

COUNTY OF SNOHOMISH:	PRIMARY CONTRACTOR:
	Company Name: _____
By: _____ Robert J. Drewel Snohomish COUNTY Executive	By: _____ Name: _____ Title: _____
Approved as to Form: _____ Prosecuting Attorney	
Reviewed by Risk Management APPROVED () OTHER () Explain. _____ Signed: _____ Date: _____	

APPENDIX D: RCW RETAIL SALES TAX

REVISED CODE OF WASHINGTON

Title 82 RCW EXCISE TAXES

82.04 Business and occupation tax

RCW 82.04.050 "Sale at retail," "retail sale."

[RCW 82.04.050](#)"Sale at retail," "retail sale."

(1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who presents a resale certificate under RCW [82.04.470](#) and who:

(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, but a purchase for the purpose of resale by a regional transit authority under RCW [81.112.300](#) is not a sale for resale; or

(b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being

produced for sale; or

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW [82.04.065](#). The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW [82.04.280](#) (2) and (7) and [82.04.290](#).

(2) The term "sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of coin-operated laundry facilities when such facilities are situated in an apartment house, rooming house, or mobile home park for the exclusive use of the tenants thereof, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original

owner;

(d) The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter [82.16](#) RCW;

(f) The sale of and charge made for the furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same;

(g) The sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), and (f) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events; and

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4) The term shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator.

(5) The term shall also include the providing of telephone service, as defined in RCW [82.04.065](#), to consumers.

(6) The term shall also include the sale of canned software other than a sale to a person who presents a resale certificate under RCW [82.04.470](#), regardless of the method of delivery to the end user, but shall not include custom software or the customization of canned software.

(7) The term shall not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(8) The term shall also not include sales of chemical sprays or washes to persons for the purpose of post harvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor shall it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

(9) The term shall not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter [35.82](#) RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor shall the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development.

(10) Until July 1, 2003, the term shall not include the sale of or charge made for labor and services rendered for environmental remedial action as defined in RCW [82.04.2635](#)(2).

[2000 2nd sp.s. c 4 § 23. Prior: 1998 c 332 § 2; 1998 c 315 § 1; 1998 c 308 § 1; 1998 c 275 § 1; 1997 c 127 § 1; prior: 1996 c 148 § 1; 1996 c 112 § 1; 1995 1st sp.s. c 12 § 2; 1995 c 39 § 2; 1993 sp.s. c 25 § 301; 1988 c 253 § 1; prior: 1987 c 285 § 1; 1987 c 23 § 2; 1986 c 231 § 1; 1983 2nd ex.s. c 3 § 25; 1981 c 144 § 3; 1975 1st ex.s. c 291 § 5; 1975 1st ex.s. c 90 § 1; 1973 1st ex.s. c 145 § 1; 1971 ex.s. c 299 § 3; 1971 ex.s. c 281 § 1; 1970 ex.s. c 8 § 1; prior: 1969 ex.s. c 262 § 30; 1969 ex.s. c 255 § 3; 1967 ex.s. c 149 § 4; 1965 ex.s. c 173 § 1; 1963 c 7 § 1; prior: 1961 ex.s. c 24 § 1; 1961 c 293 § 1; 1961 c 15 § 82.04.050; prior: 1959 ex.s. c 5 § 2; 1957 c 279 § 1; 1955 c 389 § 6; 1953 c 91 § 3; 1951 2nd ex.s. c 28 § 3; 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Notes:

Findings--Construction--2000 2nd sp.s. c 4 §§ 18-30: See notes following RCW [81.112.300](#).

Findings--Intent--Effective date--1998 c 332: See notes following RCW [82.04.29001](#).

Effective dates--1998 c 308: "(1) Sections 1 through 4 of this act take effect July 1, 1998.

(2) Section 5 of this act takes effect July 1, 2003." [1998 c 308 § 6.]

Effective date--1998 c 275: "This act takes effect July 1, 1998." [1998 c 275 § 2.]

Effective date--1997 c 127: "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 July 1, 1997." [1997 c 127 § 2.]

Severability--1996 c 148: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 148 § 7.]

Effective date--1996 c 148: "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 shall take effect April 1, 1996." [1996 c 148 § 8.]

Effective date--1996 c 112: "This act shall take effect July 1, 1996." [1996 c 112 § 5.]

Intent--1995 1st sp.s. c 12: "It is the intent of the legislature that massage services be recognized as health care practitioners for the purposes of business and occupation tax application. To achieve this intent massage services are being removed from the definition of sale at retail and retail sale." [1995 1st sp.s. c 12 § 1.]

Effective date--1995 1st sp.s. c 12: "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 shall take effect July 1, 1995." [1995 1st sp.s. c 12 § 5.]

Effective date--1995 c 39: "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 shall take effect July 1, 1995." [1995 c 39 § 3.]

Severability--Effective dates--Part headings, captions not law--1993 sp.s. c 25: See notes following RCW [82.04.230](#).

Construction--Severability--Effective dates--1983 2nd ex.s. c 3: See notes following RCW [82.04.255](#).

Intent--Severability--Effective date--1981 c 144: See notes following RCW [82.16.010](#).

Application to preexisting contracts--1975 1st ex.s. c 291; 1975 1st ex.s. c 90: See note following RCW [82.12.010](#).

Effective dates--1975 1st ex.s. c 291: "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing institutions, and shall take effect immediately: PROVIDED, That sections 8 and 26 through 43 of this amendatory act shall be effective on and after January 1, 1976: PROVIDED FURTHER, That sections 2, 3, and 4, and subsections (1) and (2) of section 24 shall be effective on and after January 1, 1977: AND PROVIDED FURTHER, That subsections (3) through (15) of section 24 shall be effective on and after

January 1, 1978." [1975 1st ex.s. c 291 § 46.]

Severability--1975 1st ex.s. c 291: "If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 291 § 45.]

Effective date--1975 1st ex.s. c 90: "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975." [1975 1st ex.s. c 90 § 5.]

Effective date--1973 1st ex.s. c 145: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1973." [1973 1st ex.s. c 145 § 2.]

Effective dates--1971 ex.s. c 299: "This 1971 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect as follows:
(1) Sections 1 through 12, 15 through 34 and 53 shall take effect July 1, 1971;
(2) Sections 13, 14, and 77 and 78 shall take effect June 1, 1971; and
(3) Sections 35 through 52 and 54 through 76 shall take effect as provided in section 53."
[1971 ex.s. c 299 § 79.]

Severability--1971 ex.s. c 299: "If any phrase, clause, subsection or section of this 1971 amendatory act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this 1971 amendatory act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid." [1971 ex.s. c 299 § 78.]

Construction--Severability--1969 ex.s. c 255: See notes following RCW [35.58.272](#).

Effective date--1967 ex.s. c 149: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1967." [1967 ex.s. c 149 § 65.]

Effective date--1965 ex.s. c 173: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect June 1, 1965." [1965 ex.s. c 173 § 33.]

Credit for retail sales or use taxes paid to other jurisdictions with respect to property used: RCW [82.12.035](#)

"Services rendered in respect to" defined: RCW [82.04.051](#)