

**OFFICE OF INSTRUCTIONAL ENHANCEMENT AND INTERNAL OPERATIONS**  
**Summary of State Board of Education Agenda Items**  
**September 13-14, 2012**

**OFFICE OF STUDENT ASSESSMENT**

15. Approval to modify contract with NCS Pearson, Inc., for Fiscal Year 2013 to include indemnification language for the Mississippi Subject Area Testing Program, Second Edition (SATP2)

Awarded Vendor: NCS Pearson, Inc.  
Iowa City, Iowa

Scope of Project: The purpose of this modification is to include the agreed upon indemnification language in the Mississippi Subject Area Testing Program, Second Edition (SATP2) Fiscal Year 2013 contract. The indemnification language specifically manages risks and protects the Mississippi Department of Education from legal issues related to the vendor.

Personnel associated with this contract are not former Department employees or related to any Department employee.

Scope of Contract:

- Term of Current Contract: April 20, 2009 – June 30, 2013
- Cost of Current Contract: \$20,892,649
- Modification Increase: \$ 0
- Total Cost of Modified Contract: \$20,892,649
- Method of Award: Request for Proposals

Funding Source: State and Federal funds

Recommendation: Approval

Backup material attached

## **Indemnification Language to be added to the NCS Pearson, Inc., MCT2 and SATP2 Contracts**

This agreed upon language between the Mississippi Department of Education and NCS Pearson, Inc., will be added to the MCT2 and SATP2 Contracts.

The following language will be added to the contracts to manage risks and to protect the Mississippi State Board of Education, members of its Commissions, and the MDE to the fullest extent allowed by law from legal issues related to the vendor (Pearson) performing the activities and work of the contract.

The agreed upon language to be added to the contracts is:

To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless and protect the members of the MBE and the members of its Commissions, the MDE, and its officers, employees, agents and representatives, and the State of Mississippi from and against all third party claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, reasonable investigative fees and expenses, and reasonable attorneys' fees, arising out of or caused by the Contractor and/or its partners, principals, agents, employees and/or Subcontractors in the performance of or failure to perform this agreement.

The State is entitled to participate in such defense. If the State considers selecting outside counsel to assist in the defense of any claim, the State will consult with the Contractor and its insurer regarding the selection of such counsel. The decision regarding the selection of outside counsel will remain within the sole discretion of the State, however, the State will give due consideration to any concerns expressed or objections made by the Contractor or its insurer.

In situations where Contractor's insurer is providing coverage for the State's defense under this indemnification clause, the Contractor's insurer will control the defense and settlement of any claim, suit, etc. subject to approval by the State (such approval not to be unreasonably withheld). In the event the Contractor defends any claim, suit, etc., the Contractor shall use legal counsel acceptable to the State (which acceptance shall not be unreasonably withheld). If such coverage is not applicable, the State will control decisions pertaining to management and settlement of such litigation subject to approval by the Contractor (such approval not to be unreasonably withheld). The Contractor shall be solely responsible for all costs and/or expenses associated with such defense.