



STATE OF WASHINGTON  
OFFICE OF FINANCIAL MANAGEMENT

**RFP NO. 15-1600**

*Chart of Accounts Redesign*

**AMENDMENT NO. ONE (1)**

**OFM RESPONSE TO BIDDER QUESTIONS**

**10.02.2015**

**OFM Answers to Bidders' Questions**

This OFM Answer to Bidders' Questions may only explain or clarify some aspect that is already addressed in the RFP. However, some of the answers may also supplement or change what was previously stated in the RFP or in an exhibit.

*Therefore it is important that bidders review all questions and answers, and not just those which they may have submitted.*

## **Bidders' Questions & Answers**

### ***Question 1: What is the current ERP?***

**ANSWER:** The state does not currently have a modern ERP system. As described in the RFP, the state is currently using 31 year old R-stars general ledger system which is a COBOL based, mainframe application

### ***Question 2: What does the State of Washington consider to be the top 4 public sector ERP systems?***

**ANSWER:** The state does not have a perspective on the top 4 public sector ERP systems at this time. It is expected that the apparently successful contractor will have an understanding of the ERP marketplace and that the state and the selected contractor will work together to define the scope for the software validation portion of the project.

### ***Question 3: When does the State of Washington plan to have the new ERP selected?***

**ANSWER:** At this time, the state does not have a timeline for ERP software selection.

### ***Question 4: Is the State of Washington considering a conversion within the current ERP if the search and select process for a new ERP is years away? Is the State of Washington interested in learning how to conduct this type of data transformation?***

**ANSWER:** The state is interested in procuring services to help with redesign of the chart of accounts as described in the RFP. The state has no plans to convert the redesigned chart of accounts into the existing general ledger system. Contractors are welcome to discuss this as a potential next step as part of their proposal, however this information will not be scored nor will it be reviewed as part of the written evaluations.

### ***Question 5: Is there a budget allocated for this project? If so, what is the budget?***

**ANSWER:** The state does not have a specified budget for this effort but is expecting bids of less than \$600,000.00. Bidders are encouraged to submit Proposals that are consistent with state efforts to conserve state resources

### ***Question 6: What is driving the business reason for this project? Reporting challenges? Data analytics, etc.?***

**ANSWER:** The state has initiated this work prior to the implementation of an ERP in order to envision the future book of records that will define how financial information is recorded and maintained and to enhance reporting capabilities for the enterprise. The state is expecting the business benefits of implementing the new chart of accounts will be discovered (and documented) during the chart of accounts redesign project. Other project background is available at: [http://one.wa.gov/documents/20141215\\_Report\\_to\\_Legislature.pdf](http://one.wa.gov/documents/20141215_Report_to_Legislature.pdf).

**Question 7: Is the State of Washington expecting a lump sum pricing model of one single all inclusive dollar amount, or is it preferred that T&E (Time and Expense) be a separate line item?**

**ANSWER:** Contractors should provide a firm fixed price for each proposed deliverable in US dollars including all expenses and indirect costs necessary to accomplish the objectives of the contract.

**Question 8: Is the State of Washington interested in information on how to migrate data and convert the old COA to the new through automation?**

**ANSWER:** Not at this time.

**Question 9: Are the State of Washington's auditing firms allowed to bid on this project?**

**ANSWER:** The State of Washington's financial statements and single audit report is audited by the Washington State Auditor's Office, an agency led by an independently elected official. The State Auditor's Office is not eligible to bid on this project. External audit firms are engaged for line of business audit purposes. These firms are eligible to bid.

**Question 10: The RFP indicates initial contract term is 1 year. Does that imply the State expects the chart of accounts redesign engagement to take a year? Would the State be open to a shorter timeframe that still accomplishes all requirements? If so, is the state most sensitive to starting the work on the contract start date outlined in the RFP or completing the work by the contract end date as outlined in the RFP?**

**ANSWER:** The state does not have an expectation of the duration of the engagement and is open to a shorter timeframe that accomplishes all the requirements. The state would prefer to start the work near the estimated start date outlined in the RFP.

**Question 11: Will agencies in all three branches of government be required to use the new COA including higher education?**

**ANSWER:** Yes. The state intends to replace the existing chart of accounts which is used by all three branches of government. Higher Education agencies currently maintain their own charts of accounts and crosswalks their data at the mandatory code level on a monthly basis. Additional information about the mandatory codes can be found at: <http://www.ofm.wa.gov/policy/75.10.htm>

**Question 12: Will they be required to use the new ERP as their general ledger system including higher education?**

**ANSWER:** It is envisioned that the new ERP will replace the existing AFRS accounting system and agencies in all three branches of state government will use the new ERP, with the exception of Higher Education agencies. Higher Education agencies will continue to maintain their own general ledger systems. These systems integrate with AFRS providing monthly financial data. No change is expected for Higher Education agencies and will not be required to migrate to the new ERP.

**Question 13: What do the individual courts use currently for COA and general ledger?**

**ANSWER:** The judicial state agencies including the state Supreme Court and the state Court of Appeals use the state chart of accounts as defined in SAAM

(<http://www.ofm.wa.gov/accounting/default.asp>) and AFRS. Judicial agencies are listed on the state organizational chart at <http://www.ofm.wa.gov/reports/orgchart/orgchart.pdf>. Superior, District and Municipal courts are out of scope as they are operated by local governments.

**Question 14:** *Section 3.4.a asks contractors to provide a firm fixed price for each proposed deliverable that includes all expenses. In Exhibit B Expenses, it states the contractor shall be reimbursed for travel and other expenses. Will the state please clarify?*

**ANSWER:** Exhibit B is attached for the primary purposes of giving the Bidders the opportunity to review the Agency's standard General Terms & Conditions. In this procurement, the clause re: travel and other expenses does not apply.

**Question 15:** *If travel and expenses are reimbursed and contractor is authorized an amount for these costs as shown in Exhibit B, how will OFM determine this amount?*

**ANSWER:** OFM requests that the contractor provide firm fixed price deliverables which are inclusive of all travel and expenses.

**Question 16:** *Will the winning bidder be precluded from bidding on the ERP SI contract?*

**ANSWER:** No.

**Question 17:** *Will the winning bidder be precluded from being a subcontractor to a bidder for the ERP SI contract?*

**ANSWER:** No.

**Question 18:** *What level of agreement is required of stakeholders? Does OFM make the final decisions?*

**ANSWER:** OFM desires input from the selected contractor on the best approach for chart of accounts redesign. It is anticipated that stakeholders will be engaged in the chart of accounts redesign project and input from a representative sample of agencies will be required. OFM will make the final decisions.

**Question 19:** *Section 1.2 Objectives and Scope of Work, page 2 – Does the state know which state staff and approximately how many will participate in the education sessions?*

**ANSWER:** The state estimates up to 30 staff from Statewide Accounting, the One Washington Project, OFM and line agencies may participate. Contractors should provide information on their proposed approach to education sessions in their proposals. The state values a contractor that is able to provide insight into the possibilities of modernizing the chart of accounts so that stakeholders understand the value and potential prior to beginning chart of accounts redesign.

**Question 20:** *Section 1.3 Minimum Qualifications, page 3 – third bullet, Prior Experience completing COA Redesign project for a State or Large Municipality. Can this experience be met by the firm or can it be met by individuals on the team?*

**ANSWER:** This experience can be met by the firm or individuals on the team. The state would prefer contractor teams that have prior experience completing COA redesign projects.

**Question 21:** *Due to the significant financial and operational impacts resulting from a Chart of Accounts redesign, we request that OFM consider a two week extension to allow bidders to develop comprehensive proposals.*

**ANSWER:** OFM will not grant the schedule extension at this time.

**Question 22:** *We request that OFM provide “Exhibit A – Certifications and Assurances” and “Exhibit B – Contract between the State of Washington Office of Financial Management and (Bidder)” in Microsoft Word format so that bidders may make track changes on the documents as noted by OFM in section 2.11 Contract and General Terms and conditions of the RFP.*

**ANSWER:** Exhibits A & B are attached as Word documents to this amendment. PLEASE NOTE: Bidders may only propose changes to the contract General Terms and Conditions.

**Question 23:** *The proposal states the timeframe for the work is December 2015 to November 2016 with the option for 2 one-year extensions. Is the thought that the Chart of Accounts would be essentially completed during the first one year period? If there is an anticipated completion date, can you provide?*

**ANSWER:** OFM is seeking input on the duration of the project from contractors as part of their proposals.

**Question 24:** *Is this Chart of Accounts also used by local governmental entities within the State of Washington or limited to the State and its related Agencies?*

**ANSWER:** The Chart of Accounts is not used by local governmental entities.

**Question 25:** *What is the budget established for the project?*

**ANSWER:** The state does not have a specified budget for this effort but is expecting bids of less than \$600,000.00. Bidders are encouraged to submit Proposals that are consistent with state efforts to conserve state resources

**Question 26:** *Can you provide a representative list of the anticipated agencies that would participate in the project?*

**ANSWER:** OFM intends to work with the awarded contractor to select an appropriate and representative sample of agencies for participation in the project.

**Question 27:** *Will the Office of Management and Budget staff be included in this effort?*

**ANSWER:** OFM intends to work with the awarded contractor to staff the project as needed. It is anticipated that Office of Financial Management (OFM) staff will participate in the project.

**Question 28:** *Will the Human Resources and Payroll staff be included in this effort?*

**ANSWER:** OFM intends to work with the awarded contractor to staff the project appropriately.

**Question 29:** *Can you confirm that results of this effort would be used as requirements into the future ERP Request for Proposal? If yes, is there an estimated timeframe for the release of the ERP RFP?*

**ANSWER:** Yes, the results of the chart of accounts redesign project are intended to be used as requirements for the future ERP RFP. OFM does not have an established timeframe for the release of the ERP RFP.

**Question 30: Will the project be managed and directed by the Office of Financial Management?**

**ANSWER:** Yes.

**Question 31: Section 3.2b: The Software Supportability Approach mentions ensuring the supportability of the new COA by at least four of the major public sector ERP packaged software offerings. Does the State have a specific list of the four it is most interested in ensuring the COA's supportability?**

**ANSWER:** The state does not have a perspective on the top 4 public sector ERP systems at this time. It is expected that the apparently successful contractor will have an understanding of the ERP marketplace and that the state and the selected contractor will work together to define the scope for the software validation portion of the project.

**Question 32: What is the main priority of the COA redesign effort? Is it to optimize the COA with a new modern structure? Is it to maximize the standardization of the COA across all of the different agencies? Something else?**

**ANSWER:** The state has initiated this work prior to the implementation of an ERP in order to envision the future book of records that will define how financial information is recorded and maintained and to enhance reporting capabilities for the enterprise. The state is expecting the business benefits of implementing the new chart of accounts will be discovered (and documented) during the chart of accounts redesign project. Other project background is available at [http://one.wa.gov/documents/20141215\\_Report\\_to\\_Legislature.pdf](http://one.wa.gov/documents/20141215_Report_to_Legislature.pdf).

**Question 33: Can you confirm if the COAs for the State's higher education institutions are considered in scope or out of scope for this effort?**

**ANSWER:** Redesign of the state's Higher Education agencies COAs is not in scope for this effort. Higher Education agencies currently maintain their own charts of accounts and crosswalk their data at the mandatory code level on a monthly basis. Additional information about the mandatory codes can be found at: <http://www.ofm.wa.gov/policy/75.10.htm>

**EXHIBIT A**

**CERTIFICATIONS AND ASSURANCES**

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

1. I/we declare that all answers and statements made in the proposal are true and correct.
2. The prices and/or cost data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single proposal.
3. The attached proposal is a firm offer for a period of 60 days following receipt, and it may be accepted by the AGENCY without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60-day period.
4. In preparing this proposal, I/we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this proposal or prospective contract, and who was assisting in other than his or her official, public capacity. If there are exceptions to these assurances, I/we have described them in full detail on a separate page attached to this document.
5. I/we understand that the AGENCY will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of the AGENCY, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
6. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by him/her prior to opening, directly or indirectly, to any other Proposer or to any competitor.
7. I/we agree that submission of the attached proposal constitutes acceptance of the solicitation contents and the attached sample contract and general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document.
8. No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.
9. I/we grant the AGENCY the right to contact references and other, who may have pertinent information regarding the ability of the Consultant and the lead staff person to perform the services contemplated by this RFP.
10. If any staff member(s) who will perform work on this contract has retired from the State of Washington under the provisions of the 2008 Early Retirement Factors legislation, his/her name(s) is noted on a separately attached page.

We (circle one) **are / are not** submitting proposed Contract exceptions. (See Section 2.11, Contract and General Terms and Conditions.) If Contract exceptions are being submitted, I/we have attached them to this form.

**On behalf of the Bidder submitting this proposal, my name below attests to the accuracy of the above statement.**

\_\_\_\_\_  
Signature of Proposer

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**GENERAL TERMS AND CONDITIONS**

**1. DEFINITIONS**

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

- a. "AGENCY" shall mean the Office of Financial Management of the State of Washington, any division, section, office, unit or other entity of the AGENCY, or any of the officers or other officials lawfully representing that AGENCY.
- b. "AGENT" shall mean the Director, and/or the delegate authorized in writing to act on the Director's behalf.
- c. "CONTRACTOR" shall mean that firm, provider, organization, individual or other entity performing service(s) under this contract, and shall include all employees of the CONTRACTOR.
- d. "SUBCONTRACTOR" shall mean one not in the employment of the CONTRACTOR, who is performing all or part of those services under this contract under a separate contract with the CONTRACTOR. The terms "SUBCONTRACTOR" and "SUBCONTRACTORS" means SUBCONTRACTOR(s) in any tier.

**2. ACCESS TO DATA**

In compliance with RCW 39.26.180(2), the CONTRACTOR shall provide access to data generated under this contract to AGENCY, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the CONTRACTOR'S reports, including computer models and methodology for those models.

**3. ADVANCE PAYMENTS PROHIBITED**

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

**4. AMENDMENTS**

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

**5. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35**

The CONTRACTOR must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

**6. ASSIGNMENT**

Neither this contract, nor any claim arising under this contract, shall be transferred or assigned by the CONTRACTOR without prior written consent of the AGENCY.

**7. ATTORNEYS' FEES**

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

**8. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

The CONTRACTOR shall not use or disclose any information concerning the AGENCY, or information that may be classified as confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of the AGENCY, or as may be required by law.

**9. CONFLICT OF INTEREST**

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

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

**10. COPYRIGHT PROVISIONS**

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

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

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

The CONTRACTOR shall exert all reasonable effort to advise the AGENCY, at the time of delivery of materials furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this contract.

The AGENCY shall receive prompt written notice of each notice or claim of infringement received by the CONTRACTOR with respect to any data delivered under this contract. The AGENCY shall have the right to modify or remove any restrictive markings placed upon the data by the CONTRACTOR.

#### **11. COVENANT AGAINST CONTINGENT FEES**

The CONTRACTOR warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the CONTRACTOR for securing business.

The AGENCY shall have the right, in the event of breach of this clause by the CONTRACTOR, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

#### **12. DEBARMENT: CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION—PRIMARY AND LOWER TIER COVERED TRANSACTIONS**

a. Contractor, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:

- 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
- 2) Have not within a three-year period preceding this Contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making

false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;

- 3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
  - 4) Have not within a three-year period preceding the signing of this Contract had one or more public transactions (Federal, State, or local) terminated for cause of default.
- b. Where the Contractor is unable to certify to any of the statements in this Contract, the Contractor shall attach an explanation to this Contract.
- c. The Contractor agrees by signing this Contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by AGENCY.
- d. The Contractor further agrees by signing this Contract that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

#### LOWER TIER COVERED TRANSACTIONS

- 1) The lower tier contractor certifies, by signing this Contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
  - 2) Where the lower tier contractor is unable to certify to any of the statements in this Contract, such contractor shall attach an explanation to this Contract.
- e. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact AGENCY for assistance in obtaining a copy of these regulations.

#### 13. DISALLOWED COSTS

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

#### **14. DISPUTES**

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with AGENT.

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

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

#### **15. DUPLICATE PAYMENT**

The AGENCY shall not pay the CONTRACTOR, if the CONTRACTOR has charged or will charge the State of Washington or any other party under any other contract or agreement, for the same services or expenses.

#### **16. GOVERNING LAW**

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

**17. INDEMNIFICATION**

To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend, and hold harmless State, agencies of State and all officials, agents and employees of State, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim," as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom.

CONTRACTOR'S obligations to indemnify, defend, and hold harmless includes any claim by CONTRACTORS' agents, employees, representatives, or any subcontractor or its employees.

CONTRACTOR expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to CONTRACTOR'S or any subcontractor's performance or failure to perform the contract. CONTRACTOR'S obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

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

**18. INDEPENDENT CAPACITY OF THE CONTRACTOR**

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

**19. INDUSTRIAL INSURANCE COVERAGE**

The CONTRACTOR shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the CONTRACTOR fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, AGENCY may collect from the CONTRACTOR the full amount payable to the Industrial Insurance accident fund. The AGENCY may deduct the amount owed by the CONTRACTOR to the accident fund from the amount payable to the CONTRACTOR by the AGENCY under this contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the CONTRACTOR.

**20. LICENSING, ACCREDITATION AND REGISTRATION**

The CONTRACTOR shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this contract.

**21. LIMITATION OF AUTHORITY**

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

**22. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

In the event of the CONTRACTOR'S non-compliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the CONTRACTOR may be declared ineligible for further contracts with the AGENCY. The CONTRACTOR shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

**23. NONDISCRIMINATION**

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

**24. PRIVACY**

Personal information including, but not limited to, "Protected Health Information," collected, used, or acquired in connection with this contract shall be protected against unauthorized use, disclosure, modification or loss. CONTRACTOR shall ensure its directors, officers, employees, subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein. CONTRACTOR and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as otherwise required by law.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The CONTRACTOR agrees to indemnify and hold harmless the AGENCY for any damages related to the CONTRACTOR'S unauthorized use of personal information.

**25. PUBLICITY**

The CONTRACTOR agrees to submit to the AGENCY all advertising and publicity matters relating to this contract wherein the AGENCY'S name is mentioned or language used from which the connection of the AGENCY'S name may, in the AGENCY'S judgment, be inferred or implied. The CONTRACTOR agrees not to publish or use such advertising and publicity matters without the prior written consent of the AGENCY.

**26. RECORDS MAINTENANCE**

The CONTRACTOR shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting

procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

CONTRACTOR shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by the AGENCY, personnel duly authorized by the AGENCY, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

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

**27. REGISTRATION WITH DEPARTMENT OF REVENUE**

The CONTRACTOR shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this contract.

**28. RIGHT OF INSPECTION**

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

**29. SAVINGS**

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

**30. SEVERABILITY**

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

**31. SITE SECURITY**

While on AGENCY premises, CONTRACTOR, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

**32. SUBCONTRACTING**

Neither the CONTRACTOR nor any SUBCONTRACTOR shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the AGENCY. In no event shall the existence of the subcontract operate to release or reduce the liability of the contractor to the

Department for any breach in the performance of the contractor's duties. This clause does not include contracts of employment between the contractor and personnel assigned to work under this contract.

Additionally, the CONTRACTOR is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subcontracts. CONTRACTOR and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as provided by law.

### **33. TAXES**

All payments accrued because of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the CONTRACTOR or its staff shall be the sole responsibility of the CONTRACTOR.

### **34. TERMINATION DUE TO CHANGE IN FUNDING**

If the funds OFM relied upon to establish this Contract are withdrawn or reduced, or if additional or modified conditions are placed on such funding, OFM may immediately terminate this Contract by providing written notice to the Contractor. The termination shall be effective on the date specified in the notice of termination.

### **35. TERMINATION FOR CAUSE**

In the event the AGENCY determines the CONTRACTOR has failed to comply with the conditions of this contract in a timely manner, the AGENCY has the right to suspend or terminate this contract. Before suspending or terminating the contract, the AGENCY shall notify the CONTRACTOR in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the CONTRACTOR shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

The AGENCY reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the CONTRACTOR from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the CONTRACTOR or a decision by the AGENCY to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the CONTRACTOR: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of the AGENCY provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

### **36. TERMINATION FOR CONVENIENCE**

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

### **37. TERMINATION PROCEDURES**

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

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

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

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

- a. Stop work under the contract on the date, and to the extent specified, in the notice;
- b. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
- c. Assign to the AGENCY, in the manner, at the times, and to the extent directed by the AGENT, all of the rights, title, and interest of the CONTRACTOR under the orders and subcontracts so terminated, in which case the AGENCY has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the AGENT to the extent AGENT

may require, which approval or ratification shall be final for all the purposes of this clause;

- e. Transfer title to the AGENCY and deliver in the manner, at the times, and to the extent directed by the AGENT any property which, if the contract had been completed, would have been required to be furnished to the AGENCY;
- f. Complete performance of such part of the work as shall not have been terminated by the AGENT; and
- g. Take such action as may be necessary, or as the AGENT may direct, for the protection and preservation of the property related to this contract, which is in the possession of the CONTRACTOR and in which the AGENCY has or may acquire an interest.

**38. TREATMENT OF ASSETS**

- a. Title to all property furnished by the AGENCY shall remain in the AGENCY. Title to all property furnished by the CONTRACTOR, for the cost of which the CONTRACTOR is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the AGENCY upon delivery of such property by the CONTRACTOR. Title to other property, the cost of which is reimbursable to the CONTRACTOR under this contract, shall pass to and vest in the AGENCY upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the AGENCY in whole or in part, whichever first occurs.
- b. Any property of the AGENCY furnished to the CONTRACTOR shall, unless otherwise provided herein or approved by the AGENCY, be used only for the performance of this contract.
- c. The CONTRACTOR shall be responsible for any loss or damage to property of the AGENCY that results from the negligence of the CONTRACTOR or which results from the failure on the part of the CONTRACTOR to maintain and administer that property in accordance with sound management practices.
- d. If any AGENCY property is lost, destroyed or damaged, the CONTRACTOR shall immediately notify the AGENCY and shall take all reasonable steps to protect the property from further damage.
- e. The CONTRACTOR shall surrender to the AGENCY all property of the AGENCY prior to settlement upon completion, termination or cancellation of this contract
- f. All reference to the CONTRACTOR under this clause shall also include CONTRACTOR'S employees, agents or SUBCONTRACTORS.

**39. U.S. Department of Treasury, Office of Foreign Assets Control**

The agency complies with U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC) payment rules. OFAC prohibits financial transactions with individuals or organizations, which have been placed on the OFAC Specially Designated Nationals (SDN) and Blocked Persons sanctions list located at <http://www.treas.gov/offices/enforcement/ofac/index.html>. Compliance with OFAC payment rules ensures that the agency does not conduct business with individuals or organizations that have been determined to be supporters of terrorism and international drug dealing or that pose other dangers to the United States.

Prior to making payment to individuals or organizations, the agency will download the current OFAC SDN file and compare it to agency and statewide vendor files. In the event of a positive match, the agency reserves the right to: (1) make a determination of “reasonability” before taking the positive match to a higher authority, (2) seek assistance from the Washington State Office of the State Treasurer (OST) for advanced assistance in resolving the positive match, (3) comply with an OFAC investigation, if required, and/or (4) if the positive match is substantiated, notify the contractor in writing and terminate the contract according to the Termination for Convenience provision without making payment. The agency will not be liable for any late payment fees or missed discounts that are the result of time required to address the issue of an OFAC match.

**40. WAIVER**

Waiver of any default or breach shall not be deemed a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this contract unless stated to be such in writing and signed by authorized representative of the AGENCY.