

STATE OF WASHINGTON
Office of Insurance Commissioner
REQUEST FOR PROPOSALS (RFP)
RFP S201717
Report on Prescription Drug Cost Sharing and Discriminatory Benefit Design

Questions Due 11:59 pm Pacific Time, March 29, 2017
Proposal Due 4:00 pm Pacific Time, April 11, 2017

Emailed bids will be accepted. Faxed bids will not.

ESTIMATED TIME PERIOD FOR CONTRACT: June 14, 2017 – January 31, 2018.

CONSULTANT ELIGIBILITY: This procurement is open to those consultants that satisfy the minimum qualifications stated herein and that are available for work in Washington State.

CONTENTS OF THE REQUEST FOR PROPOSALS:

1. Introduction
2. General Information for Contractors
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1 INTRODUCTION

1.1. Purpose and background

The Office of Insurance Commissioner (OIC), is initiating this Request for Proposals (RFP) to solicit responses from individuals or firms interested in and qualified to prepare a report that evaluates the cost-sharing for prescription drugs in the plan year 2017 individual and small group health plans in Washington state, and provides a determination of whether the variation in cost-sharing creates a discriminatory benefit design. The report will include recommendations for rulemaking that would assure substantial equivalence of prescription drug cost-sharing.

The Commissioner will use the report to inform an evaluation and determination of whether prescription drug cost-sharing is resulting in adverse selection. The report will also assist OIC staff in identifying discriminatory benefit design in formulary drug selection and cost-sharing.

The OIC was awarded a Health Insurance Enforcement and Consumer Protection grant from the Federal Department of Health and Human Services (HHS) to enhance current OIC enforcement and oversight processes for Section 2707 – Non-discrimination under Comprehensive Health Insurance Coverage (Essential Health Benefits Package) under Part A of Title XXVII of the Public Health Services Act.

The intent of the grant is to help states implement several of the federal market reforms and consumer protections from Part A of Title XXVII of the Public Health Services Act, which became effective in 2014. States can apply for grants to work on issues within the following subject areas: non-discrimination under comprehensive health insurance coverage, coverage of preventive health services, bringing down the cost of health care coverage, the appeals process, and parity in benefits for mental health and substance use disorders.

The OIC intends to award *one contract* to provide the services described in this RFP.

1.2. Objectives and scope of work

The contractor selected as a result of this RFP will be responsible for analyzing data and preparing a report that both evaluates the cost-sharing for prescription drugs in the plan year 2017 individual and small group health plans in Washington state, and provides a determination of whether the variation in cost-sharing creates a discriminatory benefit design. The report will include recommendations for rulemaking that would assure substantial equivalence of prescription drug cost-sharing.

Responsibilities are detailed in section 3.2 b.

1.3. Minimum qualifications

The CONTRACTOR minimum qualifications include:

- Licensed to do business in the State of Washington or provide a commitment that it will become licensed in Washington within thirty (30) calendar days of being selected as the Apparent Successful Contractor;
- Demonstrate knowledge of, and prior experience in, the areas of work for which the proposal is being submitted;
- Proposer must have previously held at least 36 months of responsibilities substantially the same as, or very similar to, the Scope of Work in Section 1.2 of this RFP;
- Experience analyzing prescription drug formularies for discriminatory benefit design;
- Agree to the Certifications and Assurances set forth in Exhibit A; and
- Submit proposals as specified in Section 3, Proposal Contents, of this RFP.

1.4. Period of performance

The period of performance of any contract resulting from this RFP is tentatively scheduled to begin on or about June 14, 2017 and to end on January 31, 2018.

1.5. Contracting with current or former state employees

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. Proposers should familiarize themselves with the requirements prior to submitting a proposal that includes current or former state employees.

1.6. Definitions

Definitions for the purposes of this RFP include:

OIC – The Office of Insurance Commissioner is the agency of the state of Washington that is issuing this RFP.

Apparent Successful Contractor – The individual or company selected as the entity to perform the anticipated services, subject to completion of contract negotiations and execution of a written contract.

Contractor – Individual or company whose proposal has been accepted by the OIC and is awarded a fully executed, written contract.

Pharmacodynamics – A branch of pharmacology dealing with the reactions between drugs and living systems.

Pharmacokinetics – the study of bodily absorption, distribution, metabolism, and excretion of drugs.

Pharmacotherapeutics – The study of therapeutic uses and effects of drugs.

Proposal – A formal offer submitted in response to this solicitation.

Proposer - Individual or company that submits a proposal in order to attain a contract with the OIC.

Request for Proposals (RFP) – Formal procurement document in which a service or need is identified but no specific method to achieve it has been chosen. The purpose of an RFP is to permit the vendor community to suggest various approaches to meet the need at a given price.

1.7. ADA

The OIC complies with the Americans with Disabilities Act (ADA). Proposers may contact the RFP Coordinator to receive this Request for Proposals in Braille or on tape.

2 GENERAL INFORMATION FOR CONTRACTORS

2.1. RFP coordinator

All communications with respect to this RFP must be directed to:

<p>Miranda Matson-Jewett Office of Insurance Commissioner 5000 Capitol Blvd Tumwater, WA 98501 (360) 725-9604 Contracting@oic.wa.gov</p>
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Any other communication will be considered unofficial and non-binding on the OIC. Proposers are to rely on written statements issued by the RFP Coordinator. Communication directed to parties other than the RFP Coordinator may result in disqualification of the Proposer.

2.2. Estimated schedule of procurement activities

Issue Request for Proposals	March 15, 2017
Question & answer period	March 15 – March 29, 2017
Issue last addendum to RFP	April 3, 2017
Proposals due	April 11, 2017
Evaluate proposals	April 12, 2017 – May 14, 2017
Announce 'Apparent Successful Contractor'	May 15, 2017
Hold debriefing conferences (if requested)	May 16-17, 2017

The OIC reserves the right to revise the above schedule.

2.3. Submission of proposals

The OIC will ONLY accept electronic submissions of the Proposal.

Note: *If your attachment exceeds 30 MB, please contact the RFP coordinator for an alternate means of electronic submittal.*

ELECTRONIC PROPOSALS:

The proposal must be received by the RFP Coordinator no later than 4:00p.m. Pacific Time on April 11, 2017.

Proposals to be submitted electronically should be sent as attachments to an email to Miranda Matson-Jewett, the RFP Coordinator, at the e-mail address listed in Section 2.1. Attachments to email should be in Microsoft Word, Excel, or PDF. Zipped files can be received by the OIC and can be used for submission of proposals. The cover submittal letter and the Certifications and Assurances form must have a scanned signature of the individual within the organization authorized to bind the Proposer to the offer. The OIC does not assume responsibility for problems with Proposer's email. If the OIC'S email is not working, appropriate allowances will be made.

Proposals may not be transmitted using facsimile transmission.

Proposers should allow sufficient time to ensure timely receipt of the proposal by the RFP Coordinator. Late proposals will not be accepted and will be automatically disqualified from further consideration,

unless the OIC's email is found to be at fault. All proposals and any accompanying documentation become the property of the OIC and will not be returned.

2.4. Proprietary information/Public disclosure

Proposals submitted in response to this competitive procurement shall become the property of the OIC. All proposals received shall remain confidential until the apparent successful contractor, if any, resulting from this RFP is announced by the OIC; thereafter, the proposals shall be deemed public records as defined in Chapter 42.56 of the Revised Code of Washington (RCW).

Any information in the proposal that the Proposer desires to claim as proprietary and exempt from disclosure under the provisions of Chapter 42.56 RCW must be clearly designated. The information must be clearly identified and the particular exemption from disclosure upon which the Proposer is making the claim must be cited. Each page containing the information claimed to be exempt from disclosure must be clearly identified by the words "Proprietary Information" printed on the lower right hand corner of the page. Marking the entire proposal exempt from disclosure or as Proprietary Information will not be honored.

If a public records request is made for the information that the Proposer has marked as "Proprietary Information," the OIC will notify the Proposer of the request and of the date that the records will be released to the requester unless the Proposer obtains a court order enjoining that disclosure. If the Proposer fails to obtain the court order enjoining disclosure, the OIC will release the requested information on the date specified. If a Proposer obtains a court order from a court of competent jurisdiction enjoining disclosure pursuant to Chapter 42.56 RCW, the OIC shall maintain the confidentiality of the Proposer's information per the court order.

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

2.5. Revisions to the RFP

If it becomes necessary to revise any part of this RFP, addenda will be published in WEBS [and on www.insurance.wa.gov]. For this purpose, the published questions and answers and any other pertinent information will be provided as an addendum to the RFP and will be placed on the website and in WEBS.

If you downloaded this RFP from the AGENCY's website as listed above, you are responsible for checking the website to ensure you receive any amendments or questions and answers. Proposers are encouraged to download solicitations using [WEBS](http://www.insurance.wa.gov) to ensure notification of amendments.

2.6. Minority & women-owned business participation

In accordance with chapter 39.19 RCW, the state of Washington encourages participation in all of its contracts by firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). Participation must be on a direct basis in response to this solicitation. However, *no preference will be included in the evaluation* of proposals, no minimum level of MWBE participation shall be required as a condition for receiving an award, and proposals will not be rejected or considered non-responsive on that basis.

The established annual procurement participation goals for MBE is 10% and for WBE, 4%, for this type of project. These goals are voluntary. For information on certified firms, consultants may contact OMWBE at 360/753-9693 or <http://www.omwbe.wa.gov>.

2.7. Acceptance period

Proposers must provide 60 days for acceptance by OIC from the due date for receipt of proposals.

2.8. Responsiveness

All proposals will be reviewed by the RFP Coordinator to determine compliance with administrative requirements and instructions specified in this RFP. The Proposer is specifically notified that failure to comply with any part of the RFP may result in rejection of the proposal as non-responsive.

The OIC also reserves the right at its sole discretion to waive minor administrative irregularities.

2.9. Complaint procedure

This purpose of this procedure is to provide an avenue to submit issues or concerns that are not resolved during the Q&A process. This procedure is available to Proposers who submitted a Question during the Question & Answer period. Complaints must be submitted no later than five business days before the bid response deadline.

Proposers submitting a complaint about this procurement must follow the procedures described below. Complaints that do not follow these procedures will not be considered.

All complaints must be in writing and signed by the protesting party or an authorized Agent. The complaint must clearly state the grounds for the complaint with specific facts and include a proposed remedy. All protests must be addressed to the RFQQ Coordinator.

Only complaints concerning the following subjects will be considered:

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

Complaints not based on the above subjects will not be considered and will be returned unanswered.

Upon receipt of a complaint, a review will be held by the AGENCY. The AGENCY procurement coordinator or a delegate will consider the record and all available facts and issue a decision within three business days of receipt of the complaint. If additional time is required, the complaining party will be notified of the delay. This process does not include an appeal process.

Responses to considered complaints will be in writing. Additionally, considered complaints, responses and remedies must be posted in WEBS.

Complaints may not be raised again during the protest period.

2.10. Most favorable terms

The OIC reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially on the most favorable terms which the Proposer can propose. There will be no best and final offer procedure. The OIC does reserve the right to contact a Proposer for clarification of its proposal.

The Apparent Successful Contractor should be prepared to accept this RFP for incorporation into a contract resulting from this RFP. Contract negotiations may incorporate some or all of the Proposer's

proposal. It is understood that the proposal will become a part of the official procurement file on this matter without obligation to the OIC.

2.11. Contract and general terms & conditions

The apparent successful contractor will be expected to enter into a contract which is substantially the same as the sample contract and its general terms and conditions attached as Exhibit B. In no event is a Proposer to submit its own standard contract terms and conditions in response to this solicitation. The Proposer may submit exceptions as allowed in the Certifications and Assurances form, Exhibit A to this solicitation. All exceptions to the contract terms and conditions must be submitted as an attachment to Exhibit A, Certifications and Assurances form. The OIC will review requested exceptions and accept or reject the same at its sole discretion.

2.12. Costs to propose

The OIC will not be liable for any costs incurred by the Proposer in preparation of a proposal submitted in response to this RFP, in conduct of a presentation, or any other activities related to responding to this RFP.

2.13. No obligation to contract

This RFP does not obligate the State of Washington or the OIC to contract for services specified herein.

2.14. Rejection of proposals

The OIC reserves the right at its sole discretion to reject any and all proposals received without penalty and not to issue a contract as a result of this RFP.

2.15. Insurance coverage

The CONTRACTOR is to furnish the OIC with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth below.

The CONTRACTOR shall, at its own expense, obtain and keep in force insurance coverage which shall be maintained in full force and effect during the term of the contract. The CONTRACTOR shall furnish evidence in the form of a Certificate of Insurance that insurance shall be provided, and a copy shall be forwarded to the OIC within fifteen (15) days of the contract effective date.

Liability Insurance

- 1) Commercial General Liability Insurance: CONTRACTOR shall maintain commercial general liability (CGL) insurance and, if necessary, commercial umbrella insurance, with a limit of not less than \$1,000,000 per each occurrence. If CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit. CGL insurance shall be written on ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insureds (cross liability) condition.
- 2) Business Auto Policy: As applicable, the CONTRACTOR shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto." Business auto coverage shall be written on ISO form CA 00 01, 1990 or later edition, or substitute liability form providing equivalent coverage.

Employers Liability ("Stop Gap") Insurance:

In addition, the CONTRACTOR shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

Additional Provisions

Above insurance policy shall include the following provisions:

1. Additional Insured. The state of Washington, Office of Insurance Commissioner, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the state.
2. Cancellation. State of Washington, Office of Insurance Commissioner, shall be provided written notice before cancellation or non-renewal of any insurance referred to herein, in accordance with the following specifications. Insurers subject to chapter 48.18 RCW: The insurer shall give the state 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the state shall be given 10 days advance notice of cancellation. Insurers subject to chapter 48.15 RCW (Surplus lines): The state shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the state shall be given 10 days advance notice of cancellation.
3. Identification. Policy must reference the state's contract number and the AGENCY name.
4. Insurance Carrier Rating. All insurance and bonds should be issued by companies authorized to do business within the state of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by Office of Insurance Commissioner Risk Manager, or the Risk Manager for the state of Washington, before the contract is accepted or work may begin. If an insurer is not authorized, all insurance policies and procedures for issuing the insurance policies must comply with Chapters 48.15 RCW and 284-15 WAC.
5. Excess Coverage. By requiring insurance herein, the state does not represent that coverage and limits will be adequate to protect CONTRACTOR, and such coverage and limits shall not limit CONTRACTOR's liability under the indemnities and reimbursements granted to the state in this contract.

Workers' Compensation Coverage

The CONTRACTOR will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws and rules to the full extent applicable. The state will not be held responsible in any way for claims filed by the CONTRACTOR or its' employees for services performed under the terms of this contract.

3 PROPOSAL CONTENTS

ELECTRONIC PROPOSALS:

Proposals must be written in English, submitted electronically to the RFP Coordinator, and contain the items listed below:

1. Letter of Submittal, including signed Certifications and Assurances (Exhibit A to this RFP);
2. Technical Proposal;
3. Management Proposal;
4. Experience / Related Information; and
5. Cost Proposal.

Proposals should provide information in the same order as presented in this document with the same headings. This will not only be helpful to the evaluators of the proposal, but should assist the Proposer in preparing a thorough response.

Items marked "mandatory" must be included as part of the proposal for the proposal to be considered responsive; however, these items are not scored. Items marked "scored" are those that are awarded points as part of the evaluation conducted by the evaluation team.

3.1. Letter of submittal (Mandatory)

The Letter of Submittal and the attached Certifications and Assurances form (Exhibit A to this RFP) must be signed and dated by a person authorized to legally bind the Proposer 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. Along with introductory remarks, the Letter of Submittal is to include by attachment the following information about the Proposer.

1. Name, address, principal place of business, telephone number, and email address of legal entity or individual with whom contract would be written.
2. Name, address, and telephone number of each principal officer (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.)
3. Legal status of the Proposer (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business as the entity now substantially exists.
4. Washington Uniform Business Identification (UBI) number issued by the state of Washington Department of Revenue. If the Proposer does not have a UBI number, the Proposer must state that it will become licensed in Washington within thirty (30) calendar days of being selected as the Apparent Successful Contractor.
5. Location of the facility from which the Proposer would operate.
6. Identify any state employees or former state employees employed or on the Proposer's governing board as of the date of the proposal. Include their position and responsibilities within the Proposer's organization. If following a review of this information, it is determined by the OIC that a conflict of interest exists, the Proposer may be disqualified from further consideration for the award of a contract.

3.2. Technical proposal (SCORED)

Proposal sections that exceed the page limits, when listed, will have the additional pages removed and only the allowed page limit listed will be provided to the scoring team for consideration.

The Technical Proposal must not exceed twelve (12) pages and must contain a comprehensive description of services including the following elements:

- A. Project Approach/Methodology – Include a complete description of the Proposer’s proposed approach and methodology for the project. This section should convey Proposer’s understanding of the proposed project.
- B. Work Plan - Include all project requirements and the proposed tasks, services, activities, etc. necessary to accomplish the scope of the project defined in this RFP as defined in Section 1.2, Objectives and Scope of Work. This section of the technical proposal must contain sufficient detail to convey to members of the evaluation team the Proposer’s knowledge of the subjects and skills necessary to successfully complete the project. Include any required involvement of OIC staff. The Proposer may also present any creative approaches that might be appropriate and may provide any pertinent supporting documentation.

Specifically, address the following:

Project Timelines

How the following deadlines will be met:

October 1, 2017	Draft report due to the OIC
October 31, 2017	OIC will submit feedback on draft report to contractor
January 1, 2018	Final report to the OIC

Design Evaluation Process

In the report, the contractor must provide a detailed description of the process that the contractor used to evaluate the variation in prescription drug cost-sharing in the plan year 2017 health plan filings for the individual and small group markets.

Required in the Report

- An evaluation of the variation in prescription drug cost-sharing in the plan year 2017 health plan filings for the individual and small group markets;
 - A determination of whether that variation results in discriminatory benefit design; and,
 - Recommendations for rulemaking that would assure substantial equivalence of prescription drug cost-sharing.
- C. Project Schedule - Include a project schedule indicating when the elements of the work will be completed. Project schedule must ensure that any deliverables requested are met.
 - D. Outcomes and Performance Measurement – Describe the impacts/outcomes the Proposer proposes to achieve as a result of the delivery of these services including how these outcomes would be monitored, measured and reported to the OIC.
 - E. Risks – The Proposer must identify potential risks that are considered significant to the success of the project. Include how the Consultant would propose to effectively monitor and manage these risks, including reporting of risks to the OIC’s contract manager.

- F. Deliverables – Fully describe deliverables to be submitted under the proposed contract. Deliverables must support the requirements set forth in Section 1.2, Objectives and Scope of Work.

3.3. Management proposal (SCORED)

Proposal sections that exceed the page limits, when listed, will have the additional pages removed and only the allowed page limit listed will be provided to the scoring team for consideration.

The Technical Proposal must not exceed twelve (12) pages and must contain a comprehensive description of services including the following elements:

A. Project Management (SCORED)

1. Project Team Structure/Internal Controls – In no more than five (5) pages, provide a description of the proposed project team structure and internal controls to be used during the course of the project, including any subcontractors. Provide an organizational chart of your organization, indicating lines of authority for personnel involved in performance of this potential contract and relationships of this staff to other programs or functions of the organization. This chart must also show lines of authority to the next senior level of management. Include who within the organization will have prime responsibility and final authority for the work. *The organizational chart does not count toward the page limit.*
2. Staff Qualifications/Experience - Identify staff, including subcontractors, who will be assigned to the potential contract, indicating the responsibilities and qualifications of such personnel, and include the amount of time each will be assigned to the project.
 - Project Lead or Manager
 - Clinical Expert
 - Financial Analysis Expert

Provide a resume (no more than three (3) pages each) for each of the named staff, which includes information on the individual's particular skills related to this project, education, experience, significant accomplishments and any other pertinent information. The Proposer must commit that staff and/or subcontractors identified in its proposal will actually perform the assigned work. Any staff substitution must have the prior approval of the OIC.

B. Experience of the Proposer (SCORED)

1. In no more than four (4) pages, indicate the experience the Proposer has in the following areas:

Required:

 - Experience analyzing prescription drug formularies for discriminatory benefit design. Specifically, include information about the organization's experience evaluating formulary content, cost-sharing tiers, and utilization management tools.
 - Experience writing and presenting report findings and recommendations about clinical topics to a non-clinical audience. Specifically, provide:
 - Detailed examples of when and for whom the report was created; and
 - An excerpt (up to three pages) of an actual report that meets this criterion.
 - Experience with commercially-available formulary analysis tools, either through offering or implementing such a tool.

Preferred:

 - A clinical background in pharmacology including pharmacotherapeutics, pharmacokinetics, and pharmacodynamics;
 - A broad understanding of common disease conditions and the drugs used in their treatment, based on nationally recognized treatment guidelines and recommendations;

- An understanding of [45 CFR 156.122](#) and ACA policies in benefit plan design, including EHB benchmarks and non-discrimination requirements;
 - The ability to keep track of developing drug policies and guidance; and
 - A working knowledge of prescription formulary plan design, development, and implementation.
2. Indicate other relevant experience that indicates the qualifications of the Consultant, and any subcontractors, for the performance of the potential contract.
 3. If the use of subcontractors is part of the proposer's proposal, provide all information requested in 3.3 for the subcontractor.
 4. Include a list of contracts the Proposer has had during the last five years that relate to the Proposer's ability to perform the services needed under this RFP. List contract reference numbers, contract period of performance, contact persons, telephone numbers, and email addresses.
- C. Related Information (Mandatory)
1. If the Proposer contracted with the state of Washington during the past 24 months, indicate the name of the agency, the contract number and project description and/or other information available to identify the contract.
 2. If a member of the Proposer's staff was an employee of the state of Washington during the past 24 months, or is currently a Washington State employee, identify the individual by name, the agency previously or currently employed by, job title or position held and separation date.
 3. If the Proposer has had a contract terminated for default in the last five years, describe such incident. Termination for default is defined as notice to stop performance due to the Proposer's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer, or (b) litigated and such litigation determined that the Proposer was in default.
 4. Submit full details of the terms for default including the other party's name, address, and phone number. Present the Proposer's position on the matter. The OIC will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience. If no such termination for default has been experienced by the Proposer in the past five years, so indicate.
- D. References (Mandatory)
- List names, addresses, telephone numbers, and email addresses of three (3) business references for the Proposer and three (3) business references for named team members including sub-contractors for whom work has been accomplished and briefly describes the type of service provided. Do not include current OIC staff as references.
- As a part of the reference list, the proposer and the named team members must grant permission to the OIC to contact the references and others who may have pertinent information regarding the Proposer's and the named team member's qualifications and experience to perform the services required by this RFP. The OIC may evaluate references at the OIC's discretion.
- E. OMWBE Certification (OPTIONAL AND NOT SCORED)
- Include proof of certification issued by the Washington State Office of Minority and Women's Business Enterprises (OMWBE) if certified minority-owned firm and/or women-owned firm(s) will be participating on this project. For information: <http://www.omwbe.wa.gov>.

3.4. Cost Proposal (SCORED)

The evaluation process is designed to award this procurement not necessarily to the Consultant of least cost, but rather to the Consultant whose proposal best meets the requirements of this RFP. However,

Consultants are encouraged to submit proposals which are consistent with state government efforts to conserve state resources.

A. Identification of Costs (Scored)

Proposers must provide a best and final offer for this project. Identify all costs in U.S. dollars including expenses to be charged for performing the services necessary to accomplish the objectives of the contract. The Consultant is to submit a fully detailed budget including staff costs and any expenses necessary to accomplish the tasks and to produce the deliverables under the contract. Consultants are required to collect and pay Washington state sales and use taxes, as applicable.

Costs for subcontractors are to be broken out separately. Please note if any subcontractors are certified by the Office of Minority and Women's Business Enterprises.

B. Computation

The score for the cost proposal will be computed by dividing the lowest cost bid received by the Proposer's total cost. Then the resultant number will be multiplied by the maximum possible points for the cost section.

4 EVALUATION AND CONTRACT AWARD

4.1 Evaluation Procedure

Responsive proposals will be evaluated strictly in accordance with the requirements stated in this solicitation and any addenda issued. The evaluation of proposals shall be accomplished by an evaluation team(s), to be designated by the OIC, which will determine the ranking of the proposals.

OIC, at its sole discretion, may elect to select the top-scoring firms as finalists for an oral presentation.

The RFP Coordinator may contact the Proposer for clarification of any portion of the Proposer's proposal.

4.2 Evaluation Weighting and Scoring

The following weighting and points will be assigned to the proposal for evaluation purposes:

Technical Proposal - 35%	35 points
Management Proposal – 45%	45 points
Cost Proposal – 20%	20 points
TOTAL – 100%	100 points

4.3 Notification to Proposers

The OIC will notify the apparent successful contractor of their selection via email upon completion of the evaluation process. Individuals or firms whose proposals were not selected for further negotiation or award will be notified separately by email.

4.4 Debriefing of Unsuccessful Vendors

Any Proposer who has submitted a proposal and been notified that they were not selected for contract award may request a debriefing. The request for a debriefing conference must be received by the RFP Coordinator within three (3) business days after the Unsuccessful Notification is e-mailed to the Proposer. Debriefing requests must be received by the RFP Coordinator no later than 5:00 PM, local time, in Tumwater, Washington on the third business day following the transmittal of the Unsuccessful Notification. The debriefing must be held within three (3) business days of the request. Discussion at the debriefing conference will be limited to the following:

- Evaluation and scoring of the Proposer's proposal;
- Critique of the proposal based on the evaluation;
- Review of Proposer's final score in comparison with other final scores without identifying the other firms.

Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

4.5 Protest Procedure

Protests may be made only by Proposers who submitted a response to this RFP and who have participated in a debriefing conference. Upon completing the debriefing conference, the Proposer is allowed three (3) business days to file a protest of the acquisition with the RFP Coordinator. Protests must be received by the RFP Coordinator no later than 4:30 PM, local time, in Tumwater, Washington on the

third business day following the debriefing. Protests may be submitted by e-mail, but must then be followed by the document with an original signature.

Proposers protesting this procurement shall follow the procedures described below. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to proposers under this procurement.

All protests must be in writing, via email, addressed to the RFP Coordinator, and signed by the protesting party or an authorized Agent. The protest must state the RFP number, the grounds for the protest with specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included.

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A matter of bias, discrimination or conflict of interest on the part of an evaluator;
- Errors in computing the score;
- Non-compliance with procedures described in the RFP or OIC policy.

Protests not based on procedural matters will not be considered. Protests will be rejected as without merit if they address issues such as: 1) an evaluator's professional judgment on the quality of a proposal, or 2) OIC'S assessment of its own and/or other agencies needs or requirements.

Upon receipt of a protest, a protest review will be held by the OIC. The Chief Deputy Insurance Commissioner of OIC (Chief Deputy) or an employee delegated by the Chief Deputy who was not involved in the procurement will consider the record and all available facts and issue a decision within five (5) business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event a protest may affect the interest of another Proposer that also submitted a proposal, such Proposer will be given an opportunity to submit its views and any relevant information on the protest to the RFP Coordinator.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold the OIC's action; or
- Find only technical or harmless errors in the OIC's acquisition process and determine the OIC to be in substantial compliance and reject the protest; or
- Find merit in the protest and provide the OIC options which may include:
 - Correct the errors and re-evaluate all proposals, and/or
 - Reissue the solicitation document and begin a new process, or
 - Make other findings and determine other courses of action as appropriate.

If the OIC determines that the protest is without merit, the OIC will enter into a contract with the Apparent Successful Contractor. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

5 5 RFP EXHIBITS

Exhibit A	Certifications and Assurances
Exhibit B	Sample Contract <i>including General Terms and Conditions</i>

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(s):

1. I/we certify **we do not have any financial, contractual, organizational or other interests** which relates to the work under this contract. We agree to report to the insurance commissioner any such conflicts, if they arise, within fifteen (15) days of identification of the conflict.
2. I/we declare that **all answers and statements made in the proposal are true and correct.**
3. The **prices and/or cost data have been determined independently**, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single proposal.
4. The attached **proposal is a firm offer for a period of 60 days following 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.
5. In preparing this proposal, I/we **have not been assisted by any current or former employee of the state** of Washington whose duties relate (or did relate) to this proposal or prospective contract, and who was assisting in other than his or her official, public capacity. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)
6. I/we understand that 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.
7. Unless otherwise required by law, the **prices and/or cost data that have been submitted have not been knowingly disclosed by the Proposer** and will not knowingly be disclosed by him/her prior to opening, directly or indirectly to any other Proposer or to any competitor.
8. I/we **agree that submission of the attached proposal constitutes acceptance** of the solicitation contents and the 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.
9. **No attempt has been made or will be made by the Proposer** to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.
10. I/we **grant the AGENCY the right to contact references and others**, who may have pertinent information regarding the Proposer's prior experience and ability to perform the services contemplated in this procurement.

Signature of Proposer

Title

Date

Contract for Services
Between the
State of Washington
Office of Insurance Commissioner
And
[Contractor Name]

This Contract is made and entered into by and between the state of Washington, Office of Insurance Commissioner, hereinafter referred to as the "AGENCY", and the below named firm, hereinafter referred to as "CONTRACTOR."

[Contractor Name]

Street

City, State ZIP

Federal TIN:

Purpose

The purpose of this contract is to [describe, in detail, the purpose of this contract].

Scope of work

- A. Exhibit A, attached hereto and incorporated by reference, contains the General Terms and Conditions governing work to be performed under this contract, the nature of the working relationship between the AGENCY and the CONTRACTOR, and specific obligations of both parties.
- B. The CONTRACTOR must provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

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

Option 2: As included in the AGENCY'S Request for Proposals No. _____, attached as Exhibit B, and the CONTRACTOR'S proposal dated _____, attached as Exhibit C.

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

All written reports and other deliverables required under this contract must be delivered to the AGENCY Contract Manager.

Period of performance

The period of performance under this contract will be from [date], or date of execution, whichever is later, through [date].

The AGENCY reserves the right to extend the contract for up to [number] additional [number] year periods, at the sole discretion of the AGENCY.

Compensation

Total compensation payable to CONTRACTOR for satisfactory performance of the work under this contract must not exceed [dollar amount]dollars. CONTRACTOR'S compensation for services rendered must be based on the following rates or in accordance with the following terms:

NOTE: *List detail of compensation to be paid, e.g., hourly rates, number of hours per task, unit prices, cost per task, cost per deliverable, etc., or reference documents that specify CONTRACTOR'S compensation and payment, e.g., CONTRACTOR'S compensation for services rendered shall be based on the schedule set forth in Exhibit B, Fees and Expenses. Compensation section should be consistent with Billing Procedures.*

NOTE: *Expenses are optional. Do not include Expenses paragraph below if expenses are not allowable. If allowable, include only expenses that are appropriate for the contract. If expenses will be reimbursed outside of the contract, it is advisable to state that in the contract to ensure clear understanding as to what expenses the State may be paying for directly.*

Expenses

CONTRACTOR will receive reimbursement for travel and other expenses as identified below or as authorized in advance by the AGENCY as reimbursable. The maximum amount to be paid to the CONTRACTOR for authorized expenses must not exceed \$, which amount is included in the contract total above.

Such expenses may include airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during periods of required travel. CONTRACTOR will receive compensation for travel expenses at current state travel reimbursement rates and in accordance with state travel rules.

Billing procedures and payment

AGENCY will pay CONTRACTOR upon acceptance of services provided and receipt of properly completed invoices, which must be submitted to the billing address above not more often than monthly.

Electronic invoices sent to contracting@oic.wa.gov are preferred.

Mailing address
Office of Insurance Commissioner
Attn: Contracting
PO Box 40255
Olympia, WA 98504-0255

With the exception of mileage, an itemized receipt must accompany any single expense greater than \$50.00 in order to receive reimbursement.

Payment is considered timely if made by the AGENCY within thirty (30) calendar days after receipt of properly completed invoices. Payment, or in the case of Electronic Funds Transfer, notice of payment will be sent to the address designated by the CONTRACTOR in association with the statewide payee information on file with DES. It is the responsibility of the

CONTRACTOR to ensure their statewide payee information is accurate. If the CONTRACTOR does not have a payee number, the CONTRACTOR will be required to obtain one before payment will be made.

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

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

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

Contract management

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

CONTRACTOR Contract Manager

[name]
[company name]
[street]
{City State ZIP
[phone]
[email]

AGENCY Contract Manager

[OIC Contract manager]
Office of Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255
[phone]
[Email]@oic.wa.gov

From time to time, CONTRACTOR or AGENCY contacts may change. Any change to the CONTRACTOR or AGENCY representative listed above shall be provided to the other party by email notification. The party in receipt of the change notice will confirm receipt of the notice by email notification to the party initiating the change.

Data classification, sharing and security

CONTRACTOR acknowledges that some of the material and information that may come into its possession or knowledge in connection with this contract or its performance may consist of Public Information, Sensitive Information, Confidential Information, and/or Confidential Information Requiring Special Handling as defined below.

Public Information: information that can be or currently is released to the public. It does not need protection from unauthorized disclosure, but does need integrity and availability protection controls.

Sensitive Information: information that may not be specifically protected from disclosure by law, but is for official use only. Sensitive information is generally not released to the public unless specifically requested.

Confidential Information: information that is specifically protected from disclosure by law. Confidential Information includes: personal information about individuals, such as financial account information, regardless of how that information is obtained; information concerning employee personnel records; information regarding IT infrastructure and security of computer and telecommunications systems.

Confidential Information Requiring Special Handling: information that is specifically protected from disclosure by law and for which especially strict handling requirements are dictated, such as by statutes, regulations, or agreements; or serious consequences could arise from unauthorized disclosure, such as threats to health and safety, or legal sanctions.

Information received under this contract may be *(insert the appropriate categories of information here)*.

CONTRACTOR agrees to protect all material and information, other than Public Information, obtained under this contract as Confidential Information, unless notified by the AGENCY in writing to treat the material or information with lessened or heightened protections.

CONTRACTOR will not to make use of material and information for any purpose other than the performance of this contract. CONTRACTOR will release information obtained under this contract, other than Public Information, only to authorized employees, agents, or subcontractors, requiring such information for the purposes of carrying out this contract, and only after such persons have signed the nondisclosure agreement provided to the CONTRACTOR by the AGENCY.

CONTRACTOR will not release, divulge, publish, transfer, sell, disclose, or otherwise make the material and information known to any other party, person or entity except as provided in this contract.

CONTRACTOR agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access, use, disclosure, modification or loss to material and information collected, used, or acquired in connection with this Contract. All Confidential Information, and information treated as Confidential Information, stored by the CONTRACTOR will be encrypted using industry standard algorithms or cryptographic modules validated by the National Institute of Standards and Technology (NIST).

Confidential Information transmitted by the CONTRACTOR to the AGENCY or to any employee, agent, or subcontractor under this agreement must be made using a method that ensures:

1. All manipulations or transmissions of data during the exchange are secure.
2. If intercepted during transmission the data cannot be deciphered.
3. When necessary, confirmation is received when the intended recipient receives the data.

4. Encryption methods use industry standard algorithms, or cryptographic modules validated by the National Institute of Standards and Technology (NIST).

CONTRACTOR's records are subject to inspection, review or audit in accordance with the Retention of Records section above. Any breach of this provision may result in termination of the Contract.

AGENCY reserves the right to monitor, audit, or investigate the use of material or information collected, used, or acquired by CONTRACTOR through this contract.

Immediately upon expiration or termination of this Contract, CONTRACTOR must return all material and information to AGENCY, destroy the individual identifiers associated with the records or record information, and notify this agency to this effect in writing and take whatever other steps AGENCY requires of CONTRACTOR to protect AGENCY's material and information. AGENCY reserves the right to monitor, audit, or investigate the use of material or information collected, used, or acquired by CONTRACTOR through this contract.

Prior to disclosure of any information received under this contract, CONTRACTOR must collect completed Notice of Nondisclosure forms for each employee, agent, or subcontractor that will have access to material and information for this contract. CONTRACTOR shall ensure that Notice of Nondisclosure forms are available for inspection upon AGENCY request.

Insurance

The CONTRACTOR must provide insurance coverage as set out in this section. The intent of the required insurance is to protect the state should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the CONTRACTOR or subcontractor, or agents of either, while performing under the terms of this contract.

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

1. Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence.

Additionally, the CONTRACTOR is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

2. Automobile Liability. In the event that services delivered pursuant to this contract involve the use of vehicles, either owned or unowned by the CONTRACTOR, automobile liability insurance must be required. The minimum limit for automobile liability is:

\$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.
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3. The insurance required must be issued by an insurance company/ies authorized to do business within the state of Washington, and must name the state of Washington, its agents and employees as additional insureds under the insurance policy/ies.

All policies must be primary to any other valid and collectable insurance. CONTRACTOR must instruct the insurers to give AGENCY thirty (30) calendar days advance notice of any insurance cancellation.

CONTRACTOR must submit to AGENCY within fifteen (15) calendar days of the contract effective date, a certificate of insurance that outlines the coverage and limits defined in the Insurance section. CONTRACTOR must submit renewal certificates as appropriate during the term of the contract.

Assurances

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

Order of precedence

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

1. Applicable federal and state of Washington statutes and regulations;
2. Special terms and conditions as contained in this basic contract instrument;
3. Exhibit A – General Terms and Conditions;
4. Exhibit B – Request for Proposals Number;
5. Exhibit C – Contractor's proposal dated; and
6. Any other provision, term or material incorporated herein by reference or otherwise incorporated.

Entire agreement

This contract, including referenced exhibits, represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, will be deemed a part hereof.

Conformance

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

Approval

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

THIS CONTRACT, consisting of [X] pages and [X] attachments, is executed by the persons signing below, who warrant they have the authority to execute the contract.

[Contractor Name]

Office of Insurance Commissioner

Signature

Signature

Name (Please Print)

Name

Title

Deputy Commissioner

Title

Date

Date

Sample

GENERAL TERMS AND CONDITIONS

Definitions

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

- A. "AGENCY" shall mean the Office of Insurance Commissioner 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 Commissioner, and/or the delegate authorized in writing to act on the Commissioner's behalf.
- C. "CONTRACTOR" shall mean that firm, provider, organization, individual or other entity performing service(s) under this contract, and shall include all employees of the CONTRACTOR.
- D. "SUBCONTRACTOR" shall mean one not in the employment of the CONTRACTOR, who is performing all or part of those services under this contract under a separate contract with the CONTRACTOR. The terms "SUBCONTRACTOR" and "SUBCONTRACTORS" means SUBCONTRACTOR(s) in any tier.

Access to data

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

Advance payments prohibited

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

Amendments

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

Americans with Disabilities Act (ADA) OF 1990, Public Law 101-336, also referred to as the "ADA" 28 CFR Part 35

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

Assignment

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.

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.

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.

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.

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.

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.

Disallowed costs

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

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.

1. 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.
2. The respondent shall send a written answer to the requester's statement to both the agent and the requester within 5 working calendar days.
3. 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.
4. 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.

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.

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

Indemnification

To the fullest extent permitted by law, 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 CONTRACTOR'S agents, employees, representatives, or any SUBCONTRACTOR or its employees.

CONTRACTOR expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to CONTRACTOR'S or any SUBCONTRACTOR'S performance or failure to perform the contract. CONTRACTOR'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.

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.

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.

Licensing, accreditation and registration

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

Limitation of authority

Only the AGENT or AGENT'S delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or

condition of this contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the AGENT.

Noncompliance with nondiscrimination laws

In the event of the CONTRACTOR'S 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.

Nondiscrimination

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

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.

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.

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.

Registration with department of revenue

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

Right of inspection

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

Savings

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

Severability

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

Site security

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

Subcontracting

Neither the CONTRACTOR nor any SUBCONTRACTOR shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the AGENCY. 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.

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.

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.

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.

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:

1. Stop work under the contract on the date, and to the extent specified, in the notice;

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

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.

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.

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.