

RFQQ 15-04 EXHIBIT B - EXHIBIT A TO SAMPLE CONTRACT

GENERAL TERMS AND CONDITIONS

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

- A. "OSOS" shall mean the Office of the Secretary of State, Washington State Library Division, of the state of Washington, any division, section, office, unit, or other entity of the OSOS, or any of the officers or other officials lawfully representing that OSOS.
- B. "Agent" shall mean the Secretary of State and/or the delegate authorized to act on the Secretary of State'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 EQUIPMENT: Contractor, its agents, delegates, representatives, or employees shall have reasonable access to the equipment on the OSOS's premises or where necessary to provide the specified services at no charge to the Contractor.

ADVANCE PAYMENTS PROHIBITED: No payments in advance or in anticipation of goods or services provided under this Contract shall be made by the OSOS.

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

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

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

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

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

COMPLIANCE WITH CIVIL RIGHTS LAWS: The Contractor agrees to comply with Title VII of the Civil Rights Act to the end that no person shall, on the grounds of age, race, creed, color, sex, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in relation to services provided under this Contract.

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

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

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In the event this Contract is terminated, the OSOS shall be entitled to pursue the same remedies against the Contractor as it would pursue in the event of a breach of the contract by the Contractor. The rights and remedies of the OSOS provided for in this provision 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 provision shall be an issue and may be reviewed as provided in the "Disputes" provision 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 OSOS. The OSOS 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 OSOS 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 this Contract, but that incorporate pre-existing materials not produced under this Contract, Contractor hereby grants to the OSOS 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 OSOS.

The Contractor shall exert all reasonable effort to advise the OSOS, 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 OSOS shall receive prompt written notice of each notice or claim of copyright infringement received by the Contractor with respect to any data delivered under this Contract. The OSOS 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, except bonafide employees or bonafide established agents maintained by the Contractor for securing business. The OSOS shall have the right, in the event of breach of this provision by the Contractor, to terminate this Contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage, or contingent fee.

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

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.
2. The respondent shall send an answer to the requester's statement to the Agent or his designee and requester within fifteen (15) business days.

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3. The Agent or her designee shall review the written statements and reply in writing to the parties within ten (10) business days. The Agent or her designee 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.

OSOS and Contractor agree that, notwithstanding the existence of a dispute, they will continue immediately to carry out all their respective responsibilities under this Contract that are not affected by the dispute. Both parties agree to exercise good faith in the dispute resolution and to settle disputes prior to using the dispute resolution panel whenever possible.

INDEMNIFICATION: The Contractor shall indemnify, defend, and hold harmless the OSOS and all officials, agents and employees of the OSOS from and against all claims for injuries or death arising out of or resulting from the performance of this Contract. The Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractor's agents, employees, representatives, any subcontractor, or its employees.

The Contractor agrees to indemnify, defend, and hold harmless the OSOS for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the Contract. The Contractor's obligation to indemnify, defend, and hold harmless the OSOS shall not be eliminated or reduced by any actual or alleged concurrent negligence of the OSOS or its officials, agents, or employees.

The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless the OSOS and its 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 OSOS. The Contractor will not hold himself or herself out as or claim to be an officer or employee of the OSOS or of the State of Washington, nor will the Contractor make any claim of right, privilege, or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with the Contractor.

INSURANCE COVERAGE (INDUSTRIAL): The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. Prior to performing work under this Contract, the Contractor shall provide or purchase industrial insurance coverage for the Contractor's employees, as may be required of an "employer" defined in Title 51 RCW, and shall maintain full compliance with Title 51RCW during the course of this Contract. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums, the law may require penalties on behalf of its employees, and the OSOS may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. The OSOS may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the OSOS 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 the L&I's rights to collect from the Contractor.

Industrial insurance coverage through L&I is optional for sole proprietors, partners, corporate officers and others, per RCW 51.12.020.

INSURANCE COVERAGE (VEHICLE): The Contractor shall provide insurance coverage 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.

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

1. Automobile Liability. In the event that services delivered pursuant to this Contract involve the use of vehicles, either owned or unowned by the Contractor, automobile liability insurance shall be required.
2. The insurance required shall be issued by an insurance company/ies authorized to do business within the State of Washington.

The Contractor shall submit to OSOS within fifteen (15) days of the contract effective date, a certificate of insurance which outlines the coverage and limits defined in the Insurance section. The Contractor shall submit renewal certificates as appropriate during the term of the contract.

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 shall have the express, implied, or apparent authority to alter, amend, modify, or waive any provision or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver or any provision or condition of this Contract is not effective or binding unless made in writing and signed by the Agent.

NONCOMPLIANCE WITH NONDISCRIMINATION LAWS: In the event of the Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this Contract may be rescinded, canceled, or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the OSOS. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

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

PRIVACY: Personal information collected, used, or acquired in connection with this Contract shall be used solely for the purposes of this Contract. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell, or otherwise make known to unauthorized persons personal information without the express written consent of the OSOS or as provided by law.

Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to personal information.

The OSOS reserves the right to monitor, audit, or investigate the use of personal information collected, used, or acquired by the Contractor through this Contract. The monitoring, auditing or investigating may include but is not limited to "salting" by the OSOS. Contractor shall certify return or destruction of all personal information upon expiration of this Contract. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

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

For purposes of this provision, personal information includes, but is not limited to, information identifiable to an individual that relates to a natural person's health, finances, education, business, use or receipt of governmental services, or other activities, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and other identifying numbers.

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PUBLICITY: The Contractor agrees to submit to the OSOS all advertising and publicity matters relating to this Contract where the OSOS's name is mentioned or language used from which the connection of the OSOS's name may, in the OSOS'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 OSOS.

RECORDS MAINTENANCE: The Contractor shall maintain complete financial records relating to this Contract and the services rendered including all books, records, documents, magnetic media, receipts, invoices and other evidence relating to this Contract and performance of the services described herein, including but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records including materials generated under the Contract shall be subject at all reasonable times to inspection, review, or audit by the OSOS, the Office of the State Auditor, and federal and state officials so authorized by law, rule, regulation, or agreement.

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

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

RIGHT OF INSPECTION: The Contractor shall provide right of access to its facilities to the OSOS, 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 OSOS may terminate the Contract under the "Termination for Convenience" provision, without the ten day notice requirement, subject to renegotiation at the OSOS'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 OSOS premises, Contractor, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security regulations.

SMALL, MINORITY, WOMEN'S BUSIENSS ENTERPRISES AND LABOR SURPLUS AREA

FIRMS: The Contractor shall provide to qualified small, minority, women's business enterprises and labor surplus area firms equal opportunity to participate in subcontracts related to the performance of this Contract.

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 OSOS. The Contractor is responsible for ensuring that all terms, conditions, assurances, and certifications set forth in this Contract are carried forward to any subcontract. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell, or otherwise make known to unauthorized person personal information without the express written consent of the OSOS 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.

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Either party may terminate this Contract upon a thirty (30) calendar day written notice to the other party. If this Contract is terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Contract prior to the effective date of termination.

Termination for Cause

If for any cause, either party does not fulfill its obligation in a timely and proper manner under this Contract or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within fifteen (15) business days. If failure or violation is not corrected, this Contract may be terminated immediately by written notice of the aggrieved party to the other.

Termination Procedure

Upon termination of this Contract, the OSOS, in addition to any other rights provided in this Contract, may require the Contractor to deliver to the OSOS any property specifically produced, furnished, or acquired for the performance of such part of this Contract that has been terminated.

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

The rights and remedies of the OSOS 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 OSOS, the Contractor shall:

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

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TREATMENT OF ASSETS: Title to all property furnished by the OSOS shall remain in the OSOS. 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 vests in the OSOS 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 OSOS 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 OSOS in whole or in part, whichever first occurs.

- B. Any property of the OSOS furnished to the Contractor shall, unless otherwise provided herein or approved by the OSOS, be used only for the performance of this Contract.
- C. The Contractor shall be responsible for any loss or damage to property of the OSOS, which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
- D. If any OSOS property is lost, destroyed, or damaged, the Contractor shall immediately notify the OSOS and shall take all reasonable steps to protect the property from further damage.
- E. The Contractor shall surrender to the OSOS all property of the OSOS prior to settlement upon completion, termination, or cancellation of this Contract.
- F. All reference to the Contractor under this provision shall also include Contractor's employees, agents, or Subcontractors.

USE OF OSOS PROPERTY: Any property of the OSOS furnished to the Contractor shall, unless otherwise provided herein, or approved by the Project Manager, be used only for the performance of this Contract. The Contractor shall be responsible for loss or damage to property of the OSOS during the period it has been entrusted to the Contractor or its employees. The Contractor shall return such property to the OSOS in like condition to that in which it was furnished to the Contractor prior completion or termination of this Contract.

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 the OSOS.