

**STATE OF WASHINGTON
OFFICE OF THE SECRETARY OF STATE
OLYMPIA, WASHINGTON**

**REQUEST FOR QUALIFICATIONS AND QUOTATIONS
RFQQ NO. 20-03**

**PROJECT TITLE: HD MOBILE SHELVING MODULE UPGRADES FOR THE PUGET SOUND
REGIONAL ARCHIVES**

PROPOSAL DUE DATE: OCTOBER 11, 2019

EXPECTED TIME PERIOD FOR CONTRACT:

DECEMBER 1, 2019 TO DECEMBER 31, 2019

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

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1. INTRODUCTION

1.1 PURPOSE AND BACKGROUND

The Washington State Office of the Secretary of State, Washington State Archives (OSOS), is initiating this Request for Qualifications and Quotations (RFQQ) to solicit proposals from qualified firms interested in performing upgrades to high-density mobile shelving system modules at the Puget Sound Regional Archives branch.

1.2 OBJECTIVE

OSOS wishes to obtain the services of a qualified vendor to upgrade three (3) Spacesaver high-density mobile shelving modules at the Puget Sound Regional Archives branch. The Puget Sound Regional Archives is located at 3000 Landerholm Circle SE on the campus of Bellevue College in Bellevue, Washington. One of the modules is a 7-carriage system, with each carriage holding twelve (12) units of shelving. The other two modules are 3-carriage systems, with each carriage holding ten (10) units of shelving. The upgrades sought involve the replacement of existing components with new and improved components, specifically: (1) replacing all wiring in each carriage and control module; (2) replacing the motors in each carriage; (3) replacing all safety switches and photo sweeps sensors; (4) replacing the main controller; and (5) upgrading the digital touchpad controller.

1.3 MINIMUM QUALIFICATIONS

Contractor must be registered to do business with the state and have a current Unified Business Identifier (UBI) number. Contractor must have at least three (3) years of documented experience installing, repairing, and upgrading motor-driven mobile shelving systems, and all necessary skills, tools, equipment, resources, trained personnel and facilities required to meet all requirements and perform the work as specified in the Contract including General Terms and Conditions attached hereto as Exhibit C and incorporated herein by this reference (Contract). Contractor must maintain insurance that meets or exceeds the minimum requirements set forth in the Contract. It is expected that the Apparent Successful Contractor will be capable of completing the specified upgrades to the two 3-carriage modules during the period from December 16, 2019 to December 31, 2019.

1.4 PERIOD OF PERFORMANCE

The period of performance of any Contract resulting from this RFQQ is tentatively scheduled to begin on or about December 1, 2019, and to end no later than December 31, 2019. Amendments extending the period of performance, if any, shall be at the sole discretion of OSOS.

1.5 DEFINITIONS

Definitions for the purposes of this RFQQ include:

Apparent Successful Contractor – the Contractor identified by OSOS, after evaluation of Proposals, who is recommended for contract award.

Contractor – the individual or company submitting a Proposal in order to attain a contract with OSOS.

OSOS – The Office of the Secretary of State, the agency of the state of Washington that is issuing this RFQQ.

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

RFQQ – this Request for Qualifications and Quotations.

WEBS – Washington's Electronic Business Solution, an online vendor registration and bid notification system.

1.6 Americans with Disabilities Act Compliance

OSOS complies with the Americans with Disabilities Act. Contractors may contact the RFQQ Coordinator to receive this Request for Qualifications and Quotations in Braille or on tape.

2. GENERAL INFORMATION FOR CONTRACTORS

2.1 RFQQ COORDINATOR

The RFQQ Coordinator is the sole point of contact in OSOS for this procurement. All communication between the Contractor and OSOS upon receipt of this RFQQ shall be with the RFQQ Coordinator, as follows:

Name	Jim Webster
Address	PO Box 40224
City, State, Zip Code	Olympia, WA 98504-0224
Street Address	6880 Capitol Blvd SE
City, State, Zip Code	Tumwater, WA 98501
Phone Number	(360) 704-5267
Fax Number	(360) 704-7830
E-Mail Address	jim.webster@sos.wa.gov

Any other communication will be considered unofficial and non-binding on OSOS. Contractors are to rely on written statements issued by the RFQQ Coordinator. Communication directed to parties other than the RFQQ Coordinator may result in disqualification of the Contractor.

2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue RFQQ	September 9, 2019
Question and Answer Period	Sept. 9-Sept. 20, 2019
Last Date for Questions regarding RFQQ	September 20, 2019
Mandatory Preproposal Conference (two options)	Sept. 16 or Sept. 18, 2019
Publish Q&As from Preproposal Conferences on WEBS and OSOS website	September 20, 2019
Publish complete list of Q&As on WEBS and OSOS website	September 23, 2019
Last Amendment to RFQQ	October 1, 2019
Last Date for Complaint	October 4, 2019
Proposals Due	October 11, 2019
Evaluate Proposals	Oct. 14-Oct. 18, 2019
Conduct Oral Interviews with Finalists, if required	Oct. 21-Oct. 25, 2019
Announce Apparent Successful Contractor and Notify Unsuccessful Contractors	October 28, 2019
Hold Debriefing Conferences (if requested)	See Section 4.10
Protest	See Section 4.10
Negotiate Contract	Oct. 28- Nov. 8, 2019
Begin Contract Work	December 1, 2019

OSOS reserves the right to revise the above schedule.

2.3 MANDATORY PREPROPOSAL CONFERENCE

All prospective proposers are required to attend a preproposal conference and site visit at the Puget Sound Regional Archives branch, 3000 Landerholm Circle SE, Bellevue, Washington 98007, on one of two available dates: Monday, September 16, 2019 at 10:30 A.M. Pacific Time, or Wednesday, September 18, 2019 at 10:30 A.M. Pacific Time. Written questions may be submitted in advance to

the RFQQ Coordinator. OSOS shall be bound only to written answers to questions. Any oral responses given at the preproposal conference shall be considered unofficial.

A copy of the questions and answers from the preproposal conferences will be placed on WEBS and the OSOS website: <http://www.sos.wa.gov/office/procurements.aspx>.

2.4 SUBMISSION OF PROPOSALS

Contractors are required to submit an electronic copy of their Proposal. The Proposal must be received by OSOS no later than 4:00 p.m., Pacific Time, on October 11, 2019. Attachments to the e-mail shall be in Microsoft Word or PDF format.

The Proposal is to be sent to the RFQQ Coordinator at the e-mail address noted in Section 2.1.

Late Proposals will not be accepted and will be automatically disqualified from further consideration. All Proposals and any accompanying documentation become the property of OSOS.

The Contractor's Proposal must respond to all of the solicitation requirements. Do not respond by referencing material presented elsewhere. The e-mailed Proposal shall be considered complete and stand on its own merits. Failure to respond to any portions may result in rejection of the Proposal as non-responsive.

Include Contractor's contact information for this RFQQ with name, title, email, and telephone number.

2.5 PROPRIETARY INFORMATION/PUBLIC DISCLOSURE

Materials submitted in response to this competitive procurement shall become the property of OSOS.

All Proposals received shall remain confidential until the contract, if any, resulting from this RFQQ is signed by the authorized officer of OSOS and the Apparent Successful Contractor; thereafter, the Proposals shall be deemed public records as defined under the Public Records Act, RCW Chapter 42.56.

Any information in the proposal that the Contractor desires to claim as proprietary and exempt from disclosure under the provisions of RCW 42.56.270 must be clearly designated. The page must be identified and the particular exception from disclosure upon which the Contractor is making the claim. Each page claimed to be exempt from disclosure must be clearly identified by the word "Confidential" printed on the lower right hand corner of the page.

OSOS will consider a Contractor's request for exemption from disclosure; however, OSOS will make a decision predicated upon RCW Chapter 42.56 and Chapter 143-06 of the Washington Administrative Code. Marking the entire Proposal exempt from disclosure will not be honored. The Contractor must be reasonable in designating information as confidential. If any information is marked as proprietary in the Proposal, such information will not be made available until the affected Contractor has been given an opportunity to seek a court injunction against the requested disclosure.

A charge will be made for copying and shipping, as outlined in RCW 42.56.120. No fee shall be charged for inspection of contract files, but twenty-four (24) hours' notice to the RFQQ Coordinator is required. All requests for information should be directed to the RFQQ Coordinator.

2.6 REVISIONS TO THE RFQQ

In the event it becomes necessary to revise any part of this RFQQ, addenda will be published on WEBS and the OSOS website: <http://www.sos.wa.gov/office/procurements.aspx>. For this purpose, any pertinent information and answers to substantive questions by potential Contractors shall be considered an addendum to the RFQQ and also placed in WEBS and the OSOS website. OSOS also reserves the right to cancel or to reissue the RFQQ in whole or in part, prior to execution of a contract.

2.7 SMALL, MINORITY-OWNED, WOMEN-OWNED, AND VETERAN-OWNED BUSINESS PARTICIPATION

The state of Washington encourages participation in all of its contracts by Washington small businesses, minority-owned and women-owned businesses, and veteran-owned businesses. Participation may be either on a direct basis in response to this solicitation or on a subcontractor basis.

Per RCW 39.26.010(22), a “small business” is an in-state business, including a sole proprietorship, corporation, partnership, or other legal entity, that: (1) certifies, under penalty of perjury, that it is owned and operated independently from all other businesses and has either fifty (50) or fewer employees or a gross revenue of less than seven million dollars annually; or (2) is certified by the Office of Minority and Women’s Business Enterprises (OMWBE). Contractors that qualify as a “small business” within the meaning of RCW 39.26.010(22) are encouraged to complete and submit with their proposal the Small Business Self-Certification Statement attached as Exhibit B.

Contractors that are women-owned or minority-owned as described in RCW 39.19 and have not been certified with OMWBE are encouraged to do so. Contractors may contact OMWBE at (360) 664-9750 or technicalassistance@omwbe.wa.gov to obtain information regarding certification and certified firms. Contractors that are veteran-owned and have not been certified with the Washington Department of Veterans Affairs (WDVA) are encouraged to do so. Contractors may contact WDVA at (360) 725-2169 or vob@dva.wa.gov to obtain information regarding certification and certified firms.

No preference will be included in the evaluation of bids for small, minority-owned, women-owned or veteran-owned businesses, no minimum level of small, minority-owned, women-owned or veteran-owned business participation will be required as a condition for receiving an award, and bids will not be evaluated, rejected or considered non-responsive on that basis. However, any affirmative action requirements set forth in federal statutes or regulations included or referenced in the contract documents will apply.

2.8 ACCEPTANCE PERIOD

Proposals must provide forty-five (45) days for acceptance by OSOS from the later of the due date for receipt of Proposals or receipt of best and final offers (if utilized). Contractor agrees that during the acceptance period it may not modify, withdraw or cancel its Proposal.

2.9 RESPONSIVENESS

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

OSOS also reserves the right, however, at its sole discretion to waive minor administrative irregularities.

2.10 MOST FAVORABLE TERMS

OSOS 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 Contractor can propose. OSOS reserves the right to contact a Contractor for clarification of its Proposal. OSOS also reserves the right to enact a best and final offer (BAFO) process. If so enacted the procedure is described in Section 4.

The Contractor should be prepared to accept this RFQQ, all addenda to this RFQQ, all clarifying responses and a best and final offer, as applicable, for incorporation into a contract resulting from this RFQQ. Contract negotiations may incorporate some or all of the Contractor’s Proposal. It is

understood that the Proposal will become a part of the official procurement file on this matter without obligation to OSOS.

2.11 CONTRACT INCLUDING GENERAL TERMS AND CONDITIONS

The Apparent Successful Contractor will be expected to enter into a contract which is substantially the same as the Contract including General Terms and Conditions attached as Exhibit C. In no event is a Contractor to submit its own standard contract terms and conditions in response to this solicitation. The Contractor may submit exceptions as allowed in the Certifications and Assurances attached as 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. OSOS will review requested exceptions and accept or reject the same at its sole discretion.

2.12 COSTS TO PROPOSE

OSOS will not be liable for any costs incurred by the Contractor in preparation of a Proposal submitted in response to this RFQQ, in conduct of a presentation, or any other activities related to responding to this RFQQ.

2.13 NO OBLIGATION TO CONTRACT

This RFQQ does not obligate the state of Washington or OSOS to contract for services specified herein.

2.14 REJECTION OF PROPOSALS

OSOS 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 RFQQ.

2.15 COMMITMENT OF FUNDS

The Assistant Secretary of State, the Deputy Secretary of State, or his or her delegate, are the only individuals who may legally commit OSOS to the expenditure of funds for a contract resulting from this RFQQ. No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

2.16 ELECTRONIC PAYMENT

The state of Washington prefers to utilize electronic payment in its transactions. The Apparent Successful Contractor will be provided a form to complete with the contract to authorize such payment method.

2.17 INSURANCE COVERAGE

Should a contract be awarded pursuant to this RFQQ, the Contractor will be required to provide insurance coverage as described in Exhibit C, Contract including General Terms and Conditions.

Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations 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

Proposals must be submitted on eight and one-half by eleven (8 1/2 x 11) inch paper with tabs separating the major sections of the Proposal. Electronically submitted Proposals, to the extent

permitted or required, are to be formatted analogously. The major sections of the Proposal are to be submitted in the order noted below:

1. Letter of Submittal, including signed Certifications and Assurances (Exhibit A to this RFQQ)
2. Qualifications
3. Cost Proposal

Proposals must 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 Contractor in preparing a thorough response.

Items in this section 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 (Exhibit A to this solicitation) must be signed and dated by a person authorized to legally bind the Contractor 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 Contractor and any proposed subcontractors:

1. Name, address, principal place of business, telephone number, and fax number/e-mail 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 Contractor (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business as the entity now substantially exists.
4. Federal Employer Tax Identification number or Social Security number and the Washington Uniform Business Identification (UBI) number issued by the state of Washington Department of Revenue.
5. Identify any state employees or former state employees employed or on the firm's governing board as of the date of the Proposal. Include their position and responsibilities within the Contractor's organization. If following a review of this information, it is determined by OSOS that a conflict of interest exists, the Contractor may be disqualified from further consideration for the award of a contract.

3.2 QUALIFICATIONS

A. Experience (SCORED)

1. Indicate the experience the Contractor has in installing, repairing, and upgrading motor-driven mobile shelving systems, including the number of years of experience.
2. Indicate other relevant experience that indicates the qualifications of Contractor, and any subcontractors, for the performance of the potential contract.

B. References (SCORED)

List the names, addresses, telephone numbers, and fax numbers/e-mail addresses of three business references for whom Contractor has performed work similar to that sought in this RFQQ in the last two (2) years. Contractor must grant permission to OSOS to contact the references. Do not include current OSOS staff as references.

C. Related Information (MANDATORY)

1. If the Contractor or any subcontractor 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 Contractor's staff or subcontractor'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 Contractor 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 Contractor's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Contractor, or (b) litigated and such litigation determined that the Contractor was in default.
4. Submit full details of the terms for default including the other party's name, address, and phone number. Present the Contractor's position on the matter. OSOS 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 Contractor in the past five years, so indicate.
5. If during the past two (2) years and/or currently Contractor has been the subject of any merger or acquisition inquiries, or Contractor has initiated any merger or acquisition inquiries to another company, including any discussions that led to successful, ongoing, or abandoned proposals, please provide details.
6. If during the past two (2) years and/or currently Contractor has undergone bankruptcy or similar proceedings, please provide details.

D. OMWBE Certification

Include proof of certification issued by the Washington State Office of Minority and Women's Business Enterprises if certified minority-owned and/or women-owned firm(s) will be participating on this project.

3.3 COST PROPOSAL

The evaluation process is designed to award this procurement not necessarily to the Contractor of least cost, but rather to the Contractor whose Proposal best meets the requirements of this RFQQ. However, Contractors are encouraged to submit Proposals which are consistent with state government efforts to conserve state resources.

A. Identification of Costs (SCORED)

Identify and itemize all costs including expenses to be charged for performing the requested services and producing the deliverables under the contract. Contractors are required to collect and pay Washington state sales tax, if applicable.

B. Computation

The score for the cost proposal will be computed by dividing the lowest cost bid received by the Contractor'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

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, to be designated by OSOS, which will determine the ranking of the Proposals. Both the Contractors' responsibility and the responsiveness of their Proposals to this solicitation will be evaluated. In scoring against stated criteria, the evaluation team may consider such factors as accepted industry standards and a comparative evaluation of other Proposals in terms of differing price and quality. These scores will be used to determine the most advantageous Proposal to OSOS.

After receipt of Proposals and prior to the recommendation of an award, OSOS, at its sole discretion, may initiate discussions with one or more Contractors for clarification, and/or select the top-scoring Contractors as finalists for an oral presentation, and/or initiate a best and final offer process.

4.2 RESPONSIBILITY

In determining whether a Contractor is responsible, OSOS will consider (1) the Contractor's ability, capacity, and skill to perform the contract; (2) The Contractor's character, integrity, reputation, judgment, experience, and efficiency; (3) Whether the Contractor can perform the contract within the time, and at the times, specified; (4) the quality of Contractor's performance of previous contracts; (5) The previous and existing compliance by the Contractor with laws relating to the contract; (6) Whether, within the three-year period immediately preceding the date of this RFQQ, the Contractor has been determined by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of RCW Chapter 49.46, 49.48, or 49.52; and (7) Such other information as may be secured having a bearing on the decision to award the contract.

4.3 RESPONSIVENESS

OSOS will initially classify all Proposals as either "responsive" or "nonresponsive". OSOS may deem a Proposal nonresponsive if: (1) any of the required information is not provided; (2) the submitted price is found to be excessive or inadequate as measured by the RFQQ criteria; or (3) the Proposal does not meet RFQQ requirements and specifications. OSOS may find any Proposal to be nonresponsive at any time during the procurement process. If OSOS deems a Proposal nonresponsive, it will not be considered further. The RFQQ Coordinator will notify the Contractor by email.

4.4 EVALUATION WEIGHTING AND SCORING

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

Qualifications – 30%		60 points
Experience	40 points (maximum)	
References	20 points (maximum)	
Cost Proposal – 70%	140 points (maximum)	140 points
		<hr/>
GRAND TOTAL		200 POINTS

4.5 ORAL PRESENTATIONS

Oral presentations, if considered necessary or desirable, may be utilized in selecting the Apparent Successful Contractor. OSOS, at its sole discretion, may elect to select the top-scoring Contractors from the evaluation of Proposals for an oral presentation and final determination of contract award. The cut-off for the top-scoring Contractors will be based on several considerations, such as responsiveness, qualifications, and competitiveness, suitability of the products and services offered, cost and economy, and the ability of the Contractor to perform. Should OSOS elect to hold oral presentations, it will contact the top-scoring Contractors to schedule a date, time and location. Commitments made by the Contractor in the oral presentation, if any, will be considered binding. The score from the oral presentation will be considered independently and will determine the Apparent Successful Contractor.

4.6 BEST AND FINAL OFFER (BAFO).

Contractors are encouraged to submit their most competitive offer, but there is a potential for a best-and-final offer (BAFO) process. This section defines that process.

OSOS reserves the right, any point during the evaluation of Proposals, to notify all remaining responsive and responsible Contractors that OSOS will require them to submit BAFOs. Contractors will not be allowed to make material changes to their Proposals unless they receive a request for a BAFO from OSOS.

The notice will be in writing and will set a specific time and date certain by which the Contractor must submit the BAFO to OSOS. The BAFO notice may set additional conditions and requirements for its submission. The notice will advise Contractors that the BAFO shall be in writing and that following the closing date for submission, OSOS intends to select the highest scoring responsive and responsible Contractor for award. Prior to the closing date for the submission of BAFOs, OSOS may, at its discretion, engage in discussion with any or all remaining Contractors regarding how they can make their Proposals more responsive to the selection criteria in the RFQQ. All Contractors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of Proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining BAFOs. In conducting discussions, there shall be no disclosure of any pricing information or other content derived from Proposals submitted by competing Contractors.

For purposes of the BAFO, Contractors may make such changes to their original Proposals as they believe appropriate to enhance their potential for selection and award under the selection criteria set forth in the RFQQ and the BAFO notice. Changes to the original Proposal must be clearly identified in the re-submitted Proposal using the Track Changes function in Microsoft Word.

Evaluation of BAFOs and selection of the Apparent Successful Contractor will be based upon the evaluation criteria set out in the RFQQ. Terms proposed as part of a BAFO must be substantially in accordance with the terms requested in this RFQQ and may not materially alter the requirements of the RFQQ. Contractors may be requested to make an oral presentation regarding their BAFO. The evaluation team may accept or reject any information submitted in a BAFO.

Contractors are not required to submit a BAFO and may submit a written response stating that their original Proposal remains as originally submitted. If a BAFO process is initiated, all Contractors that submitted a Proposal will be eligible for a debriefing conference.

At the conclusion of negotiations with the Apparent Successful Contractor, OSOS will require that the Contractor submit a signed contract as a BAFO pending acceptance.

4.7 REQUEST FOR DOCUMENTS

Upon concurrence with the recommendation of the evaluation team, the RFQQ Coordinator will request from the Apparent Successful Contractor the required documents and information, such as insurance policy documents, contract performance security, an electronic copy of any requested material (e.g., the Proposal, responses to clarification questions, and/or BAFO), and any other necessary documents. Receipt of this request does not constitute a contract between the Contractor and OSOS.

4.8 CONTRACT EXECUTION

Upon receipt of all required materials, a Contract including General Terms and Conditions substantially in the form of the attached Exhibit C will be presented to the Apparent Successful Contractor for signature. The Apparent Successful Contractor will be expected to accept and agree to all material requirements contained in the contract. If the Apparent Successful Contractor does not accept all material requirements, OSOS may move to the next highest scoring Contractor, or cancel the RFQQ. Work under the contract may begin when the contract is signed by all parties and OSOS has given Contractor a notice to proceed.

4.9 NOTIFICATION TO CONTRACTORS

Contractors whose Proposals have not been selected for further consideration or award will be notified via facsimile or e-mail.

4.10 COMPLAINT, DEBRIEFING AND PROTEST PROCEDURES

A. COMPLAINTS

A Contractor may file a complaint concerning this RFQQ after any applicable question and answer period has ended, up until five (5) business days before the bid response deadline. The complaint may be based on any of the following:

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

Complaints must be in writing and sent to the RFQQ Coordinator. They should clearly articulate the basis for the complaint and should include a proposed remedy.

The RFQQ Coordinator will respond to all complaints in writing, and will post the response, including any changes to this RFQQ, on WEBS and the OSOS website. The RFQQ Coordinator's response to a Contractor's complaint is final and no appeal is available. The complaint may not be raised again during the protest period.

B. DEBRIEFING

Upon request, a debriefing conference will be scheduled with an unsuccessful Contractor after the announcement of the Apparent Successful Contractor. The request must be received by the RFQQ Coordinator within three (3) business days after the Contractor is notified that their bid was unsuccessful. The debriefing must be held within three (3) business days of the request.

Discussion will be limited to a critique of the unsuccessful Contractor's Proposal. 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.

C. PROTESTS

This procedure is available to Contractors who submitted a Proposal in response to this RFQQ and who participated in a debriefing conference. Upon completing the debriefing conference, the Contractor is allowed five (5) business days to file a protest of the award with the RFQQ Coordinator.

Contractors protesting an award shall follow the procedures described below. Protests that do not follow these procedures will not be considered. This protest procedure constitutes the sole administrative remedy available to unsuccessful Contractors under this procurement.

All protests must be in writing and signed by the protesting party or an authorized agent. The protest must state 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. All protests shall be addressed to the RFQQ Coordinator.

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 the scoring of Proposals, if applicable
- Non-compliance with procedures described in this RFQQ or OSOS policy

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

Upon receipt of a protest, a protest review will be held by OSOS. The Secretary of State or an employee delegated by the Secretary of State who was not involved in the procurement will consider the record and all available facts and issue a decision within ten (10) 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 Contractor that submitted a Proposal, such Contractor will be given an opportunity to submit its views and any relevant information on the protest to the RFQQ Coordinator.

The final determination of the protest shall:

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

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

The protest decision is final and no appeal is available. If a Contractor does not accept the OSOS protest response it may try to seek relief from superior court.

5. RFQQ EXHIBITS

- Exhibit A Certifications and Assurances
- Exhibit B Small Business Self-Certification Statement
- Exhibit C Contract including General Terms and Conditions

EXHIBIT A

CERTIFICATIONS AND ASSURANCES

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

1. That all answers and statements made in the Proposal are true and correct.
2. That the prices and/or cost data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single Proposal.
3. That the attached Proposal is a firm offer for the period of time specified in the solicitation, and it may be accepted by OSOS without further negotiation (except where obviously required by lack of certainty in key terms) at any time within that specified time period.
4. That in preparing the 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.)
5. That I/we understand OSOS will not reimburse me/us for any costs incurred in the preparation of the Proposal. All Proposals become the property of OSOS, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in the Proposal.
6. That unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by me/us and will not knowingly be disclosed by me/us prior to the bid deadline, directly or indirectly, to any other Contractor or to any competitor.
7. That I/we agree submission of the attached Proposal constitutes acceptance of the solicitation contents and the attached Contract including General Terms and Conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document.
8. That no attempt has been made or will be made to induce any other person or firm to submit or not to submit a Proposal for the purpose of restricting competition.
9. That the Contractor has not, within the three-year period immediately preceding the date of the solicitation, been determined by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of RCW Chapter 49.46, 49.48, or 49.52.

I/we hereby certify, under penalty of perjury under the laws of the state of Washington, that the foregoing is true and correct.

(Signature of person authorized to sign on behalf of Contractor)

(Signature of person authorized to sign on behalf of Contractor)

(Printed name)

(Printed name)

(Title)

(Title)

(Date) *(Location)*

(Date) *(Location)*

EXHIBIT B

SMALL BUSINESS

SELF-CERTIFICATION STATEMENT

RCW Chapter 39.26.010(22) states:

(22) "Small business" means an in-state business, including a sole proprietorship, corporation, partnership, or other legal entity, that:

- (a) Certifies, under penalty of perjury, that it is owned and operated independently from all other businesses and has either:
 - (i) Fifty or fewer employees; or
 - (ii) A gross revenue of less than seven million dollars annually as reported on its federal income tax return or its return filed with the department of revenue over the previous three consecutive years; or
- (b) Is certified with the office of women and minority business enterprises under chapter 39.19 RCW.

I hereby certify, under penalty of perjury under the laws of the state of Washington, that

_____ **meets the above definition of a "small business".**

(Name of Contractor)

*(Signature of person authorized to sign
on behalf of Contractor)*

(Printed name)

(Title)

(Date)

(Location)

EXHIBIT C

[CONTRACT INCLUDING
GENERAL TERMS AND CONDITIONS
ATTACHED]

EXHIBIT C

CONTRACT

BETWEEN THE

WASHINGTON STATE OFFICE OF THE SECRETARY OF STATE

AND

CONTRACT # _____

This Contract ("Contract") is made and entered into by and between the Washington State Office of the Secretary of State (OSOS), and the below named firm, a _____, hereinafter referred to as Contractor:

Phone: _____

Email: _____

WA State UBI Number: _____

FEIN: _____

RECITALS

WHEREAS, OSOS issued a Request for Qualifications and Quotations (RFQQ) dated September 9, 2019 for the purpose of soliciting interest from qualified vendors in performing upgrades to certain high-density mobile shelving modules located at the Puget Sound Regional Archives branch, which RFQQ is attached hereto as Exhibit A and incorporated herein by this reference; and

WHEREAS, Contractor submitted a timely Proposal in response to the RFQQ, which Proposal is attached hereto as Exhibit B and incorporated herein by this reference; and

WHEREAS, OSOS evaluated all properly submitted Proposals and identified Contractor as the apparent successful Contractor, and has further determined that entering into a contract with Contractor will meet OSOS's needs and will be in its best interests.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises contained herein, OSOS and Contractor agree as follows:

EXHIBIT C

1. PURPOSE

The purpose of this Contract is to perform identified upgrades to certain high-density mobile shelving modules located at the Puget Sound Regional Archives branch, 3000 Landerholm Circle SE, Bellevue, Washington 98007.

2. STATEMENT OF WORK; GENERAL TERMS AND CONDITIONS

Contractor shall furnish the necessary personnel, equipment, material, supplies and services and otherwise do all things necessary for or incidental to the performance of the work set forth in the Statement of Work attached hereto as Exhibit C and incorporated herein by this reference.

The General Terms and Conditions attached hereto as Exhibit D and incorporated herein by this reference govern the work to be performed under this Contract, the nature of the relationship between OSOS and Contractor, and specific obligations of both parties.

3. PERIOD OF PERFORMANCE

The period of performance under this Contract will be from December 1, 2019 through December 31, 2019. With respect to the work to be performed on the two 3-carriage modules, Contractor agrees that Contractor will perform this work during the period from December 16, 2019 to December 31, 2019 and not at any other time during the period of performance.

4. COMPENSATION

OSOS shall pay a total amount not to exceed _____ (\$_____) for the performance of all things necessary for or incidental to the performance of work as set forth in the Statement of Work. Contractor's compensation for services rendered shall be based on the rates and fees set forth in the Statement of Work, and shall be payable subject to the terms and conditions of this Contract. Total costs shall not be increased except by an amendment to this Contract duly executed by both parties.

5. PAYMENT TERMS

- A. Statewide Vendor Payment Registration. Contractor is required to be registered in the Statewide Vendor Payment System, prior to submitting a request for payment under this Contract.
- B. Prevailing Wage Filing Requirements. Contractor shall comply with prevailing wage laws and the filing requirements of the Department of Labor and Industries with respect to the payment of prevailing wages under this Contract. Confirmation that Contractor has made the appropriate filings will be required prior to making any payment to Contractor.
- C. Billing Procedures. Each billing shall consist of an original invoice each month and shall be submitted to the OSOS contract manager. Payment for approved and completed work will be made by warrant or account transfer by OSOS within thirty (30) calendar days of receipt of a satisfactorily completed invoice. Satisfactorily completed is defined as having all the information required for processing by OSOS Financial Services. In addition to a Federal Tax ID number, Contractor must provide OSOS a Statewide Vendor number. Payment cannot be made without

EXHIBIT C

these numbers on file. The Contract number and Statewide Vendor number must be referenced on each reimbursement claim in order for the claim to be processed.

OSOS may, in its sole discretion, terminate this Contract or withhold payments claimed by Contractor for services rendered if Contractor fails to satisfactorily comply with any terms or conditions of this Contract.

No payments in advance or in anticipation of services or supplies to be provided under this Contract will be made by OSOS.

Payment shall be sent to the address designated by Contractor. Should questions arise during processing of invoices, inquiries should be sent to payables@sos.wa.gov.

6. LIQUIDATED DAMAGES

Any delay by Contractor in meeting the completion date of December 31, 2019 for the work to be performed under this Contract will interfere with the proper implementation of OSOS's programs and will result in loss and damage to OSOS. As it would be impracticable to fix the actual damage sustained in the event of any such failure to perform, the amount of damage which will be sustained will be the amount set forth below and the parties agree that Contractor shall pay such amounts as liquidated damages and not as a penalty.

If Contractor does not have the work to be performed under this Contract completed by December 31, 2019, then Contractor shall provide OSOS with a revised completion date and pay to OSOS as fixed and agreed liquidated damages, in lieu of all other damages due to such delay, for each calendar day between December 31, 2019 and the date that Contractor actually completes the work and all modules are fully operational, an amount of Two Hundred Fifty Dollars (\$250.00) per calendar day. OSOS shall deduct and retain the amount of such liquidated damages out of the money which may be due or become due under this Contract.

7. INSURANCE

Contractor shall provide insurance coverage as set out in this section. Failure to buy and maintain the required insurance may result in the termination of this Contract at OSOS's option. The intent of 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 Contractor or any subcontractor of Contractor, or agents of either, while performing under the terms of this Contract. By requiring insurance herein, OSOS 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 OSOS in this Contract.

Contractor shall, at all times during the term of this Contract at its own cost and expense buy and maintain insurance of the types and amounts listed below:

- A. 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 such CGL insurance contains aggregate limits, the general

EXHIBIT C

aggregate limit shall be at least twice the “each occurrence” limit. The CGL insurance shall have a products-completed operations aggregate limit of at least two times the “each occurrence” limit.

- B. Employers Liability (Stop Gap) Insurance. Contractor will at all times comply with all applicable workers’ compensation, occupational disease, and occupational health and safety laws, statutes and regulations to the full extent applicable and will maintain employers liability insurance and, if necessary, commercial umbrella liability insurance, with a limit of not less than \$1,000,000. The state of Washington will not be held responsible in any way for claims filed by Contractor or its employees for services performed under this Contract.

The insurance shall cover bodily injury, including disease, illness and death, and property damage arising out of Contractor’s premises/operations, independent contractors, products/completed operations, personal injury and advertising injury, and contractual liability arising out of premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and contractual (including the tort liability of another assumed in a business contract), and contain a separation of insureds (cross liability) conditions.

- C. Business Automobile Liability Insurance. In the event that services delivered pursuant to this Contract involve the use of vehicles, either owned or unowned by Contractor, Contractor shall maintain business automobile liability insurance with a limit of not less than \$1,000,000 per occurrence, using a combined single limit for bodily injury and property damage.

The insurance required to be maintained pursuant to this Contract shall be issued by an insurance company authorized to do business in the state of Washington, and shall name the state of Washington, its agents and employees as additional insureds under the insurance policies. All policies shall be primary to any other valid and collectible insurance. Contractor shall instruct its insurers to give OSOS thirty (30) calendar days’ advance notice of any insurance cancellation. Contractor agrees to disclose the existence and nature of any limiting endorsement that applies to any liability insurance policy required pursuant to this Contract.

Upon request, Contractor shall submit to OSOS the certificates of insurance that outline the coverages, limits and terms specified herein. Contractor shall submit renewal certificates as appropriate during the term of the Contract. Contractor shall include all subcontractors as insureds under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each subcontractor. Subcontractors must comply fully with all insurance requirements stated herein. Failure of subcontractor(s) to comply with insurance requirements does not limit Contractor’s liability or responsibility. Contractor hereby waives all rights against OSOS for recovery of damages to the extent such damages are covered by insurance maintained pursuant to this Contract.

8. SITE SECURITY

While on OSOS premises, Contractor, its agents, employees, and subcontractors shall conform in all respects with physical, fire, and other security regulations. Failure to comply with any part of facility security or confidentiality is a violation of this Contract and may result in termination of this Contract.

9. CONTRACT MANAGEMENT

EXHIBIT C

The Contract Manager for each of the parties shall be the contact person listed below for all communications, notices and billings regarding the Contract:

CONTRACTOR

OSOS

CONTRACT MANAGER

CONTRACT MANAGER

Mike Saunders

Puget Sound Regional Archives

3000 Landerholm Circle SE

Bellevue, WA 98007

Phone: _____

Phone: (425) 564-3950

e-mail: _____

e-mail: mike.saunders@sos.wa.gov

10. CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

Each of the exhibits listed below is incorporated by reference into this Contract. In the event of any inconsistency, the inconsistency shall be resolved by giving precedence in the following order:

- A. Applicable federal and state of Washington statutes and regulations
- B. This Contract
- C. Exhibit C – Statement of Work
- D. Exhibit D – General Terms and Conditions
- E. Exhibit B – Contractor’s Proposal
- F. Exhibit A – RFQQ 20-03

11. ASSURANCES

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

12. NOTICES

Any notice, demand or other communication required or permitted to be given under this Contract or applicable law will be effective only if it is in writing and signed by the party giving notice, properly addressed, and either delivered in person or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid to the other party at the other party’s address provided in section 8 of this Contract.

Notices shall be effective upon receipt or four business days after mailing, whichever is earlier. A notice address may be changed by written notice given as provided above.

EXHIBIT C

13. ENTIRE AGREEMENT

This Contract, including the exhibits hereto, represent all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, shall be deemed a part hereof.

14. SEVERABILITY

If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract or document which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Contract.

15. APPROVAL; AMENDMENTS

This Contract shall be subject to the written approval of OSOS's authorized representative and shall not be binding until so approved. This Contract may be altered, amended, or waived only by a written amendment executed by both parties.

16. COUNTERPARTS

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or duplicate original will be deemed to be an original copy of the Contract signed by each party for all purposes.

THIS CONTRACT is executed by the persons signing below, who warrant that they have the authority to execute this Contract.

(Signature)

(Printed Name)

(Title)

(Date)

STATE OF WASHINGTON

OFFICE OF THE SECRETARY OF STATE

(Signature)

(Title)

(Date)

EXHIBIT C

EXHIBIT A

[REQUEST FOR QUALIFICATIONS AND QUOTATIONS]

EXHIBIT C

EXHIBIT B

[CONTRACTOR'S PROPOSAL]

EXHIBIT C

EXHIBIT C

[STATEMENT OF WORK]

EXHIBIT C

EXHIBIT D

GENERAL TERMS AND CONDITIONS

DEFINITIONS

“Agent” means the Secretary of State and/or the delegate authorized in writing to act on the Secretary of State’s behalf.

“Contract” means the Contract entered into by and between OSOS and Contractor for janitorial services, including all exhibits incorporated by reference into the Contract.

“Contractor” means the entity or individual performing services under this Contract, and includes all employees of Contractor.

“OSOS” means the Office of the Secretary of State.

“Proprietary information” means information owned by Contractor for which Contractor claims a protectable interest under law. Proprietary information includes, but is not limited to, information protected by copyright, patent, trademark or trade secret laws.

“Subcontractor” means an entity or individual not in the employment of Contractor who is performing all or part of the work to be performed under the Contract under a separate contract or agreement with Contractor. The terms “Subcontractor” and “Subcontractors” may refer to Subcontractor(s) in any tier.

AMENDMENTS

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

AMERICANS WITH DISABILITIES ACT COMPLIANCE

Contractor must comply with the Americans with Disabilities Act of 1990, Public Law 101-336, 28 CFR Part 35, 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 Contractor without prior written consent of OSOS, and any such attempted transfer or assignment without such consent shall be void and of no effect.

ATTORNEYS’ FEES AND COSTS

In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, the parties will share equally in the cost of the alternative dispute resolution method, including the cost of a dispute resolution panel. In addition, each party will be responsible for its own attorneys’ fees incurred while utilizing such alternative dispute resolution method. If any litigation is brought to enforce any term, condition, right or obligation under this Contract, or as a result of the Contract in any way, each party agrees to bear its own attorneys’ fees, costs and expenses.

EXHIBIT C

CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

Contractor shall not use or disclose any information concerning OSOS, 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 OSOS, or as may be required by law.

CONFLICT OF INTEREST

Notwithstanding any determination by the Washington State Executive Ethics Board or other tribunal, OSOS may, in its sole discretion, by written notice to Contractor, terminate the Contract if it is found after due notice and examination by OSOS that there is a violation of the Ethics in Public Service Act, RCW Chapter 42.52 or any similar statute involving Contractor in the procurement of, or performance under, this Contract. In the event this Contract is terminated as provided above, OSOS shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of a breach of this Contract by Contractor. The rights and remedies of OSOS provided for in this clause shall not be exclusive and are in addition to any and all other rights and remedies provided by law. The existence of facts upon which OSOS makes any determination under this clause may be an issue for adjudication as provided in the **DISPUTES** clause of this Contract.

CONTRACTOR'S PROPRIETARY INFORMATION

Contractor acknowledges that OSOS is subject to RCW Chapter 42.56, and that this Contract is a public record as defined therein. Any specific information that is claimed by Contractor to be proprietary and confidential must be clearly identified as such by Contractor. Price information and entire bid proposals will not be treated as proprietary and confidential. To the extent consistent with state law, OSOS will maintain the confidentiality of all Proprietary information. If a public records request is made for such information, OSOS will notify Contractor of the request and of the date such records are scheduled to be released unless Contractor obtains an order from a court of competent jurisdiction enjoining the release.

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 OSOS. OSOS shall be considered the author of such materials. In the event that the materials are not considered "works for hire" under U.S. copyright laws, Contractor hereby irrevocably assigns all right, title, and interest in the materials, including all intellectual property rights, to OSOS, effective from the moment of creation of such materials.

"Materials" in this context 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, and 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 OSOS a non-exclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such materials to translate, reproduce, distribute, prepare derivative works, publicly perform and publicly display. 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 OSOS.

EXHIBIT C

Contractor shall exert all reasonable efforts to advise OSOS, at the time of delivery of the materials furnished under the 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 the Contract.

OSOS shall receive prompt written notice of each notice or claim of infringement received by Contractor with respect to any data delivered under the Contract. OSOS shall have the right to modify or remove any restrictive markings placed upon the data by Contractor.

COVENANT AGAINST CONTINGENT FEES

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 Contractor for securing business. OSOS shall have the right, in the event of breach of this clause by 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

Contractor is responsible for any audit exceptions or disallowed costs incurred by Contractor or its Subcontractors.

DISPUTES

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

The request for a dispute hearing must: (1) be in writing; (2) state the disputed issue(s); (3) state the relative positions of the parties; (4) state requester's name, address, and the contract number; and (5) be mailed to the Agent and the respondent's contract manager. The respondent shall send a written answer to the requester's statement to both the Agent and the requester within 15 business days.

The Agent shall review the written statements and reply in writing to both parties within ten business days. The Agent may extend this period if necessary by notifying the parties.

The parties agree that this dispute hearing 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 alternative dispute resolution method in addition to the dispute resolution procedure outlined above.

DUPLICATE PAYMENT

OSOS shall not pay Contractor if 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.

FAILURE TO PERFORM AND REMEDIES

If Contractor fails to perform any substantial obligation under the Contract, OSOS will give Contractor written notice of such failure. If after 30 calendar days from the date of notice, or other time period agreed between the parties, Contractor has still not performed, OSOS may then withhold some or all monies due and payable to Contractor until such failure is cured or is otherwise resolved. This remedy is

EXHIBIT C

not exclusive, but is in addition to any and all other remedies available to OSOS as provided herein or as are available under law.

GOVERNING LAW

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, without reference to conflict of law principles. Jurisdiction for any action hereunder and venue for any such action shall be in Superior Court for Thurston County, Washington.

INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless OSOS, its officials, agents and employees from and against all claims, including reasonable attorneys' fees resulting from such claims, by third parties arising out of or incident to Contractor's or any Subcontractor's intentional, willful or negligent acts or omissions in the performance of the Contract. Contractor's obligation to indemnify, defend and hold harmless OSOS shall not be eliminated or reduced by any actual or alleged concurrent negligence of OSOS or its officials, agents or employees.

"Claim" as used in this Contract means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorneys' 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 waives its immunity under RCW Chapter 51 to the extent it is required to indemnify, defend and hold harmless OSOS and its officials, agents and employees.

INDEPENDENT CAPACITY OF CONTRACTOR

The parties intend that an independent contractor relationship be created by this Contract, and that the employees or agents of one party will not be deemed or construed to be employees or agents of the other party for any purpose whatever. Contractor and Contractor's employees or agents performing under the Contract are not employees or agents of OSOS. Contractor will not hold itself out as or claim to be an officer or employee of OSOS by reason hereof, nor will Contractor make any claim of right, privilege or benefit that would accrue to such employee under law.

INDUSTRIAL INSURANCE COVERAGE

Contractor shall comply with the provisions of RCW Chapter 51. If 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, OSOS may collect from Contractor the full amount payable to the Industrial Insurance accident fund. OSOS may deduct the amount owed by Contractor to the accident fund from the amount payable to Contractor by OSOS under this Contract, and transmit the deducted amount to the Department of Labor & Industries (L&I), Division of Insurance Services. This provision does not waive any of L&I's rights to collect from Contractor.

EXHIBIT C

LICENSING, ACCREDITATION, REGISTRATION AND BONDING

Contractor shall comply with all applicable local, state and federal licensing, accreditation, registration and bonding requirements and standards necessary for the performance of the Contract.

LIENS, CLAIMS AND ENCUMBRANCES

All materials, equipment and/or services rendered by Contractor under the Contract shall be free of all liens, claims or encumbrances of any kind, and Contractor shall deliver a formal release of the same to OSOS upon request.

LIMITATION OF AUTHORITY

Only the Agent, the Assistant Secretary of State or the Deputy Secretary of State or their designees shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract.

NONDISCRIMINATION

During the performance of this Contract, Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies. In the event of Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, OSOS may rescind, cancel or terminate the Contract in whole or in part, and Contractor may be declared ineligible for further contracts with OSOS. Contractor shall be given a reasonable time in which to cure any non-compliance, and any dispute regarding nondiscrimination compliance may be resolved in accordance with the **DISPUTES** procedures set forth herein.

PERSONAL LIABILITY

In no event shall any official, employee or agent of OSOS be in any way personally liable or responsible for any covenant or agreement to be observed by OSOS in this Contract, whether express or implied, nor for any statement or representation made in connection with the Contract.

PUBLICITY

The award of this Contract is not in any way an endorsement of Contractor or Contractor's services by OSOS, and may not be so construed by Contractor in any advertising or other publicity materials. Contractor agrees to submit to OSOS all advertising and publicity matters relating to the Contract wherein OSOS is named or mentioned or language is used from which the connection of OSOS's name may, in OSOS's judgment, be inferred. Contractor agrees not to publish or use such advertising and publicity materials without the prior written consent of OSOS.

OVERPAYMENTS TO CONTRACTOR

Contractor must refund to OSOS the full amount of any erroneous payment or overpayment under the Contract within 30 calendar days of written notice. If Contractor fails to make timely refund, OSOS may charge Contractor one percent (1%) per month on the amount due until paid in full.

EXHIBIT C

RECORDS MAINTENANCE

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 OSOS, personnel duly authorized by OSOS, 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-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

RIGHT OF INSPECTION

Contractor shall provide right of access to its facilities to 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, OSOS may terminate the Contract under the **TERMINATION FOR CONVENIENCE** clause without the 10-day notice requirement, subject to renegotiation at 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.

SUBCONTRACTING

Neither Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this Contract without obtaining prior written approval of OSOS. In no event shall the existence of the subcontract operate to release or reduce the liability of Contractor to OSOS for any breach in the performance of Contractor's duties. This clause does not include contracts of employment between Contractor and personnel assigned to work under this Contract. Additionally, Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are carried forward to any subcontracts.

SURVIVORSHIP

All terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of the Contract shall so survive. In addition, the terms of the sections titled **OVERPAYMENTS TO CONTRACTORS**,

EXHIBIT C

CONTRACTOR'S PROPRIETARY INFORMATION, COPYRIGHT PROVISIONS, DISPUTES, INCORPORATED DOCUMENTS AND ORDER OF PRECEDENCE, and **PUBLICITY** shall survive the termination of this Contract.

TAXES

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

TERMINATION FOR CAUSE

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

In the event of termination or suspension, 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., the cost of competitive bidding, mailing, advertising and staff time.

OSOS reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by Contractor or a decision by OSOS to terminate the Contract. A termination shall be deemed a "Termination for Convenience" if it is determined that Contractor: (1) was not in default; or (2) failure to perform was outside of Contractor's control, fault or negligence. The rights and remedies of OSOS 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, OSOS 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, OSOS 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, OSOS, in addition to any other rights provided in this Contract, may require Contractor to deliver to OSOS 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.

OSOS shall pay to Contractor the agreed upon price, if separately stated, for completed work and services accepted by OSOS, and the amount agreed upon by Contractor and OSOS 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 OSOS, 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 OSOS. Failure to agree with such determination shall be a dispute within the meaning of the **DISPUTES** clause of

EXHIBIT C

this Contract. OSOS may withhold from any amounts due Contractor such sum as the Agent determines to be necessary to protect OSOS against potential loss or liability.

The rights and remedies of 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 direct by the Agent, 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 OSOS, in the manner, at the times, and to the extent directed by OSOS, all of the rights, title, and interest of Contractor under the orders and subcontracts so terminated, in which case 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;
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 Agent may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to OSOS 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 OSOS;
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 Contractor and in which OSOS has or may acquire an interest.

TREATMENT OF ASSETS

Title to all property furnished by OSOS shall remain in OSOS. Title to all property furnished by Contractor, for the cost of which Contractor is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vest in OSOS upon delivery of such property by Contractor. Title to other property, the cost of which is reimbursable to Contractor under this Contract, shall pass to and vest in 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 OSOS in whole or in part, whichever first occurs.

Any property of OSOS furnished to Contractor shall, unless otherwise provided herein or approved by OSOS, be used only for the performance of this Contract.

Contractor shall be responsible for any loss or damage to property of OSOS that results from the negligence of Contractor or which results from the failure on the part of Contractor to maintain and administer that property in accordance with sound management practices.

If any OSOS property is lost, destroyed or damaged, Contractor shall immediately notify OSOS and shall take all reasonable steps to protect the property from further damage.

EXHIBIT C

Contractor shall surrender to OSOS all property of OSOS prior to settlement upon completion, termination or cancellation of this Contract.

All references to Contractor under this clause shall also include Contractor's employees, agents and Subcontractors.

WAIVER

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