

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

**REQUEST FOR PROPOSALS
RFP NO. 20-05**

PROJECT TITLE: Implementation of end-to-end statewide ebooks platform utilizing Library Simplified middleware and the SimplyE application

PROPOSAL DUE DATE: December 18, 2019

EXPECTED TIME PERIOD FOR CONTRACT: One Year

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 Library (WSL) seeks a vendor to implement a statewide end-to-end platform for hosting, managing, and consuming ebooks and other digital content, utilizing a cloud storage service, the Library Simplified middleware, and the SimplyE application. The purpose of the implementation is to provide one platform accessible by all Washington citizens, regardless of library size, location or type. WSL seeks to provide access to ebook content that is licensed with the best interests of libraries and library users in mind: broad licensing terms--available to all libraries regardless of size, location or type--simultaneous use and unlimited access and perpetual use. Available titles will include public domain and open access content, but critically, WSL intends to use its purchasing power to collect and promote works by publishers who are willing to provide in-copyright content with such licensing terms. Additionally WSL intends to host its own digital content, scanned from its own collection or provided via other partnerships, like the ebook and e-audio content from Legacy Washington, a publishing arm of Washington's Secretary of State.

The platform will allow for hosting and management of all ebook (and in future e-audio) content that any library or system in the state of Washington, including the Washington State Library, purchases, leases, or otherwise acquires whether the digital content needs to be hosted or whether the files reside on a managed, remotely hosted service. Examples include materials available through the DPLA Exchange, as well as Overdrive, HathiTrust, Bibliolabs, along with digital files copyright-owned by the State of Washington. When possible, general usage ebook (and in future e-audio) content provided by individual libraries will be shared across the statewide platform as appropriate and according to US Copyright Law.

We expect the platform will allow for libraries or library systems to acquire and manage content available only to their patrons. In addition the system should allow for libraries or library systems to "include" or "not include" material with appropriate licensing to be shared across all libraries in the state that WSL or another library has acquired.

WSL is also considering other sources of ebook content, like the content available via Internet Archive's Open Library as a result of its Controlled Digital Lending model. Other outside content—especially open access content, such as Project Gutenberg, HathiTrust, OAPEN, and Knowledge Unlatched, will also be considered for inclusion.

Washington State Library will serve as the primary customer and will be the purchaser of the service. Individual libraries may in time opt to purchase their own content for their own libraries, so a distributed model that allows for libraries to be able to administer their own collections activities, including acquisition, billing and circulation, must be part of the model. If add-on features are developed in time that have additional costs and do not have statewide application, individual libraries may request the option to customize their platforms.

We also expect that the selected contractor will provide ongoing maintenance of the system that includes timely installation of upgrades and fixes.

1.2 OBJECTIVE

Acquire the aforescribed platform as a long term tool for statewide use.

1.3 MINIMUM QUALIFICATIONS

Contractor must be registered to do business with the state and have a current Unified Business Identifier (UBI) number.

1.4 PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFP is tentatively scheduled to begin on or about February 6, 2020 and to end on February 1, 2021. 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 RFP 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 RFP.

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

RFP – This Request for Proposals.

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

2. GENERAL INFORMATION FOR CONTRACTORS

2.1 RFP COORDINATOR

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

Name	Mike Buschman
Address	P.O. Box 42460
City, State, Zip Code	Olympia, Washington 98504-2460
Street Address	6880 Capitol Blvd SE
City, State, Zip Code	Tumwater, WA 98501
Phone Number	360-704-5248
Fax Number	360-586-7575
E-Mail Address	mike.buschman@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 RFP Coordinator. Communication directed to parties other than the RFP Coordinator may result in disqualification of the Contractor.

2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue Request for Proposals	11/18/19
Question and answer period	11/18 – 12/4
Last date for questions regarding RFP	12/4
Preproposal conference	11/25
Place Q&As from preproposal conference by	11/27
Place complete list of Q&As on WEBS and OSOS web site	12/6
Last amendment to RFP	12/9
Last day for complaint	12/11
Proposals due	12/18
Evaluate proposals	12/19 – 1/23/20
Conduct oral interviews with finalists, if required	1/7
Issue BAFOs (Optional)	1/9
BAFOs due	1/17
Announce “Apparent Successful Bidder” (ASB) and send notification via fax or e-mail to unsuccessful proposers	1/24
Hold debriefing conferences (if requested)	See 4.10
Protest	See 4.10
Negotiate contract	1/27 – 2/5/20
Sign and Begin contract work	2/6/20

OSOS reserves the right to revise the above schedule.

2.3 PREPROPOSAL CONFERENCE

A preproposal conference is scheduled to be held on November 25, 2019 from 10:00 a.m. to 12:00 p.m., PST, by conference call. All prospective Proposers should call in; however, attendance is not mandatory. **To join the conversation call in on: 360-407-3780. Then use the PIN Code 232604#.** Written questions may be submitted in advance to the RFP 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 conference will be placed on WEBS and OSOS web sites on November 27, 2019.

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., PST, on December 18, 2019. Attachments to the e-mail shall be in Microsoft Word or PDF format.

The Proposal is to be sent to the RFP 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 RFP with name, title, email, and telephone number.

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 D. 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 form, Exhibit A to this solicitation. All exceptions to the contract terms and conditions must be submitted as an attachment to Exhibit A, Certifications and Assurances form. OSOS will review requested exceptions and accept or reject the same at its sole discretion.

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 RFP 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 RFP Coordinator is required. All requests for information should be directed to the RFP Coordinator.

2.6 REVISIONS TO THE RFP

In the event it becomes necessary to revise any part of this RFP, amendments will be published on WEBS and the OSOS web site, as follows: <http://www.sos.wa.gov/office/procurements.aspx>. For this purpose, the published questions and answers from the preproposal conference and any other pertinent information shall be considered an amendment to the RFP and also placed on these sites.

OSOS also reserves the right to cancel or to reissue the RFP 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 90 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 RFP Coordinator to determine compliance with administrative requirements and instructions specified in this RFP. The Contractor is specifically notified that failure to comply with any part of the RFP 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 RFP, all addenda to this RFP, all clarifying responses and a best and final offer, as applicable, for incorporation into a contract resulting from this RFP. 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 D. 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 section, Exhibit A to this solicitation. 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 RFP, in conduct of a presentation, or any other activities related to responding to this RFP.

2.13 NO OBLIGATION TO CONTRACT

This RFP does not obligate the state of Washington or 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 RFP.

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 RFP. 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 RFP, the Contractor will be required to provide insurance coverage as described in Exhibit D, 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 the contract.

2.18 EVALUATION PREFERENCE

Pursuant to RCW 39.26.160(3) (best value criteria) and consistent with Executive Order 18-03 – *Supporting Workers’ Rights to Effectively Address Workplace Violations* (dated June 12, 2018), OSOS will evaluate bids for best value and provide a bid preference in the amount of 5% of the available proposal points to any bidder who certifies, pursuant to the certification attached as Exhibit B – *Contractor Certification for Executive Order 18-03 – Workers’ Rights*, that their firm does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waiver.

3. PROPOSAL CONTENTS

Proposers are required to submit an electronic version of their proposal. The proposal must be received by OSOS no later than 4:00 p.m., PST, on December 18, 2019. E-mail is preferred; attachments to the e-mail shall be in Microsoft Word format, except as specified elsewhere (e.g., Section 3.1 Letter of Submittal). Physical electronic formats such as CD-ROM or USB flash drive may be used, using Microsoft Word as the format for the electronic format proposals. If the electronic version is provided in a physical format, two separate physical copies must be provided. An electronic version provided in a format that cannot easily be edited (e.g., PDF alone, without equivalent Microsoft Word version), will be considered nonresponsive. A PDF version may be provided as a more permanent reference supplement to the Microsoft Word version, if desired. Proposals may not be transmitted using facsimile transmission (fax).

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

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 RFP)
2. Technical Proposal
3. Management Proposal
4. 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 form (Exhibit A to this RFP) 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. Location of the facility from which the Contractor would operate.
6. 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 TECHNICAL PROPOSAL (SCORED)

The Washington State Library (WSL) seeks a vendor to implement a statewide end-to-end platform for hosting, managing, and consuming ebooks and other digital content, utilizing a cloud storage service, the Library Simplified middleware, and the SimplyE application. The platform will allow for hosting and management of all ebook and e-audio content that any library or system in the state of Washington, including the Washington State Library, purchases, leases, or otherwise acquires outside of a managed, remotely hosted service, such as DPLA Exchange, Overdrive, Hathi Trust, Bibliolabs, etc.

The technical proposal must contain a comprehensive description of services including the following elements:

- A. Project Approach/Methodology** – Include a complete description of the Contractor's proposed approach and methodology for the project. This section should convey Contractor's understanding of the proposed project.
- B. Work Plan** – Include all project requirements and the proposed tasks, services, activities, etc. necessary to accomplish the scope of the project defined in this RFP. This section of the technical proposal must contain sufficient detail to convey to members of the evaluation team the Contractor's knowledge of the subjects and skills necessary to successfully complete the project. Include any required involvement of OSOS staff. The Contractor may also present any creative approaches that might be appropriate and may provide any pertinent supporting documentation.
- C. Project Schedule** – Include a project schedule indicating when the elements of the work will be completed and when deliverables, if any, will be provided.
- D. Deliverables** – Fully describe deliverables to be submitted under the proposed contract.
- E. Outcomes and Performance Measurement** – Describe the impacts/outcomes the Contractor proposes to achieve as a result of the delivery of these services, including how these outcomes would be monitored, measured and reported to OSOS.

F. Risks

Overall Risk - Define risks you identify as being significant to the success of the project. Include how you would propose to effectively monitor and manage these risks, including reporting of risks to OSOS's contract manager.

3.3 MANAGEMENT PROPOSAL

A. Project Management (SCORED)

1. **Project Team Structure/Internal Controls** - Provide a description of the proposed project team structure and internal controls to be used during the course of the project, including any subcontractors. Provide an organizational chart of your firm indicating lines of authority for personnel involved in performance of this potential contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of management. Include who within the firm will have prime responsibility and final authority for the work.
2. **Staff Qualifications/Experience** – Identify staff, including subcontractors, who will be assigned to the potential contract, indicating the responsibilities and qualifications of such personnel, and include the amount of time each will be assigned to the project. Provide resumes for the named staff which include information on the individuals' particular skills related to this project, education, experience, significant accomplishments and any other pertinent information. The Contractor must commit that staff identified in its Proposal will actually perform the assigned work. Any staff substitution must have the prior approval of OSOS.

B. Experience of the Contractor (SCORED)

1. Indicate the experience the Contractor and any subcontractors have in the following areas:
 - Experience in implementing a statewide (or provincewide or national) ebook platform
 - Experience in implementing a statewide (or provincewide or national) ebook platform that included Library Simplified and SimplyE
 - Experience in implementing a “distributed” ebook platform model where different libraries or library systems could acquire, manage, and distribute their own collections under a broader umbrella platform
 - Provide a list of integrated library systems (ILSs) that the Contractor has successfully integrated in previous projects. Please provide concrete examples, such as links to current implementations, especially for products from ILS providers Polaris, SirsiDynix, Innovative, KOHA, and Evergreen.
 - Experience in managing multiple ebook and e-content vendors, including commercial and local content
 - Experience with maintaining an active ebook platform including timely updates and bug fixes
 - Provide a detailed description of data that will be available for reporting. Can the data be segregated by individual participating libraries? Reporting is expected to include the following: circulation counts, hold counts, unique user counts, new user counts, “active” user counts (a user might be considered to be “active” if he/she has

checked out an item or placed a hold within the past 12 months, for example), purchases/acquisitions on library basis as well as aggregated. At the title level we would expect reporting on checkouts, for assessing title popularity, and/or success of acquisition decisions. Is all reporting data exportable in standard spreadsheet-compatible formats? Do reports automatically include relevant metadata for the report (e.g., date(s) covered, and any other specified report parameters)?

- Provide proof (using a VPAT or otherwise) that the system will meet or accede common accessibility standards.
2. Indicate other relevant experience that indicates the qualifications of the Contractor, and any subcontractors, for the performance of the potential contract.
 3. Include a list of contracts the Contractor has had during the last five years that relate to the Contractor's ability to perform the services needed under this RFP. List contract reference numbers, contract period of performance, contact persons, telephone numbers, and fax numbers/e-mail addresses.
 4. Indicate any experience or current designs/plans for implementing functionality for automated library card sign-up for appropriate library system(s) based on the user's location.
 5. Indicate any experience or current designs/plans for supporting geo-location, so that any user in the State of Washington can find the platform and gain access to content while they are in the state of Washington, even if they are not previously associated with any library in the state.

C. References (SCORED)

List names, addresses, telephone numbers, and fax numbers/e-mail addresses of three business references for whom work has been accomplished and briefly describe the type of service provided. The Contractor must grant permission to OSOS to contact the references. Do not include current OSOS staff as references. References will be contacted for the top-scoring Proposal(s) only.

D. Related Information (MANDATORY)

1. If 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.

E. OMWBE Certification

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

3.4 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 RFP. However, Contractors are encouraged to submit Proposals which are consistent with state government efforts to conserve state resources.

A. Identification of Costs (SCORED)

Identify all costs including expenses to be charged for performing the services necessary to accomplish the objectives of the contract. The Contractor is to submit a fully detailed budget including staff costs and any expenses necessary to accomplish the tasks and to produce the deliverables under the contract. Contractors are required to collect and pay Washington state sales tax, if applicable.

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

B. Computation

The score for the cost proposal will be computed by dividing the lowest cost bid received by the 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 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 RFP, 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 RFP criteria; or (3) the Proposal does not meet RFP 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 RFP 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:

Technical Proposal – 30% Project Approach/Methodology 10 points (maximum) Quality of Work Plan 30 points (maximum) Project Schedule 10 points (maximum) Project Deliverables 10 points (maximum)	60 points
Management Proposal – 35% Project Team Structure Internal Controls 10 points (maximum) Staff Qualifications/Experience 20 points (maximum) Experience of the Contractor 40 points (maximum)	70 points
Cost Proposal – 35%	70 points

Executive Order 18-03 Evaluation Preference – 5%	10 points
Sub-Total	210 points
References (top-scoring Contractor(s) only)	10 points
GRAND TOTAL	220 points

References will be contacted for the top-scoring Contractor(s) only, based on the written Proposal. References will then be scored and included in the Grand Total.

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 RFP. 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 RFP 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 RFP. Terms proposed as part of a BAFO must be substantially in accordance with the terms requested in this RFP and may not materially alter the requirements of the RFP. 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 RFP 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 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 Service Contract including General Terms and Conditions substantially in the form of the attached Exhibit D 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 RFP. 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 are not selected for further consideration or award will be notified via WEBS **and** facsimile or e-mail.

4.10 COMPLAINT, DEBRIEFING AND PROTEST PROCEDURES

A. COMPLAINTS

A Contractor may file a complaint concerning this RFP 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 RFP Coordinator. They should clearly articulate the basis for the complaint and should include a proposed remedy.

The RFP Coordinator will respond to all complaints in writing, and will post the response, including any changes to this RFP, on WEBS and the OSOS website. The RFP 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 RFP 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 RFP 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 RFP 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 RFP 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 RFP 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 RFP 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. RFP EXHIBITS

- Exhibit A Certifications and Assurances
- Exhibit B Small Business Self-Certification Statement
- Exhibit C Contractor Certification for Executive Order 18-03 – Workers' Rights
- Exhibit D Sample 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 Service 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)

**RFP 20-05 Exhibit D
Sample Contract**

**SERVICE CONTRACT
THE STATE OF WASHINGTON
OFFICE OF THE SECRETARY OF STATE
WASHINGTON STATE LIBRARY DIVISION
And**

[_____ (NAME OF CONTRACTOR)]

This Contract is made and entered into by and between the Office of the Secretary of State, P.O. Box 42460, Olympia, Washington 98504-2460 (“OSOS”) and (Name and address of Contractor) (“Contractor”) for the express purpose set forth below:

PURPOSE

This Contract will provide an easy-to-use platform for purchasing ebooks made available to anyone in the state of Washington for unlimited simultaneous use.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, or attached and incorporated and made a part hereof, OSOS and Contractor mutually agree as follows:

1. STATEMENT OF WORK; GENERAL TERMS AND CONDITIONS

The Contractor shall furnish the necessary personnel, equipment, material and/or service(s) and otherwise do all things necessary for or incidental to the performance of work set forth in the Statement of Work (attached hereto and incorporated herein as Exhibit B).

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

2. PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFP is scheduled to begin on or about February 6, 2020 and to expire on January 30, 2021 with extension options.

3. COMPENSATION AND PAYMENT

A. Amount of Compensation. OSOS shall pay an 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 hereunder shall be based on the following rates or in accordance with the following terms:

B. Billing Procedures. Contractor shall submit invoices to the OSOS Project Manager (as identified in Section 5 below) not more often than monthly.

Invoices shall be submitted for expenses on the following annual schedule:

For expenses	Submit by
From October 1 through June 30	July 31
From July 1 through September 30	October 31

Payment for approved and completed work will be made by warrant or account transfer by OSOS within 30 calendar days 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, the Contractor must provide OSOS a Statewide Vendor Number (SWV#). Payment cannot be made without these numbers on file. **The Contract Number S-_____ 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 shall be made by OSOS.

Payment shall be sent to the address designated by Contractor.

4. CERTIFICATE OF DEBARMENT AND SUSPENSION

Contractor shall complete, sign and submit the Certificate of Debarment and Suspension (attached and incorporated hereto as Exhibit C) to OSOS prior to the Effective Date.

5. CONTRACT MANAGEMENT

The Project Manager for each of the parties identified below shall be the contact person for communications regarding the performance of this Contract. Invoices shall be sent to the OSOS Project Manager. Should questions arise during processing of invoices send inquiries to payables@sos.wa.gov.

Project Manager for the Contractor is:	Project Manager for the OSOS is:
<p>Name</p> <p>Address</p> <p>Phone:</p> <p>Fax:</p> <p>E-mail address:</p>	<p>_____</p> <p>Office of the Secretary of State Washington State Library P.O. Box 42460 Olympia, Washington 98504-2460</p> <p>Phone: Fax: 360.586.7575 E-mail:</p>

7. **INSURANCE**

Contractor shall provide a program of self insurance or the following insurance coverage as set out in this Section. The intent of the required insurance is to protect the state of Washington (“State”), its elected and appointed officials, agents and employees should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of Contractor or subcontractor, or agents of either, while performing under the terms of this Contract. By requiring insurance herein, State does not represent that coverage and limits will be adequate to protect Contractor, and such coverage and limits shall not limit Contractor’s liability under the indemnities and reimbursements granted to the State in this Contract.

Contractor shall, at all times during the term of the Contract at its own cost and expense buy and maintain insurance of the types and amounts listed below. OSOS shall be provided written notice before cancellation or non-renewal of any insurance referred to therein. Failure to buy and maintain the required insurance may result in the termination of the Contract at OSOS option.

COMMERCIAL GENERAL LIABILITY (CGL) AND EMPLOYERS LIABILITY INSURANCE

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

CGL insurance shall be written on ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability arising out of premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insureds (cross liability) condition.

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

EMPLOYERS LIABILITY (STOP GAP) INSURANCE

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

WORKERS COMPENSATION INSURANCE

Contractor shall comply with all state of Washington workers compensation statutes and regulations. Workers compensation coverage shall be provided for all employees of Contractor and employees of any subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Contract. Except as prohibited by law, Contractor waives all rights of subrogation against State for

recovery of damages to the extent they are covered by workers compensation, employers liability, commercial general liability or commercial umbrella liability insurance.

If Contractor or subcontractor fails to comply with all state of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Contractor shall indemnify State. Indemnity shall include all fines, payment of benefits to Contractor or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees. Any amount owed to State by Contractor pursuant to the indemnity agreement may be deducted from any payments owed by State to Contractor for performance of this Contract.

BUSINESS AUTO POLICY (BAP)

In the event that services delivered pursuant to this Contract involve the use of vehicles, either owned or unowned by Contractor, automobile liability insurance shall be required. The minimum limit for automobile liability is:

Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident using a Combined Single Limit for bodily injury and property damage. Such insurance shall cover liability arising out of "Any Auto." Contractor waives all rights of subrogation against State for recovery of damages to the extent they are covered.

Business auto coverage shall be written on ISO form CA 00 01, or substitute liability form providing equivalent coverage. If necessary the policy shall be endorsed to provide contractual liability coverage and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01.

Contractor waives all rights against State for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

Contractor shall include all subcontractors as insureds under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each subcontractor. Subcontractor(s) 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.

The insurance required shall be issued by an insurance company/ies authorized to do business within the state of Washington, and shall name the Office of the Secretary of State, State of Washington, its agents and employees as additional insureds on all general liability, umbrella, excess, and property insurance policies. All policies shall be primary to any other valid and collectable insurance. The Contractor shall instruct its insurers to give the Purchaser 30 days advance notice of any insurance cancellation.

The Contractor shall submit to OSOS, within 7 days of the Contract's Effective Date, a certificate of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements specified in the Contract, or a complete description of the self insurance program and a financial statement showing the status of the self insurance fund.

9. ORDER OF PRECEDENCE

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

- i. Applicable Federal and Washington State statutes, rules, and regulations
Special Terms and Conditions as contained in this Contract
- ii. Exhibit A – General Terms and Conditions
- iii. Exhibit B – Statement of Work
- iv. Exhibit C – Certificate of Debarment and Suspension
- v. Exhibit D – Contractor’s response to the solicitation
- vi. Exhibit E – RFP No. 20-05
- vii. Any other provision, term, or material incorporated by reference or otherwise incorporated

10. ENTIRE AGREEMENT

This Contract including referenced exhibits represents all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this Contract shall be deemed a part hereof.

11. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement 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 Agreement, and to this end the provisions of this Agreement are declared to be severable.

12. 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 written amendment executed by both parties.

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

[_____(CONTRACTOR NAME)]

OFFICE OF THE SECRETARY OF STATE

Authorized Signatory
Print Name:_____

Date

Sheri Nelson
Deputy Secretary of State

Date

Title:

APPROVED AS TO FORM
Attorney General's Office

RFP 20-05 Exhibit D
Sample Contract

GENERAL TERMS AND CONDITIONS

These General Terms and Conditions marked as Exhibit A (this “Exhibit A”) are attached and incorporated into that certain Service Contract (the “Contract”) by and between the Office of the Secretary of State (“OSOS”) and [_____] dated [_____] [____], 20[____]. Capitalized terms used and not defined herein shall have the meanings given to them in the Contract.

- 1. DEFINITIONS** - As used throughout this Exhibit A, the following terms shall have the meaning set forth below:
- a. “Agent” shall mean Secretary of State, and/or the delegate authorized in writing to act on the Secretary of State’s behalf.
 - b. “Contractor” shall mean that firm, provider, organization, individual or other entity performing service(s) under the contract, and shall include all employees of Contractor.
 - c. “Individually Identifiable Health Information” shall mean a subset of health information, including demographic information collected from an individual and relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, as set forth in 45 CFR § 164.501 as currently adopted and subsequently amended or revised.
 - d. “Materials” shall mean 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.
 - e. “Protected Health Information” shall mean Individually Identifiable Health Information that is transmitted by electronic media, or transmitted or maintained in any other form or medium, as set forth in 45 CFR § 164.501, as currently adopted and subsequently amended or revised.
 - f. “Subcontractor” shall mean one not in the employment of Contractor, who is performing all or part of those services under the Contract under a separate contract with Contractor. The terms “Subcontractor” and “Subcontractors,” means Subcontractor(s) in any tier.

- 2. ACCESS TO DATA** - In compliance with RCW 39.29.080, Contractor shall provide access to data generated under the Contract to OSOS, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of Contractor’s reports, including computer models and methodology for those models.

Contractor agrees to make personal information covered under the Contract available to OSOS for inspection or to amend the personal information. Contractor shall, as directed by OSOS, incorporate any amendments to the personal information into all copies of such personal information maintained by Contractor or its Subcontractors.

- 3. AMERICANS WITH DISABILITIES ACT (ADA)** - 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.

4. NO ASSIGNMENT – Neither the Contract, nor any claim arising under the Contract, shall be transferred or assigned by Contractor without prior written consent of OSOS. For the purposes of the Contract, assignment shall include assignment by merger.

5. ATTORNEY’S FEES – In the event of litigation or other action brought to enforce the terms of the Contract, each party agrees to bear its own attorney’s fees and costs.

6. CONFIDENTIALITY / SAFEGUARDING OF INFORMATION - Contractor shall not use or disclose any information concerning OSOS, or information which may be classified as confidential, for any purpose not directly connected with the administration of the Contract without prior written consent of OSOS, or as may be required by law.

7. CONFLICT OF INTEREST - Notwithstanding any determination by the 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 the Agent that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving Contractor in the procurement of, or performance under the Contract.

In the event the 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 the contract by Contractor. The rights and remedies of OSOS provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Agent makes any determination under this Section 7 shall be an issue and may be reviewed as provided in Section 10 below.

8. COPYRIGHT PROVISIONS – Unless otherwise provided, all Materials produced under the 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 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 OSOS effective from the moment of creation of such Materials. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the contract, but that incorporate pre-existing materials not produced under the contract, Contractor hereby grants to 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. 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.

Contractor shall exert all reasonable effort to advise OSOS, at the time of delivery of Materials furnished under the Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which 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.

9. COVENANT AGAINST CONTINGENT FEES - Contractor warrants and represents that no person or selling agent has been employed or retained to solicit or secure the 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 the purpose of securing business. OSOS shall have the right, in the event of breach of this Section 9 by Contractor, to annul the 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.

10. DISPUTES - Except as otherwise provided in the Contract, when a bona fide dispute arises between OSOS and Contractor 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:

- a. be in writing;
- b. state the disputed issue(s);
- c. state the relative positions of the parties;
- d. state Contractor's name, address, and contract number; and
- e. be mailed to the Agent and the other party's (respondent's) Contract Manager within 3 working days after the parties agree that they cannot resolve the dispute.
- f. The respondent shall send a written answer to the requester's statement to both the agent and the requester within 15 working days.
- g. The Agent shall review the written statements and reply in writing to both parties within 10 working days. The Agent may extend this period if necessary by notifying the parties.
- h. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in the Contract shall be construed to limit the parties' choice of a mutually acceptable Alternate Dispute Resolution method in addition to the dispute resolution procedure outlined above.

11. GOVERNING LAW - The Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

12. INDEMNIFICATION - To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless Washington State, agencies of Washington State and all officials, agents and employees of Washington State, from and against all claims for injuries or death arising out of or resulting from the performance of the Contract. Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractors' agents, employees, representatives, or any Subcontractor or its employees.

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

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

13. INDEPENDENT CAPACITY OF THE CONTRACTOR - The parties intend that an independent contractor relationship will be created by the Contract. Contractor and his or her employees or agents performing under the Contract are not employees or agents of OSOS. Contractor will not hold himself/herself out as or claim to be an officer or employee of OSOS or of the state of Washington by reason hereof, nor will 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 Contractor.

14. INDUSTRIAL INSURANCE COVERAGE - Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. 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 the Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from Contractor.

15. LICENSING, ACCREDITATION AND REGISTRATION – Contractor shall comply with all applicable local and state licensing, accreditation and registration requirements/standards, necessary for the performance of the Contract.

16. LIMITATION OF AUTHORITY - Only the Agent or Agent's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of the Contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of the Contract is not effective or binding unless made in writing and signed by the Agent.

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

18. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS - In the event of Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy the Contract may be rescinded, canceled, or terminated in whole or in part, and Contractor may be declared ineligible for further contracts with OSOS. 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 in Section 10 above.

19. PRIVACY - Personal information including, but not limited to Protected Health Information collected, used, or acquired in connection with the Contract shall be protected against unauthorized use, disclosure, modification or loss. Contractor shall ensure its directors, officers, employees, Subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth in the 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 OSOS or as otherwise required by law.

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

20. PUBLICITY - Contractor agrees to submit to OSOS all advertising and publicity matters relating to the Contract wherein OSOS's name is mentioned or language used from which the connection of OSOS's name may, in OSOS's judgment, be inferred or implied. Contractor shall not publish or use such advertising and publicity matters without the prior written consent of OSOS.

21. RECORDS MAINTENANCE - Contractor shall maintain books, records, documents, data and other evidence relating to the 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 the Contract. Contractor shall retain such records for a period of six (6) 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 state officials so authorized by law, regulation or agreement.

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

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

23. 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 Washington State, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under the Contract.

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

25. SITE SECURITY – While on OSOS premises, Contractor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

26. SUBCONTRACTING - Neither Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under the 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 the Department 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 the Contract.

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

27. TAXES – All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for Contractor or its staff shall be the sole responsibility of Contractor.

28. TERMINATION FOR CAUSE – In the event OSOS determines Contractor has failed to comply with the conditions of the Contract in a timely manner, OSOS has the right to suspend or terminate the 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 thirty (30) days, 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., cost of the 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 to be a "Termination for Convenience" if it is determined that Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of OSOS provided in the Contract are not exclusive and are in addition to any other rights and remedies provided by law.

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

30. TERMINATION PROCEDURES - Upon termination of the Contract OSOS, in addition to any other rights provided in the Contract, may require Contractor to deliver to OSOS any property specifically produced or acquired for the performance of such part of the Contract as has been terminated. The provisions of the "Treatment of Assets" in Section 31 below 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 which 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 in Section 10 above. 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 the Contract.

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

- a. Stop work under the contract on the date, and to the extent specified, in the notice;
- b. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated;
- c. Assign to OSOS, in the manner, at the times, and to the extent directed by the Agent, 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.
- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Agent to the extent Agent may require, which approval or ratification shall be final for all the purposes of this clause;
- e. Transfer title to 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;
- f. Complete performance of such part of the work as shall not have been terminated by the Agent; and
- g. Take such action as may be necessary, or as the Agent may direct, for the protection and preservation of the property related to the Contract which is in the possession of Contractor and in which OSOS has or may acquire an interest.

31. TREATMENT OF ASSETS

A. 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 the 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 the Contract, shall pass to and vest in OSOS upon (i) issuance for use of such property in the performance of the Contract, or (ii) commencement of use of such property in the performance of

the Contract, or (iii) reimbursement of the cost thereof by OSOS in whole or in part, whichever first occurs.

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

C. Contractor shall be responsible for any loss or damage to property of OSOS which 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.

D. If any of 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.

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

F. All reference to Contractor under this Section 31 shall also include Contractor's employees, agents or Subcontractors.

32. WAIVER- Waiver of any default or breach shall not be deemed to be a waiver of any subsequent 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 authorized representative of OSOS.

**RFP 20-05 Exhibit D
Sample Contract**

STATEMENT OF WORK

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The (Contractor) shall provide (description of services). This work shall include:

DELIVERABLES/COSTS

REPORTS REQUIRED

SCHEDULE

RFP 20-05 Exhibit D
Sample Contract

**CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION
LOWER TIER COVERED TRANSACTIONS**

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to the department, institution, or office to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 41 CFR 105, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment Suspension, Ineligibility, and Voluntary Exclusion -- Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 41 CFR 105, debarred, suspended, declared ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the list of parties excluded from the federal procurement and non-procurement programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and

information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 41 CFR 105, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name and Title of Authorized Representative

Signature

Date

Name of Project

Location

Number assigned to Contract