

**State of Washington – Washington State Dairy Products Commission**

**REQUEST FOR PROPOSALS – RFP No. 2020-01**

**Marketing, Public Relations, Research and Media Buying Services Contract**

**Project Title:** Marketing, Public Relations, Research, and Media Buying Services Procurement

**Proposal Due Date:** December 3, 2020

**Procurement Coordinator:**

Celeste Piette

[celeste@wadairy.org](mailto:celeste@wadairy.org)

**Proposal:**

Electronic submissions only via email or a web-based storage platform.

Please submit all proposals to [celeste@wadairy.org](mailto:celeste@wadairy.org)

**Expected Contract Period:** January 1, 2021, to December 31, 2021. The Dairy Farmers of Washington reserves the right to extend the contract for up to three additional one-year periods.

**Contractor Eligibility:** This procurement is open to those Contractors that satisfy the minimum qualifications stated in this RFP and that are available for work in Washington State.

**NOTE:** *If you obtain this RFP from any source other than Washington's Electronic Business Solution (WEBS), you are responsible for sending your name, address, e-mail address and telephone number to the RFP Coordinator (please see below) in order for your organization to receive any RFP amendments or bidder questions/AGENCY answers.*

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Exhibit A Certifications and Assurances

Exhibit B Personal Service Contract Format including General Terms and Conditions (GT&Cs)

# **1. INTRODUCTION**

## **1.1. PURPOSE AND BACKGROUND**

This Request for Proposals (RFP) is issued by the Washington Dairy Products Commission, also doing business as the Dairy Farmers of Washington, a state agency established under chapter 15.44 RCW (hereinafter referred to as AGENCY). The AGENCY is soliciting proposals from qualified vendors to provide full-service marketing, public relations, research, and media buying services. The AGENCY will evaluate proposals and select one contractor to supply these services.

The selected contractor will assist AGENCY in the development, implementation and evaluation of a variety of initiatives intended to communicate key dairy industry messages to consumers and other audience groups. The objectives of these initiatives will be to:

- Enhance the image of Washington's dairy products, producers and community among consumers, media, retailers, and other important audience groups.
- Explain and develop awareness of the importance of ensuring key audiences recognize dairy as good for people, the community and the environment.
- Increase media and consumer awareness of Washington dairy farmers' commitment to being good community partners and their dedication to following environmentally and socially responsible farming practices.

## **1.2 ABOUT THE WASHINGTON DAIRY PRODUCTS COMMISSION**

The Dairy Products Commission represents one of the largest agricultural commodities in Washington and a major contributor to the state's economy. As today's consumers become more educated about where their food comes from and how it is produced, the AGENCY steps up to tell the dairy story.

The AGENCY was created by the Washington state legislature in 1939 and is governed by a board of commissioners appointed by the Director of the Washington State Department of Agriculture.

The AGENCY raises awareness among Washington consumers and farmers through year-round advertising and public relations initiatives. The staff conducts market research, monitors local and national trends, and spends time "in the field" with farmers and consumers.

The AGENCY is funded by dairy farmers. Every licensed dairy pays a mandatory assessment based on pounds of milk produced on the farm. Additionally, the AGENCY receives money from processor assessments and other income sources.

The AGENCY provides nutrition education under the name of the Washington State Dairy Council. This work focuses on educating key thought-leaders about the health benefits of dairy. One major initiative is Fuel Up to Play 60, an in-school wellness program in partnership with the National Dairy Council and the National Football League.

### 1.3 DEFINITIONS

Definitions for the purposes of this RFP include:

**AGENCY** – The Washington Dairy Products Commission

**APPARENT SUCCESSFUL CONTRACTOR** – The CONTRACTOR selected as the entity to perform the anticipated services sought under this RFP, subject to completion of Contract negotiations and execution of a written Contract.

**CONTRACTOR** – Depending on the context used in the RFP, “CONTRACTOR” refers to entities that submit or may submit a proposal under the RFP, to the Apparent Successful Contractor, and, as used in the Contract documents attached to the RFP, to the entity that the AGENCY contracts with to perform the negotiated Scope of Work.

**PROPOSAL** – A formal offer submitted in response to this solicitation. A responsive Proposal is a Proposal that satisfies the RFP terms and conditions.

**PROPOSER** – Individual or company that submits a Proposal in order to obtain a contract with AGENCY. When indicated by the context in this RFP, Proposer may be identified as CONTRACTOR.

**REQUEST FOR PROPOSALS (RFP)** – This formal procurement document which is issued in compliance with chapter 39.26 RCW. The RFP provides the terms and conditions for Proposals, for the process the AGENCY will follow to determine the Apparent Successful Contractor, and for the key terms and conditions for the Contract to be awarded at the discretion of the AGENCY.

### 1.4 SCOPE OF WORK

The AGENCY seeks a CONTRACTOR with whom to collaborate in developing a variety of comprehensive communication and marketing initiatives to achieve the objectives described in Section 1.1.

The APPARENT SUCCESSFUL CONTRACTOR will become responsible for planning, implementing, evaluating and reporting results on these creative initiatives directed toward consumers. This work must be performed in compliance with all rules pertaining to the operation of agricultural commodity commissions as established in federal and state statutes, regulations and policies.

The APPARENT SUCCESSFUL CONTRACTOR will provide the following:

- Strategy and planning, creative development, and support for communication and marketing initiatives
- Market/audience analysis and consumer research
- Creative development and production
- Public relations expertise and assistance with key communication issues
- Results-oriented updates and presentations at industry meetings and conferences

- Social media content creation, monitoring, calendar and strategy development
- Website development (front and back-end)
  - The CONTRACTOR will work with AGENCY on the wadairy.org website
  - The work will include, but not be limited to: custom website improvements, search engine and mobile device optimization, reports and evaluations, and security. The CONTRACTOR must provide recommendations for new technology, website innovations, redesign, testing and quality assurance, and recommend and/or deliver tools to accomplish approved plans.
- Media buying services: planning, negotiations, placement, optimization, cancellations, auditing, payment to vendors, and billing

Under this RFP and as it relates to the Scope of Work, the Proposal should incorporate any commission or other reimbursement the CONTRACTOR will allocate for its work in managing the media placement contracts. Media companies to be used by CONTRACTOR to place the AGENCY'S marketing materials are not considered "subcontractors" as that term is used in this RFP. See also Section 3.1. The CONTRACTOR will be expected to negotiate its own contracts with such media placement companies.

"Subcontractor" for purposes of this RFP refers only to those persons or companies the CONTRACTOR proposes to subcontract with to perform other services under this Scope of Work. The AGENCY will accept PROPOSALS which may include a CONTRACTOR'S proposal to use subcontractors to perform one or more elements of the Scope of Work. Any PROPOSAL that includes the intent to utilize a subcontractor must include all applicable information about the subcontractor relevant to the scope of work to be performed by the subcontractor, including the subcontractor's experience, and references as further provided under Section 3.4.D.

## **1.5 MINIMUM QUALIFICATIONS**

Respondents to this RFP shall possess the following minimum qualifications:

- Respondents shall be licensed to operate a business in the state of Washington or provide a written commitment that they will become licensed in Washington within 30 calendar days of being selected as the APPARENT SUCCESSFUL CONTRACTOR in reference to this RFP.
- Respondents must be registered with the Office of Financial Management as a statewide vendor.
- Respondents shall have operated as a provider of professional marketing, communications and public relations services for at least five years.
- Respondents shall be able to demonstrate experience in the provision of professional marketing, communications and public relations services that is directly applicable to AGENCY's needs, as described in Section 1.4.

## 1.6 FUNDING

AGENCY is projecting a budget up to six hundred thousand dollars (\$600,000) per year for this RFP. Any Contract awarded as a result of this procurement is contingent upon the availability of funding.

## 1.7 PERIOD OF PERFORMANCE

The period of performance of any Contract resulting from this RFP is scheduled to begin tentatively on or about January 1, 2021, and to end on December 31, 2021. Amendments extending the period of performance for up to three one-year periods beginning January 1, 2022 shall be at the sole discretion of AGENCY.

## 1.8 CONTRACTING WITH CURRENT OR FORMER STATE EMPLOYEES

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington (RCW). Respondents should familiarize themselves with the requirements prior to submitting a proposal that includes work, either actual or prospective, provided by current or former state employees.

## 2. GENERAL INFORMATION FOR CONTRACTORS

### 2.1 RFP COORDINATOR

The RFP Coordinator is the sole point of contact in AGENCY for this procurement. All communication between a CONTRACTOR and the AGENCY upon release of this RFP shall be with the RFP Coordinator, as follows:

Name	Celeste Piette
E-Mail Address	<a href="mailto:celeste@wadairy.org">celeste@wadairy.org</a>

Communications with other persons in the AGENCY will be considered unofficial and non-binding on AGENCY and may result in disqualification of the CONTRACTOR. CONTRACTORS are to rely only upon written statements issued by the RFP Coordinator.

### 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

RFP Issued	November 9, 2020
Vendor Written Questions Due	November 13 <sup>th</sup> , 2020
Written Answers Issued	November 16 <sup>th</sup> , 2020
Issue last Addendum to RFP	November 18, 2020
Proposals due	December 3, 2020
Evaluate written proposals	December 7, 2020
Top Scoring Bidders Announced	December 11, 2020
Presentations from up to three Top Scoring Bidders based on written proposal evaluations	December 16-18, 2020

Apparent Successful Contractor Announced and notification sent via e-mail to unsuccessful proposers	December 22, 2020
Hold debriefing conferences (if requested)	January 2021
Negotiate contract with the Apparent Successful Contractor	Dec 23, 2020- Jan 8, 2021
File contract with Dept. of Enterprise Services (DES)	January 12, 2021
Contractor assumes responsibilities	Tentatively January 15, 2021

AGENCY reserves the right to change these dates.

**2.3 PRE-PROPOSAL QUESTIONS**

A pre-proposal conference is not planned in connection with this RFP. The AGENCY will be bound only to AGENCY’S written answers to questions timely submitted by CONTRACTORS. Written questions timely raised by CONTRACTORS with the RFP Coordinator will be documented and answered in written form. A copy of the questions and answers will be sent to each prospective CONTRACTOR that has received a copy of the RFP or made the RFP Coordinator aware in writing of its interest in this procurement.

**2.4 SUBMISSION OF PROPOSALS**

Each PROPOSER is required to deliver an electronic version of the proposal. Electronic versions of the proposal must be in PDF format and delivered on a digital storage device or emailed to [celeste@wadairy.org](mailto:celeste@wadairy.org).

The AGENCY must receive electronic proposal no later than **1:00 p.m. PST on Friday, December 3, 2021**.

Any creative or work samples should be submitted with the proposal. They can be emailed or set up on a web-based storage platform and must be submitted with the proposal.

AGENCY assumes no responsibility for delays caused by any delivery service. Late proposals will not be accepted and will be automatically disqualified from further consideration. All proposals and any accompanying documentation submitted in response to this competitive procurement become the records of the AGENCY and will not be returned.

**2.5 PROPRIETARY INFORMATION/PUBLIC DISCLOSURE**

All proposals received shall remain exempt from disclosure as public records under chapter 42.56 RCW until the AGENCY announces the Apparent Successful Contractor.

The CONTRACTOR must clearly designate any part of the Proposal it desires to claim as proprietary and exempt from disclosure under the provisions of chapter 42.56 RCW, or other state or federal law that provides for the nondisclosure. The information must be identified clearly and the particular exemption from disclosure upon which the CONTRACTOR is making the claim must be cited. Each page containing the information claimed to be exempt from disclosure must be identified clearly by the words “Proprietary Information” printed on the lower right-hand corner of the page.

Marking the entire proposal exempt from disclosure or as “Proprietary Information” will not be honored.

If a public records request is made for the information that the CONTRACTOR has marked as "Proprietary Information," the AGENCY will notify the CONTRACTOR of the request and of the date that the records will be released to the requester unless the CONTRACTOR obtains a court order enjoining that disclosure. If the CONTRACTOR fails to obtain a court order enjoining disclosure, AGENCY will release the requested information on the date specified. If a CONTRACTOR obtains a court order from a court of competent jurisdiction enjoining disclosure pursuant to chapter 42.56 RCW, or other state or federal law that provides for nondisclosure, AGENCY shall maintain the confidentiality of the CONTRACTOR's information per the court order. The AGENCY retains discretion to assert an exemption or exception from disclosure when it determines such an exemption or exception applies under the applicable law.

## **2.6 REVISIONS TO THE RFP**

In the event it becomes necessary to revise any part of this RFP, addenda will be published at the Washington State Department of Enterprise Services "Washington's Electronic Business Solution" (WEBS) web site only. CONTRACTOR questions/AGENCY answers and any other pertinent information shall be provided as an addendum to the RFP and will be published on the same website.

If a CONTRACTOR obtained this RFP by any means other than WEBS, said CONTRACTOR is responsible for accessing WEBS and obtaining any addenda or other information AGENCY may post there.

The AGENCY reserves the right to cancel or to reissue the RFP in whole or in part, prior to execution of a Contract.

## **2.7 MINORITY & WOMEN-OWNED BUSINESS PARTICIPATION**

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

## **2.8 ACCEPTANCE PERIOD**

Proposals must provide 60 days for acceptance by AGENCY from the due date for receipt of proposals.

## **2.9 RESPONSIVENESS**

All proposals will be reviewed by the RFP Coordinator and AGENCY to determine compliance with the requirements and instructions specified in this RFP. CONTRACTORS are hereby notified that failure to comply with any part of the RFP may result in rejection of the proposal as non-responsive.

AGENCY reserves the right at its sole discretion to waive minor irregularities.

## **2.10 MOST FAVORABLE TERMS**



AGENCY 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 the CONTRACTOR can propose. The AGENCY reserves the right to contact a CONTRACTOR for clarification of its proposal.

The Apparent Successful Contractor should be prepared to accept this RFP for incorporation into a Contract resulting from this RFP. Contract negotiations may incorporate some or all of the CONTRACTOR's proposal. The proposal becomes a part of the official procurement file.

## **2.11 CONTRACT AND GENERAL TERMS & CONDITIONS**

The Apparent Successful Contractor will be expected to enter into a Contract that is substantially the same as the Sample Contract, Exhibit A (Sample contract includes General Terms and Conditions).

In no event is a CONTRACTOR to submit its own standard contract terms and conditions in response to this solicitation.

## **2.12 EXCEPTIONS**

The CONTRACTOR may submit exceptions with its Proposal as provided at Section 7 of the Certifications and Assurances form, Exhibit B. AGENCY will review requested exceptions and accept or reject the same at its sole discretion.

## **2.13 COSTS TO PROPOSE**

AGENCY 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.

## **2.14 NO OBLIGATION TO CONTRACT**

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

## **2.15 REJECTION OF PROPOSALS**

AGENCY 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.

## **2.16 COMMITMENT OF FUNDS**

No cost chargeable to the proposed Contract may be incurred before the time stated in the executed Contract.

## **2.17 PAYMENT AND ACCOUNTING**

The CONTRACTOR must propose an annual budget for all expenditures that are anticipated to be billed to the AGENCY. This proposed budget should represent a cost-efficient plan that is responsive to the AGENCY's marketing and communication needs. As part of the negotiations with the Apparent

Successful Contractor, the AGENCY will develop a budget to take into account the negotiated Scope of Work and related budget amounts or percentages.

After the contract is awarded, the budget will be reviewed monthly and must be revised as required by the AGENCY. The Contractor will provide the AGENCY a monthly project summary indicating the current amount billed to the AGENCY during the year, the amount billed that has not yet been paid, and amounts committed to media buys that have not been billed

The CONTRACTOR must provide experienced accounting staff support to implement timely and accurate reports and billing to meet the AGENCY's specifications. Monthly, the Contractor must provide the AGENCY invoices detailing a summary of all approved expenditures fees and expenses for work performed during the month. All invoices will indicate account numbers and budget category, as defined by the AGENCY (Media, Creative Development, Production, , Public Relations, Website Services, Research, , etc.). The CONTRACTOR'S invoices to the AGENCY must include copies of invoices to the CONTRACTOR from media placement companies. Copies of the media placement invoices to the CONTRACTOR are required to allow the AGENCY to verify the media placements obtained by the CONTRACTOR and any related costs or commissions for media placements included in the CONTRACTOR's monthly invoices to the AGENCY.

Payment shall be considered timely if made by the AGENCY within 30 days after the AGENCY receives a properly completed invoice. Payment shall be sent to the address designated by the CONTRACTOR on the invoice.

## **2.18 INSURANCE COVERAGE**

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

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

### **Liability Insurance**

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

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

- 2) Business Auto Policy: As applicable, the successful CONTRACTOR shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto." Business

auto coverage shall be written on ISO form CA 00 01, 1990 or later edition, or substitute liability form providing equivalent coverage.

**Professional Liability Insurance:** The successful CONTRACTOR shall maintain Professional Liability (Errors and Omissions) Insurance appropriate to the CONTRACTOR'S business as a marketing firm, with limits no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

**Employers Liability ("Stop Gap") Insurance:** In addition, the successful CONTRACTOR shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

### **Additional Provisions**

Above insurance policy shall include the following provisions:

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

### **Workers' Compensation Coverage**

The successful 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.

### 3. PROPOSAL CONTENTS

#### 3.1 DELIVERY OF PROPOSALS:

Each PROPOSER is required to deliver an electronic version of the proposal. Electronic versions of the proposal must be in PDF format and delivered on a web-based storage platform or emailed to [celeste@wadairy.org](mailto:celeste@wadairy.org). Any creative or work samples should be submitted with the proposal. They can be emailed, provided on a web-based storage platform and must be submitted with the proposal.

The four major sections of the proposal are to be submitted in the order indicated below:

1. Letter of Submittal, including signed Certifications and Assurances form (Exhibit A to this RFP)
2. Technical Proposal
3. Management Proposal
4. Cost Proposal

All information requested in this RFP must be included as part of the proposal for the proposal to be considered responsive to the RFP.

#### 3.2 LETTER OF SUBMITTAL

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 bind legally the CONTRACTOR to a contractual relationship. Along with introductory remarks, the Letter of Submittal is to include by attachment the following information about the CONTRACTOR and any proposed subcontractors. For purposes of this section, a “subcontractor” is any natural or corporate person the CONTRACTOR proposes to contract with to provide any part of the Scope of Work—provided that “subcontractor” does not include media companies that the CONTRACTOR contracts with for placement of the AGENCY’S marketing and educational materials.

1. CONTRACTOR Name, address, principal place of business, telephone number and e-mail address.
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. If the CONTRACTOR or subcontractor does not have a UBI number, the CONTRACTOR must state that it (or its subcontractor) will become licensed in Washington within thirty (30) calendar days of being selected as the Apparent Successful Contractor.
5. Location of all facilities from which the Contractor or subcontractor would operate to fulfill the scope of work, including the work anticipated to be provided from the CONTRACTOR and subcontractor facility(ies) in Washington State.

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 or subcontractor’s organization. If following a review of this information, it is determined by AGENCY that a conflict of interest exists, the CONTRACTOR may be disqualified from further consideration for the award of a Contract.

### 3.3 TECHNICAL PROPOSAL

The Technical Proposal must contain a comprehensive description of services including the following elements:

- A. **Project Approach** – Include a complete description of the CONTRACTOR's proposed approach and understanding of the AGENCY.
- B. **Work Plan** - Include all project requirements and the proposed tasks, services, activities, etc., necessary to accomplish the scope as outlined in this RFP. Explain the PROPOSER'S creative development process, including the allocation of applicable personnel to projects and timelines from project inception to execution. The CONTRACTOR may also present any creative approaches that might be appropriate and may provide any pertinent supporting documentation.
- C. **Outcomes and Performance Measurement** – Describe the impacts/outcomes the CONTRACTOR proposes to achieve.
- D. **Risks** – The CONTRACTOR must identify potential risks that are considered significant to the success of the project. Include how the CONTRACTOR would propose to effectively monitor and manage these risks, including reporting of risks to AGENCY'S Contract manager.
- E. **Deliverables** – Fully describe deliverables to be submitted under the proposed Contract. Deliverables must support the requirements in Section 1.3, "Objectives and Scope of Work" above.
- F. **Resources** – Indicate which of the following capabilities the CONTRACTOR has (and whether the capability is in-house or provided by an identified subcontractor):
  - 1. Strategic Planning and Brand Management / Development
  - 2. Market and Consumer Research
  - 3. Creative Development and Production Services (list types)
  - 4. Promotions Planning and Implementation
  - 5. Media Planning, Buying and Negotiation
  - 6. Public Relations
  - 7. Web Service Development and Management
  - 8. Mobile Application Development and Marketing
  - 9. Other (explain)

### 3.4 MANAGEMENT PROPOSAL

#### A. Project Management

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 CONTRACTOR's firm indicating lines of authority for personnel involved in execution of the prospective 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 execution of 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 individual's 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 equivalent skills and abilities.

## **B. Experience of the CONTRACTOR**

1. Describe and provide examples or experience that demonstrates the qualifications of the CONTRACTOR, and any subcontractors, relevant to the performance of the prospective contract. Experience:
  - a. Creating a holistic approach to client advertising, including both "traditional" and "new" communications channels, in the following categories: agriculture and farming, health, sports and nutrition, and working with government agencies.
  - b. Developing, producing and measuring advertising, including television, videos, radio, print, online, outdoor and other formats.
  - c. Using strategic partnerships to extend a client's budget and exposure.
  - d. Planning, developing, implementing and measuring online communications programs, including social media and website management and hosting.
  - e. Using analytics and other determining factors to guide media purchasing decisions.
  - f. Developing reputation management-focused public relations programs.
  - g. Managing subcontractors on an ongoing communications project.
2. Where would the Dairy Farmers of Washington fit within your current client roster in terms of size, scope, and type of products?
3. List any marketing awards or recognition your AGENCY received in the past three years.

## **C. Related Information**

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 the CONTRACTOR's staff or subcontractor's staff was an employee of the State of Washington during the past 24 months, or is currently a State of Washington employee, identify the individual by name, the AGENCY previously or currently employed by, job title or position held and separation date.
3. If the 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 Proposer, or (b) litigated and such litigation determined that the Proposer was in default. Fully describe the circumstances of that termination, including the other party's name, address, and telephone number.
4. If during the past three years you have been assessed any fine limiting your right to engage in any business or have been involved in any billing disputes of \$10,000 or more, fully describe the circumstances and resolution of those disputes.

#### **D. References**

Submittal of the Proposal constitutes the CONTRACTOR'S permission for the AGENCY to contact the references and others who may have pertinent information regarding the CONTRACTOR's and the lead staff person's qualifications and experience to perform the services required by this RFP. AGENCY may evaluate references at AGENCY'S discretion.

The CONTRACTOR must provide the following information for three references and describe each reference's relationship with the CONTRACTOR, the work accomplished, and the duration of the CONTRACTOR'S working relationship with each reference. Upon submittal of its Proposal, the CONTRACTOR is responsible to notify each reference that it may be contacted by the AGENCY and that CONTRACTOR has given permission for the reference to respond to the AGENCY.

1. Name of CONTRACTOR's Project Lead on the Account
2. Reference's Name and Contact Person
3. Address
4. Telephone Number
5. Business E-mail Address

#### **E. OMWBE Certification**

Include proof of certification issued by the Washington State Office of Minority and Women's Business Enterprises (OMWBE) if certified minority-owned firm(s) and/or women-owned firm(s) will be participating on this project. For information: <http://www.omwbe.wa.gov>.

### **3.5 COST PROPOSAL**

The maximum fee for the prospective Contract must be six hundred thousand dollars (\$600,000) per year or less to be considered responsive to this RFP.

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 that are consistent with state government efforts to conserve State resources.

#### **A. Identification of Costs**

When recommending activities to achieve the objectives (as described under Section 3.3, B, "Work Plan," above), assign costs for time and expenses, if any, to each recommended activity. Identify all costs in U.S. dollars. 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 and use taxes, as applicable.

Costs for subcontractors are to be broken out separately. The AGENCY'S only contractual relationship is with the CONTRACTOR. The costs a CONTRACTOR expects to incur when using the services of any identified subcontractor are considered as CONTRACTOR'S costs for purposes of scoring. 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 Proposal section.

### **4. EVALUATION AND CONTRACT AWARD**

#### **4.1 EVALUATION PROCEDURE**

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

AGENCY, at its sole discretion, may select two to three top-scoring firms as finalists for an oral presentation.

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

#### **4.2 EVALUATION WEIGHTING AND SCORING**

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

**Technical Proposal** **45 points**

- Project Approach: 10 points (maximum)
- Quality of Work Plan: 25 points (maximum)
- Project Schedule: 5 points (maximum)
- Project Deliverables: 5 points (maximum)



<b>Management Proposal</b>	<b>45 points</b>
<ul style="list-style-type: none"> <li>-Project Team Structure: 5 points (maximum)</li> <li>-Staff Qualifications/Experience: 15 points (maximum)</li> <li>-Experience of the CONTRACTOR: 25 points (maximum)</li> </ul>	
<b>Cost Proposal</b>	<b>10 points</b>
<b>SUB TOTAL</b>	<b>100 points</b>

**FINALISTS ONLY**

Presentation (if required)	<b>20 points</b>
<b>TOTAL POINTS POSSIBLE</b>	<b>120 points</b>

If two or more CONTRACTOR'S receive identical highest scores, the AGENCY reserves the right in its sole discretion to award the Contract to the CONTRACTOR whose proposal is deemed to be in the best interest of AGENCY and the State of Washington.

**4.3 PRESENTATIONS MAY BE REQUIRED**

AGENCY may, after evaluating the written proposals, elect to schedule presentations of the finalist(s). Should presentations become necessary, AGENCY will contact the top two to three scoring firms from the written evaluation to schedule a date, time and location. Commitments made by the CONTRACTOR at the interview, if any, will be considered binding.

The presentation will determine the APPARENT SUCCESSFUL CONTRACTOR.

**4.4 NOTIFICATION TO PROPOSERS**

AGENCY will notify the Apparent Successful Contractor of its selection in writing upon completion of the evaluation process. Individuals or firms whose proposals were not selected for further negotiation or award will be notified separately by e-mail.

**4.5 DEBRIEFING OF UNSUCCESSFUL PROPOSERS**

Any CONTRACTOR that has submitted a proposal and been notified that they were not selected for Contract award may request a debriefing. The request for a debriefing conference must be received by the RFP Coordinator within three (3) business days after the Unsuccessful CONTRACTOR Notification is e-mailed to the CONTRACTOR. Debriefing requests must be received by the RFP Coordinator no later than 4:00 p.m. Pacific Standard Time, on the third business day following the transmittal of the Unsuccessful CONTRACTOR Notification. The debriefing must be held within three (3) business days of the request.

Discussion at the debriefing conference will be limited to the following:

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

Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences will be conducted virtually or via phone and will be scheduled for a maximum of thirty minutes.

#### **4.6 PROTEST PROCEDURE**

Protests may be made only by CONTRACTORS that submitted a response to this solicitation document and have participated in a debriefing conference. Upon completing the debriefing conference, the CONTRACTOR is allowed five (5) business days to file a protest of the acquisition with the RFP Coordinator. Protests must be received by the RFP Coordinator no later than 4:00 p.m. Pacific Standard Time at Lynnwood, Washington, on the third business day following the debriefing. Protests may be submitted by e-mail and must then be followed by a digital copy of the document with an original signature.

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

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

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

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

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

Upon receipt of a protest, a protest review will be held by AGENCY. AGENCY General Manager or an employee delegated by the General Manager who was not involved in the procurement will consider the record and all available facts and issue a decision no more than 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 also 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 AGENCY's action

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

If AGENCY determines that the protest is without merit, AGENCY will enter into a Contract with the Apparent Successful Contractor. If the protest is determined to have merit, one of the alternatives noted above will be taken.

## **5. RFP EXHIBITS**

Exhibit A Certifications and Assurances

Exhibit B Personal Service Contract Format including General Terms and Conditions (GT&Cs)

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# EXHIBIT A

**SAMPLE CONTRACT FOR SERVICES  
BETWEEN  
THE STATE OF WASHINGTON  
<INSERT AGENCY NAME>  
AND  
<INSERT CONTRACTOR NAME>**

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This Contract is made and entered into by and between the, <INSERT AGENCY NAME>, hereinafter referred to as the "AGENCY", and the below named firm, hereinafter referred to as "CONTRACTOR,"

Contractor Name \_\_\_\_\_  
Address \_\_\_\_\_  
City, State & Zip Code \_\_\_\_\_  
Phone \_\_\_\_\_  
E-mail Address \_\_\_\_\_

Federal ID No. \_\_\_\_\_

WA State UBI No. \_\_\_\_\_

## **PURPOSE**

The purpose of this contract is to:

## **SCOPE OF WORK**

A. The CONTRACTOR will provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

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

*Option 2: as included in the CONTRACTOR'S Proposal dated \_\_\_\_\_ attached as Exhibit B, and the AGENCY'S Request for Proposals attached as Exhibit C.*

B. Exhibit A contains the General Terms and Conditions governing work to be performed under this contract, the nature of the working relationship between the AGENCY and the CONTRACTOR, and specific obligations of both parties.

The CONTRACTOR shall produce the following written reports or other written documents (deliverables) by the dates indicated below:

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All written reports required under this contract must be delivered to \_\_\_\_\_, the Contract Manager, in accordance with the schedule above.

**PERIOD OF PERFORMANCE**

*Option 1:*

Subject to other contract provisions, the period of performance under this contract will be from \_\_\_\_\_ or date of execution, whichever is later through \_\_\_\_\_.

*Option 2:*

Subject to other contract provisions, the period of performance under this contract will be from \_\_\_\_\_ or date of execution, whichever is later through \_\_\_\_\_. AGENCY shall have the option to extend this contract up to three consecutive one-year terms.

**COMPENSATION AND PAYMENT**

AGENCY 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 Scope of Work. AGENCY shall retain the right to approve in advance any and all of the details of the means and manner by which the CONTRACTOR accomplishes the services as set forth in the Scope of Work. CONTRACTOR'S compensation for services rendered shall be based on the following rates or in accordance with the following terms:

**NOTE:** *List detail of compensation to be paid, e.g., budget allocation, hourly rates, number of hours per task, unit prices, cost per task, cost per deliverable, etc. Or reference documents that specify Contractor's compensation and payment, e.g. Contractor's compensation for services rendered shall be based on the schedule set forth in Exhibit D, Fees and Expenses.*

**NOTE:** *Expenses are optional. Do not include Expenses paragraph below if expenses are not allowable. If allowable, include only expenses which are appropriate for the contract.*

Expenses. CONTRACTOR shall receive reimbursement for travel and other legitimate business expenses that may be incurred by the CONTRACTOR in the course of providing assigned services for the AGENCY as identified below or as authorized in advance by the AGENCY as reimbursable. CONTRACTOR shall receive compensation for travel expenses at actual cost as evidenced by receipts. To receive reimbursement, CONTRACTOR must provide a detailed breakdown of authorized expenses, identifying what was expended and when.

**NOTE:** *List detail of expenses allowable for reimbursement.*

*Such travel expenses may include: airfare (economy or coach class only), other transportation expenses, lodging and subsistence necessary during periods of required travel. Legitimate business expenses may include: postage and facsimile transmission costs, shipping and handling charges, creative design services, audio/visual production, photography services, photographic production and reproduction costs, long-distance telephone charges and applicable sales taxes. The AGENCY is a chartered agency of the state of Washington and is subject to the constraints upon reimbursements for expenses established by Statute and by applicable regulations. Nothing in this Agreement shall be understood to obligate the AGENCY to compensate the CONTRACTOR for expenses that are not permissible within the limits of applicable Statutes and/or regulations.*

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**BILLING PROCEDURES.**

*NOTE: Payment can be based upon satisfactory acceptance of each deliverable, payment after completion of each major part of the contract, payment at conclusion of the contract, etc.*

AGENCY will pay CONTRACTOR upon receipt of properly completed invoices, which shall be submitted to the Contract Manager not more often than monthly. The invoices shall describe and document to the AGENCY'S satisfaction a description of the work performed, the progress of the project, and fees. If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany any expense in order to receive reimbursement.

Payment shall be considered timely if made by the AGENCY within thirty (30) days after receipt of properly completed invoices. Payment shall be sent to the address designated by the CONTRACTOR.

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

**CONTRACT MANAGEMENT**

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

<b>Contract Manager for CONTRACTOR is:</b>		<b>Contract Manager for AGENCY is:</b>	
<u>Contractor Name</u>		<u>Agency Name</u>	
<u>Address</u>		<u>Address</u>	
<u>City, State Zip Code</u>		<u>City, State Zip Code</u>	
Phone: ( )	Fax: ( )	Phone: ( )	Fax: ( )
E-mail address:		E-mail address:	

**INSURANCE**

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

INSURANCE REQUIREMENT: **YES**  **NO**

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

1. Commercial General Liability Insurance Policy CONTRACTOR shall maintain commercial general liability (CGL) insurance and, if necessary, commercial umbrella insurance, with a limit of not less than \$1,000,000 per each occurrence. If CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit. All insurance shall cover liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insureds (cross liability) condition.

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

2. Automobile Liability - In the event that services delivered pursuant to this contract involve the use of vehicles, either owned or unowned by the CONTRACTOR, automobile liability insurance shall be required. CONTRACTOR shall maintain business auto liability and, if necessary, commercial

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umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto."

3. Professional Liability Insurance - CONTRACTOR shall maintain Professional Liability (Errors and Omissions) Insurance appropriate to the CONTRACTOR'S business as a marketing firm, with limits no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.
4. Employers Liability Insurance - CONTRACTOR shall maintain 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.
5. The insurance required shall be issued by an insurance company/ies authorized to do business within the State of Washington, and shall name the AGENCY, its agents and employees as additional insureds under the insurance policy/ies. All policies shall be primary to any other valid and collectable insurance. CONTRACTOR shall instruct the insurers to give AGENCY 30 days advance notice of any insurance cancellation.

CONTRACTOR shall submit to AGENCY a certificate of insurance, which outlines the coverage and limits defined in the *Insurance* section. CONTRACTOR shall submit renewal certificates as appropriate during the term of the contract.

### **ASSURANCES**

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

### **ORDER OF PRECEDENCE**

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

- Applicable Federal and State of Washington statutes and regulations
- Special Terms and Conditions as contained in this basic contract instrument
- Exhibit A – General Terms and Conditions
- Exhibit B – Contractor's Proposal dated \_\_\_\_\_
- Exhibit C – Request for Proposal No. \_\_\_\_\_
- Exhibit D – Fees and Expenses
- Any other provision, term or material incorporated herein by reference or otherwise incorporated

### **ENTIRE AGREEMENT**

This contract including referenced exhibits represents all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind any of the parties hereto.

### **CONFORMANCE**

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

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**APPROVAL**

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

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

[AGENCY'S NAME]

[CONTRACTOR'S NAME]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



## **GENERAL TERMS AND CONDITIONS**

### **DEFINITIONS**

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

- A. "AGENCY" shall mean the Washington State Dairy Products Commission of the State of Washington, any division, section, office, unit or other entity of the AGENCY, or any of the officers or other officials lawfully representing that AGENCY. Under RCW 15.44.015(1), the AGENCY may also act under the name "The Dairy Farmers of Washington."
- B. "CONTRACTOR" shall mean that firm, provider, organization, individual or other entity performing service(s) under this contract, and shall include all employees of the CONTRACTOR.
- C. "SUBCONTRACTOR" shall mean one not in the employment of the CONTRACTOR, who is performing all or part of those services under this contract under a separate contract with the CONTRACTOR. The terms "SUBCONTRACTOR" and "SUBCONTRACTORS" means SUBCONTRACTOR(s) in any tier.

### **ACCESS TO DATA**

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

### **ADVANCE PAYMENTS PROHIBITED**

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

### **AMENDMENTS**

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

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

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

### **ASSIGNMENT**

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

### **ATTORNEYS' FEES**

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

## **CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

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

## **CONFLICT OF INTEREST**

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

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

## **COPYRIGHT PROVISIONS**

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

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

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

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

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

## **COVENANT AGAINST CONTINGENT FEES**

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

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

## **DISALLOWED COSTS**

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

## **DISPUTES**

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, the parties agree to participate in non-binding mediation.

1. The request for mediation to the other party hearing must:
  - Be in writing;
  - State the disputed issue(s);
  - Be mailed to the other party's contract manager within 3 working calendar days after the parties agree that they cannot resolve the dispute.
2. The mediator shall be chosen by agreement of the parties. Each party shall be responsible for an equal share of the mediator's fees. If the parties cannot agree on a mediator, the parties shall use a mediation service that selects the mediator for the parties. Unless otherwise agreed by the AGENCY, the mediator shall be selected from an area in reasonable proximity to the AGENCY'S offices.
3. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

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

## **DUPLICATE PAYMENT**

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

## **GOVERNING LAW**

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

## **INDEMNIFICATION**

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

disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom.

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

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

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

### **INDEPENDENT CAPACITY OF THE CONTRACTOR**

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

### **INDUSTRIAL INSURANCE COVERAGE**

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

### **LICENSING, ACCREDITATION AND REGISTRATION**

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

### **LIMITATION OF AUTHORITY**

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

### **NONDISCRIMINATION**

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

## **NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

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

## **PRIVACY**

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

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

## **PUBLICITY**

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

## **RECORDS MAINTENANCE**

The CONTRACTOR shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

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

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

## **REGISTRATION WITH DEPARTMENT OF REVENUE**

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

## **RIGHT OF INSPECTION**

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

## **SAVINGS**

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

## **SEVERABILITY**

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

## **SITE SECURITY**

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

## **SUBCONTRACTING**

Neither the CONTRACTOR nor any SUBCONTRACTOR shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the AGENCY. In no event shall the existence of the subcontract operate to release or reduce the liability of the CONTRACTOR to the AGENCY for any breach in the performance of the CONTRACTOR'S duties. This clause does not include contracts of employment between the CONTRACTOR and personnel assigned to work under this contract.

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

## **TAXES**

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

## **TERMINATION FOR CAUSE**

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

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

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

The rights and remedies of the AGENCY provided in this contract are not exclusive and are, in

addition to any other rights and remedies, provided by law.

### **TERMINATION FOR CONVENIENCE**

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

### **TERMINATION PROCEDURES**

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

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

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

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

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

## **TREATMENT OF ASSETS**

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

## **U.S. DEPARTMENT OF TREASURY, OFFICE OF FOREIGN ASSETS CONTROL**

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

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

## **WAIVER**

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





**EXHIBIT B**  
**CERTIFICATIONS AND ASSURANCES**

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

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

We (circle one) are / are not submitting proposed Contract exceptions. (See Section 2.10, Contract and General Terms and Conditions.) If Contract exceptions are being submitted, I/we have attached them to this form.

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

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Title

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Date