

**STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS  
GENERAL TERMS AND CONDITIONS**

1. DEFINITIONS - As used throughout this Contract Agreement, the following terms shall have the meanings set forth below:
  - 1.1 "Contractor" shall mean that agency, firm, provider, organization, individual or other entity performing services under this Contract Agreement. It shall include any Subcontractor retained by the prime Contractor as permitted under the terms of this Contract Agreement.
  - 1.2 "Secretary" shall mean the Secretary of the Department of Corrections and delegates authorized in writing to act on Secretary's behalf.
  - 1.3 "Department" shall mean the Department of Corrections (DOC) of the state of Washington, any division, section, office, unit or other entity of the Department, or any of the officers or other officials lawfully representing that Department.
  - 1.4 "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract Agreement under a separate contract agreement with the Contractor. The terms "Subcontractor" and "Subcontractors" mean Subcontractor(s) in any tier.
  - 1.5 "Contract Administrator" shall mean the Administrator of the Department's Office of Contracts and Regulations, or delegate.
  - 1.6 "OMWBE" means the Office of Minority and Women's Business Enterprises of the state of Washington.
  - 1.7 "Minority Business Enterprise", "Minority-Owned Business Enterprise", or "MBE" means a business organized for profit, performing a commercially useful function, which is owned and controlled by one or more minority individuals and which is certified by the OMWBE.
  - 1.8 "Women's Business Enterprise", "Women-owned Business Enterprise", or "WBE" means a business organized for profit, performing a commercially useful function, which is owned and controlled by one or more women and which is certified by the OMWBE.
2. CONTRACTOR NOT EMPLOYEE OF DEPARTMENT - The Contractor, its employees or agents performing under this Contract Agreement are not employees or agents of the Department. The Contractor will not hold himself/herself out as, nor claim to be, an officer or employee of the Department or of the state of Washington by reason hereof, nor will he/she make any claim of right, privilege, or benefit which would accrue to a civil service employee under Chapter 41.06 RCW.
3. NON-DISCRIMINATION - During the performance of this Contract Agreement, the Contractor shall comply with all requirements of federal, state, and local non-discrimination statutes and regulations. These requirements include, but are not limited to:
  - 3.1 Non-discrimination in employment. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin, creed, marital status, age, or the presence of any sensory, mental or physical handicap. This requirement does not apply, however, to a religious corporation, association, educational institution or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

The Contractor shall take affirmative action to ensure that employees, including apprentices and volunteers, are employed and treated during employment without discrimination because of their race, color, religion, sex, national origin, creed, marital status, age, or the presence of any sensory, mental, or physical handicap. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, transfer, recruitment, and selection for training.
  - 3.2 Non-discrimination in Client Services. The Contractor shall not, on grounds of race, color, sex, religion, national origin, creed, marital status, age, or the presence of any sensory, mental, or physical handicap:

- A. Deny an individual any services or other benefits provided under this Contract Agreement.
  - B. Provide any service(s) or other benefits to an individual which are different, or are provided in a different manner from those provided to others under this Contract Agreement.
  - C. Subject any individual to segregation or separate treatment in any manner related to the receipt of any service(s) or other benefits provided under this Contract Agreement.
  - D. Deny any individual an opportunity to participate in any program provided by this Contract Agreement through the provision of services or otherwise, or afford an opportunity to do so which is different from that afforded others under this Contract Agreement. The Contractor, in determining (a) the types of services or other benefits to be provided; (b) the class of individuals to whom, or the situation in which, such services or other benefits will be provided; or (c) the class of individuals to be afforded an opportunity to participate in any services or other benefits, will not utilize criteria, methods or administration which have the effect of subjecting individuals to discrimination because of their race, color, sex, religion, national origin, creed, marital status, age or the presence of any sensory, mental, or physical handicap.
- 3.3 Americans with Disabilities Act, and any other Federal, State, or local regulations regarding the rights of individuals or groups shall be abided by in the performance of this Contract Agreement where appropriate.
- 3.4 Non-compliance with Non-discrimination Requirements - In the event of the Contractor's non-compliance or refusal to comply with the non-discrimination requirements, this Contract Agreement may be rescinded, canceled, or terminated, in whole or in part, and the Contractor may be declared ineligible for further contracts with the Department. The Contractor shall, however, be given a reasonable time in which to cure this non-compliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.
4. POLICIES AND PROCEDURES - In connection with such services rendered hereunder, the Contractor agrees to comply with applicable Department/ Institution policies and procedures relative to custody of inmates and security/operation of the institution such as, but not limited to, fingerprinting, photographs for identification purposes, and searches.
5. UTILIZATION OF MINORITY-OWNED AND WOMEN-OWNED BUSINESSES - During the performance of this Contract Agreement, the Contractor shall comply with Chapter 39.19 RCW, as now existing or hereafter amended, any rule adopted under that Chapter by OMWBE and/or any policy or regulations adopted by the Department to effect agency compliance with that Chapter.

In the event that the Contractor fails to comply with any requirements set forth in the text of the contract instrument, relative to the utilization of minority and/or women-owned businesses, the Department may take such action or actions as are provided to the Department under Chapter 39.19 RCW.

If the Contractor prevents or interferes with any Subcontractor's compliance with these provisions, or submits false or fraudulent information to the Department regarding compliance with this provision, the Contractor shall be subject to a fine not to exceed One Thousand Dollars (\$1,000) in addition to any other penalties or sanctions prescribed by law.

- 6. BILLING PROCEDURES - The Contractor's compensation for goods and services rendered under this Contract Agreement shall be as set forth in the text of the contract instrument attached hereto. Any additional goods or services furnished by the Contractor in excess of that set forth in the text of the contract instrument attached hereto must have prior written approval of the Secretary.

At the intervals prescribed by the Department, the Contractor shall submit a state invoice voucher form prepared in triplicate (original and two signed copies) in the manner prescribed by the Department. Such vouchers shall contain a detailed statement of contract services performed for which the Contractor is seeking compensation. These vouchers shall also include such information as is necessary for the Department to determine the exact nature of all expenditures by Contractor for which reimbursement is sought and, as appropriate, identify all personnel for whom compensation is sought, the amount of hours each individual worked, and the rate of compensation for each.

The Contractor shall submit all travel expenses for which reimbursement is sought on a state travel expense voucher form, completed and signed by the Contractor. These expenses shall be submitted at the intervals and in the manner prescribed by the Department.

Payment shall be considered timely if made by the Department within 30 work days after the date of receipt. The Department may, in its sole discretion, withhold payments due the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract Agreement.

7. INDEMNIFICATION - The Contractor shall defend, protect, and hold harmless the state of Washington, the Department, or any employees thereof, from and against all claims, suits, or actions arising from any negligent or deliberate wrongful act or omission of the Contractor or Subcontractor, or agents of either, while performing under the terms of this Contract Agreement. The provisions of this paragraph shall not apply to any act or omission by the Contractor for which the Department, in the text of this Contract Agreement, has agreed to defend and hold the Contractor harmless. The provisions of this section shall survive any termination or the expiration of this Contract Agreement.
8. COVENANT AGAINST CONTINGENT FEES - The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agency maintained by the Contractor for the purpose of securing business. The Department shall have the right, in the event of breach of this clause by the Contractor, to annul this Contract Agreement without liability or, in its discretion, to deduct from the contract price or consideration or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee. The provisions of this section shall survive any termination or the expiration of this Contract Agreement.
9. CONFLICT OF INTEREST - The Department may, by written notice to the Contractor:
  - 9.1 Terminate the right of the Contractor to proceed under this Contract Agreement if it is found, after due notice and examination by the Contract Administrator, that gratuities in the form of entertainment, gifts, or otherwise are offered or given by the Contractor, or an agent or representative of the Contractor, to any officer or employee of the Department, with a view towards securing this Contract Agreement or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to this Contract Agreement.
  - 9.2 In the event this Contract Agreement is terminated as provided in (9.1) above, the Department shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract Agreement by the Contractor. The rights and remedies of the Department provided for in this clause shall not be inclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Contract Administrator makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this Contract Agreement.
10. TREATMENT OF ASSETS -
  - 10.1 Title to all property furnished by the Department shall remain in the Department. Example: The Department provides desks for Contractor staff. Title to desks remain in the Department.
  - 10.2 Title to all property purchased by the Contractor, the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under the Contract Agreement, shall pass to and vest in the Department upon delivery of such property to the Contractor. Example: The Contractor purchases equipment which is a reimbursable budget line item. Title passes to and vests in the Department.
  - 10.3 Title to all property, the costs of which is directly or indirectly reimbursed by the Department, shall pass to and vest in the Department upon delivery of such property to the Contractor. Example: Contractor receives all income from the Department. There are no other sources of funds. Although the item may not be listed in the budget, title will pass to and vest in the Department upon delivery since the costs of the item has been paid by Department funds.
  - 10.4 Any property of the Department furnished to the Contractor shall, unless otherwise provided herein, or approved by the Contract Administrator, be used only for the performance of this Contract Agreement.
  - 10.5 The Contractor shall be responsible for any loss or damage to property of the Department which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices, and shall maintain an inventory of Department property.
  - 10.6 Upon the happening of loss or destruction of, or damage to, any Department property, the Contractor shall notify the Contract Administrator thereof and shall take all reasonable steps to protect that property from further damage.

- 10.7 The Contractor shall surrender to the Department all property of the Department prior to settlement upon completion, termination, or cancellation of this Contract Agreement.
- 10.8 All purchases of equipment by Contractors for programs administered by Contractors, which are property of the Department as defined herein, are to be received at the institution/location for control and tagging and entry into the Capital Asset Management System (CAMS) before distribution to the Contractor for use.
- 10.9 All references to the Contractor under this clause shall include any of his/her employees, agents, or Subcontractors.
11. NON-ASSIGNABILITY - The Contractor may not assign any of the Contractor's duties, obligations, rights, or claims assumed or created under this contract without the express prior written consent of the Department signed by the Secretary. The provisions of this section shall survive any termination or the expiration of this Contract Agreement.
12. RECORDS, DOCUMENTS, AND DUTIES - The Contractor shall maintain such books and records, and utilize such accounting procedures and practices necessary to reflect sufficiently, accurately, and properly all direct and indirect costs of any nature expended in the performance of this Contract Agreement. These records shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by the Department. Should an audit conducted under the authority of this section disclose that the Contractor has been paid by the Department in excess of the agreed upon costs (overpayment), or has been reimbursed by the Department for direct or indirect costs which are disallowed as a result of that audit, then, in either event, the Contractor shall, upon demand by the Department, repay such overpayment or reimbursement to the Department. The Contractor will retain all books, records, documents, and other material relevant to this Contract Agreement for five years after settlement, and make them available for inspection by persons authorized under this provision. The provisions of this section shall survive any termination or the expiration of this Contract Agreement.
13. SAFEGUARDING OF INMATE INFORMATION - The use or disclosure by any party of any information concerning an inmate for any purpose not directly connected with the administration of the Department's or the Contractor's responsibilities with respect to services provided under this Contract Agreement is prohibited, except by written consent of the Department or inmate, or his/her legal representative.

The Contractor agrees to abide by present and future federal and state laws and regulations in maintaining the confidentiality of agency files and records, including Criminal History Record Information (CHRI). In the event CHRI is provided to the Contractor, the Contractor shall abide by all present and future Department rules and regulations governing the use of CHRI information and shall require any of the Contractor's authorized personnel having access to CHRI to strictly adhere to the same. The provisions of this section shall survive any termination or the expiration of this Contract Agreement.

14. RIGHTS IN DATA - Unless otherwise provided, data which originates from this Contract Agreement shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the Department. Data shall include, but not be limited to, 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.

Data which is delivered under the Contract Agreement, but which does not originate therefrom, shall be transferred to the Department with a non-exclusive, royalty free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so; provided that such license shall be limited to the extent which the Contractor has a right to grant such a license. The Contractor shall exert all reasonable efforts to advise the Department, at the time of delivery of data furnished under this Agreement, 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 this Contract Agreement. The Department shall receive prompt written notice of each notice, claim, or copyright infringement received by the Contractor with respect to any data delivered under this Contract Agreement. The Department shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor. The provisions of this section shall survive any termination or the expiration of this Contract Agreement.

15. SUB-CONTRACTING - The Contractor shall not enter into sub-contracts for any of the work contemplated under this Contract Agreement without obtaining prior written approval of the Contracts Administrator of the Department or his/her delegate.

16. LICENSING AND ACCREDITATION STANDARDS - The Contractor shall comply with all applicable local, state and federal licensing and accrediting requirements/standards, necessary in the performance of this Contract Agreement.
17. INDUSTRIAL INSURANCE COVERAGE - As required by statutes or regulations, the Contractor shall provide or purchase industrial insurance coverage prior to performing work under this Contract Agreement. The Department will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for the Contractor, or any Sub-contractor, or employee of the Contractor, which might arise under these industrial insurance laws during performance of duties and services under this Contract Agreement.
18. RIGHT OF INSPECTION - The Contractor shall provide right of access to its facilities to the Department, 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 Agreement.
19. ADVANCE PAYMENTS PROHIBITED - No payment in advance or in anticipation of services or supplies to be provided under this Contract Agreement shall be made by the Department.
20. NON-AVAILABILITY OF FUNDS - In the event funding from state, federal, or other sources is unavailable, withdrawn, reduced, insufficient, or limited in any way, the Department may terminate the Contract Agreement under the "Termination for Convenience" clause, (without the five-day notice requirement) subject to renegotiation under any new funding limitations and conditions.
21. WAIVER OF DEFAULT - Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of the Contract Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Contract Agreement, unless stated to be such in writing, signed by the Secretary of the Department, and attached to the original Contract Agreement.
22. CHANGES AND MODIFICATIONS - The Secretary may, at any time, by written notification to the Contractor, and without notice to any known guarantor or surety, make unilateral changes in the scope of the services to be performed under the Contract Agreement, the period of performance, or the price. These unilateral changes shall be effective as set forth in the amendment to the Contract Agreement or upon signature by the Secretary, if no date has been set forth.

The Contractor will be deemed to have accepted any such unilateral change unless the Contractor notifies the Department's Contracts Administrator of the Contractor's non-acceptance of such unilateral change within fifteen (15) calendar days after the date the change notice is signed by the Secretary. The Contractor and the Department will then use good faith efforts to negotiate a change acceptable to both parties. Failure to agree on an acceptable change shall be a dispute concerning a question of fact within the meaning of clause #23, "Disputes". However, nothing in this clause shall excuse the Contractor from proceeding with the Contract Agreement as changed.

23. DISPUTES - Except as otherwise provided in the Contract Agreement, should a dispute arise between the parties hereto, with respect to the terms of this contract or the performance thereof, and it cannot be resolved informally, the parties shall refer the dispute to an independent arbitrator selected by mutual agreement of the Contractor and the Department. The arbitrator so chosen shall establish procedures for an arbitration hearing and shall render a decision resolving the dispute. The arbitrator's decision shall be binding on both parties, unless either party delivers written objection to the decision to the non-objecting party within ten (10) working days after receiving the decision by the arbitrator. The arbitrator's fee will be shared equally by the parties, but neither party shall be financially responsible for the costs incurred by the other party in connection with the arbitration. The parties agree that this dispute process shall precede the commencement of any legal action.

Should either party hereto commence any action in a state or federal tribunal with respect to the dispute decided by arbitration hearing, then the party bringing the action shall bear all court costs and attorney fees if the decision of the arbitrator is substantially upheld. If the decision of the arbitrator is not upheld, then each party shall bear its own costs and attorney fees.

24. TERMINATION -

24.1 BY CONTRACTOR - The Contractor may terminate the Contract Agreement by giving the Department written notice of such termination. No such termination shall be effective until sixty (60) days after the Department has received the Contractor's written notice of termination, or until such later date as established by the Contractor in the Contractor's written notice of termination. Contractor shall mail or deliver the Contractor's written notice of termination to the Contracts Administrator. If the Contractor terminates the Contractor Agreement, the Department shall be liable only for payment in accordance with the terms of this Contract Agreement for services rendered prior to the effective date of termination.

24.2 FOR DEFAULT - The Secretary may, by written notice, terminate the Contract Agreement in whole or in part, for failure of the Contractor to perform any of the provisions hereof. In such event, the Contractor shall be liable for damages as authorized by law, including, but not limited to, any cost difference between the original Contract Agreement and the replacement or cover Contract Agreement and all administrative costs directly related to the replacement Contract Agreement, i.e., cost of the competitive bidding, mailing, advertising, and staff time: Provided, that if (A) it is determined for any reason the Contractor was not in default, or (B) the Contractor's failure to perform is without his/her and/or his/her Sub-contractor's control, fault or negligence, the termination shall be deemed to be a Termination for Convenience.

24.3 FOR CONVENIENCE - Except as otherwise provided in this Contract Agreement, the Secretary may, by five (5) day's written notice beginning on the second day after the mailing, terminate this Contract Agreement, in whole or in part, when it is in the best interests of the Department. If this Contract Agreement is so terminated, the Department shall be liable only for payment in accordance with the terms of this Contract Agreement for services rendered prior to the effective date of termination.

25. TERMINATION PROCEDURE - Upon termination of this Contract Agreement, the Department, in addition to any other rights provided in this Contract Agreement, may require the Contractor to deliver to the Department any property specifically produced or acquired for the performance of such part of this Contract Agreement as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

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

The rights and remedies of the Department provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract Agreement.

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

25.1 Stop work under the Contract Agreement on the date, and to the extent specified, in the notice;

25.2 Place no further orders or sub-contracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract Agreement as is not terminated;

25.3 Assign to the Department, in the manner, at the times, and to the extent directed by the Secretary, all of the rights, titles, and interest of the Contractor under the orders and sub-contracts so terminated, in which case the Department has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and sub-contracts;

25.4 Settle all outstanding liabilities and all claims arising out of such termination or orders and sub-contracts, with the approval or ratification of the Secretary to the extent he/she may require, which approval or ratification shall be final for all the purposes of this clause;

- 25.5 Transfer title to the Department and deliver in the manner, at the time, and to the extent, if any, as directed by the Secretary, any property which, if the Contract Agreement had been completed, would have been required to be furnished to the Department.
- 25.6 Complete performance of such part of the work as shall not have been terminated by the Secretary; and
- 25.7 Take such action as may be necessary, or as the Secretary may direct, for the protection and preservation of the property related to this Contract Agreement which is in the possession of the Contractor and in which the Department has or may acquire an interest.
26. GOVERNING LAW - This Contract Agreement shall be governed by the laws of the state of Washington. Any action brought hereunder must be brought in Thurston County, Washington.
27. SEVERABILITY - If any provision of this Contract Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract Agreement which can be given effect without the invalid provision, and to this end the provisions of this Contract Agreement are declared to be severable.
28. CONSTRUCTION - Nothing in this Contract Agreement shall be construed to create a right enforceable by or in favor of any third party.
29. EMPLOYMENT - During the performance of this Contract Agreement, the Contractor shall comply with all requirements of the federal Immigration Reform and Control Act (IRCA) and any regulations adopted by the Department of Justice Bureau of Immigration and Naturalization Services to implement the IRCA. The provisions of this paragraph shall be in addition to any other requirements set forth in the text of the contract instrument attached hereto or any attachments thereto.
30. HEALTH RISKS - There is potential risk to blood borne or other body fluid diseases to personnel who work in or at a DOC facility. It is your responsibility under Chapter 296-62-08001 Washington Administrative Code (WAC) to ensure personnel in your employment and in a DOC site are trained in the requirements of this standard and that you provide adequate protection for your staff consistent with the standard.
- If the Contractor is a health care provider whose primary duties are the medical or physical care of inmates or emergency or medical treatment of employees, you are responsible to understand and abide by the requirements of Chapter 296-62-08001 WAC as well as standard medical practice.
31. ENTIRE AGREEMENT - The Contract, these Terms and Conditions, and all attachments and amendments thereto, constitute the entire agreement between the Contractor and the Department and no other statements or representations, written or oral, shall be deemed a part thereof.

