

**DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT
LOCAL GOVERNMENT DIVISION
CONTRACT GENERAL TERMS AND CONDITIONS**

1. DEFINITIONS

As used throughout this CONTRACT, the following terms shall have the meanings set forth below:

"DEPARTMENT" shall mean the Department of Community, Trade and Economic Development 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 the DEPARTMENT.

"CONTRACTOR" shall mean the agency, firm, provider, organization, individual or other entity performing services under this CONTRACT. It shall include any subcontractor retained by the prime CONTRACTOR as permitted under the terms of this CONTRACT.

A "SUBCONTRACTOR" shall mean a person or entity who is not an employee of the CONTRACTOR, who is an individual, or other entity performing all or part of the services under this CONTRACT, under a separate written CONTRACT with the CONTRACTOR. It shall include any SUBCONTRACTOR retained by the prime CONTRACTOR, as permitted under the terms of this CONTRACT. The terms "SUBCONTRACTOR" and "SUBCONTRACTORS" mean SUBCONTRACTOR(s) in any tier.

2. GOVERNING LAW AND VENUE

This CONTRACT shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the state of Washington. Venue of any suit between the parties arising out of this CONTRACT shall be the Superior Court of Thurston County, Washington.

3. CONTRACTOR NOT EMPLOYEE, OFFICER, OR AGENT OF AGENCY

The CONTRACTOR and his/her employees or agents performing under this CONTRACT are not deemed to be employees, officers, or agents of the DEPARTMENT in any manner whatsoever. The CONTRACTOR will not hold himself/herself out as, nor claim to be, an officer, employee, or agent of the DEPARTMENT or of the state of Washington by reason hereof and will not make any such applicable claim, demand, or application to or for any right or privilege.

4. CONTRACT MODIFICATIONS

The DEPARTMENT and the CONTRACTOR may request changes in services to be performed with the funds, or in the amount of funds to be reimbursed to the CONTRACTOR. Any such changes that are mutually agreed upon by the DEPARTMENT and the CONTRACTOR shall be incorporated herein by written amendment to this CONTRACT. It is mutually agreed and understood that no alteration or variation of the terms of this CONTRACT shall be valid unless made in writing and signed by the parties

hereto, and that any oral understanding or agreements not incorporated herein, unless made in writing and signed by the parties hereto, shall not be binding. However, the Director may at any time, by written notification to the CONTRACTOR and without notice to any known guarantor or surety, make changes within the general scope of the services to be performed under this CONTRACT. If any such change causes an increase or decrease in the cost of or the time required for the performance of this CONTRACT, an equitable adjustment may be made in the CONTRACT price or period of performance, or both, and the CONTRACT shall be modified in writing accordingly.

5. SUBCONTRACTS

Neither the CONTRACTOR nor any SUBCONTRACTORS shall enter into SUBCONTRACTS for any of the work contemplated under this CONTRACT without obtaining prior written approval of the DEPARTMENT.

6. DUPLICATION OF COSTS

The CONTRACTOR certifies that work to be performed under this CONTRACT does not duplicate any work to be charged against any other CONTRACT, SUBCONTRACT, or other funding. The CONTRACTOR shall include the provisions of this clause in any SUBCONTRACT.

7. NONDISCRIMINATION

During the performance of this CONTRACT, the CONTRACTOR shall comply with the DEPARTMENT'S nondiscrimination plan and the federal and state laws upon which it is based. Requirements of the nondiscrimination plan are hereby incorporated by reference and include, but are not limited to:

- A. Nondiscrimination 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, Vietnam era or disabled veterans status, or the presence of any sensory, mental, or physical disability, or the use of any trained dog guide or service animal by a disabled person. The CONTRACTOR shall take affirmative action to ensure that employees are employed and treated during employment without discrimination because of their race, color, religion, sex, national origin, creed, marital status, age, Vietnam era or disabled veterans status, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; or recruitment or selection for training, including apprenticeships and volunteers.
- B. Nondiscrimination in services: The CONTRACTOR shall not discriminate against any person eligible for services or participation in the program because of race, color, sex, religion, national origin, creed, marital status, age, Vietnam Era or disabled veterans status or the presence of any sensory, mental or physical disability, or the use of any trained dog guide or service animal by a disabled person.
- C. Religious Activity: The CONTRACTOR shall not use any curricula or materials that have any religious orientation. The CONTRACTOR shall not require participants under this CONTRACT to participate in any religious activity.

8. NONCOMPLIANCE WITH NONDISCRIMINATION PLAN

In the event of the CONTRACTOR'S noncompliance or refusal to comply with the above non-discrimination plan, 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 DEPARTMENT. The CONTRACTOR shall, however, be given a reasonable time, in no event to exceed thirty (30) days, in which to correct this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

9. COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990

The CONTRACTOR shall comply with the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. Section 12101 et seq. and its implementing regulations. This act provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

10. INDEMNIFICATION

The CONTRACTOR agrees that he or she is financially responsible (liable) for any audit exception or other financial loss to the state of Washington which occurs due to the negligence, intentional acts, or failure for any reason to comply with the terms of this CONTRACT by the CONTRACTOR and/or its agents, employees, SUBCONTRACTORS or representatives.

The CONTRACTOR further agrees to protect, defend, and save the state, its elected and appointed officials, agents and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands and causes of action of any kind or character, including the cost of defense thereof, arising in favor of the CONTRACTOR'S employees or third parties on account of bodily or personal injuries, death, or damage to property or any other liability arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the CONTRACTOR and/or its agents, employees, SUBCONTRACTORS or representatives under this CONTRACT.

The CONTRACTOR is responsible for ensuring that any SUBCONTRACT(s) include a comprehensive indemnification clause holding harmless the CONTRACTOR, the DEPARTMENT, and the state of Washington.

The CONTRACTOR waives his or her immunity under Title 51 RCW to the extent required by this clause.

11. LIABILITY INSURANCE

The DEPARTMENT assumes no liability with respect to bodily injury, illness, accident, theft, or any other damages or losses concerning persons or property, or involving the CONTRACTOR'S equipment or vehicles. The CONTRACTOR is responsible for providing adequate insurance coverage to protect against legal liability arising out of activities under this CONTRACT. The CONTRACTOR shall notify the DEPARTMENT forty-five (45) days before cancellation or reduction in the CONTRACTOR'S insurance coverage.

A. Public Liability Insurance

The CONTRACTOR shall at all times during the term of this CONTRACT, at its cost and expense, carry and maintain general public liability insurance, including contractual liability, against claims for bodily injury, personal injury, death or property damage occurring or arising out of services provided under this CONTRACT. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the CONTRACTOR or its officers, agents, representatives, assigns or servants. The limits of liability insurance, which may be increased from time to time as deemed necessary by the state, with the approval of the CONTRACTOR (which shall not be unreasonably withheld), shall not be less than \$1,000,000 combined single limits.

B. Automobile Liability Insurance

In the event that services delivered pursuant to this CONTRACT involve the use of vehicles or the transportation of clients, automobile liability insurance shall be required. If CONTRACTOR-owned personal vehicles are used, a Business Automobile Policy covering at a minimum Code 2 "owned autos only" must be secured. If CONTRACTOR employee's vehicles are used, the CONTRACTOR must also include under the Business Automobile Policy Code 9, coverage for "non-owned autos". The minimum limit for automobile liability is \$1,000,000 per occurrence, using a combined single limit for bodily injury and property damage.

C. Professional Liability, Errors and Omissions Insurance

In the event that services delivered pursuant to a CONTRACT or agreement, either directly or indirectly, involve or require providing professional services, Professional Liability Errors and Omissions Insurance shall be required. "Professional Services," for purposes of the CONTRACT section, shall mean any services provided by a physician, psychologist, architect, or other licensed professional. The CONTRACTOR shall maintain minimum limits no less than \$1,000,000 per occurrence.

Alternatively, the CONTRACTOR may provide the coverage specified above under a self-insurance risk management program.

Additionally, the CONTRACTOR is responsible for ensuring that liability related to SUBCONTRACTOR activity is appropriately covered by insurance provided either by the SUBCONTRACTOR or CONTRACTOR.

12. WORKER'S COMPENSATION COVERAGE

The CONTRACTOR shall provide or purchase workers' compensation insurance coverage prior to performing work under this CONTRACT. The DEPARTMENT will not be responsible for payment of workers compensation insurance premiums or for any other claim or benefit for a consultant, or any SUBCONTRACTOR, or employee of the CONTRACTOR, which might arise under the workers compensation laws during performance of duties and services under this CONTRACT.

The 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. Such workers' compensation and occupational disease requirements shall include coverage for all employees of the CONTRACTOR, and for all employees of any SUBCONTRACT retained by the CONTRACTOR, suffering bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of the CONTRACT. Satisfaction of these requirements shall include, but shall not be limited to:

- A. Full participation in any required governmental occupational injury and/or disease insurance program, to the extent participation in such program is mandatory in any jurisdiction.
- B. Purchase of workers' compensation and occupational disease insurance providing benefits to employees in full compliance with all applicable laws, statutes, and regulations, but only to the extent such coverage is not provided under a mandatory government program as in 12(A) above, and/or;
- C. Maintenance of a legally permitted and governmentally approved program of self-insurance for workers' compensation and occupational disease.
- D. Except to the extent prohibited by law, the program of CONTRACTOR'S compliance with workers' compensation and occupational disease laws, statutes, and regulations in 12(A), 12(B), and 12(C) above shall provide for a full waiver of right of subrogation against the DEPARTMENT, its directors, officers, and employees.
- E. If the CONTRACTOR, or any SUBCONTRACTOR retained by the CONTRACTOR, fails to effect and maintain a program of compliance with applicable workers' compensation and occupational disease laws, statutes, and regulations, and the DEPARTMENT incurs fines or is required by law to provide benefits to such employees or to obtain coverage for such employees, the CONTRACTOR will indemnify the DEPARTMENT for such fines, payment of benefits to CONTRACTOR or SUBCONTRACTOR employees or their heirs or legal representatives, and/or the cost of effecting coverage on behalf of such employees. Any amount owed to the DEPARTMENT by the CONTRACTOR pursuant to the indemnity may be deducted from any payments owed by the DEPARTMENT for performance of this CONTRACT.
- F. The CONTRACTOR, in addition to complying with the provisions of the Workers' Compensation section above, will maintain coverage for employer's liability with a policy limit of not less than \$1,000,000 per accident.

G. The CONTRACTOR shall include these requirements in all approved SUBCONTRACTS.

13. BONDING

Within ten (10) calendar days after receipt of notice of award of this CONTRACT, the CONTRACTOR shall ensure that every officer, director, or employee who is authorized to act on behalf of the CONTRACTOR or any SUBCONTRACTOR for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be bonded to provide protection against loss. SUBCONTRACTOR bonding may be provided by the SUBCONTRACTOR or the CONTRACTOR. Fidelity bonding secured pursuant to the CONTRACT must name the DEPARTMENT as beneficiary.

The amount of coverage must be \$100,000 or the total amount of the CONTRACT, whichever is less, and must be secured for the term of the CONTRACT. The CONTRACTOR will provide the DEPARTMENT a copy of the bonding instrument or certification of the same from the bond issuing company.

The CONTRACTOR shall provide a Performance Bond, (if specifications require), executed by a competent and financially sound surety company, rated B or higher, and admitted to write in Washington by the State Insurance Commissioner.

If the CONTRACTOR is self-insured, evidence of such insurance will be provided to the DEPARTMENT by the CONTRACTOR upon request by the DEPARTMENT.

14. ACCEPTABILITY OF INSURERS AND PROOF OF INSURANCE

A. Proof of Insurance

Certificates or other evidence satisfactory to the DEPARTMENT confirming the existence, terms, and conditions of all insurance required in this CONTRACT shall be kept on file by the CONTRACTOR within ten days of the CONTRACTOR'S receipt of the notice of award of this CONTRACT. The policy(ies) of insurance required to be maintained in accordance with this CONTRACT shall not be canceled or given notice of non-renewal, nor shall the terms or conditions thereof be altered or amended without forty-five (45) days prior written notice given to the DEPARTMENT.

B. Additional Insured

The DEPARTMENT shall be specifically named as an additional insured on all policies, and all policies shall be primary to any other valid and collectable insurance. At its option, the DEPARTMENT may waive this requirement where insurance carriers will not under any circumstances extend secondary insured coverage for physicians' professional liability, or architects' and engineers' insurance. The DEPARTMENT may also waive this requirement where insurance carriers will not under any circumstances extend secondary fidelity bonding coverage for private nonprofit organizations.

15. COVENANT AGAINST CONTINGENT FEES

The CONTRACTOR warrants that no person or agency has been employed or retained on a contingent fee for the purpose of seeking or obtaining this CONTRACT. This does not apply to legitimate employees or an established commercial or selling agency maintained by the CONTRACTOR for the purpose of securing business.

In the event of breach of this clause by the CONTRACTOR, the DEPARTMENT may at its discretion:

- A. Rescind the CONTRACT without any liability; or
- B. Deduct from the CONTRACT price or consideration or otherwise recover the full amount of any such contingent fee.

16. PROGRAM INCOME

Program income generated by interest-bearing accounts or otherwise under this CONTRACT shall be used for operational expenses not included in the total approved budget.

17. CONFLICT OF INTEREST

The DEPARTMENT may, by written notice to the CONTRACTOR:

- A. Terminate this CONTRACT if it is found after due notice and examination by the DEPARTMENT that there is a violation of Chapter 42.52 RCW, Ethics in Public Service, or any similar statute involving the CONTRACTOR in the procurement of or performance under this CONTRACT.
- B. In the event this CONTRACT is terminated as provided in (A) above, the DEPARTMENT shall be entitled to pursue remedies against the CONTRACTOR for breach of the CONTRACT by the CONTRACTOR. The rights and remedies of the DEPARTMENT provided for in this section are in addition to any other rights and remedies provided by law. Any determination made by the DEPARTMENT under this clause may be reviewed as provided in the "Disputes" clause of this CONTRACT.

18. TREATMENT OF ASSETS

The CONTRACTOR shall take the following actions to secure the financial interest of the DEPARTMENT in items purchased under this CONTRACT:

- A. Title to all property furnished by the DEPARTMENT shall remain in the DEPARTMENT. 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 this CONTRACT, shall remain with the CONTRACTOR provided the CONTRACTOR certifies to the DEPARTMENT in writing that the property will be used for the same funded program purposes. If such certification is not made, title shall vest in the DEPARTMENT.

- B. 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.
- C. The CONTRACTOR shall maintain records, perform inventories, and maintain control systems to prevent loss, damage, or theft of equipment, materials, and supplies.
- D. The CONTRACTOR shall maintain a non-expendable equipment inventory on file. The DEPARTMENT'S interest in equipment purchased under this CONTRACT and prior CONTRACTS from the same funding source is automatically transferred forward to the next CONTRACT year at the close of the CONTRACT period.
- E. The CONTRACTOR shall surrender to the DEPARTMENT all property of the DEPARTMENT prior to settlement upon completion, termination, or cancellation of this CONTRACT.

19. PROCUREMENT STANDARDS

The CONTRACTOR shall establish procurement policies and procedures for all purchases funded by this CONTRACT as follows:

- A. Establish a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of bids using state or federal funds.
- B. Ensure that all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.
- C. CONTRACTORS and SUBCONTRACTORS shall be required to receive prior approval from the DEPARTMENT for using funds from this CONTRACT to enter into a sole source CONTRACT or a CONTRACT where only one bid or proposal is received when value of the CONTRACT is expected to exceed \$5,000. Prior approval requests shall include: a copy of the proposed CONTRACT, any related procurement documents, and justification for noncompetitive procurement, if applicable.

20. NON-ASSIGNABILITY

Neither this CONTRACT, nor any claim arising under this CONTRACT, shall be transferred or assigned by the CONTRACTOR.

21. RIGHTS IN DATA

Unless otherwise provided, data that originates from this CONTRACT shall be made "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. In the event the data are not considered "works for hire," under the U.S. Copyright Laws, CONTRACTOR hereby irrevocably assigns all right, title, and interest in such data, including all intellectual property rights, to the DEPARTMENT effective from the moment of creation of such data.

Ownership includes the right to copyright, patent, and register, and the ability to transfer these rights. Data which is delivered under this CONTRACT, but does not originate from it, shall be transferred to the DEPARTMENT with a non-exclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, and dispose of, and authorize others to do so; provided that such license shall be limited to the extent to which the CONTRACTOR has a right to grant such a license. The CONTRACTOR shall exert all reasonable effort to advise the DEPARTMENT, at the time of delivery 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 DEPARTMENT shall receive prompt written notice of each notice or claim of copyright infringement received by the CONTRACTOR with respect to any data delivered under this CONTRACT. The DEPARTMENT shall have the right to remove any restrictive markings placed upon the data by the CONTRACTOR.

22. RECAPTURE PROVISION

In the event the CONTRACTOR fails to expend funds in accordance with state law or the provisions of this CONTRACT, the DEPARTMENT reserves the right to recapture funds in an amount equivalent to the extent of the noncompliance. Such right of recapture shall exist for a period not to exceed six (6) years following termination of this CONTRACT. Repayment by the CONTRACTOR of funds under this recapture provision shall occur within thirty (30) days of demand.

23. WRITTEN POLICIES AND PROCEDURES

Written policies and procedures consistent with federal and state regulations, as applicable, shall be kept on file in the office of the CONTRACTOR or its local programs and available for review. Such policies and procedures shall include, but not be limited to: personnel regulations; job descriptions; organizational charts; travel regulations; fiscal management regulations; and affirmative action policies and plans.

24. RECORDS AND DOCUMENTS

The CONTRACTOR shall maintain books, records, documents, and other evidence that properly reflect all costs of any nature expended in the performance of this CONTRACT. Such records shall reflect financial procedures and practices, participant records, statistical records, property and materials records, and supporting documentation. These records shall be subject at all reasonable hours to review and audit by the DEPARTMENT, the Office of the State Auditor, and state and federal officials so authorized by law. The CONTRACTOR shall retain all such records for a period of six (6) years from the termination of the CONTRACT.

If any litigation or audit is begun in the period during which records must be retained, or if a claim is initiated involving the CONTRACT or any related agreement, the CONTRACTOR must retain the related records until the litigation, audit, or claim has been finally resolved.

25. DOCUMENTS ON FILE

Documents consistent with federal and state regulations, as applicable, shall be kept on file in the office of the CONTRACTOR or its local programs and available for review. Such documents shall include, but not be limited to: Articles of Incorporation/Tribal Charter; by-laws; IRS Nonprofit Status Certification; latest agency audit; and insurance policies and bonding required by the CONTRACT.

26. APPLICABLE LAWS AND REGULATIONS

The CONTRACTOR shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state and federal governments, as now or hereafter amended.

27. LOBBYING FOR GRANTS AND COOPERATIVE AGREEMENTS

- A. No funds will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an officer or employee of Congress, or an employee of a member of Congress in connection with the making of this CONTRACT, which is funded in whole or in part with federal funds.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this CONTRACT, the CONTRACTOR shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The CONTRACTOR shall require that the language of this certification be included in the CONTRACT language for all SUBCONTRACTS at all tiers and that all SUBCONTRACTORS shall certify and disclose accordingly.

28. POLITICAL ACTIVITIES PROHIBITED

No funds may be used in working for or against ballot measures, or for or against the candidacy of any person for public office.

29. DISPUTES

Except as otherwise provided in this CONTRACT, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute hearing. The parties shall select a dispute resolution team to resolve the dispute. The team shall consist of a representative appointed by the DEPARTMENT, a representative appointed by the CONTRACTOR, and a third party mutually agreed upon by both parties. The team shall attempt, by majority vote, to resolve the dispute. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

30. LEGAL PROCEEDINGS

In the event the DEPARTMENT is required to institute legal proceedings to enforce any provision of this CONTRACT, and is the prevailing party, the DEPARTMENT shall be entitled to its costs thereof, including reasonable attorneys' fees.

The laws of the state of Washington shall govern this CONTRACT. In the event of a lawsuit involving this CONTRACT, venue shall be proper only in Thurston County. The CONTRACTOR, by execution of this CONTRACT, acknowledges the jurisdiction of the state of Washington in this matter.

31. TERMINATION OF CONTRACT

- A. If, through any cause, the CONTRACTOR shall fail to fulfill in a timely and proper manner its obligations under this CONTRACT, or if the CONTRACTOR shall violate any of the covenants, agreements, or stipulations of this CONTRACT, the DEPARTMENT shall thereupon have the right to terminate this CONTRACT and withhold the remaining allocation if such default or violation is not corrected within thirty (30) days after submitting written notice to the CONTRACTOR describing such default or violation.
- B. Notwithstanding any provisions of this CONTRACT, either party may terminate this CONTRACT by providing written notice of such termination, specifying the effective date thereof, at least thirty (30) days prior to such date.
- C. Reimbursement for CONTRACTOR services performed, and not otherwise paid for by the DEPARTMENT prior to the effective date of such termination, shall be as the DEPARTMENT reasonably determines.
- D. The DEPARTMENT may immediately and unilaterally terminate all or part of this CONTRACT, or may reduce its scope of work and budget, if there is a reduction in funds by the source of those funds, and if such funds are the basis for this CONTRACT. Such termination shall be effective when the DEPARTMENT sends written notice of termination to the CONTRACTOR.

32. 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.

33. SEVERABILITY

In the event any term or condition of this CONTRACT or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this CONTRACT that can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this CONTRACT are declared severable.

34. WAIVER OF DEFAULT

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Waiver shall not be construed to be a modification of the terms of the contract unless stated to be such in writing, signed by the contracting officer of the department.

35. AUDIT REQUIREMENTS

CONTRACTORS shall:

- A. Adhere to the General Office of Management and Budget (OMB), Generally Accepted Auditing Standards (GAAS), Government Accounting Standards (the Revised Yellow Book), OMB Circular A-133, and other applicable federal and state regulations.
- B. Funding Thresholds for Audits:
 - 1). Organizations expending less than \$75,000 per year in federal funds are not required to have any specific audit.
 - 2). Organizations expending more than \$75,000 and less than \$300,000 in federal funds shall have a financial audit in accordance with GAAS—Financial Audits.
 - 3). Organizations expending more than \$300,000 in federal funds shall have a single-agency audit.
- C. Maintain accounting records that will enable separate identification of all funds received and expended, and assure that SUBCONTRACTORS also maintain records that are auditable. The CONTRACTOR shall be responsible for any audit exceptions incurred by its own organization or that of its SUBCONTRACTORS. The DEPARTMENT reserves the right to recover disallowed expenditures.
- D. The Office of the State Auditor shall conduct the audit of the CONTRACTOR’S program if the CONTRACTOR is a state or local government entity; or an independent Certified Public Accountant firm selected by the CONTRACTOR if the CONTRACTOR is not a state or local government entity, in accordance with OMB Circular A-122.
- E. The CONTRACTOR must prepare a Schedule of Financial Assistance for federal and state funds that includes: grantor agency name, federal agency, program name, other identifying contract numbers, catalog of federal domestic assistance (CFDA) number, grantor contract number, total award amount including amendments, beginning balance, current year revenues, current year expenditures, ending balance, and program total.
- F. The CONTRACTOR shall maintain its records and accounts in such a way as to facilitate the DEPARTMENT’S audit requirements, and ensure that SUBCONTRACTORS also maintain records that are auditable. The CONTRACTOR is responsible for any audit exceptions incurred by its own organization or that of its SUBCONTRACTORS. The DEPARTMENT reserves the right to recover from the CONTRACTOR disallowed costs resulting from the final audit.
- G. The CONTRACTOR shall be responsible for sending one (1) copy of the audit report to the DEPARTMENT as soon as it is available, but no later than thirteen (13) months after the end of the CONTRACTOR’S fiscal year, to: Department of Community, Trade and Economic Development, 906 Columbia Street SW, PO Box 48300, Olympia, WA 98504-8300, Attn: Audit Review Office.

- H. The CONTRACTOR will respond to DEPARTMENT requests for information or corrective action concerning audit issues within 30 days of the date of request.
- I. The CONTRACTOR shall include audit requirements A through H above in all SUBCONTRACTS.

As applicable, costs of the audit are an allowable expenditure.

36. SPECIAL PROVISION

The DEPARTMENT'S failure to insist upon the strict performance of any provision of this AGREEMENT or to exercise any right based upon breach thereof or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this AGREEMENT.

37. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY

If federal funds are the basis for this CONTRACT, the CONTRACTOR certifies that neither it nor its principals are presently debarred, declared ineligible, or voluntarily excluded from participation in transactions by any federal department or agency.