

**STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS**

REQUEST FOR PROPOSAL



RFP8782

COMMISSARY ORDERING SYSTEM FOR OFFENDERS

ISSUE DATE: February 8, 2011

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SECTION I - GENERAL INFORMATION

1.1 PURPOSE AND OBJECTIVE

The state of Washington, Department of Corrections (DOC) Correctional Industries (CI) is seeking proposals to install a commissary ordering system to enable offenders, residing in correctional institutions, to place commissary orders from their living units. The ordering system will be installed in all department facilities except work release. A complete list of department facilities may be found at: <http://www.doc.wa.gov/facilities/prison/default.asp>

1.2 BACKGROUND

Offenders are not permitted to have access to the internet. J Pay currently provides kiosks in the institution under contract with DOC, which allows offenders limited e-mail communication and the ability to purchase MP3 players and audio content. The Trust Accounting System (TAS), provided under contract to the department by Syscon Justice Systems, Ltd., is the accounting system of record for all offender resident trust accounts held by the Department.

Additionally, TAS is the accounting system used for the Department's commissary operations. The TAS application encompasses two independent functions; trust and commissary. The TAS is set up so that offender orders charged in the commissary side of the application will withdraw funds from the offender's trust account in the trust side of the application.

1.3 SYSTEM REQUIREMENTS

The Commissary Order Submission system would provide the following:

- Provide a Commissary Catalog:

The following information will be extracted from TAS via an interface for use as an online Commissary Catalog:

- Stock Item ID – unique identifier for each stock item code in each Commissary (E/W)
- Stock Item Code
- Stock Item Category(s)
- Stock Item Description
- Stock Item Selling Price
- Optional - Item Photo
- Global Commissary Message (e.g. "Thanksgiving orders must be submitted by 11/2/2011")
- Order Submission Message (e.g. "Order confirmation; All orders are final. No refunds, etc.")
- Provide Offender Commissary Ordering:

An interface text file (per order or with a period of time's worth of orders) would be generated by the ORDERING SYSTEM vendor and contain the following

information. These files would be processed (loaded into TAS) by a new Syscon created TAS interface.

The order file would then contain:

- The DOC number – provided by the offender
- And based on the DOC number
- The TAS Caseload (e.g. “AD1”) - provided in file from DOC
- The facility of the offender (e.g.” D01”) - provided in file from DOC
- The living unit of the offender (e.g. “A”) - provided in file from DOC
- The bed assignment of the offender (e.g. “A1211”) - provided in file from DOC
- The Date the Order was submitted – system generated
- The Stock Item Code, Stock Item ID (internal identifier) and Quantity – indicated by the offender

The data for the submitted order is retained in predefined file format/table where DOC can cycle (e.g. nightly), pull the file(s), run a batch job that executes the 2nd interface program to insert the info into the order temp tables.

Usage Fees

- If usage fees exist, they must be directed to Correctional Industries, not offenders or their family members.
- Any usage fees should be billed to CI at a flat rate per year, not based upon volume.

Availability

- Vendor must determine the best offender to ordering unit ratio, which will be reviewed and approved by Correctional Industries.
- In addition to English, an option to order using the Spanish language must be provided.
- System must be able to accommodate one order per week per offender. While there are currently 10,000 orders per week, the system must be able to accommodate up to 16,000 orders per week.
- If proposed system or units are already in use within DOC facility, the addition of commissary ordering must not negatively impact current contracted services.
- Should the need arise, additional ordering units must be added to meet usage needs at vendor's expense. If significant additional costs are required, the fees may be renegotiated.
- 24-hour response is expected if an ordering unit goes down.
- ADA accessible option must be available for all offenders using the system.

Order Placement Time

- Vendor must provide an estimated length of time for offenders to place their order:
 - o Assumptions:
 - Offender is familiar with general operation of ordering unit
 - Offender has printed commissary list or some type of pre-written list of items to purchase
 - Offender is purchasing the average weekly volume of products
 - Order consists of 14 different items and item codes are 4-digits
 - Offender reviews his order after completion, then makes one change
 - Offender reviews order once again and approves.
- If ADA accessible option increases or decreases order time, vendor must also provide estimated time using same scenario as above.

Desired Additional Feature

- Ability to electronically receive feedback or to poll offenders (ex: list of five lowest sellers, which should be removed?).

Other

- Vendor must own or be licensed to use the software or technology system.

Installation Timeline

- Vendor must submit timeline for completion of installation of ordering units at all facilities.

Selected vendor will work with Correctional Industries to finalize timeline. If approved timeline is met, the vendor may be eligible to receive a monetary bonus (to be determined during contract negotiations).

- Any required infrastructure additions/improvements must be approved by the department and must be in full compliance with state law.

1.4 MIMUMUM QUALIFICATIONS

The successful vendor must be licensed to do business in the state of Washington prior to the execution of the contract or have a waiver from the Department of Revenue that registration is not required. Desirable qualifications include:

- Demonstrated operation of a similar ordering system in a correctional facility.

1.5 DEFINITIONS

Definitions for purposes of this RFP include:

Department - The Department of Corrections (DOC) is the department of the state of Washington that is issuing this RFP.

Vendor: - The individual or company submitting a proposal in order to attain a contract with the Department.

Contractor: - Individual or company whose proposal has been accepted by Department and is awarded a fully executed, written contract.

Proposal: - A formal offer submitted in response to this solicitation.

Request for Proposal: - Formal procurement document in which a service or need is identified but no specific method to achieve it has been chosen. The purpose of an RFP is to permit the vendor community to suggest various approaches to meet the DOC's Purpose and Objective at a given price.

1.6 PERIOD OF PERFORMANCE

Any contract awarded as a result of this RFP is tentatively scheduled to begin on or about July 1, 2011, and continue through September 30, 2014. Amendments extending the period of performance shall be at the sole discretion of the Department.

1.7 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue RFP	February 8, 2011
Last Date to Ask Questions Regarding the RFP	February 23, 2011
All Questions and Answers released	February 28, 2011
Due Date for Proposal Submittal LATE PROPOSALS WILL NOT BE ACCEPTED	March 7, 2011
Oral Presentations (System Demonstration)	April 4-8, 2011
Announcement of Apparent Successful Vendor and Notification to Unsuccessful Vendors	April 12, 2011*
Debriefing Request Due to DOC	Within 1 business day of announcement and/or notification
Protest Notifications Due to DOC	Within 3 business days of Debriefing Conference
Contract Performance Begins	July 1, 2011

*Tentative. The Department reserves the right to revise the above schedule.

1.8 QUESTION ACCEPTANCE

Vendors must submit all questions regarding the RFP by close of business February 23, 2011. Questions must be in written format and submitted via email to RFP Coordinator John Nispel at john.nispel@doc.wa.gov and Lindsey Konrad at lmkonrad@doc1.wa.gov Written answers to all questions raised will be posted on the Washington Department of General Administration "WEBS" website at <https://fortress.wa.gov/ga/webs/> on February

28, 2011. The Department shall be bound only to the Department's written answers to questions. Any oral responses given shall be considered unofficial.

1.9 ISSUING OFFICE

The Contracts and Legal Affairs Office is the issuing office for this procurement. The RFP Coordinator is the sole point of contact in the Department for this procurement. All communication between the Vendor and the Department upon receipt of this RFP shall be with the RFP Coordinator. The RFP Coordinator is:

John Nispel, RFP Coordinator
Department of Corrections
Contracts and Legal Affairs
Post Office Box 41114
Olympia, Washington 98504-1114
Telephone (360) 725-8365
Fax (360) 664-2009
john.nispel@doc.wa.gov

Communications directed elsewhere may result in the disqualification of the Vendor. Only written communications from the Department's Contracts and Legal Affairs Office may be relied upon. Communications from other than the Contracts and Legal Affairs Office or oral communications from any source regarding this RFP are not be binding and should not be relied upon by the Vendor.

Vendors having special needs may contact the RFP Coordinator to receive this Request for Proposals in an alternative format.

1.10 MODIFICATION OF REQUEST FOR PROPOSAL

In the event it becomes necessary to revise any part of the RFP, addenda will be posted on WEBS. The Department may also, at its sole discretion, issue addenda by the United States Post Office, electronic mail, facsimile, and/or private mail delivery service. It is Vendor's responsibility to monitor WEBS for addenda to this RFP. If any Vendor has reason to doubt whether Department is aware of the Vendor's interest, it is incumbent on the Vendor to notify the Department to be sure that addenda are received. Email such notice to the RFP Coordinator listed above.

For this purpose, the published questions and answers shall be considered an addendum to the RFP.

The Department also reserves the right to cancel or to reissue the RFP in whole or in part, prior to execution of a contract.

1.11 CONTRACT MANAGEMENT

Lindsey Konrad, Correctional Industries Brand Manager, or her designee shall monitor the day-to-day activities and manage the resulting contract.

1.12 COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

Unless a business or organization is exempt from compliance with the Americans with Disabilities Act (ADA), the Department will contract only with business or organizations that declare their intention to comply with the Americans with Disabilities Act.

1.13 MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE PARTICIPATION

In accordance with the legislative findings and policies set forth in 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. Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the contract documents will apply.

In the event the Vendor wishes to be considered a minority-owned or women-owned business, then the Vendor shall submit evidence of certification by the Washington State Office of Minority and Women's Business Enterprises. Firms must be certified at the time of proposal submittal to qualify for consideration under this section. Uncertified firms may 'self identify' if they chose. Vendors may contact OMWBE at 360-753-9693 to obtain information on certified firms.

1.14 ACCEPTANCE PERIOD

Proposals must provide sixty (60) days for acceptance by Department from the due date for receipt of proposals.

1.15 FAILURE TO COMPLY

All proposals will be reviewed by the RFP Coordinator to determine compliance with administrative requirements and instructions specified in this RFP. Items in all of the subsections of Section III, Proposal Content Requirements, marked "mandatory" must be included as part of the proposal for the proposal to be considered responsive. Failure to answer each requirement may cause the proposal to be deemed non-responsive and be disqualified from further consideration. The Vendor is specifically notified that failure to comply with any part of the Request for Proposals may result in rejection of the proposal as non-responsive.

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

1.16 REJECTION OF PROPOSALS

The Department 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.

1.17 MOST FAVORABLE TERMS

The Department reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially on the most favorable terms which can be proposed. There will be no best and final offer procedure. The Department does reserve the right to contact the Vendor for clarification of the proposal.

The apparent successful Vendor should be prepared to accept this RFP for incorporation into a contract resulting from this RFP. It is understood that this RFP will become a part of the official procurement file on this matter without obligation to the Department.

1.18 COSTS TO PROPOSE

The Department will not be liable for any costs incurred by the Vendor 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.

SECTION II - PROPOSAL ORDER OF APPEARANCE

The proposal must provide the information requested in all of the subsections of Section III, Proposal Content Requirements. The Vendor shall reiterate the number and the heading of the requirement in sequence and write the response immediately after each requirement statement. Proposals must provide information in the same order as presented in this document and with the same headings. .

SECTION III - PROPOSAL CONTENT REQUIREMENTS

3.1 LETTER OF SUBMITTAL (MANDATORY – NOT SCORED)

The Letter of Submittal (mandatory) and attached Certifications and Assurances form (Exhibit A to this RFP), must be signed and dated by a person authorized to legally bind the Vendor to a contractual relationship, e.g. the President or Executive Director of a corporation, managing partner if a partnership, or the proprietor of a sole proprietorship. Along with introductory remarks, the Letter of Submittal is to include by attachment the following information about the Vendor and any proposed subcontractors:

1. Name, address, principal place of business, telephone number, and fax number/e-mail address of legal entity or business with whom a contract would be written.
2. Name address, and telephone number of each principal officer of the legal entity with whom a contract would be written (President, Treasurer, Chairperson of the Board of Directors, etc.).
3. Legal status of the Vendor (sole proprietorship, partnership, corporation, etc.).State of incorporation, partnership, etc.
4. Federal Employer Tax Identification number and the Washington Uniform Business Identification (UBI) number issued by the state of Washington Department of Revenue.
5. Identify any Washington 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 Vendor's organization. If following a review of this

information, the Department determines that a conflict of interest exists, the Vendor may be disqualified from further consideration for the award of the contract.

3.2 TECHNICAL PROPOSAL (SCORED)

3.2.1 Vendor shall provide a turnkey system which meets the requirements described in Section 1.3, above and best meets the Purpose and Objectives in Section 1.1, above.

3.2.2 The Technical Proposal must contain a comprehensive description of how the vendor's system will provide the following:

3.2.2.1.1 Describe the ordering systems to be installed; How many installations? How is the system connected to DOC? Describe the cycle time for downloads; Describe the time out function on the ordering system, if any;

3.2.2.2 Describe the process and timeline for installation of the ordering systems in the facilities; Describe the tech support that will be available; Describe the expected response time to address system/hardware problems; Describe the training that will be provided to offenders/staff on system operation.

3.2.2.3 Describe how offenders would order commissary items. Describe the process for offenders to access the system; Describe the security protocols necessary to access the system.

3.2.2.4 Describe your process to incorporate the desirable future enhancements in the system.

3.3 MANAGEMENT PROPOSAL

3.3.1 Staff Qualifications/Experience – Identify staff, including subcontractors, who will be assigned to the potential contract, indicating the responsibilities and qualifications of such personnel.

3.2.1 Client References

Provide three references from institutions/agencies currently being using a similar system. The Vendor must grant permission to the Department to contact the references. For each reference provided, give

1. Name, address, telephone number and FAX number;
2. Contact person;
3. Performance dates;
4. Costs charged offenders and commissions paid, and
5. Signed Consent to Release Information form.

3.4 COST PROPOSAL

Describe the costs that will be borne by the department for the use of this system.

3.5 RELATED INFORMATION (MANDATORY)

1. If the Vendor or any subcontractor contracted with the state of Washington during the past 24 months, indicate the name of the Department, the contract number and project description and/or other information available to identify the contract.
2. If the Vendor 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 Vendor's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction of the part of the Vendor, or (b) litigated and such litigation determined that the Vendor was in default. Submit full details of the terms for default including the other party's name, address, and phone number. If the Vendor has experienced no such termination for default in the past five years, so indicate.

The Department will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience.

SECTION IV - PROPOSAL PREPARATION

4.1 PROPOSAL FORMAT

The proposal should be prepared on 8 1/2" by 11" inch white paper. The proposal is to be separated into 5 parts: Letter of Submittal, Technical Proposal, Management Proposal, Cost Proposal, and Related Information.

A copy of the proposal in electronic form (Adobe PDF) is also requested by the Department.

The proposal must provide the information requested in all of the subsections of Section III, Proposal Content Requirements. The Vendor shall reiterate the number and the heading of the requirement in sequence and write the response immediately after each requirement statement. Failure to answer each requirement may cause the proposal to be deemed non-responsive and be disqualified from further consideration.

4.2 SUBMITTAL LETTER, CERTIFICATIONS AND ASSURANCES

Proposals must include a Letter of Submittal and the Certifications and Assurances, Exhibit A. All statements must be signed and dated by a signatory, who has full authority to bind the Vendor submitting the proposal to the contents of the proposal.

4.3 PROPOSAL SUBMITTAL AND CLOSING DATE

One (1) original and five (5) complete copies of each proposal, including all supporting documentation, and one (1) unprotected Adobe File Document in .PDF format compatible with version 8.0 of Acrobat Professional or Reader on CD, DVD or USB thumb-drive, whether mailed or hand delivered, must be RECEIVED at the RFP Coordinator's Office no later than 4:00 p.m. PST on the closing date of March 7, 2011, in accordance with the directions given below. No other distribution of the proposal is to be made by the Vendor.

LATE PROPOSALS WILL NOT BE ACCEPTED AND WILL BE AUTOMATICALLY DISQUALIFIED FROM FURTHER CONSIDERATION. TIME EXTENSIONS WILL NOT BE GRANTED.

All proposals and accompanying documentation become the property of the Department and will not be returned.

4.4 PROPOSALS DELIVERED BY MAIL

Proposals delivered by mail must be addressed as follows:

John Nispel, RFP Coordinator
Contracts and Legal Affairs
Department of Corrections
P. O. Box 41114
Olympia, Washington 98504-1114

Vendors are encouraged to use registered or at least first class mail and allow sufficient time to meet the proposal closing date.

4.5 PROPOSALS DELIVERED BY HAND/COURIER SERVICE

Proposals that are hand delivered must be taken to:

John Nispel, RFP Coordinator
Contracts and Legal Affairs
Department of Corrections
7345 Linderson Way SW
Tumwater, Washington 98501

When hand delivering proposals, please sign in with the security guard at the entrance. The Department will accept hand delivered proposals between 8:00 a.m. and 4:00 p.m. PST daily except for Saturdays, Sundays, and state holidays.

4.6 FAXED/E-MAIL PROPOSALS

Proposals submitted by facsimile or e-mail will **NOT** be accepted.

4.7 PROPRIETARY INFORMATION

All proposals and accompanying documentation become the property of the Department and will not be returned. The Department shall have the right to use any or all ideas or adaptations of the ideas presented in any proposal received in response to this RFP. Selection or rejection of the proposal will not affect this right.

Any restriction on the use of data contained within a proposal must be clearly marked in the proposal itself. Entire proposals marked proprietary will not be honored. Proprietary information submitted in response to this RFP will be handled in accordance with applicable Washington Department of Corrections regulations and Washington State law.

The content of the proposal of a successful Vendor will be included by reference in any resulting contract.

SECTION V - EVALUATION OF PROPOSALS

5.1 PROPOSAL EVALUATION

Responsive proposals will be evaluated against the requirements stated in this solicitation and any addenda issued. The evaluation of proposals will be accomplished by an evaluation team, to be determined by Department, which will determine the ranking of the proposals.

Department may select the top-scoring firms as finalists for a demonstration of the software and hardware capabilities of the system or may award a contract directly to the highest scoring vendor, at its sole option.

It is understood that upon finalization of a contract with the successful Vendor(s) all proposals will become a part of the official file on this matter without obligation to the Department and shall be a matter of public record. Until such time, all proposals will be held as a part of work in progress and are not disclosable.

5.2 SYSTEM DEMONSTRATION MAY BE REQUIRED

The Department may select the top scoring finalists from the written evaluation for an oral presentation and final determination of contract award. The Department will contact the top-scoring firm(s) to schedule a date, time, and location. Commitments made by the Vendor at the demonstration, if any, will be considered binding. If conducted, the score from the demonstration will be considered independently and will determine the apparently successful Vendor.

5.3 RESPONSIVENESS

All proposals will be reviewed by the RFP Coordinator to determine compliance with the administrative requirements and instructions specified in the RFP. Only responsive proposals that meet the minimum requirements will be forwarded to the evaluation team for further review.

5.4 CLARIFICATION

The RFP Coordinator and Evaluation Committee members may contact the Vendor for clarification of any portion of the Vendor's proposal. In addition, the Vendor may be contacted and requested to provide a demonstration of application material.

5.5 SCORING

The following maximum points will be assigned to the proposal for evaluation purposes and to determine firms that will provide system demonstrations:

Technical Proposal	25 percent
Management Proposal	15 percent
Cost Proposal	<u>60 percent</u>

Total for Written Proposal 100 percent

System demonstrations, if held, will be scored separately.

Evaluation criteria will include such elements as:

- Demonstrated understanding of project requirements
- Relevant experience
- Qualifications
- Ordering time
- System accessibility
- Interference with other uses
- References
- Costs
- Other considerations

If held, the apparent successful vendor will be chosen based on the scoring of the demonstrations.

5.6 REJECTION OF PROPOSALS

THE DEPARTMENT RESERVES THE RIGHT AT ITS SOLE DISCRETION TO REJECT ANY OR ALL PROPOSALS FOR ANY REASON WHATSOEVER PRIOR TO THE EXECUTION OF A CONTRACT WITH NO PENALTY TO THE DEPARTMENT OR THE STATE. THIS RFP DOES NOT OBLIGATE THE DEPARTMENT OR THE STATE OF WASHINGTON TO AWARD A CONTRACT AS A RESULT OF THIS RFP.

5.7 FINAL SELECTION

Awards will be made based on multiple factors. The evaluation process is designed to award this contract to the Vendor whose proposal best meets the requirements of this RFP. The final selection, if any, will be based upon the evaluation committee's recommendation after analysis of the technical, management, and cost elements of the proposal and the system demonstration.

THE EVALUATION PROCESS IS DESIGNED TO AWARD A CONTRACT TO THE VENDOR WHO, IN THE OPINION OF THE DEPARTMENT, BEST MEETS THE PURPOSE AND OBJECTIVES AND THE REQUIREMENTS SET FORTH IN THIS RFP AND IS IN THE BEST INTEREST OF THE DEPARTMENT AND THE STATE OF WASHINGTON.

5.8 NOTICE OF AWARD OF CONTRACT

The Department will endeavor to notify all Vendors on or before April 12, 2011, which Vendor the Department has selected for contract negotiation.

5.9 DEBRIEFING CONFERENCE

Vendors who submitted a proposal may, within one business day of receipt of the notice of non-selection, request a meeting for debriefing and discussion of their proposals. The request may be submitted to the RFP Coordinator, in writing, by FAX or e-mail. Debriefings will be completed within the five business days following the mailing of the notice of non-selection. The Department will control the scheduling of debriefings. In order to participate in the Protest procedure Vendors must participate in a debriefing conference.

Discussion will be limited to a critique of the requesting Vendor's proposal. Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

SECTION VI - PROTEST PROCEDURES

Vendors 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 Vendors under this procurement.

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

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

- A matter of bias, discrimination or conflict of interest on the part of the evaluator.
- Errors in computing the score.
- Non-compliance with procedures described in the procurement document or Department 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) Department's assessment of its own and/or other agencies needs or requirements.

Upon receipt of protest, a protest review will be held by the Contracts and Legal Affairs Administrator of the Department. The Contracts and Legal Affairs Administrator will consider the record and all available facts and issue a decision within five 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 Vendor which submitted a proposal, such Vendor will be given an opportunity to submit its views and any relevant information on the protest to the Contracts and Legal Affairs Administrator.

The final determination of the protest shall:

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

If the Department determines that the protest is without merit, the Department will enter into a contract with the apparently successful contractor. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

If the protest involves the rejection of a proposal, the protest must be received by the Contracts and Legal Affairs Section no later than 5:00 p.m., PST on the fifth business day following the debriefing conference. Only those who are eligible to submit a proposal under the criteria established by the Contracts and Legal Affairs Administrator may protest the rejection of a proposal.

The Contracts and Legal Affairs Administrator will consider the record and all facts available and issue a decision within five business days of receipt of the protest unless additional time is required, in which case the protesting party will be notified by the Contracts and Legal Affairs Section of the delay. The decision of the Contracts and Legal Affairs Section will be final and conclusive.

SECTION VII - MISCELLANEOUS PROVISIONS

7.1 WAIVER OF RFP TERMS AND CONDITIONS

The Department reserves the right to waive specific terms and conditions contained in this RFP. Submission of a proposal is predicated upon acceptance of all terms and conditions contained in this RFP, unless the Vendor has obtained a waiver of specific terms and conditions in writing from the Department prior to submission of the proposal. Such a waiver, if granted, will be applicable to all Vendors.

7.2 AUTHORITY TO BIND THE DEPARTMENT

The Secretary is the only individual who may legally commit the Department to the expenditure of public funds. No cost chargeable to the proposed contract may be incurred before receipt of either a fully executed contract or a specific, written authorization from the Secretary or his delegate.

7.3 CERTIFICATION AND ASSURANCES

The Certification and Assurances form, Exhibit "A" must be signed and dated by a signatory, who has full authority to bind the entity submitting the proposal to the contents of the proposal.

7.4 TERMS AND CONDITIONS

This RFP is subject to all the terms and conditions contained herein.

7.5 GENERAL TERMS AND CONDITIONS

The General Terms and Conditions, attached to this RFP as Exhibit B, will be made a part of any contract awarded pursuant to this RFP. In no event is a Vendor to submit its own standard contract terms and conditions in response to the solicitation. The Vendor may submit exceptions as allowed in the Certifications and Assurances section. The Department will review requested exceptions and accept or reject the same at its sole discretion. By submitting an RFP proposal the Vendor is agreeing to all terms and conditions of the General Terms and Conditions.

7.6 CANCELLATION OR REISSUANCE OF THE RFP

The Department reserves the right to cancel or reissue this RFP in whole or in part and for any reason, at the sole discretion of the Department at any time prior to the execution of a contract.

7.7 WAIVER OF MINOR ADMINISTRATIVE IRREGULARITIES

The Department reserves the right, at its sole discretion, to waive minor administrative irregularities contained in any proposal.

7.8 INSURANCE COVERAGE

The apparent successful Vendor is to furnish the Department with a certificate of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth below.

The 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 Contractor shall furnish evidence in the form of a Certificate of Insurance that insurance shall be provided, and a copy shall be forwarded to the Department within fifteen (15) days of the contract effective date.

Liability Insurance

- 1) Commercial General Liability Insurance: Contractor shall maintain general liability (CGL) insurance and, if necessary, commercial umbrella insurance, with a limit of not less than \$1,000,000 per each occurrence. If 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 from 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 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 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.
- 3) Copyright infringement coverage.

Worker's Compensation Coverage

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. The State will not be held responsible in any way for claims filed by the Contractor or their employees for services performed under the terms of this contract.

7.9 SITE SECURITY

Contractor, its agents, employees, and subcontractors shall conform in all respects with physical, fire, or other security policies or regulations while on Department premises. Failure to comply with safety regulations may be grounds for revoking or suspending security access to these facilities. Department reserves the right and authority to immediately revoke security access to Contractor staff for any real or threatened breach of this provision. Upon reassignment or termination of any Contractor staff, Contractor agrees to promptly notify Department. Any staff entering a facility must pass a NCIC criminal record background check prior to entry to the facility.

EXHIBIT A
CERTIFICATION AND ASSURANCES

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

1. 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 Department 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. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)
5. I/we understand that the Department will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of the Department, 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 that have been submitted have not been knowingly disclosed by the Vendor and will not knowingly be disclosed by him/her prior to opening, directly or indirectly to any other Vendor 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 Vendor to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

Signed this ____ day of _____ 2011

Signature _____ Title: _____

EXHIBIT B
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.