



EXECUTIVE DOCUMENT SUMMARY

Instructions for completing the EDS and the Contract process.

RECEIVED

- 1. Please read the guidelines on the back of this form.
2. Please type all information.
3. Check all boxes that apply.
4. For amendments / renewals, attach original contract.
5. Attach additional props if necessary.

AUG 26 2019

JS

IDOA CONTRACTS

1. EDS Number: C39-19-ALJ2
2. Date prepared: 08/08/19
3. CONTRACTS & LEASES

Professional/Personal Services, Grant, Lease, Attorney, MOU, QPA, Contract for procured Services, Maintenance, License Agreement, Amendment #, Renewal #, Other

FISCAL INFORMATION

4. Account Number: 10560-125000531014
5. Account Name: Department of Administration
6. Total amount this action: \$10,000.00
7. New contract total: \$10,000.00
8. Revenue generated this action: \$0.00
9. Revenue generated total contract: \$0.00

10. New total amount for each fiscal year:
Year 2020 \$ 10,000.00
Year \$
Year \$
Year \$
Year \$

TIME PERIOD COVERED IN THIS EDS

11. From (month, day, year): 6/1/2019
12. To (month, day, year): 5/31/2021
13. Method of source selection: Bid/Quotation, Emergency, RFP #, Negotiated, Special Procurement, Other (specify)

35. Will the attached document involve data processing or telecommunications systems(s)? Yes: IOT or Delegate has signed off on contract

36. Statutory Authority (Cite applicable Indiana or Federal Codes): 25 IAC 5

37. Description of work and justification for spending money. (Please give a brief description of the scope of work included in this agreement.) N
Vendor will act as Administrative Law Judge (ALJ) to preside over administrative hearings, which are required by or authorized under 25 IAC 5 for review of final determinations by the State.

38. Justification of vendor selection and determination of price reasonableness:
Three vendors were contacted. Two of the vendors agreed to preside as ALJ at the rate of \$60 per hour.
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39. If this contract is submitted late, please explain why: (Required if more than 30 days late.)
SBA ACCOUNTING

40. Agency fiscal officer or representative approval
41. Date Approved: 8-14-19
42. Budget agency approval
43. Date Approved: 8/29/19
44. Attorney General's Office approval
45. Date Approved
46. Agency representative receiving from AG
47. Date Approved

AGENCY INFORMATION

14. Name of agency: Indiana Department of Administration
15. Requisition Number:
16. Address: IDOA, Minority Business, 402 W Washington Street Rm W469, Indianapolis, IN 46204

AGENCY CONTACT INFORMATION

17. Name: John Snethen
18. Telephone #: 317-234-2718
19. E-mail address: jsnethen@idoa.in.gov

COURIER INFORMATION

20. Name: Sandra Redding
21. Telephone #: 317-232-3153
22. E-mail address: sredding@idoa.in.gov

VENDOR INFORMATION

23. Vendor ID Number: 0000301829
24. Name: Jane Deitchman
25. Telephone #:
26. Address: J Clare Deitchman LLC, 748 E Bates Ste 105, Indianapolis, IN 46202

27. E-mail address: cdeitchmanlaw@att.net
28. Is the vendor registered with the Secretary of State? (Out of State Corporations, must be registered) Yes No

29. Primary Vendor: M/WBE/IN-Veteran
Minority: Yes No
Women: Yes No
IN-Veteran: Yes No
30. Primary Vendor Percentages: 100.0%

31. Sub Vendor: M/WBE/IN-Veteran
Minority: Yes No
Women: Yes No
IN-Veteran: Yes No
32. If yes, list the %:
Minority: %
Women: %
IN-Veteran: %

33. Is there Renewal Language in the document? Yes No
34. Is there a "Termination for Convenience" clause in the document? Yes No

## PROFESSIONAL SERVICES CONTRACT

EDS # C39-19-ALJ2

This Contract ("this Contract"), entered into by and between **Clare Deitchman** (the "Contractor") and **Indiana Department of Administration** (the "State"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

**1. Duties of Contractor.** The Contractor shall provide the following services relative to this Contract:

The Contractor shall act as an administrative law judge ("ALJ") to preside over administrative hearings, including preliminary and subsequent matters relevant thereto, which are required by or authorized under 25 IAC 5 for review of final determinations by the State.

The Contractor shall have had no prior involvement in the matter to be heard.

Invoices to the State shall show with particularity the date and description of the services rendered.

**2. Consideration.** The Contractor will be paid at the rate of sixty dollars per hour (\$60.00/hr) for performing the duties set forth above. Total remuneration under this Contract shall not exceed \$10,000.

**3. Term.** This Contract shall be effective for a period of 24 months. It shall commence on September 1, 2019, and shall remain in effect through August 31, 2021.

**4. Access to Records.** The Contractor shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. It shall make such materials available at its offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.

**5. Assignment; Successors.** The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that the Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

**6. Audits.** The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC §5-11-1, *et seq.*, and audit guidelines specified by the State.

**7. Changes in Work.** The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. The Contractor shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

## 8. Compliance with Laws.

A. The Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.

B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC §4-2-6, *et seq.*, IC §4-2-7, *et seq.* and the regulations promulgated thereunder. **If the Contractor has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the Contractor shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this contract.** If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Contractor agrees that any payments currently due to the State of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.

E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC §5-17-5.

F. The Contractor warrants that the Contractor shall obtain and maintain all required permits, licenses, registrations, and approvals.

G. As required by IC §5-22-3-7:

(1) The Contractor and any principals of the Contractor certify that:

(A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of:

(i) IC §24-4.7 [Telephone Solicitation Of Consumers];

(ii) IC §24-5-12 [Telephone Solicitations]; or

(iii) IC §24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and

(B) the Contractor will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

(2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor, except for de minimis and nonsystematic violations,

(A) has not violated the terms of IC §24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and

(B) will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

**9. Condition of Payment.** All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of any federal, state or local statute, ordinance, rule or regulation.

**10. Confidentiality of State Information.** The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract will not be disclosed to or discussed with third parties without the prior written consent of the State.

The parties acknowledge that the services to be performed by Contractor for the State under this Contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the State in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Contractor and the State agree to comply with the provisions of IC §4-1-10 and IC §4-1-11. If any Social Security number(s) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this contract.

**11. Default by State.** If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute measures to collect monies due up to and including the date of termination.

**12. Disputes.**

A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute.

**13. Drug-Free Workplace Certification.** As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Contractor hereby covenants and agrees to make a good

faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor, or an employee of the Contractor in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

**14. Force Majeure.** In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately or as soon as is reasonably possible under the circumstances give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

**15. Funding Cancellation.** When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

**16. Governing Law.** This Contract shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

**17. Indemnification.** The Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all third party claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The State shall not provide such indemnification to the Contractor.

**18. Independent Contractor; Workers' Compensation Insurance.** The Contractor is performing as an independent entity under this Contract. No part of this Contract shall be construed to represent the creation of an employment, agency, partnership or joint venture agreement between the parties. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

**19. Licensing Standards.** The Contractor shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules, or regulations governing services to be provided by the Contractor pursuant to this Contract. The State will not pay the Contractor for any services performed when the Contractor is not in compliance with such applicable standards, laws, rules, or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification, or accreditation, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract.

**20. Merger & Modification.** This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, except by written agreement signed by all necessary parties.

**21. Notice to Parties.** Whenever any notice, statement or other communication is required under this Contract, it shall be sent by first class mail or via an established courier/delivery service to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to: **(Include contact name and/or title, name of agency & address)**

John Snethen  
General Counsel, IDOA  
4012 W. Washington Street, GCS 4<sup>th</sup> Floor  
Indianapolis, IN 46204

B. Notices to the Contractor shall be sent to: **(Include contact name and/or title, name of vendor & address)**

Clare Deitchman  
748 E. Bates Street, Suite 105  
Indianapolis, Indiana 46202

As required by IC §4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the Indiana Auditor of State.

**22. Payments.** All payments shall be made thirty five (35) days in arrears in conformance with State fiscal policies and procedures and, as required by IC §4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC §4-13-2-20.

**23. Penalties/Interest/Attorney's Fees.** The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC §5-17-5, IC §34-54-8, IC §34-13-1 and IC § 34-52-2-3.

Notwithstanding the provisions contained in IC §5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

**24. Public Record.** The Contractor acknowledges that the State will not treat this Contract as containing confidential information, and will post this Contract on its website as required by Executive Order 05-07. Use by the public of the information contained in this Contract shall not be considered an act of the State.

**25. Renewal Option.** This Contract may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC §5-22-17-4. The term of the renewed contract may not be longer than the term of the original Contract.

**26. Severability.** The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

**27. Termination for Convenience.** This Contract may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior

to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price.

**28. Termination for Default.** With the provision of thirty (30) days' notice to the Contractor, the State may terminate this Contract in whole or in part if the Contractor fails to:

1. Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the State determines progress is being made and the extension is agreed to by the parties;
2. Perform the services within the time specified in this Contract or any extension;
3. Make progress so as to endanger performance of this Contract; or
4. Perform any of the other provisions of this Contract.

**29. Travel.** No expenses for travel will be reimbursed.

#### Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Contractor, or that the undersigned is the properly authorized representative, agent, member or officer of the Contractor. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the Contractor attests to compliance with the disclosure requirements in IC 4-2-6-10.5.**

**In Witness Whereof,** Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below agree to the terms thereof.

Contractor

By: \_\_\_\_\_

Clare Deitchman  
Clare Deitchman

Date: Aug. 15, 2019

IDOA

By: \_\_\_\_\_

John Snethen  
John Snethen, General Counsel

Date: 8-26-19

**Approved by:**

Indiana Department of Administration

By: Lesley A. Crane (for)  
Lesley A. Crane, Commissioner

Date: 8-26-19

**Approved by:**

State Budget Agency

By: Zachary Q. Jackson (for)  
Zachary Q. Jackson, Director

Date: 8/29/19