

STATE OF WASHINGTON  
DEPARTMENT OF LICENSING  
STANDARD TERMS AND CONDITIONS

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**1. MINORITY & WOMEN'S BUSINESS ENTERPRISES (MWBE)**

In accordance with the legislative findings and policies set forth in RCW 39.19, the State of Washington encourages participation in all of its contracts by Minority & Women's Business Enterprises (MWBE) firms either self-identified or certified by the Office of Minority & Women's Business Enterprises (OMWBE). While the State does not give preferential treatment, it does seek equitable representation from the minority and women's business community.

Participation by MWBE contractors may be either on a direct basis in response to this solicitation or as a subcontractor to a contractor. However, no preference will be given in the evaluation of Bids, no minimum level of MWBE participation shall be required, and Bids will not be evaluated, rejected or considered non-responsive on that basis.

Bidders may contact the Office of Minority & Women's Business Enterprises (OMWBE) at <http://www.omwbe.wa.gov/index.shtml> to obtain information on certified firms for potential sub-contracting arrangements or for information on how to become certified. Nothing in this section is intended to prevent or discourage participation from non MWBE firms, as well as MWBE firms.

**2. VETERAN/SERVICEMEMBER OWNED BUSINESS PARTICIPATION**

The State also strongly encourages participation of businesses owned by veterans and U.S. Active Duty, Reserve or National Guard service members. Vendors who are registered with the State Department of Veterans Affairs are encouraged to identify the participating firm. No minimum level of Veteran/Service member owned business participation is required as a condition of receiving an award, and no preference will be included in the evaluation of Proposals in accordance with RCW 43.60A. For questions regarding the above, contact the Washington State Department of Veterans Affairs at (800) 562-0132.

**3. ENTIRE AGREEMENT**

This document, including all addenda and subsequently issued change notices, comprises the entire agreement between the State Of Washington and the Contractor and shall be governed by the laws of the State Of Washington incorporated herein by reference. The venue for legal action shall be the Superior Court for the State Of Washington, County of Thurston. The state reserves the right to reject bids that propose alternate or additional terms and conditions.

**4. CONFLICT AND SEVERABILITY**

Conflict: In the event of conflict between this solicitation and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this solicitation to afford the state maximum benefits.

Severability: Any provision of this solicitation found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the solicitation.

**5. ANTITRUST**

The state maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, the Contractor hereby assigns to the state any and all claims for such overcharges except overcharges which result from antitrust violations commencing after the price is established under this contract and which are not passed on to the state under an escalation clause.

**6. NONDISCRIMINATION**

**A. Employment:**

Acceptance of this contract binds the Contractor to the Terms and Conditions of Section 601, Title VI, Civil Rights Act of 1964, as may be amended: In that "No person in the United States shall, on the grounds of race, color, national origin, sex, or age, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance." In

addition, "No otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Unless exempted by Presidential Executive Order #11246, as may be amended or replaced and applicable regulations there under, Contractor shall not discriminate against any employee or applicant for employment.

**B. Contracting:**

Contractors, Bidders, and Proposers shall not create barriers to open and fair opportunities for all businesses including MWBE's to participate in all State contracts and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate on the basis of race, color, creed, religion, sex, age, nationality, marital status, or the presence of any mental, or physical disability in an otherwise qualified disabled person.

**7. WORKERS' RIGHT TO KNOW**

Recently passed "right to know" legislation required the Department of Labor and Industries to establish a program to make employers and employees more aware of the hazardous substances in their work environment. WAC 296-62-054 requires among other things that all manufacturers/distributors of hazardous substances, including any of the items listed on this IFB, RFQ, or contract bid and subsequent award, must include with each delivery completed Material Safety Data Sheets (MSDS) for each hazardous material. Additionally, each container of hazardous material must be appropriately labeled with:

- The identity of the hazardous material,
- Appropriate hazardous warnings, and
- Name and address of the chemical manufacturer, importer, or other responsible party.

Labor and Industries may levy appropriate fines against employers for noncompliance and agencies may withhold payment pending receipt of a legible copy of the MSDS. It should be noted that OSHA Form 20 is not acceptable in lieu of this requirement unless it is modified to include appropriate information relative to "carcinogenic ingredients" and "routes of entry" of the product(s) in question.

**8. GIFTS AND GRATUITIES**

In accordance with RCW 39.26.020 and RCW 42.52.140-160, it is unlawful for any person to directly or indirectly offer, give or accept gifts, gratuities, loans, trips, favors, special discounts, services, or anything of economic value in conjunction with state business practices to another to refrain from submitting a proposal. Further RCW 39.26.020 and the Ethics in Public Service Law, Chapter 42.52 RCW prohibits state officers or employees from receiving, accepting, taking or seeking gifts (except as permitted by RCW 42.52.150) if the officer or employee participates in contractual matters relating to the purchase of goods or services.

**9. RIGHTS AND REMEDIES**

In the event of any claim for default or breach of contract, no provision in this document or in the bidder's offer shall be construed, expressly or by implication, as a waiver by the state of any existing or future right and/or remedy available by law. Failure of the state to insist upon the strict performance of any term or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract or by law, or the acceptance of (or payment for) materials, equipment or services, shall not release the Contractor from any responsibilities or obligations imposed by this contract or by law, and shall not be deemed a waiver of any right of the state to insist upon the strict performance of the contract.

**10. SAVE HARMLESS**

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless the State, agencies of the State, and all officers and employees of the State, from and against all claims for injuries or death arising out of or resulting from the performance of the Contract. Contractor's obligation to indemnify, defend and hold harmless include any claim by Contractors' agents, employees, representatives, or any subcontractor or its employees.

Contractor expressly agrees to indemnify, defend and hold harmless the State for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the Contract. Contractor shall be required to indemnify, defend and hold harmless the State only to the extent the claim is caused in whole or in part by negligent acts or omissions of Contractor.

Contractor waives its immunity under Title 51 RCW to the extent required to indemnify, defend and hold harmless the State and its agencies, officers, or employees.

**11. PERSONAL LIABILITY**

It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of the State of Washington be in any way personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement or representation made herein or in any connection with this agreement.

**12. SUPERVISION AND COORDINATION**

Contractor shall:

- Competently and efficiently supervise and direct the implementation and completion of all contract requirements specified herein.
- Designate in its bid to the state, a representative(s) with the authority to legally commit Contractor's firm. All communications given or received from the Contractor's representative shall be binding on the Contractor.
- Promote and offer to Purchasers only those materials, equipment and/or services as stated herein and allowed for by contractual requirements. Violation of this condition will be grounds for contract termination.

**13. ADVERTISING**

Contractor shall not advertise or publish information concerning this contract in any form or media without prior written consent from DOL.

**14. SUBCONTRACTS/ASSIGNMENT**

Contractor shall not subcontract or assign its obligations under this contract without the prior written consent of the Department of Licensing. The Contractor shall be responsible to ensure that all requirements of the contract shall flow down to any and all subcontractors.

**15. TAXES, FEES AND LICENSES**

Taxes: Where required by state statute or regulation, contractor shall pay for and maintain in current status and all taxes that are necessary for contract performance. Unless otherwise indicated, the purchaser agrees to pay State of Washington sales or use taxes on all applicable consumer services and materials purchased. No charge by contractor shall be made for federal excise taxes and the purchaser agrees to furnish contractor with an exemption certificate where appropriate. Sales tax shall not be included in bid pricing submitted.

Collection of Retail Sales Tax: In state suppliers: In general, in state suppliers engaged in retail sales activities within Washington State are required to collect and remit sales tax to Department of Revenue.

Out-of-state suppliers: In general, out-of-state suppliers must collect and remit "use tax" to Department of Revenue if the activity carried on by the seller in Washington State is significantly associated with supplier's ability to establish or maintain a market for its products in Washington State. Examples of such activity include where the supplier either directly or by an agent or other representative:

- a) Maintains an in-state office, distribution house, sales house, warehouse, service enterprise, or any other in-state place of business; or
- b) Maintains an in-state inventory or stock of goods for sale; or
- c) Regularly solicits orders from customers located within state via sales representatives entering the state; or

- d) Sends other staff into the state (e.g. product safety engineers, etc.) to interact with customers in an attempt to establish or maintain market(s); or
- e) Other factors identified in WAC chapter 458-20.

Out-of-state suppliers meeting one of the above criteria must register and establish an account with the Department of Revenue (DOR). Refer to WAC 458-20-193 (7 through 9) or contact the Washington State Department of Revenue. When out-of-state suppliers are not required to collect and remit "use tax", the agency is responsible for paying this tax, if applicable, directly to DOR.

Fees/Licenses: Prior to bid opening the Contractor shall pay for and maintain in a current status, any license fees, assessments, permit charges, etc., which are necessary for contract performance. It is the contractor's sole responsibility to monitor and determine any changes or the enactment of any subsequent regulations for said fees, assessments or charges and to immediately comply with said changes or regulations during the entire term of this contract.

Customs/Brokerage Fees: To be considered responsive, bid must include ALL customs duties, brokerage or import fees where applicable. Contractor shall take all necessary actions to ensure that materials or equipment purchased are expedited through customs. Failure to do so may subject contractor to liquidated damages as identified in this document and/or to other administrative actions considered appropriate.

#### 16. WARRANTIES

Product: Contractor warrants that all materials, equipment, and/or services provided under this contract shall be fit for the purpose(s) for which intended, for merchantability, and shall conform to the requirements and specifications herein. Acceptance of any service and inspection incidental thereto by the state shall not alter or affect the obligations of the Contractor or the rights of the state.

Price: Contractor warrants that prices of materials, equipment, and services set forth herein do not exceed those charged by the Contractor to any other customer purchasing the same goods or services under similar conditions and in like or similar quantities.

#### 17. LIENS, CLAIMS AND ENCUMBRANCES

All materials, equipment or services shall be free of all liens, claims, or encumbrances of any kind and if the state requests, a formal release of same shall be delivered to the state.

#### 18. DELIVERY

A. Time: Delivery must be made during normal work hours and within time frames proposed by Bidder herein and subsequently accepted by the state. Failure to comply may subject Contractor to non-delivery assessment charges and/or liquidated damages as appropriate. The state reserves the right to refuse shipment when delivered after normal working hours. Contractor shall verify specific working hours of individual agencies and so instruct carrier(s) to deliver accordingly. The acceptance by the purchaser of late performance with or without objection or reservation by the purchaser shall not waive the right to claim damage for such breach, nor preclude the purchaser from pursuing any other remedy provided herein, including termination, nor constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Contractor.

B. Terms: Unless otherwise specified, all goods are to be shipped FOB Destination freight prepaid and included. Where specific authorization is granted to ship goods FOB shipping point, Contractor agrees to prepay all shipping charges, route as instructed or if instructions are not provided, route by cheapest common carrier. Each invoice for shipping charges shall contain the original or a copy of the freight bill indicating that the payment for shipping has been made. The purchaser reserves the right to refuse COD shipments.

C. Location: All deliveries are to be made to the applicable delivery location in accordance with Interstate Commerce Commission rules or as indicated in purchase order. When applicable, Contractor shall take necessary actions to safeguard items during inclement weather.

D. Unauthorized: In no case shall Contractor initiate performance prior to receipt of written or verbal authorization from authorized purchasers. Expenses incurred otherwise shall be borne solely by the Contractor.

**19. INSPECTION AND REJECTION**

The Purchaser's inspection of all materials and equipment upon delivery is for the sole purpose of identification. Such inspection shall not be construed as final acceptance, or as acceptance of the materials or equipment, if materials or equipment does not conform to contractual requirements. If there are any apparent defects in the materials or equipment at the time of delivery, the Purchaser will promptly notify the Contractor thereof. Without limiting any other rights, the Purchaser and/or the state at its option, may require the Contractor to:

- Repair or replace, at Contractor's expense, any or all of the damaged goods, or
- Refund the price of any or all of the damaged goods, or
- Accept the return of any or all of the damaged goods.

**20. TITLE AND RISK OF LOSS**

Regardless of FOB point, Contractor agrees to bear all risks of loss, injury, or destruction of goods and materials ordered herein which occur prior to delivery and acceptance. Such loss, injury or destruction shall not release Contractor from any obligation hereunder.

**21. PERFORMANCE**

Acceptance by the purchaser of unsatisfactory performance with or without objection or reservation shall not waive the right to claim damage for breach, or terminate the contract, nor constitute a waiver of requirements for satisfactory performance of any obligation remaining to be performed by Contractor.

**22. IDENTIFICATION**

All invoices, packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written documents affecting this contract shall be identified by the applicable purchase order or field order number. Packing lists shall be enclosed with each shipment, indicating the contents therein.

**23. CHARGES FOR HANDLING**

No charges will be allowed for handling that includes but is not limited to packing, wrapping, bags, containers or reels, unless otherwise stated herein.

**24. INVOICING**

Contractor shall provide an original copy of invoice. Each invoice shall be submitted as required by the contract and shall reference the contract and field order or purchase order number. Invoices shall be properly annotated with applicable prompt payment discount(s).

**25. PAYMENT**

Payment will be made by the state agency or political subdivision indicated on ordering document. Any bid that requires payment in less than thirty (30) calendar days need not be considered. Qualifying prompt payment discount will be considered in determining the apparent lowest responsible and responsive bid. Invoices will not be processed for payment nor will the period of cash discount commence until receipt of a properly completed invoice and until all invoiced items are received and satisfactory performance of Contractor has been attained. If an adjustment in payment is necessary due to damage or dispute, the cash discount period shall commence on the date final approval for payment is authorized. Under "Chapter 39.76 RCW," if purchaser fails to make timely payment(s), Contractor may invoice for 1% per month on the amount overdue or a minimum of \$1.00. Payment will not be considered late if a check or warrant is mailed within the time specified. If no terms are specified, net 30 days will automatically apply. Payment(s) made in accordance with contract terms shall fully compensate the Contractor for all risk, loss, damages or expense of whatever nature and acceptance of payment shall constitute a waiver of all claims submitted by Contractor.

Payment for materials or equipment received or for services rendered shall be made by warrant issued from the Washington State Treasury and redeemable in U.S. dollars. Unless otherwise indicated, the state's sole

responsibility shall be to issue this warrant. Any bank or transaction fees or similar costs associated with currency exchange procedures shall be fully assumed by the contractor.

**26. QUALITY STANDARDS**

Product or service specifications herein are intended solely to clearly describe type and quality and not to be restrictive. Trade reference specifications describe the type product thus far found to best meet agency functional requirements and provide the most economical use life under agency use situations. So as not to misrepresent the requirements herein, brands other than those specified will therefore be considered on the basis of whether at least equal in quality/performance. Failure to submit with bid complete documentation sufficient to establish products bid as at least equal may be grounds for rejection. By submitting bid, bidder expressly warrants product bid as at least equal in quality and performance. The state's acceptance of a product bid as an "equal" is conditioned on the state's inspection and testing after receipt. If, in the sole judgment of the state, the item is determined not to be an equal, the bid may be rejected or the product returned at bidder's expense and/or the contract canceled without any liability whatsoever to the state. Any bid containing a brand that is not of equal quality, performance or use specified must be represented as an "alternate" and not as an "equal"; failure to do so shall be sufficient reason to consider the bid nonresponsive.

**27. DETERMINATION OF RESPONSIBILITY**

- A. During bid evaluation, the state reserves the right to make reasonable inquiry to determine the responsibility of any bidder. Requests may include, but not be limited to, financial statements, credit ratings, references, record of past performance, on-site inspection of bidder's, or bidder's subcontractor's facilities. Failure to respond to said request(s) will be sufficient reason to consider the bid nonresponsive.
- B. During the contract term, should the contractor be determined to be in violation of federal, state, or local laws or regulations, the state reserves the right to modify its initial determination of responsibility at the time of award and to take other action as determined appropriate, including but not limited to termination of the contract.

**28. SUPPLIER REGISTRATION**

Prior to award of a contract, any unregistered bidder may be required to complete a Supplier Registration Packet for placement on the state's supplier list.

**29. CHANGES**

No alteration in any of the terms, conditions, or contractual requirements herein shall be effective without the written consent of the Department of Licensing.

**30. BREACH, DEFAULT, TERMINATION**

- A. Breach: A breach of a term or condition of the contract shall mean any one or more of the following events: (1) Contractor fails to perform the services by the date required or by a later date as may be agreed to in a written amendment to the contract signed by the state; (2) Contractor breaches any warranty or fails to perform or comply with any term or agreement in the contract; (3) Contractor makes any general assignment for the benefit of creditors; (4) in the state's sole opinion, Contractor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder; (5) Contractor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors; (6) any receiver, trustee, or similar official is appointed for Contractor or any of the Contractor's property; (7) Contractor is determined to be in violation of federal, state, or local laws or regulations and that such determination, in the state's sole opinion renders the Contractor unable to perform any aspect of the contract.
- B. Default: A Contractor may be declared in default for failing to perform a contractual requirement or for a material breach of any term or condition.
- C. Termination for Convenience: The state may terminate this contract, in whole or in part, at any time and for any reason by giving thirty (30) calendar days written termination notice to Contractor. Termination charges shall not apply unless they are subsequently agreed upon by both parties. Where termination charges are applicable, both parties agree to negotiate in good faith and to limit the extent of negotiations to valid documented expenses incurred by Contractor prior to date of termination. If the

parties cannot agree to a satisfactory settlement, the matter may be subjected to mediation and/or legal proceedings.

- D. Termination for Breach and/or Default: Except in the case of delay or failure resulting from circumstances beyond the control and without the fault or negligence of the Contractor or of the Contractor's suppliers or subcontractors, the state shall be entitled, by written or oral notice, to cancel and/or terminate this contract in its entirety or in part for breach and/or for default of any of the terms herein and to have all other rights against Contractor by reason of the Contractor's breach as provided by law.
- E. Termination by Mutual Agreement: The state or the Contractor may terminate this contract in whole or in part, at any time, by mutual agreement with thirty (30) calendar days written notice from one party to the other.
- F. Sanctions: Any violations of the mandatory provisions of this contract shall be a material breach of contract for which the contractor may be subject to a requirement of specific performance, or damages and sanctions provided by contract, by RCW 39.19.090, or by other applicable laws.

**31. OPPORTUNITY TO CURE DEFAULT**

- A. Events: In the event that Contractor fails to perform a contractual requirement or materially breaches any term or condition, the state may issue a written or oral notice of default and provide a period of time in which Contractor shall have the opportunity to cure. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages. The state is not required to allow the Contractor to cure defects if the opportunity for cure is not feasible as determined solely by the state. The state may terminate the contract for nonperformance, breach or default without allowing the opportunity to cure by the Contractor.
- B. Remedies: If the nonperformance, breach or default remains after Contractor has been provided the opportunity to cure, the state may do one or more of the following:
  - 1. Exercise any remedy provided by law.
  - 2. Terminate this contract and any related contracts or portions thereof.
  - 3. Impose liquidated damages.
  - 4. Suspend Contractor from receiving future Invitations for Bid.

**32. LEGAL FEES**

The Contractor covenants and agrees that in the event suit is instituted by the purchaser for any nonperformance, breach or default on the part of the Contractor, and the Contractor is adjudged by a court of competent jurisdiction, he shall pay to the purchaser all costs, expenses expended or incurred by the purchaser in connection therewith, and reasonable attorney's fees.

**33. FORCE MAJEURE**

Definition: Except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences.

Notification: If either party is delayed by force majeure, said party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall be provided. The time of completion shall be extended by contract modification for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this contract.

Rights Reserved: The state reserves the right to cancel the contract and/or purchase materials, equipment or services from the best available source during the time of force majeure, and Contractor shall have no recourse against the state.