

**Invitation to Bid #TR0-5301**

**Traffic Signal Controllers and Compatible Cabinets and Equipment**

*This Contract is funded, in part, by the U.S. Department of Transportation, Federal Highway Administration (FHWA) and is subject to the requirements set forth by the applicable FHWA Master Agreements.*

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Table 1: Solicitation Schedule

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| --- | --- |
| Event | Date |
| ITB Issued | 5/06/2021 |
| Pre-Bid Conference (Optional) Via WebEx Only [(Join meeting)](https://seattle.webex.com/seattle/j.php?MTID=m5575baaedba453a608dfe5d08471cd03) | 5/10/2021 at 2 PM PST |
| Deadline for Questions | 5/18/2021 |
| Sealed Bids Due to the City | 5/27/2021 at 10 AM PST |

**The City may modify this schedule. Changes to the due date are posted on the City website and by amendment. Bids must be received by the due date and at the time and location specified in Section 5 “BID INSTRUCTIONS AND INFORMATION” or as amended.**

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# BACKGROUND AND PURPOSE

## Purpose:

The purpose of this Invitation to Bid is to solicit bids from interested and qualified Vendors for compatible traffic signal controllers and cabinets and equipment as specified in Section 4. Offers must be compliant with all federal provisions and clauses contained herein. See also Attachment B, Contract for federal terms and conditions.

## Single Award:

The City intends to award one contract and does not anticipate multiple awards. Regardless, the City reserves the right to make multiple or partial awards.

# SOLICITATION OBJECTIVES

The City expects to achieve the following outcomes through this solicitation: obtain a reliable and responsible vendor capable of providing the specified products in a cost- and time-efficient manner.

## Minimum Qualifications:

There are no minimum qualifications for eligibility to submit a bid.

# LICENSING AND BUSINESS TAX REQUIREMENTS

The Vendor must meet all licensing requirements that apply to their business immediately after contract award or the City may reject the Vendor before contract execution. Carefully consider related costs before submitting an offer, as the City does not separately pay or reimburse licensing costs.

## Seattle Business Licensing and associated taxes:

If you have a “physical nexus” in the city, you must obtain a Seattle Business license and pay all taxes due before the Contract can be signed. A “physical nexus” means you have physical presence, such as: a building/facility in Seattle, you make sales trips into Seattle, your own company drives into Seattle for product deliveries, and/or you conduct service work in Seattle (repair, installation, service, maintenance work, on-site consulting, etc.).

We provide a Vendor Questionnaire Form in our submittal package items later in this ITB, and it will ask you to specify if you have “physical nexus”. All costs for any licenses, permits and Seattle Business License taxes owed shall be borne by the Vendor and not charged separately to the City.

The apparent successful Vendor must immediately obtain the license and ensure all City taxes are current, unless exempted by City Code due to reasons such as no physical nexus. Failure to do so will cause rejection of the bid/proposal. Self-Filing: You can pay your license and taxes on-line using a credit card [www.seattle.gov/self](http://www.seattle.gov/self).

For Questions and Assistance, call the License and Tax Administration office which issues business licenses and enforces licensing requirements. The general e-mail is [tax@seattle.gov](mailto:tax@seattle.gov). The main phone is 206-684-8484. The licensing website is <http://www.seattle.gov/licenses>.

The City of Seattle website allows you to apply and pay on-line with a credit card if you choose.

If a business has extraordinary balances due on their account that would cause undue hardship to the business, the business can contact our office to request additional assistance. A weblink providing further explanation, with the application and instructions for a Seattle Business License is provided below.

Those holding a City of Seattle Business license may be required to report and pay revenue taxes to the City. Such costs should be carefully considered by the Vendor prior to submitting your offer. When allowed by City ordinance, the City will have the right to retain amounts due at the conclusion of a contract by withholding from final invoice payments.

The application for a Seattle Business License can be found at <https://www.seattle.gov/license-and-tax-administration/business-license-tax-certificates>.

## State Business Licensing and associated taxes:

Before the contract is signed, provide the State of Washington business license (a State “Unified Business Identifier” known as a UBI Number). If the State of Washington has exempted your business from State licensing (some foreign companies are exempt and sometimes, the State waives licensing because the company does not have a physical presence in the State), then submit proof of that exemption to the City. All costs for any licenses, permits and associated tax payments due to the State because of licensing shall be borne by the Vendor and not charged separately to the City.

Instructions and applications are at <http://bls.dor.wa.gov/file.aspx>.

# SPECIFICATIONS AND SCOPE OF WORK

The Vendor shall provide the items specified in Section 6.4, Bid Offer Sheet. Vendor shall provide such items as specified in each delivery order issued by the City, which may include directions the Vendor shall comply with such as: delivery due date(s) and location(s), specified product(s) and quantities, packaging, packing and/or shipping instructions, etc., as necessary. The specifications and scope of work can be accessed here:



## Brand Name or Approved Equal:

The manufacturer and model listed indicate a standard of performance acceptable to the City. Any alternate items proposed must meet or exceed the specifications of the equipment in both published specifications and actual performance. Alternates will not be considered for those items marked “No Substitutions.” Any alternate item proposed is subject to acceptance at the sole opinion of the City. Such determinations are not subject to protest, and remain the sole discretion of the City. If you intend to submit an “Approved Equal” product, you must present sufficiently clear and detailed materials, product specification sheets, manufacturer materials, or other evidence that the product is an “Approved Equal” to the brand stated. See the Evaluation Section for further detail about “Approved Equal” determinations.

## Contract Term:

This contract shall be for one year, with four one-year extensions allowed at the option of the City. The Vendor may provide a notice to not extend, but must provide such notice to the City at least 45 days prior to the renewal date.

## No Guaranteed Contract Utilization:

The City does not guarantee utilization through any resultant contract. The solicitation may provide estimates of utilization solely to help Vendors prepare their bids and does not serve as a guarantee of usage. The City reserves the right to make multiple or partial awards, and/or to order greater or less quantities based on City needs. The City reserves the right to use other appropriate contract sources to obtain these products or services, such as State of Washington Contracts. The City may also periodically re-solicit for new additions to the Vendor pool, to invite additional Vendors to submit bids for award. Use of such supplemental contracts does not limit the right of the City to terminate existing contracts for convenience or cause.

If the City awards multiple contracts to form a vendor pool, this ITB established competition compliant to City competitive proposal laws; the City Project Manager may place an order with any pool vendor or may solicit multiple quotes to select among the pool vendors. If departments request quotes, the Vendors must use the costs and hourly rates in the contract.

## Contract Expansion:

Any resultant contract or Purchase Order may be expanded as allowed below. A modification may be considered per the criteria and procedures below, for any ongoing Contract that has not yet expired. Likewise, a one-time Purchase Order may be modified if the bid reserved the right for additional orders to be placed within a specified period of time, or if the project or body of work associated with a Purchase Order is still active. Such modifications must be mutually agreed. The only person authorized to make such agreements for the City is the Buyer from the City Purchasing Division (Department of Finance and Administrative Services). No other City employee is authorized to make such written notices. Expansions must be issued in writing from the City Buyer in a formal notice. The Buyer will ensure the expansion meets the following criteria collectively: (a) it could not be separately bid, (b) the change is for a reasonable purpose, (c) the change was not reasonably known to either the City or Vendor at time of bid or else was mentioned as a possibility in the bid (such as a change in environmental regulation or other law); (d) the change is not significant enough to be reasonably regarded as an independent body of work; (e) the change could not have attracted a different field of competition; and (f) the change does not vary the essential identity or main purpose of the contract. The Buyer shall make this determination, and may make exceptions for immaterial changes, emergency or sole source conditions, or for other situations as required in the opinion of the Buyer.

Some changes are not an expansion of scope, including an increase in quantities, exercising bid options and alternates, or ordering work identified within the solicitation. If such changes are approved, changes are done as a written order issued by City Purchasing to the Vendor.

## Trial Period and Right to Award to Next Low Vendor:

A ninety (90) day trial period applies to contracts awarded by this solicitation. During the trial period, vendors must successfully perform. Failure to perform may cause immediate cancellation of the contract. If a dispute occurs or a discrepancy arises as to acceptability of product or service, the City’s decision prevails. The City will pay only for authorized orders received up to termination. If the contract is terminated within the trial period, the City may award the contract to the next low responsive Bidder by mutual agreement with that Bidder. Any new award will be for remaining contract work and is also subject to a trial period.

## Background Checks and Immigrant Status:

Background checks will not be required for workers that will be performing the work under this contract. The City has strict policies regarding the use of Background checks, criminal checks, immigrant status, and/or religious affiliation for contract workers. The policies are incorporated into the contract and available for viewing on-line at <http://www.seattle.gov/purchasing-and-contracting/social-equity/background-checks>

## Schedule, Orders, Delivery:

### Order Desk:

The successful vendorshall provide a telephone service or “order desk” to receive calls from City departments for advice or assistance, recommendations on products, parts, and repairs, and for receiving and processing of phone orders. The Order Desk shall be available from 7:00 a.m. to 5:00 p.m. all business days except City holidays. If your standard operating hours are otherwise, notify City Purchasing. Depending on the Department needs, hours similar to, but not exactly the same as the 7-5 schedule may be accepted by the City as compliance to this requirement.

### Adequate Inventory and Response Times:

The vendor shall provide response time and delivery for most new orders placed by the City as specified in a delivery/work order. Vendor will maintain adequate inventory to stock and provide same-day response on the most frequently ordered items, allowing City employees to purchase products or parts at the Vendor location within the same-day of placing the order.

### Pick-up Option:

City employees may pick up orders at the Vendor location. Vendor shall require a City ID and the employee’s Washington Driver’s license, City shop assignment and City equipment number when placing and picking up an order.

### Delivery Option:

The Vendor shall provide a delivery service for routine orders. The Vendor will pick up or deliver products to the City location specified. There will be no charge for delivery, unless specified in the Bid.

### No Minimum Order Quantities:

There will be no minimum order quantities for any resultant contract.

### Warranty:

The Vendor warrants all materials and workmanship delivered under any resulting contract to be free from defects, damage or failure which the City may reasonably determine is the responsibility of the Vendor, for a minimum of ninety (90) days after final acceptance and without cost to the City for labor, materials, parts, installation or any other costs except where longer periods of warranty or guarantees are specified.

### Right to Replace Products & Product Discontinuance:

If the manufacturer discontinues or replaces a product, Vendor may request the City accept a substitute product for the contract. Pricing for a product replacement or substitute must be the same discount rate as provided to the City on the original product.

### Prohibition on Advance Payments:

The City cannot accept requests for up-front payment, down payment or partial payment. Maintenance subscriptions may be paid up to one year in advance provided that the payment is reimbursed to the City on a prorated basis upon termination; all other expenses are payable net 30 days after receipt and acceptance of satisfactory compliance.

## Environmental Specifications:

### Environmental Standards:

Unless notified otherwise by the Vendor, products bid will be compliant to USEPA Standards published by the USEPA, unless specified otherwise.

See USEPA Standards at: <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

### PBT Free Specification - Persistent Bioaccumulative Toxic (PBT) Chemicals – Mercury, Dioxin, PCB, PBDE, Lead, PVC and other:

The City of Seattle adopted Resolution #30487 in 2002 which requires City Purchasing differentiate products that contain PBT chemicals and that release PBT chemicals during production or disposal, from those products that do not, and requires City Purchasing reduce acquisition of products that contain or release PBT chemicals. This includes mercury, dioxin, PCB, PBDE (polybrominated diphenyl ethers, i.e. flame retardants), and others identified by the State of Washington, Department of Ecology see <https://ecology.wa.gov/Waste-Toxics/Reducing-toxic-chemicals/Addressing-priority-toxic-chemicals>.

If a Bidder has a product that contains or releases any PBT materials, Bidder must immediately notify the City Buyer. Should the City determine there is no reasonable or economically feasible substitute, the City may amend allow for, or provide a maximum of 10% preference for, products that include or release the least PBT chemical practical. The City may reject Bids with PBT materials. Additional information is at: <http://www.ecy.wa.gov/toxhaz.html>. The City Council Resolution is below:



## Work Order Quotations for Pool Contracts:

For pool contract awards, City departments may request quotes from one or more of contract vendors in the pool. Vendors must issue quotes using unit prices in the contract. The City Project Manager shall describe to the companies the following information, and provide it by phone or fax to the pool Vendor: Description of work, Date work must start and /or be completed by, Special materials, parts, or equipment needed to complete the work, Location of the work, Time and date the quotation is due, Name, phone and fax numbers, of the City Project Manager, Other special information required to successfully perform the work. Firms shall respond before quotes are due. Firms who cannot quote are asked to reply back with “no bid.” If multiple quotations were solicited, the City Department will award to the lowest responsive quote and notify others not selected. A purchase order number shall be provided to the selected Vendor. After inspection that approves the completed work, the Vendor will invoice using the departmental purchase order number.

## Paid Sick Time and Safe Time Ordinance:

Be aware that the City has a Paid Sick Time and Safe Time ordinance that requires companies to provide employees who work more than 240 hours within a year inside Seattle, with accrued paid sick and paid safe time for use when an employee or a family member needs time off from work due to illness or a critical safety issue. The ordinance applies to employers, regardless of where they are located, with more than four full-time equivalent employees. This is in addition and additive to benefits a worker receives under prevailing wages per WAC 296-127-014(4). City contract specialists may audit payroll records or interview workers as needed to ensure compliance to the ordinance. Please see <http://www.seattle.gov/laborstandards>, or may call the Office of Labor Standards at 206.684.4500 with questions.

# BID INSTRUCTIONS AND INFORMATION

## Registration into City Online Business Directory:

If you have not previously completed a one-time registration into the City Online Business Directory, we request you register at: www.seattle.gov/obd. The City Online Business Directory is used by City staff to locate your contract(s) and identify companies for bid lists on future purchases. Bids are not rejected for failure to register, however, if you are awarded a contract and have not registered, you will be required to register, or you will be added into the system. Women and minority owned firms are asked to self-identify. If you need assistance, please call 206-684-0444.

## Communications:

All vendor communications concerning this acquisition and evaluation must be directed only to the Buyer below. Failure to comply may cause bid rejection. Unless authorized by the Buyer, no other City official or City employee is empowered to speak for the City regarding this solicitation or resultant contract evaluation.

Erin Buch

206-643-3851

[Erin.buch@seattle.gov](mailto:Erin.buch@seattle.gov)

## Pre-Bid Conference:

The City shall conduct an optional Pre-Bid conference (see date and time page 1), via WebEx using the information below. Vendors need not attend to be eligible to submit a Bid. The meeting answers questions potential Vendors may have regarding the solicitation document and to discuss and clarify issues. This is an opportunity for Vendors to raise concerns regarding specifications, terms, conditions, and any requirements of this solicitation. Failure to raise concerns over any issues at this opportunity will be a consideration in any protest filed regarding such items known as of this pre-bid conference.

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| |  | | --- | | **When it's time, join your Webex meeting here.** | |  |  |  |  | | --- | --- | | |  | | --- | | [Join meeting](https://seattle.webex.com/seattle/j.php?MTID=m5575baaedba453a608dfe5d08471cd03) | | |  | | **More ways to join:** | |  | | **Join from the meeting link** | | <https://seattle.webex.com/seattle/j.php?MTID=m5575baaedba453a608dfe5d08471cd03> | |  |  |  | | --- | | **Join by meeting number** | | Meeting number (access code): 187 058 7517 | | Meeting password: njVwaeny472 | |  |   **Tap to join from a mobile device (attendees only)**   [+1-206-207-1700,,1870587517##](tel:%2B1-206-207-1700,,*01*1870587517%23%23*01*) United States Toll (Seattle)   [+1-408-418-9388,,1870587517##](tel:%2B1-408-418-9388,,*01*1870587517%23%23*01*) United States Toll    **Join by phone**   +1-206-207-1700 United States Toll (Seattle)   +1-408-418-9388 United States Toll   [Global call-in numbers](https://seattle.webex.com/seattle/globalcallin.php?MTID=m96e0e783c33cac2eeb9a41b9a07d62f2)      **Join from a video system or application** Dial [1870587517@seattle.webex.com](sip:1870587517@seattle.webex.com)   You can also dial 173.243.2.68 and enter your meeting number.   |  | | --- | | **Join using Microsoft Lync or Microsoft Skype for Business** | | Dial [1870587517.seattle@lync.webex.com](sip:1870587517.seattle@lync.webex.com) | |  | | | Need help? Go to <https://help.webex.com> | | | |  | | | |

## Questions:

Submit questions to the Buyer by the deadline (see page 1). The City prefers such questions by e-mail to the City Buyer. Failure to request clarification of any inadequacy, omission, or conflict will not relieve Vendor of any responsibilities herein or in any subsequent contract. The Vendor is responsible to assure they received responses to the questions if issued.

## Changes to the ITB/Addenda:

A change may be made by the City if, in the sole judgment of the City, the change will not compromise the City’s objectives. A change will be made by formal written addendum issued by the City’s Buyer. Such Addenda shall become part of this ITB and included in the Contract. Interested Vendors are responsible to assure they received Addenda.

## Bid Blog:

You may opt to subscribe to an “RSS Feed” on our new Blog (titled “The Buy Line”). This is optional for your convenience and for companies familiar with RSS technology. If you are unfamiliar and would like to learn, you may call the City Buyer. The technology provides alerts for addenda or solicitations you may be interested in. <http://www.seattle.gov/purchasing-and-contracting/purchasing>

## Receiving Addenda and/or Question and Answers

The City Buyer will try to provide you notice, through the RSS Feed or e-mail, when changes or addendums are posted on our website. Notwithstanding such efforts, it is the Vendor responsibility to learn of addendums, responses, or notices issued by the City. Some third-party services post City of Seattle bids on their websites. The City does not guarantee such services have accurately provided bidders with all information, particularly Addendums or changes to bid date/time.

Bids are considered compliant to all Addendums, with or without specific Bidder confirmation. The Buyer can reject the Bid if it does not reasonably appear to have incorporated Addendum. The Buyer may reject bids that don’t appear to incorporate substantive Addendum, or the Buyer may find that the Addendum were not material and accept the bid.

## Submittal Requirements:

### COVID-19 Procedures:

Bid submittal and Bid Opening procedures have been changed in response to COVID-19 health and safety measures. Bids shall be submitted using the electronic process provided for below or delivered by U.S. mail or courier services (hand-delivery is only allowed via courier service).

### Late Submittals:

The submitter has full responsibility to ensure the response arrives at City Purchasing within the deadline. A submittal after the time fixed for receipt will not be accepted unless the lateness is waived by the City as immaterial based upon a specific fact-based review. Responses arriving after the deadline may be returned unopened to the Vendor, or the City may accept the package and make a determination as to lateness.

### Electronic Copy Submittal:

In lieu of a paper copy, bidders must submit bids via e-mail process as described below. All other bid requirements remain the same. The City uses a secure mailbox to receive and protect bids for a sealed opening at the designated date and time. To submit an electronic copy, bidders can e-mail their bid documents by the bid opening date and time (Table 1 or as otherwise amended) to [securebid@seattle.gov](mailto:securebid@seattle.gov).

Do not e-mail your bid response to any other e-mail address.

* Title the e-mail with the bid title, number and company name. Any risks associated with the electronic transmission of the bid submittal are borne by the Bidder.
* The City e-mail system will allow documents up to, but no larger than, 25 Megabytes. If the bidder also submits a paper-copy, the City will determine which form takes precedence if discrepancies occur.
* City intends to send a confirming e-mail in reply. However, a bidder may also call (206) 684-0444 to confirm their bid has been received by the City.

## Bid Opening:

Bids shall be publicly opened by the City at the date and time specified. Due to social distancing practices in place in response to COVID-19, Bidders wishing to attend the bid opening must do so through WebEx by accessing the following:

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| |  | | --- | |  | | |  | | --- | | **When it's time, join your Webex meeting here.** | |  |  |  |  | | --- | --- | | |  | | --- | | [Join meeting](https://seattle.webex.com/seattle/j.php?MTID=mdc5cdea978ba90e69f5e6f25ac92b5f6) | | |  | | **More ways to join:** | |  | | **Join from the meeting link** | | <https://seattle.webex.com/seattle/j.php?MTID=mdc5cdea978ba90e69f5e6f25ac92b5f6> | |  |  |  | | --- | | **Join by meeting number** | | Meeting number (access code): 187 220 7578 | | Meeting password: kGHBATMN338 | |  |   **Tap to join from a mobile device (attendees only)**   [+1-206-207-1700,,1872207578##](tel:%2B1-206-207-1700,,*01*1872207578%23%23*01*) United States Toll (Seattle)   [+1-408-418-9388,,1872207578##](tel:%2B1-408-418-9388,,*01*1872207578%23%23*01*) United States Toll    **Join by phone**   +1-206-207-1700 United States Toll (Seattle)   +1-408-418-9388 United States Toll   [Global call-in numbers](https://seattle.webex.com/seattle/globalcallin.php?MTID=m920f7af8ab50305ec139343044713ff6)      **Join from a video system or application** Dial [1872207578@seattle.webex.com](sip:1872207578@seattle.webex.com)   You can also dial 173.243.2.68 and enter your meeting number.   |  | | --- | | **Join using Microsoft Lync or Microsoft Skype for Business** | | Dial [1872207578.seattle@lync.webex.com](sip:1872207578.seattle@lync.webex.com) | | Need help? Go to <https://help.webex.com> | | |  | | | |
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## Bid and Price Specifications:

Vendor shall provide their Offer on the City forms, indicating unit prices for each item if applicable, attaching additional pages if needed. In the case of difference between the unit price and the extended price, the City shall use the unit price. The City may correct the extended price, if applicable. Unless specified otherwise, Vendor shall quote prices F.O.B. Destination, with freight prepaid and allowed, US Dollars.

## Do Not Submit Extra Comments, Explanations, Information or Changes:

The City will reject bids that take material exception to City specifications and contract. Never add information or explanations on your Offer form. Do not take exceptions, do not offer alternatives (unless City requests), and do not mark the Offer with changes. Do not attach your boilerplate. All those can cause bid rejection in the Buyer’s sole opinion. If the Offer Form doesn’t adequately address your concern, ask the Buyer for direction.

## Partial and Multiple Awards:

Unless stated to the contrary in the Solicitation, the City reserves the right to name a partial and/or multiple awards, in the best interest of the City. Prepare all pricing and Offers accordingly. The City may eliminate an individual line item when calculating award, to meet City needs, if a line item is not routinely available or cost exceeds City funds.

## Prompt Payment Discount:

As provided for on the Offer form, Vendor may provide a prompt payment discount term. A prompt payment discount term of ten or more days will be considered for bid tabulation.

## Taxes:

The City is exempt from Federal Excise Tax. Washington state and local sales tax will be an added line item although taxes are not used in bid tabulation for award.

## Interlocal Purchasing Agreements:

This is for information only and not to determine award. RCW 39.34 allows cooperative purchasing between public agencies, nonprofits and political subdivisions. Public agencies that file an Intergovernmental Cooperative Purchasing Agreement with the City may purchase from City Contracts. The seller agrees to sell additional items at the bid prices, terms and conditions, to other eligible governmental agencies. The City has no responsibility for the payment of such purchases. Should the Vendor impose additional costs for such purchases, the Vendor is to name such additional pricing as a supplement to their offer.

## Contract Terms and Conditions:

Vendors shall carefully review all specifications, requirements, Terms and Conditions (see Attachment B). Bid Submittal is agreement to all Terms and Conditions. All specifications, requirements, terms and conditions are mandatory and submittals should anticipate full compliance without exception.

## Incorporation of ITB and Bid in Contract:

This ITB and Vendor’s response, including promises, warranties, commitments, and representations made in the successful Bid, are binding and incorporated by reference in the City’s contract.

## Effective Dates of Offer:

Offered prices remain valid until City completes award. Should any Vendor object, do so before the bid due date.

## Cost of Preparing Bids:

The City is not liable for costs incurred by Vendors in bid preparation and presentation including, but not limited to, costs incurred for demonstrations and pre-Bid conferences.

## Prohibited Contacts:

Vendors shall not interfere in any way to discourage other potential and/or prospective Vendors from bidding or considering a bid process. Prohibited contacts includes but is not limited to any contact, whether direct or indirect (i.e. in writing, by phone, email or other, and by the Vendor or another person acting on behalf of the Vendor) to a likely firm or individual that may discourage or limit competition. If such activity is evidenced to the satisfaction and in sole discretion of the City Purchasing Manager, the Vendor that initiates such contacts may be rejected from the process.

## Vendor Responsibility to Examine Documents:

Vendor is responsible to examine all specifications and conditions thoroughly, and comply with specifications and terms and conditions. Vendors must comply with all Federal, State, and City laws, ordinances and rules, and meet any and all registration requirements per Washington State law. By responding to this Invitation to Bid (ITB), Bidder agrees he/she has read and understands all documents within this ITB package.

## Vendor Responsibility to Provide Full Response:

It is the Vendor’s responsibility to provide a full and complete written response and Offer Form that does not require interpretation or clarification by the Buyer. The Vendor is to provide all requested materials, forms and information. The Vendor must ensure the Offer accurately reflects Vendor specifications and offering. The City does not accept materials intended to supplement the bid after the bid deadline; however the City may consider additional materials obtained by the City, even if submitted by Vendor, or to seek clarifications from Vendor as needed. However this does not limit the right of the city to consider additional information (such as references that are not provided by the vendor but are known to the City, or past experiences by the City in assessing responsibility), or to seek clarifications by the City.

## Do Not Attach Additional Materials with your Bid:

Do not insert material sheets, extra product options, comments on boilerplate, supplemental or suggested contract terms, or other similar materials unless such materials are requested by the City or are necessary to show an “Approved Equal” product specification. Such additional materials can compromise the clarity of your bid and result in rejection of your offer. If the materials conflict with your Offer, the City will not be obligated to clarify or determine which has priority; the City may instead reject your bid.

## Changes or Corrections to Bids:

Prior to the bid submittal closing date and time established for this ITB, a Vendor may change its bid provided the change is initialed and dated by the Vendor. No change to a bid shall be made after the bid closing date and time. Note you cannot change, mark-up or cross-out any condition, format, provision or term that appears on the City’s published Offer Form. If you need to change your own prices or answers you write on the Offer Form must be made in pen, initialed, and be clear in intent. Do not use white-out.

## Errors in Bids:

Vendors are responsible for errors and omissions in their Bids. No such error or omission shall diminish the Vendor’s obligations to the City.

## Withdrawal of Bid:

A submittal may be withdrawn by written request of the submitter, prior to bid closing. After the closing date and time, the submittal may be withdrawn only with permission by the City.

## Rejection of Bids and Rights of Award:

The City reserves the right to reject any or all Bids with no penalty. The City also has the right to waive immaterial defects and minor irregularities in any submitted Bid.

## Bid Disposition:

All material submitted in response to this ITB shall become the property of the City upon delivery to the Buyer.

## Equal Benefits:

Seattle Municipal Code Chapter 20.45 (SMC 20.45) requires consideration of whether bidders provide health and benefits that are the same or equivalent to the domestic partners of employees as to spouses of employees, and of their dependents and family members. The bid package includes a “Vendor Questionnaire” which is the mandatory form on which you make a designation about the status of such benefits. If your company does not comply with Equal Benefits and does not intend to do so, you must still supply the information on the Vendor Questionnaire. Instructions are provided at the back of the Questionnaire.

## Women and Minority Opportunities:

The City intends to provide the maximum practicable opportunity for successful participation of minority and women owned firms, given such businesses are underrepresented. If a Bidder intends to subcontract any work, the City requires he/she agree to SMC Chapter 20.42 and include with their Bid an Inclusion Plan showing meaningful subcontracting opportunities for minority and women owned firms. The link to the Inclusion Plan is located in the Vendor Questionnaire. The City reserves the right to improve the Plan with the successful Bidder before contract execution. Good faith efforts to perform will be a material contract provision. Bidders should use whatever selection methods and strategies the Prime Bidder finds effective for successful WMBE participation. At the request of the City, Vendors must furnish evidence of the Vendor's compliance, including documentation such as copies of agreements with WMBE subcontractor either before contract execution or during contract performance. See also Section 88 Disadvantaged Business Enterprise (DBE) and Small Business of the Contract.

## Insurance Requirements:

Insurance requirements in the attached Terms and Conditions shall apply, unless modified by further materials within this solicitation. If formal proof of insurance must be submitted to the City before execution of the Contract, the City will remind the successful Vendor in the Intent to Award letter. The apparent successful Vendor must promptly provide such proof of insurance to the City in reply to the Intent to Award Letter. Contracts will not be executed until all required proof of insurance has been received and approved by the City. Vendors are encouraged to immediately contact their Broker to begin preparation of the required insurance documents, if the Vendor is selected as a finalist. Vendors may elect to provide the requested insurance documents within their Bid.

## ProprietaryMaterials:

The State of Washington’s Public Records Act (Release/Disclosure of Public Records): Under Washington State Law (reference RCW Chapter 42.56, the Public Records Act) all materials received or created by the City of Seattle are considered public records. These records include but are not limited to bid or proposal submittals, agreement documents, contract work product, or other bid material.

The State of Washington’s Public Records Act requires that public records must be promptly disclosed by the City upon request unless that RCW or another Washington State statute specifically exempts records from disclosure. Exemptions are narrow and explicit and are listed in Washington State Law (Reference RCW 42.56 and RCW 19.108).

Bidders/proposers must be familiar with the Washington State Public Records Act and the limits of record disclosure exemptions. For more information, visit the Washington State Legislature’s website at <http://www1.leg.wa.gov/LawsAndAgencyRules>).

If you have any questions about disclosure of the records you submit with your bid, please contact Purchasing at (206) 684-0444.

### Marking Your Records Exempt from Disclosure (Protected, Confidential, or Proprietary):

As mentioned above, all City of Seattle offices (“the City”) are required to promptly make public records available upon request. However, under Washington State Law some records or portions of records are considered legally *exempt from disclosure* and can be withheld. A list and description of records identified as exempt by the Public Records Act can be found in RCW 42.56 and RCW 19.108.

If you believe any of the records you are submitting to the City as part of your bid/proposal or contract work products, are exempt from disclosure you can request that they not be released before you receive notification. To do so you must complete the City Non-Disclosure Request Form (“the Form”) provided by City Purchasing (see Form as part of Vendor Questionnaire), very clearly and specifically identify each record and the exemption(s) that may apply, and submit a copy of your records with the specified exemptions redacted. (If you are awarded a City contract, the same exemption designation will carry forward to the contract records.)

The City will not withhold materials from disclosure simply because you mark them with a document header or footer, page stamp, or a generic statement that a document is non-disclosable, exempt, confidential, proprietary, or protected. Do not identify an entire page as exempt unless each sentence is within the exemption scope; instead, identify paragraphs or sentences that meet the specific exemption criteria you cite on the Form. Only the specific records or portions of records properly listed on the Form will be protected and withheld for notice. All other records will be considered fully disclosable upon request.

If the City receives a public disclosure request for any records you have properly and specifically listed on the Form, the City will notify you in writing of the request and will postpone disclosure. While it is not a legal obligation, the City, as a courtesy, will allow you up to ten business days to file a court injunction to prevent the City from releasing the records (reference RCW 42.56.540). If you fail to obtain a Court order within the ten days, the City may release the documents.

The City will not assert an exemption from disclosure on your behalf. If you believe a record(s) is exempt from disclosure you are obligated to clearly identify it as such on the Form and submit it with your solicitation. Should a public record request be submitted to City Purchasing for that record(s), you can then seek an injunction under RCW 42.56 to prevent release. By submitting a bid document, the bidder acknowledges this obligation; the proposer also acknowledges that the City will have no obligation or liability to the proposer if the records are disclosed.

## Requesting Disclosure of Public Records

The City asks bidders and their companies to refrain from requesting public disclosure of bids until an intention to award is announced. This measure is intended to protect the integrity of the solicitation process particularly during the evaluation and selection process or in the event of a cancellation or re-solicitation. With this preference stated, the City will continue to be responsive to all requests for disclosure of public records as required by State Law. If you do wish to make a request for records, please make your request at the City of Seattle’s Public Records Request Center at [www.seattle.gov/public-records/public-records-request-center](http://www.seattle.gov/public-records/public-records-request-center).

## Ethics Code:

Please familiarize yourself with the City Ethics code: <http://www.seattle.gov/ethics/etpub/et_home.htm>. Attached is a pamphlet for Vendors, Customers and Clients. Any questions should be addressed to Seattle Ethics and Elections Commission at 206-684-8500

### No Gifts and Gratuities:

Vendors shall not directly or indirectly offer anything of value (such as retainers, loans, entertainment, favors, gifts, tickets, trips, favors, bonuses, donations, special discounts, work, or meals) to any City employee, volunteer or official, if it is intended or may appear to a reasonable person to be intended to obtain or give special consideration to the Vendor. An example is giving sporting event tickets to a City employee on the evaluation team of a bid you plan to submit. The definition of what a “benefit” would be is broad and could include not only awarding a contract but also the administration of the contract or evaluating contract performance. The rule works both ways, as it also prohibits City employees from soliciting items of value from vendors. Promotional items worth less than $25 may be distributed by the vendor to City employees if the Vendor uses the items as routine and standard promotions for the business.

### Involvement of Current and Former City Employees:

If a Vendor has any current or former City employees, official or volunteer, working or assisting on solicitation of City business or on completion of an awarded contract, you must provide written notice to Purchasing of the current or former City official, employee or volunteer’s name. The Vendor Questionnaire within your bid documents prompts you to answer that question. You must continue to update that information to City Purchasing during the full course of the contract. The Vendor is to be aware and familiar with the Ethics Code, and educate vendor workers accordingly.

### Contract Workers with over 1,000 Hours:

The Ethics Code has been amended to apply to vendor company workers that perform over 1,000 cumulative hours on any City contract during any 12-month period. Any such vendor company employee covered by the Ethics Code must abide by the City Ethics Code. The Vendor is to be aware and familiar with the Ethics Code, and educate vendor workers accordingly.

### No Conflict of Interest:

Vendor (including officer, director, trustee, partner or employee) must not have a business interest or a close family or domestic relationship with any City official, officer or employee who was, is, or will be involved in selection, negotiation, drafting, signing, administration or evaluating Vendor performance. The City shall make sole determination as to compliance.

### Campaign Contributions (Initiative Measure No. 122)

Elected officials and candidates are prohibited from accepting or soliciting campaign contributions from anyone having at least $250,000 in contracts with the City in the last two years or who has paid at least $5,000 in the last 12 months to lobby the City. Please see Initiative 122, or call 206-684-8500 with questions.

# BID SUBMITTALS

Submit Bid in the following format and attachments. Attach each form within your bid*. (Note: Any Addendum could change the forms provided below.)* The Bidder Instructions have specified how the Buyer will consider a failure to incorporate changes made by Addendum):

## Legal Name:

Submit a certificate, copy of web-page, or other documentation from the Corporation Commission in which you incorporated that shows your legal name as a company. Many companies use a “Doing Business As” name or a nickname in their daily business. However, the City requires the legal name of your company, as it is legally registered. When preparing all forms below, use the proper company legal name. Your company’s legal name can be verified through the State Corporation Commission in the state in which you were established, which is often located within the Secretary of State’s Office for each state at <http://www.coordinatedlegal.com/SecretaryOfState.html>.

## CERTIFIED DEALER OR DISTRIBUTOR FOR SIEMENS:

This response is mandatory at time of bid for the Siemens products listed. Otherwise, a copy of the certification will be required upon request.

Vendor must be a certified dealer or distributor of this product, and must provide a copy of certification upon request (or at time of bid).

The Vendor, if other than the manufacturer, shall provide a current, dated, and signed authorization from the manufacturer that the Vendor is an authorized distributor, dealer or service representative and may sell the manufacturer's products. Failure to comply with this requirement may cause bid rejection.

## Vendor Questionnaire:

This response is mandatory. Submit this questionnaire even if you have sent one in to the City on a previous bid.



## Bid Offer Form:

This response is mandatory. In addition to the below bid offer form, please also submit a link to or copy of your firm’s published list prices upon request (or at time of bid submittal).



## Federal Forms: Lobbying Certifications/Standard Form LLL (SF-LLL) Disclosure of Lobbying Activities; Buy America; Certification regarding debarment, Suspension, and other responsibility matters

This response is mandatory.



## Submittal Checklist:

This checklist is for your convenience only. It need not be submitted with your bid. This checklist summarizes each form required to complete and submit your bid package to the City.

|  |  |
| --- | --- |
| **Form** | **Type** |
| Cover Sheet |  |
| Legal Name |  |
| Certified Dealer or Distributor | Mandatory |
| Vendor Questionnaire | Mandatory |
| Bid Offer Form | Mandatory |
| Published List Price | Upon Request or at time of bid submittal |
| Federal Form: Lobbying Certifications/SF-LLL | Mandatory |
| Federal Form: Certification of Materials Origin | Mandatory |
| Federal Form: Certification Regarding Debarment, Suspension and other Responsibility Matters | Mandatory |

# EVALUATION

## Responsiveness and Responsibility

Purchasing shall review submittals to determine basic responsiveness (timely submittal, all required forms submitted, etc), responsibility (minimum qualifications, equal benefit determinations, etc), WMBE Inclusion Plan, and technical minimum requirements if any (delivery date, required specifications etc). An initial review is made after opening, however additional and more detailed reviews may be made during evaluation and before award. The review may be made of all Vendors or only as needed to determine the lowest responsive and responsible Vendor.

## Specifications:

Before tabulating price, the City evaluates Vendor compliance with specifications and bid requirements, and determinations of “Approved Equal” alternates. If submitting an “Approved Equal” the bidder must show the product is equivalent, by attaching comprehensive manufacturing specifications or other appropriate materials. The Buyer may also obtain a manufacturer line card to verify. If manufacturer materials differ from the Bidder’s materials, the Bidder must explain why or the Buyer may rely upon the manufacturer specification materials alone to make the determination.

## Pricing:

Items on price sheets shall then be calculated for award. Item pricing will be multiplied by the number of units required for an item total and the discount will be applied thereafter for the total extended amount (item total). Item totals will be totaled for all items for a tabulated total. If an error in math occurs, unit pricing will be considered the correct price and will be used. If any cost item is missing from a bidder Offer Form, the City reserves the right to reject that Bid or to calculate and compare bids without that cost item considered.

## Prompt Payment Discount:

The City will calculate and reduce the pricing submitted by applying any prompt payment discounts.

## Local Business Tax Revenue Consideration:

SMC 20.60.106 (H) authorizes that in determining the lowest and best bid, the City shall consider the tax revenues derived by the City from its business and occupation, utility, sales and use taxes from the proposed purchase. The City will apply SMC 20.60.106(H) and calculate when the value could serve as a differentiator to determine the lowest bid. The City of Seattle’s Business and Occupation Tax rate varies according to business classification. Typically, the rate for service such as consulting and other professional services is .00415% and for retail or wholesale sales and associated services, the rate is .00215%. Only vendors that have a City of Seattle Business License and have an annual gross taxable Seattle income of $100,000 or greater, pay Business and Occupation Tax.

# AWARD AND CONTRACT EXECUTION

The City Buyer intends to provide written notice of the intention to award in a timely manner and to all Vendors responding to the Solicitation. Please note, however, there are time limits on protests to bid results, and Vendors have final responsibility to learn of results in sufficient time for such protests to be filed in a timely manner.

## Protests and Complaints:

The City has rules to govern the rights and obligations of interested parties that desire to submit a complaint or protest to this ITB process. Please see the City website at <http://www.seattle.gov/city-purchasing-and-contracting/solicitation-and-selection-protest-protocols> for these rules. Interested parties have the obligation to know of and understand these rules, and to seek clarification from the City.

## Instructions to the Apparently Successful Vendor(s):

The Apparently Successful Vendor(s) will receive an Intention to Award Letter from the Buyer after award decisions are made by the City. The Letter will include instructions for final submittals due prior to execution of the contract or Purchase Order. The Vendor will be expected to provide all essential documents within ten (10) business days. This includes attaining a Seattle Business License and payment of all associated taxes due and providing proper proof of insurance. If the selected Vendor fails to complete all the final submittals within the allotted ten (10) days, the City may elect to cancel the intended award and award to the next ranked Vendor, or cancel or reissue this solicitation. Cancellation of an award for failure to execute the Contract in the timeframes above may cause Bidder disqualification for future solicitations for this same or similar product/service.

## Final Submittals Prior to Award:

The Vendor(s) should anticipate that the Letter will require at least the following. Vendors are encouraged to prepare these documents when possible, to eliminate risks of late compliance.

1. Ensure Seattle Business License is current and all taxes due have been paid.
2. Ensure the company has a current State of Washington Business License.
3. Supply Evidence of Insurance to the City Insurance Broker if applicable
4. Special Licenses (if any)
5. Proof of certified dealer status (if applicable)
6. Supply a Taxpayer Identification Number and W-9 Form

## Taxpayer Identification Number and W-9:

Unless the apparently successful Vendor has already submitted a fully executed Taxpayer Identification Number and Certification Request Form (W-9) to the City, the apparently successful Vendor must execute and submit this form prior to the contract execution date.

ATTACHMENT A, CONTRACT

**City of Seattle**

**Terms and Conditions**

This contract will be funded, in part, by the U.S. Department of Transportation, Federal Highway Administration (FHWA) and will be subject to the requirements set forth by the Master Agreement, **Federal Aid # 693JJ31950002**, as amended.Note: Should the City instead choose to use a Contractor to install such items as available herein, the City will require the Contractor to supply such items itself.

# Entire Agreement

This Contract comprises the entire agreement between the City of Seattle (the “City”) and the Vendor. The Contract is defined to explicitly include this contract and all attachments as amended, and all Addendums and Vendor’s Offer. Where there are conflicts between these documents, the controlling documents will be in that same sequence, with the first taking priority over the last listed.

# Mutual Acceptance

This Contract has been accepted by both parties upon signature by the City of Seattle. The Contractor may provide an adjoining signature or may indicate mutual acceptance by receiving the Contract from the City without objection. If the Vendor objects, the Vendor must provide immediate written notice to the City Purchasing Department upon receipt of the Contract.

# Term

The Contract shall be for one year with four one-year options to extend. The option periods may only be extended provided the circumstances justifying a sole source still exist. Past the five-year term, the City may require continued performance of any services or supplies within the limits and at the rates specified in the contract; this option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contractor may provide a notice to not extend, but must provide such notice to the City at least 45 days prior to the renewal date.

# Schedule

Unless the City Buyer issues a written change, Contractor shall deliver the items or render the services by the due date or delivery schedule stated on the Contract. At the City’s option, Contractor’s failure to timely deliver or to perform may require expedited shipping at Contractor’s expense, or may be cause for termination of the Contract and the return of all or part of the items at Contractor’s expense. If Contractor anticipates difficulty in meeting the schedule, the Contractor shall promptly notify the City’s Buyer of such difficulty and the length of the anticipated delay.

# Limits of Sales to Authorized Products and Services

Contractor has responsibility to limit sales to those products or services authorized within the Contract, whether authorized by changes and amendments or stated within the original contract scope. The Contractor is responsible for refusing orders that are not properly authorized by the contract or through other proper Purchase Orders issued by authorized persons from the City. If the Contractor has consistent sales of unauthorized products or services, the City reserves the right to use any of the following: terminate the contract in accordance with termination provisions, place the Contractor payments on “hold” for all incoming invoices while the City determines which are authorized items eligible for payment, and/or refuse certain invoices that contain non-authorized items.

# Adjustments

The City Buyer at any time may make reasonable changes in the place of delivery, installation or inspection; the method of shipment or packing; labeling and identification; extension of contract duration, and ancillary matters that Contractor may accommodate without substantial additional expense to the City.

# Changes and Expansion Authority

No modification of this Contract shall be effective unless in writing and signed by an authorized representative of the City. The only person authorized to make amendments on behalf of the City is the designated Buyer from Purchasing, Department of Finance and Administrative Services. The City Buyer shall issue change notices to Contractor, and such notices shall be considered to take effect and be mutually acceptable, upon sole signature of the City Buyer, unless timely written objection is received from the Contractor.

# Contract Expansion

This contract may be expanded as mutually agreed, if such expansion is approved by the City Buyer. Expansions must be issued in writing from the City Buyer in a formal notice. The Buyer will ensure the expansion meets the following criteria collectively: (a) it could not be separately bid; (b) the change is for a reasonable purpose; (c) the change was not reasonably known to either the City or Contractors at time of bid or else was mentioned as a possibility in the bid (such as a change in environmental regulation or other law); (d) the change is not significant enough to be reasonably regarded as an independent body of work; (e) the change could not have attracted a different field of competition; and (f) the change does not vary the essential identity or main purpose of the contract. The Buyer shall make this determination, and may make exceptions for immaterial changes, emergency or sole source conditions, or for other situations as required in the opinion of the Buyer. Note that certain changes are not considered an expansion of scope, including an increase in quantities ordered, the exercise of options and alternates in the bid, or ordering of work originally identified within the originating contract. If such changes are approved, changes are conducted as a written order issued by the Purchasing Buyer in writing to the Contractor.

# Invoices

Invoices must show line item detail and price for each**.** Invoices must provide the name of the City employee that placed the order, Department name and the Contract and/or Purchase Order number. An invoice is considered received when it is date-stamped as received by the office of the recipient who is designated within this Contract. If the invoice is not date-stamped or otherwise marked as received by a department, the date of the invoice will be considered the date the invoice is received.

###### If the pricing structure is based upon a discount below list, or a mark-up above cost, then the Contractor must provide a method for tracking the cost of the item to the City, with the City discount calculation displayed so that pricing discounts can be easily tracked and verified by the City. Seattle will not be bound by prices contained in an invoice that are higher than those in the contract. Unless the higher price has been accepted by the City and the contract amended, the invoice may be rejected and returned to the Contractor for corrections.

###### **Delayed Invoice Submittal:** Invoices must be submitted to the City within 60 days of either the date the City received, inspected and accepted delivery of all goods, the date the City accepted final completion of all services, or the date of receipt of a correct invoice, whichever date is later.

###### **Payment/Payment Procedures:** Seattle agrees to compensate as specified herein or attached, in consideration of acceptable Contractor performance and a properly completed and received invoice as specified in item 9 above. Payment shall only be made for services performed and/or product delivered, after receipt, review, and authorization by the City. Payment periods will be computed from the date of receipt of a correct invoice. The payment term is net thirty (30) days after the City’s receipt of the invoice and acceptance of the goods or completion and acceptance of the services. A payment is considered made on the day it is mailed or is available. This section is not intended to restrict partial payments that are specified in the Contract. All dollars referenced in this Contract and attachments are US Dollars. No fees for late payment of invoices shall apply.

###### **Prohibition on Advance Payments:** The City does not accept requests for early payment, down payment or partial payment. The Federal Transit Administration allows reimbursement by progress payments, in such cases, payments are based on actual cost, based on a City-approved schedule of values, incurred during project delivery.

###### **Overages/Underages:** Shipments shall match the purchase order; any unauthorized advance or excess shipments are returnable at Contractors expense. The City is not obligated to return overages and will not pay for overages.

# Disputed Items

The City may withhold payment for disputed items. Disputed items include, but are not restricted to, improperly prepared invoices, lack of appropriate supporting documentation, unapproved staff or staff rates on the invoice, and unsatisfactory work product or services. The City will promptly notify the Vendor in writing, outlining the disputed items, the amount withheld and actions the Vendor must take to resolve the disputed items. The City default is to delay payment until a revised invoice is submitted and approved. However, the Vendor may request partial payment for the approved amounts, if the unapproved amount represents a small share of the total invoice. The City shall pay the revised invoice within thirty (30) calendar days of receipt.

# Legal Fees

In any action brought to collect interest due under this Section, the prevailing party is entitled to an award of reasonable attorney fees.

# Taxes, Fees and Licenses

###### Fees and Licenses: 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 requirements for said fees, assessments, or charges and to immediately comply with said changes during the entire term of this Contract. Contractor must pay all custom duties, brokerage or import fees where applicable as part of the contract price. Contractor shall take all necessary actions to ensure that materials or equipment purchased are expedited through customs.

###### Taxes: Where required by State statute, ordinance or regulation, Contractor shall pay for and maintain in current status all taxes that are necessary for contract performance. Unless otherwise indicated, Seattle agrees to pay State of Washington sales or use taxes on all applicable consumer services and materials purchased. No charge by the Contractor shall be made for federal excise taxes and Seattle agrees to furnish Contractor with an exemption certificate where appropriate.

###### Withholding payment for taxes/business license fees due the City of Seattle: If specified by Seattle Municipal Code the Director of the Department of Finance and Administrative Services may withhold payment due a City contractor pending satisfactory resolution of unpaid taxes and fees due the City. Contractor is to calculate and enter the appropriate Washington State and local sales tax on the invoice. Tax is to be computed on new items after deduction of any trade-in, in accordance with WAC 458-20-247.

# Pricing

###### Pricing reflects the following Terms. These are in addition to annual Prevailing Wage adjustments if required. The Buyer may exempt these requirements for extraordinary conditions that could not have been known by either party at the time of bid or other circumstances beyond the control of both parties, as determined in the opinion of the Buyer. Such changes (whether increases or decreases) may only be issued by the Purchasing Buyer (Department of Finance and Administrative Services). No other individual or City Department is authorized to approve such modifications. Changes shall be issued in writing by the Purchasing Buyer. Absent a written contract document, such changes shall not be considered effective. The Change Order shall not require joint signature, and implies concurrence unless the Contractor rejects in writing immediately upon receipt of such a Change Order.

###### Requests for Price Decreases: Contractors can offer greater discounts or lower prices at any time when a specific order is placed or when a long-term change in costs allows the Contractor to offer a permanent change to the contract prices. Requests that reduce pricing charged to the City may be delivered to the Purchasing Buyer at any time during the contract period. Such price reductions should use the same pricing structure as the original contract (i.e. discounts below list, mark-up above, fixed price, or hourly rates). The City may likewise initiate a request to the Contractor for price reductions, subject to mutual agreement of the Contractor.

###### Requests for Price Increases: Requests that increase costs to the Citymust be delivered to the Purchasing Buyer in accordance to the rules below. No other employee may accept a rate increase request on behalf of the City. Any invoice that is sent to the City with pricing above that specified by the City in writing within this Contract or specified within an official written change issued by Purchasing to this contract, shall be invalid. Payment of an erroneous invoice does not constitute acceptance of the erroneous pricing, and the City would seek reimbursement of the overpayment or would withhold such overpayment from future invoices.

###### **Discount from Manufacturer List Pricing:** The City will not accept requests to change discount rates below Manufacturer List prices or mark-up above wholesale, except for those that are more favorable to the City than the original contract. As manufacturer list prices change, the net price to the City will automatically change in the same percentage as the discount rate to the City.

###### **One-time Purchase Order Prices:** For a one-time purchase, pricing shall be firm and fixed for that purchase, and shall not be subject to requests for price increases by the Contractor. With this said, the Contractor may submit requests to reduce and decrease the price.

###### **Hourly Rates or Service Pricing:** For multi-year contracts that provide services. The Contractor may submit a price reduction that implements a lower and more favorable cost to the City at any time during the contract. Contractor requests for rate increases must be no sooner than two years after contract signature, are at the discretion of the Buyer; and must be:

### The direct result of increases to wage rates and not exceed the U.S. Dept. of Labor Consumer Price Index (CPI) for All Urban Consumers Seattle-Tacoma-Bellevue or other appropriate service rate index agreed upon between the Buyer and the Contractor. A link to the CPI Data is available at <http://www.seattle.gov/financedepartment/cpi/historical.htm>.

### Calculated over the previous 12-month period.

### Not produce a higher profit margin than that on the original contract.

### Clearly identify the service titles and the hours of service performed if specified within the contract and the before and after wage rates for such titles.

### Be filed with Buyer a minimum of 90 calendar days before the effective date of proposed increase.

### Be accompanied by detailed documentation acceptable to the Buyer sufficient to warrant the increase.

### The Adjustment (if any) shall remain firm and fixed for at least 365 days after the effective date of the adjustment.

### Should not deviate from the original contract pricing scheme/methodology.

###### **Fixed Product Pricing:** For contracts that provide on-going, multiple year supply of products, the Contractor may submit notice of a price reduction that provides lower prices to the City, at any time during the contract. Requests by the Contractor to increase pricing shall be no sooner than two years after the execution of the contract, are at the discretion of the Buyer; and must also be:

### The direct result of increases at the manufacturer's or supplier’s level.

### Incurred one (1) year after contract commencement date.

### Not produce a higher profit margin than that on the original contract.

### Clearly identify the items impacted by the increase.

### Be filed with Buyer a minimum of 90 calendar days before the effective date of proposed increase.

### Be accompanied by detailed documentation acceptable to the Buyer sufficient to warrant the increase.

### The United States published indices such as the U.S. Dept. Of Labor Consumer Price Index (CPI), Producer Price Index (PPI) or other data may be referenced to help substantiate the Contractor’s documentation.

### The Adjustment (if any) shall remain firm and fixed for at least 365 days after the effective date of the adjustment.

### Should not deviate from the original contract pricing scheme/methodology.

###### Seattle will not be bound by prices contained in an invoice that are higher than those in the contract. Unless the higher price has been accepted by the City and the contract amended, the invoice may be rejected and returned to the Vendor for corrections.

###### **Catalogue and Manufacturer List Pricing:** Upon City request, the Contractor shall provide access to the “Manufacturer’s Current Price List” in electronic and/or paper format. Such requests may be for current catalogue pricing or for past catalogue that are within the term of the contract.

###### Order Cancellation – Returns and Restocking:

The following shall apply:

### Contractor Error: No restocking charge for items ordered due to Contractor error. Contractor pays all shipping costs.

### Stocked Items: No restocking fee applies if new, unused, in original packaging and shipped back within 30 days of receipt by the City. Customer pays the shipping cost.

### Non-Stocked Items: Item(s) may be returned if new, unused, in original packaging and shipped back within 30 days of receipt. The Contractor may charge the customer reasonable expenses incurred up until the date of cancellation, expenses that could not be reasonably avoided or offset by the Contractor. In no event will the charge exceed 10% of the total cost of the order.

### Non-Standard Items: Items that are custom engineered and fabricated to design specifications may be returned under the terms negotiated between the parties upon request of the City.

### Failure to perform: If Contractor has presented a particular product as suitable and fit for the purpose described by the City herein or upon order by the City, and the product fails to perform as advised and/or specified, that shall be defined as a Contractor error. No restocking charge shall be charged to the City. Further, if such fitness could not have been determined until the product had been in use, the City may return the product opened and used within 30 days of receipt without penalty or charges due to the City.

# Idling Prohibited (Delivery Services)

Vehicles and/or diesel fuel trucks shall not idle at the time and location of the delivery to the City for more than five minutes. The City requires Contractors to utilize practices that reduce fuel consumption and emission discharge, including turning off trucks and vehicles during delivery of products to the City. Exceptions to this requirement include when a vehicle is making deliveries and associated power is necessary; when the engine is used to provide power in another device, and if required for proper warm-up and cool-down of the engine. Specific examples include “bucket” trucks that allow a worker to reach wires on telephone poles or tree branches for trimming; and vehicles with a lift on the back of a truck to move products in and out of the truck. The City of Seattle has a commitment to reduction of unnecessary fuel emissions. The City intends to improve air quality by reducing unnecessary air pollution from idling vehicles. Limiting car and truck idling supports cleaner air, healthier work environments, the efficient use of city resources, the public’s enjoyment of City properties and programs, conservation of natural resources, and good stewardship practices.

# Travel and Direct Charges

If the specifications or scope of work for this purchase have specifically identified travel and/or direct costs that the City intends to reimburse, then the following requirements shall apply. All such expenses must be pre-approved in writing by the Project Manager. If the specifications and scope of work do not clearly identify such costs for compensation, then no compensation will be given.

###### City will reimburse the Contractor at actual cost for expenditures that are pre-approved by the City in writing and are necessary and directly applicable to the work required by this Contract provided that similar direct project costs related to the contracts of other clients are consistently accounted for in a like manner. Such direct project costs may not be charged as part of overhead expenses. Direct charges may include, but are not limited to the following items: travel, printing, long distance telephone, supplies, computer charges, and fees of subconsultants or subcontractors.

###### The billing for third party direct expenses specifically identifiable with this project shall be an itemized listing of the charges supported by copies of the original bills, invoices, receipts, subconsultant/subcontractor paid invoices, and other supporting documents used by the Contractor to generate invoice(s) to the City. The original supporting documents shall be available to the City for inspection upon request. All third-party charges must be necessary for the services provided under this Contract.

###### The City will reimburse the actual cost for travel expenses incurred as evidenced by copies of receipts (excluding meals) supporting such travel expenses, and in accordance with the City of Seattle Travel Policy, details of which can be provided upon request.

###### **Airfare:** Airfare will be reimbursed at the actual cost of the airline ticket. The City will reimburse for Economy or Coach class fare only. Receipts detailing each airfare are required. Unusual itineraries or multi-leg trips shall be prorated to the business requirements of this contact at the sole discretion of the City**.**

###### **Meals:** Meals will be reimbursed at the Federal Per Diem daily meal rate *(excluding the “Incidental” portion of the published CONUS Federal M&I Rate)* for the city in which the work is performed (the current Federal Per Diem daily meal rate used by the City for reimbursement will be provided upon request). *Receipts are not required as documentation.* The invoice shall state “the meals are being billed at the Federal Per Diem daily meal rate”, and shall detail how many of each meal is being billed (e.g. the number of breakfasts, lunches, and dinners). The City will not reimburse for alcohol at any time.

###### **Lodging:** Lodging will be reimbursed at actual cost incurred up to a maximum of the published Runzheimer Cost Index for the city in which the work is performed (*the current maximum allowed reimbursement amount can be provided upon request*). Receipts detailing each day / night lodging are required. The City will not reimburse for ancillary expenses charged to the room (e.g. movies, laundry, mini bar, refreshment center, fitness center, sundry items, etc.).

###### **Vehicle Mileage:** Vehicle mileage will be reimbursed at the Federal Internal Revenue Service Standard Business Mileage Rate in affect at the time the mileage expense is incurred. Documentation of mileage incurred is required. Please note: payment for mileage incurred for long distances traveled shall not be more than an equivalent trip round-trip airfare on a commercial airline for a coach or economy class ticket.

###### **Rental Car:** Rental car expenses will be reimbursed at the actual cost of the rental. Rental car receipts are required for all rental car expenses. The City will reimburse for a standard car of a mid-size class or less. The City will not reimburse for ancillary expenses charged to the car rental (e.g. GPS unit).

###### **Miscellaneous Travel** (e.g. parking, rental car gas, taxi, shuttle, toll fees, ferry fees, etc.)**:** Miscellaneous travel expenses will be reimbursed at the actual cost incurred. Receipts are required for each expense of $10.00 or more.

###### **Miscellaneous other business expenses:** Other miscellaneous third-party business expenses if allowed by this contract (e.g. printing, photo development, binding, courier, etc.): will be reimbursed at the actual cost incurred and may not include a markup. Receipts are required for all third-party miscellaneous expenses that are billed.

###### **Subcontractor**: Subcontractor expenses if allowed by this contract will be reimbursed at the actual cost incurred and may not include a markup. Copies of all subcontractor invoices that are rebilled to the City are required.

# Delivery Time

Except when instructed otherwise, delivery must be made during normal working hours and within timeframes proposed by Contractor herein and as accepted by Seattle. Failure to comply may subject Contractor to non-delivery assessment charges and/or damages as appropriate. Seattle reserves the right to refuse shipment when delivered before or after normal working hours. Contractor shall verify specific working hours of offices and so instruct carrier(s) to deliver accordingly. The acceptance by Seattle of late performance without objection or reservation shall not waive the right of Seattle to claim damages for such breach, nor preclude Seattle 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.

# Title, Risk of Loss, Freight, Overages or Underages

Contractor warrants that he/she has properly produced, stored, packaged, boxed and shipped the products and goods for delivery, at Contractor’s expense. No charges will be allowed for handling that includes but is not limited to packing, wrapping, bags, containers, or reels, unless otherwise stated herein. 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. Title of goods received under this contract shall remain with the Contractor until they are delivered, inspected and accepted at the address specified, at which time title passes to Seattle. 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, inspection and acceptance by Seattle. Such loss, injury, or destruction shall not release Contractor from any obligations hereunder. Prices include freight prepaid. Contractor assumes the risk of every increase, and receives the benefit of every decrease, in delivery rates and charges. Shipments shall correspond with the Contract; any unauthorized advance or excess shipment is returnable at Contractor’s expense.

# Identification

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

# Rejection of Goods

Goods shall not be deemed accepted until the City completes receipt, inspection and acceptance. The City may reject goods upon notice to the Contractor without the requirement to specify the reason(s) for rejection. The City can return non-conforming goods, require Contractor to replace non-conforming goods, or require Contractor to repair non-confirming goods to meet requirements, at the Contractor cost.

# Liens

Contractor warrants all products are free and clear of liens.

# Contract Notices

Contract notices shall be delivered to the City Buyer and Contractor at the addresses specified in the contract cover page.

# Representations

Contractor represents and warrants that it has the requisite training, skill and experience necessary to provide Work and is appropriately accredited and licensed by all applicable agencies and governmental entities.

# Warranties

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, are properly packaged, proper instructions and warnings are supplied, that all goods comply with applicable safety and health standards, that an MSDS Sheet is supplied as required by law, and that products or services conform to the requirements and specifications herein. Acceptance of any service and inspection incidental thereto by Seattle shall not alter or affect the obligations of the Contractor or the rights of Seattle.

The Contractor shall warrant all materials and workmanship delivered under any resulting contract to be free from defects, damage or failure for any reason whatsoever which the City may reasonably determine is the responsibility of the Vendor, for a minimum of ten (10) years after the date of final acceptance and without cost to the City for labor, materials, parts, installation or any other costs except where longer periods of warranty of guarantees are specified.

# Independent Contractor

It is the intention and understanding of the Parties that Contractor shall be an independent contractor and that Seattle shall be neither liable for nor obligated to pay sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax that may arise as an incident of employment. The Contractor shall pay all income and other taxes as due. Industrial or other insurance that is purchased for the benefit of the Contractor shall not be deemed to convert this Contract to an employment contract. It is recognized that Contractor may or will be performing work during the term for other parties and that Seattle is not the exclusive user of the services that Contractor provides.

# INSPECTION

Work shall be subject, at all times, to inspection by and with approval of Seattle, but the making (or failure or delay in making) such inspection or approval shall not relieve Contractor of responsibility for performance of the Work in accordance with this Contract, notwithstanding Seattle’s knowledge of defective or noncomplying performance, its substantiality or the ease of its discovery. Contractor shall provide sufficient, safe, and proper facilities and equipment for such inspection and free access to such facilities.

# Performance

Acceptance by Seattle 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.

# Social Equity Requirements

###### Employment Actions: Contractor shall not discriminate against any employee or applicant for employment because of race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, honorably discharged veteran or military status or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. Contractor shall affirmatively try to ensure applicants are employed, and employees are treated during employment, without regard to race, color, age, sex, marital status, sexual orientation, gender identify, political ideology, creed, religion, ancestry, national origin, honorably discharged veteran or military status or the presence of any sensory, mental or physical handicap. Such efforts include, but are not limited to: employment, upgrading, demotion, transfer, recruitment, layoff, termination, rates of pay or other compensation, and training.

###### Contractor will ensure that its respective employees, agents, and subcontractors conduct themselves in a courteous and expeditious manner. The use of abusive, indecent, offensive, coarse, or insulting language, or any form of harassment is prohibited and will not be tolerated. Contractor’s employees, agents, and subcontractors will be competent and hold appropriate licenses and endorsements. The City may require the removal of any employee or subcontractor of Contractor for misconduct or incompetent or negligent performance. Such persons will not be allowed to perform services under this Contract without the written consent of the City.

# Assignment

Contractor shall not assign any of its obligations under this Contract without Seattle’s written consent, which may be granted or withheld in Seattle’s sole discretion.

# Subcontracting

Contractor shall not subcontract any of its obligations under this Contract without Seattle’s written consent, which may be granted or withheld in Seattle’s sole discretion. Contractor shall ensure that all subcontractors comply with the obligations, requirements and terms and conditions of the subcontract, except for Equal Benefit provisions. Seattle’s consent to subcontract shall not release the Contractor from liability under this Contract, or from any obligation to be performed under this Contract, whether occurring before or after such consent to subcontract.

# Key Persons and Subcontractors

Contractor shall not transfer, reassign or replace any individual or subcontractor that is determined to be essential or that has been agreed upon in the Contractor’s Subcontracting (Outreach) Plan, without express written consent of Seattle. If during the term of this Contract, any such individual leaves the Contractor’s employment or any named subcontract is terminated for any reason, Contractor shall notify Seattle and seek approval for reassignment or replacement with an alternative individual or subcontractor. Upon Seattle’s request, the Contractor shall present to Seattle, one or more subcontractors or individual(s) with greater or equal qualifications as a replacement. Continued achievement of the Subcontracting (Outreach) Plan that was incorporated into this Contract by reference, if any, and the associated subcontract awards, aspirational goals and efforts, will be one of the considerations in approval of such changes. Seattle’s approval or disapproval shall not be construed to release the Contractor from its obligations under this Contract.

# Involvement of Current and Former City Employees

If a Contractor has any current or former City employees, official or volunteer, working or assisting on solicitation of City business or on completion of an awarded contract, you **must** provide written notice to Purchasing of the current or former City official, employee or volunteer’s name. The Vendor Questionnaire within your bid documents prompts you to answer that question. You must continue to update that information to Purchasing during the full course of the contract. The Vendor is to be aware and familiar with the Ethics Code, and educate vendor workers accordingly.

# Equal Benefits

###### Compliance with SMC Ch. 20.45: The Contractor shall comply with the requirements of SMC Ch. 20.45 and Equal Benefits Program Rules implementing such requirements, under which the Contractor is obligated to provide the same or equivalent benefits (“equal benefits”) to its employees with domestic partners as the Contractor provides to its employees with spouses. At Seattle’s request, the Contractor shall provide complete information and verification of the Contractor’s compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract. (For further information about SMC Ch. 20.45 and the Equal Benefits Program Rules call (206) 684-0430 or review information at <http://www.seattle.gov/purchasing-and-contracting/social-equity/equal-benefits>.)

###### Remedies for Violations of SMC Ch. 20.45: Any violation of this section shall be a material breach of Contract for which the City may:

### Require the Contractor to pay actual damages for each day that the Contractor is in violation of SMC Ch. 20.45 during the term of the Contract; or

### Terminate the Contract; or

### Disqualify the Contractor from bidding on or being awarded a City contract for a period of up to five (5) years; or

### Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated there under.

# Publicity

No news release, advertisement, promotional material, tour, or demonstration related to the City’s purchase or use of the Contractor’s product or any work performed pursuant to this Contract shall be produced, distributed or take place without the prior, specific written approval of the City’s Project Director or his/her designee.

# Proprietary and Confidential Information

The State of Washington’s Public Records Act (Release/Disclosure of Public Records): Under Washington State Law (reference RCW Chapter 42.56, the Public Records Act) all materials received or created by the City of Seattle are considered public records. These records include but are not limited to bid or proposal submittals, agreement documents, contract work product, or other bid material.

The State of Washington’s Public Records Act requires that public records must be promptly disclosed by the City upon request unless that RCW or another Washington State statute specifically exempts records from disclosure. Exemptions are narrow and explicit and are listed in Washington State Law (Reference RCW 42.56 and RCW 19.108).

As mentioned above, all City of Seattle offices (“the City”) are required to promptly make public records available upon request. However, under Washington State Law some records or portions of records may be considered legally *exempt from disclosure.* A list and description of records identified as exempt by the Public Records Act can be found in RCW 42.56 and RCW 19.108.

If the City receives a public disclosure request for any records or parts of records that Contractor has properly and specifically listed on the City Non-Disclosure Request Form (Form) submitted with Contractor’s bid/proposal, or records that have been specifically identified in this contract, the City will notify Contractor in writing of the request and will postpone disclosure. While it is not a legal obligation, the City, as a courtesy, will allow Contractor up to ten business days to obtain and serve the City with a court injunction to prevent the City from releasing the records (reference RCW 42.56.540). If you fail to obtain a Court order and serve the City within the ten days, the City may release the documents.

The City will not assert an exemption from disclosure on Contractor’s behalf. If Contractor believes that its records are exempt from disclosure, Contractor is obligated to seek an injunction under RCW 42.56.540. Contractor acknowledges that the City will have no obligation or liability to Contractor if the records are disclosed.

# Indemnification

To the extent permitted by law, the Contractor shall protect, defend, indemnify and hold the City harmless from and against all claims, demands, damages, costs, actions and causes of actions, liabilities, fines, penalties, judgments, expenses and attorney fees, resulting from the injury or death of any person or the damage to or destruction of property, or the infringement of any patent, copyright, trademark or trade secret, arising out of the work performed or goods provided under this Contract, or the Contractor’s violation of any law, ordinance or regulation, contract provision or term, or condition of regulatory authorization or permit, except for damages resulting from the sole negligence of the City. As to the City of Seattle, the Contractor waives any immunity it may have under RCW Title 51 or any other Worker’s Compensation statute. The parties acknowledge that this waiver has been negotiated by them, and that the contract price reflects this negotiation.

# Insurance

Unless specified otherwise, the following is in effect. Contractor shall maintain at its own expense at all times during the term of this Contract the following insurance with limits of liability consistent with those generally carried by similarly situated enterprise:

###### Minimum Coverages and Limits of Liability. Contractor shall at all times during the term of this Agreement maintain continuously, at its own expense, minimum insurance coverage’s and limits of liability as specified below:

### Commercial General Liability (CGL) insurance, including:

Premises/Operations

Products/Completed Operations

Personal/Advertising Injury

Contractual

Independent Contractors

Stop Gap/Employers Liability

With minimum limits of liability of $1,000,000 each occurrence combined single limit bodily injury and property damage (“CSL”), except:

$1,000,000 Personal/Advertising Injury

$1,000,000 each/disease/employee Stop Gap/Employer’s Liability

### Automobile Liability insurance, including coverage for owned, non-owned, leased or hired vehicles with a minimum limit of liability of $1,000,000 CSL.

### Worker’s Compensation for industrial injury to Contractor’s employees in accordance with the provisions of Title 51 of the Revised Code of Washington.

###### Seattle as Additional Insured. The City of Seattle shall be included as an additional insured under CGL and Automobile Liability insurance for primary and non-contributory limits of liability.

###### No Limitation of Liability. The limits of insurance coverage specified herein in subparagraph A1 are minimum limits of insurance coverage only and shall not be deemed to limit the liability of Vendor’s insurer except as respects the stated limit of liability of each policy. Where required to be an additional insured, the City of Seattle shall be so for the full limits of insurance coverage required by Vendor, whether such limits are primary, excess, contingent or otherwise. Any limitations of insurance liability shall have no effect on Vendor’s obligation to indemnify the City.

###### Minimum Security Requirement. All insurers must be rated A- VII or higher in the current A.M. Best's Key Rating Guide and licensed to do business in the State of Washington unless coverage is issued as surplus lines by a Washington Surplus lines broker.

###### Self-Insurance. Any self-insured retention not fronted by an insurer must be disclosed. Any defense costs or claim payments falling within a self-insured retention shall be the responsibility of Contractor.

###### Evidence of Coverage. Prior to performance of any scope of work, Contractor shall provide certification of insurance acceptable to the City evidencing the minimum coverage’s and limits of liability and other requirements specified herein. Such certification must include a copy of the policy provision documenting that the City of Seattle is an additional insured for commercial general liability insurance on a primary and non-contributory basis.

# Audit

Upon request, Contractor shall permit Seattle, and any other governmental agency involved in the funding of the Work (“Agency”), to inspect and audit all pertinent books and records of Contractor, any subcontractor, or any other person or entity that performed work in connection with or related to the Work, at any and all times deemed necessary by Seattle or Agency, including up to six years after the final payment or release of withheld amounts has been made under this Contract. Such inspection and audit shall occur in King County, Washington or other such reasonable location as Seattle or Agency selects. The Contractor shall supply Seattle with, or shall permit Seattle to make, a copy of any books and records and any portion thereof. The Contractor shall ensure that such inspection, audit and copying right of Seattle and Agency is a condition of any subcontract, agreement or other arrangement under which any other person or entity is permitted to perform work under this Contract. *Also see Federal provisions for federal access when this contract is paid in part or in whole by federal fund sources.*

# Contractual Relationship

The relationship of Contractor to Seattle by reason of this Contract shall be that of an independent contractor. This Contract does not authorize Contractor to act as the agent or legal representative of Seattle for any purpose whatsoever. Contractor is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of Seattle or to bind Seattle in any manner or thing whatsoever.

# Safety, Supervision and Coordination

Contractor is solely responsible for the safe performance of the Work, and it must establish, maintain, and supervise a safe and healthy working environment for the performance of the Work. When deemed necessary by the City, the Contractor must submit for approval, a Health and Safety Plan identifying procedures and guidelines demonstrating compliance with all federal, state, tribal, county, and local health and safety law, ordinances, and regulations that are applicable to the Work.

Further, Contractor shall:

###### Competently and efficiently, supervise and direct the implementation and completion of all contract requirements specified herein.

###### Designate in its bid or proposal to Seattle, 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 City of Seattle employees 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.

# Compliance with Law

###### General Requirement:The Contractor, at its sole cost and expense, shall perform and comply with all applicable laws of the United States and the State of Washington; the Charter, Municipal Code, and ordinances of The City of Seattle; and rules, regulations, orders, and directives of their respective administrative agencies and officers, including, but not limited to, Seattle Municipal Code Chapter 14.04 (Fair Employment Practices), Chapter 14.06 (Unfair Public Accommodations Practices), Chapter 14.10 (Fair Contracting Practices), and Chapter 20.45 (City Contracts – Non-Discrimination in Benefits).

###### Licenses and Similar Authorizations:The Contractor, at no expense to the City, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all related requirements.

###### Taxes: The Contractor shall pay, before delinquency, all taxes, import duties, levies, and assessments arising from its activities and undertakings under this Contract; taxes levied on its property, equipment and improvements; and taxes on the Contractor's interest in this Contract.

# Violations of Law

Any violation of the requirements in Section 41 shall be a material breach of contract for which the Contractor may be subject to damages, sanctions, or other remedies as provided for under this Contract or under applicable law. In the event the Contractor is in violation of Section 41, the Contractor may also be subject to debarment from City contracting activities in accordance with Seattle Municipal Code Section 20.70 (Debarment).

# No Gifts or Gratuities

Contractor shall not directly or indirectly offer anything of value (such as retainers, loans, entertainment, favors, gifts, tickets, trips, favors, bonuses, donations, special discounts, work or meals) to any City employee, volunteer or official, that is intended, or may appear to a reasonable person to be intended, to obtain or give special consideration to the Contractor. Promotional items worth less than $25 may be distributed by the Contractor to City employees if the Contractor uses the items as routine and standard promotions for business. Any violation of this provision may result in termination of this Contract. Nothing in this Contract prohibits donations to campaigns for election to City office, so long as the donation is disclosed as required by the election campaign disclosure laws of the City and of the State.

# Contract Workers with 1,000 Hours

Throughout the life of the Contract, Contractor shall provide written notice to Purchasing and the City Project Manager of any contract worker that shall perform more than 1,000 hours of contract work for the City within a rolling 12-month period. Such hours include those that the contract worker performs for the Contract, and any other hours that the worker performs for the City under any other contract. Such workers are subject to the requirements of the City Ethics Code, Seattle Municipal Code 4.16. The Contractor shall advise their Contract workers as applicable.

# Intellectual Property Rights

###### Patents: Contractor hereby assigns to Seattle all rights in any invention, improvement, or discovery, together with all related information, including but not limited to, designs, specifications, data, patent rights and findings developed in connection with the performance of Contract or any subcontract hereunder. Notwithstanding the above, the Contractor does not convey to Seattle, nor does Seattle obtain, any right to any document or material utilized by Contractor that was created or produced separate from this Contract or was preexisting material (not already owned by Seattle), provided that the Contractor has clearly identified in writing such material as preexisting prior to commencement of the Work. To the extent that preexisting materials are incorporated into the Work, the Contractor grants Seattle an irrevocable, non-exclusive, fully paid, royalty-free right and/or license to use, execute, reproduce, display, and transfer the preexisting material, but only as an inseparable part of the Work.

###### Copyrights: For materials and documents prepared by Contractor in connection with Work, Contractor shall retain the copyright (including the right of reuse) whether or not the Work is completed. Contractor grants to Seattle a non-exclusive, irrevocable, unlimited, royalty-free license to use every document and all other materials prepared by the Contractor for Seattle under this Contract. If requested by Seattle, a copy of all drawing, prints, plans, field notes, reports, documents, files, input materials, output materials, the media upon which they are located (including cards, tapes, discs and other storage facilities), software programs or packages (including source code or codes, object codes, upgrades, revisions, modifications, and any related materials) and/or any other related documents or materials developed solely for and paid for by Seattle in connection with the Work, shall be promptly delivered to Seattle.

###### Seattle may make and retain copies of such documents for its information and reference in connection with their use on the project. The Contractor does not represent or warrant that such documents are suitable for reuse by Seattle, or others, on extensions of the project, or on any other project. Contractor represents and warrants that it has all necessary legal authority to make the assignments and grant the licenses required by this Section.

# No personal liability

No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this Contract, whether expressed or implied, nor for any statement or representation made herein or in any connection with this Contract.

# Binding Effect

The provisions, covenants and conditions in this Contract apply to bind the parties, their legal heirs, representatives, successors, and assigns.

# Waiver

No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance by Seattle of any performance by the Contractor after the time the same shall have become due nor payment to the Contractor for any portion of the Work shall constitute a waiver by Seattle of the breach or default of any covenant, term or condition unless otherwise this is expressly agreed to by Seattle, in writing. The City’s failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or the City’s waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether the same or similar type.

# Anti-Trust

Seattle maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore the Contractor hereby assigns to Seattle 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 Seattle under an escalation clause.

# Applicable Law

This Contract shall be construed under the laws of the State of Washington. The venue for any action relating to this Contract shall be in the Superior Court for King County, State of Washington.

# Remedies Cumulative

Remedies under this Contract are cumulative; the use of one remedy shall not be taken to exclude or waive the right to use another.

# Captions

The titles of sections, or subsections, are for convenience only and do not define or limit the contents.

# Severability

Any invalidity, in whole or in part, of any provision of this Contract shall not affect the validity of any other of its provisions.

# Disputes

Seattle and Contractor shall maintain business continuity to the extent practical while pursuing disputes. Any dispute or misunderstanding that may arise under this Contract concerning Contractor's performance shall first be resolved, if mutually agreed to be appropriate, through negotiations between the Contractor's Project Manager and Seattle's Project Manager, or if mutually agreed, referred to the City’s named representative and the Contractor's senior executive(s). Either party may decline or discontinue such discussions and may then pursue other means to resolve such disputes, or may by mutual agreement pursue other dispute alternatives such as alternate dispute resolution processes. Nothing in this dispute process shall in any way mitigate the rights, if any, of either party to terminate the contract in accordance with the termination provisions herein.

Notwithstanding above, if Seattle believes in good faith that some portion of Work has not been completed satisfactorily, Seattle may require Contractor to correct such work prior to Seattle payment. In such event, Seattle must clearly and reasonably provide to Contractor an explanation of the concern and the remedy that Seattle expects. Seattle may withhold from any payment that is otherwise due, an amount that Seattle in good faith finds to be under dispute, or if the Contractor does not provide a sufficient remedy, Seattle may retain the amount equal to the cost to Seattle for otherwise correcting or remedying the work not properly completed.

# Termination

###### For Cause:Seattle may terminate this Contract if the Contractor is in material breach of any of its terms, and such breach has not been corrected to Seattle’s reasonable satisfaction in a timely manner.

###### For City’s Convenience:Seattlemay terminate this Contract in whole or in part, without cause and for any reason including Seattle’s convenience, upon written notice to the Contractor.

###### Nonappropriation of Funds: Seattle may terminate this Contract at any time without notice due to nonappropriation of funds, whether such funds are local, state or federal grants, and no such notice shall be required notwithstanding any notice requirements that may be agreed upon for other causes of termination.

###### Acts of Insolvency: Seattle may terminate this Contract by written notice to Contractor if the Contractor becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or is wound up or liquidated, voluntarily or otherwise.

###### Termination for Gifts or Gratuities: Seattle may terminate this Contract by written notice to Contractor if Seattle finds that any gratuity in the form of entertainment, a gift, or otherwise, was offered to or given by the Contractor or any agent therefor to any City official, officer or employee, as defined above.

###### Notice: Seattle is not required to provide advance notice of termination. Notwithstanding, the Buyer may issue a termination notice with an effective date later than the termination notice itself. In such case, the Contractor shall continue to provide products and services as required by the Buyer until the effective date provided in the termination notice.

###### Actions upon Termination: In the event of termination not the fault of the Contractor, the Contractor shall be paid for the services properly performed prior to termination, together with any reimbursable expenses then due, but in no event shall such compensation exceed the maximum compensation to be paid under the Contract. The Contractor agrees that this payment shall fully and adequately compensate the Contractor and all subcontractors for all profits, costs, expenses, losses, liabilities, damages, taxes, and charges of any kind whatsoever (whether foreseen or unforeseen) attributable to the termination of this Contract. Upon termination for any reason, the Contractor shall provide Seattle with the most current design documents, contract documents, writings and other product it has completed to the date of termination, along with copies of all project-related correspondence and similar items. Seattle shall have the same rights to use these materials as if termination had not occurred.

# Force Majeure – Suspension and Termination

###### This section applies in the event that either party is unable to perform the obligations of this contract because of a Force Majeure event as defined herein, to the extent that the Contract obligations must be suspended in full. A Force Majeure event is an event that prohibits performance and is beyond the control of the party. Such events may include natural or man-made disasters, or an action or decree of a superior governmental body, which prevents performance.

###### Force Majeure under this Section shall only apply in the event that performance is rendered not possible by either party or its agents. Should it be possible to provide partial performance that is acceptable to the City under Section 57 **Major Emergencies or Disasters**, Section 57 below shall instead be in force.

###### Should either party suffer from a Force Majeure event and is unable to provide performance, such party shall give notice to the remaining party as soon as practical and shall do everything possible to resume performance.

###### Upon receipt of such notice, the party shall be excused from such performance as is affected by the Force Majeure Event for the period of such Event. If such Event affects the delivery date or warranty provisions of this Agreement, such date or warranty period shall automatically be extended for a period equal to the duration of such Event.

# Major Emergencies or Disasters

The City may undergo an emergency or disaster that may require the Contractor to either increase or decrease quantities from normal deliveries, or that may disrupt the Contractor’s ability to provide normal performance. Such events may include, but are not limited to, a storm, high wind, earthquake, flood, hazardous material release, and transportation mishap, loss of any utility service, fire, terrorist activity or any combination of the above. In such events, the following shall apply.

###### The City shall notify the Contractor that the City is experiencing an emergency or disaster, and will request emergency and priority services from the Contractor.

###### The City may request that the Contractor provide either increased or decreased quantities from traditional orders, or may request Contractor provide additional products or services.

###### Upon such notice by the City, the Contractor shall make reasonable efforts to provide the City the materials in the quantities requested and within the schedule specified by the City, adhering to the conditions in this Section.

###### The City of Seattle shall be the customer of first priority for the Contractor, except where preceded by State or Federal government mandates. The Contractor shall provide its best and priority efforts to provide the requested goods and/or services to the City of Seattle in as complete and timely manner as possible. Such efforts by the Contractor are not to be diminished as a result of Contractor providing service to other customers, except as mandated by State or Federal governments.

###### If the Contractor is unable to respond in the time and/or quantities requested by the City, the Contractor shall promptly assist the City to the extent practicable, to gain access to alternative materials and/or services. This may include:

### Coordinating with other distributors or subsidiaries beyond those in the local region to fulfill order requests;

###### Offering the City substitutions provided the Contractor obtains prior approval from the City for such substitution.

###### The Contractor shall charge the City the price determined in this Contract for the goods and services provided, and if no price has been determined, it shall charge the City a price that is normally charged for such goods and/or services (such as listed prices for items in stock). However, in the event that the City’s request results in the Contractor incurring unavoidable additional costs and causes the Contractor to increase prices in order to obtain a fair rate of return, the Contractor shall charge the City a price not to exceed the cost/profit formula found in this Contract.

# Interlocal Cooperation Act

RCW 39.34 allows cooperative purchasing between public agencies, and other political subdivisions. **SMC 20.60.100 also allows nonprofits to use these agreements. Such agenc**ies that file an Intergovernmental Cooperative Purchasing Agreement with the City of Seattle may purchase from Contracts established by the City. Unless Contractor declines on the Offer submitted by the Seller to the City, the Contractor agrees to sell additional items at the bid prices, terms and conditions, to other eligible governmental agencies that have such agreements with the City. The City of Seattle accepts no responsibility for the payment of the purchase price by other governmental agencies. Should the Contractor require additional pricing for such purchases, the Contractor is to name such additional pricing upon Offer to the City.

# City Debarment

In accordance with SMC Ch. 20.70, the Director of Finance and Administrative Services or designee may debar a Contractor from entering into a Contract with the City or from acting as a subcontractor on any Contract with the City for up to five years after determining that any of the following reasons exist:

###### Contractor has received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City Contracts.

###### Contractor failed to comply with City ordinances or Contract terms, including but not limited to, ordinance or Contract terms relating to small business utilization, discrimination, prevailing wage requirements, equal benefits, or apprentice utilization.

###### Contractor abandoned, surrendered, or failed to complete or to perform work on or in connection with a City Contract.

###### Contractor failed to comply with Contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards.

###### Contractor submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a Contract.

###### Contractor colluded with another contractor to restrain competition.

###### Contractor committed fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Contract for the City or any other government entity.

###### Contractor failed to cooperate in a City debarment investigation.

###### Contractor failed to comply with SMC Ch. 14.04, SMC Ch. 14.10, SMC Ch. 20.42, or SMC Ch. 20.45, or other local, State, or federal non-discrimination laws.

The Director may issue an Order of Debarment after adhering to the procedures specified in SMC 20.70.050. The rights and remedies of the City under these provisions are in addition to any other rights and remedies provided by law or under the Contract.

# Green Seal Products

Contractor shall use Green Seal, Eco-Logo or other certified cleaning products if approved by the City, in performance of all cleaning and janitorial work to protect the health, safety, wellness and environmentally sustainable practices that the City requires of companies doing business with the City. Cleaning products, floor care products and other products used in the performance of work that carry a Green Seal certification are required. The Bidder shall identify the products that the Bidder intends to use at the City facilities and shall list them on the Offer Form, with a notation to confirm the Green Seal product certification. The Green Seal website is <http://www.greenseal.org/Home.aspx>. The City has contracts with various Contractors who will supply the winning Bidder with Green Seal certified products for use in performance of City contract work, at City contract pricing. For the list of Contractors, contact the City Buyer.

# Paper and Paper Product Requirements

The City desires use of 100% PCF (post consumer recycled content, chlorine-free) paper, to comply with the City Executive Order and to encourage environmentally preferable practices for City business. The City prohibits vinyl binders. The City prefers 100% recycled stock Binders. Please do not use binders or plastic folders, unless essential. Contractors shall duplex materials prepared for Seattle under this Contract, whether materials are printed or copied, except when impracticable due to the nature of the product. This is executed under the Mayor's Executive Order, issued February 13, 2005.

# Workers Right to Know

“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 296-800-108 requires among other things that all manufacturers/distributors of hazardous substances, including any of the items listed on this ITB, RFP 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 the 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. 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.

# Davis Bacon Act

If this work has federal funding, work in this contract is subject to prevailing wage requirements for both the State (RCW Chapter 39.12) and federal (Davis-Bacon and related acts), if such work has an applicable wage category. The Contractor and all subs must then comply with the Davis-Bacon Act (includes (40 U.S.C. 276a to a-7) and related Acts (Walsh-Healy Public Contracts Act for manufacturer, and the McNamara-O’Hara Service Contract Act for services), as supplemented by Department of Labor regulations (29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”)).

The Contractor and every Subcontractor must then pay the greater of the State prevailing wage rates and the federal prevailing wage rates as issued by the Secretary of Labor, on a classification by classification basis. Contractors shall be required to pay wages not less than once a week. The Contractor shall report all suspected or reported violations to the City.

## Posting Notices

Notices and posters shall be placed in areas readily accessible to read by employees. The Contractor shall ensure the following are posted:

### EEOC - P/E-1 (revised 11/09) - Equal Employment Opportunity is THE LAW published by US Department of Labor. Post for projects with federal-aid funding.

### WH 1321 (revised 04/09) - Employee Rights under the Davis-Bacon Act published by US Department of Labor. Post for projects with federal-aid funding.

### WHD 1088 (revised 07/09) - Employee Rights under the Fair Labor Standards Act published by US Department of Labor. Post on all projects.

### WHD - 1420 (revised 01/09) - Employee Rights and Responsibilities under the Family and Medical Leave Act published by US Department of Labor. Post on all projects.

### WHD-1462 (revised 01/12) – Employee Polygraph Protection Act published by US Department of Labor. Post on all projects.

### F416-081-909 (revised 12/12) - Job Safety and Health Law published by Washington State Department of Labor and Industries. Post on all projects.

### F242-191-909 (revised 12/12) - Notice to Employees published by Washington State Department of Labor and Industries. Post on all projects.

### F700-074-909 (revised 12/12) - Your Rights as a Worker in Washington State by Washington State Department of Labor and Industries (L&I). Post on all projects.

### EMS 9874 (revised 04/12) - Unemployment Benefits published by Washington State Employee Security Department. Post on all projects.

### Post one copy of the approved “Statement of Intent to Pay Prevailing Wages” for the Contractor, each Subcontractor, each lower tier subcontractor, and any other firm (Supplier, Manufacturer, or Fabricator) that falls under the provisions of RCW 39.12 because of the definition of “Contractor” in WAC 296-127-010.

### Post one copy of the prevailing wage rates for the project.

## Apprentices

An apprentice is defined as a laborer, worker, or mechanic employed to perform the Work for whom an apprentice agreement is established through training program that is registered and approved by the Washington State Apprenticeship and Training Council (WSATC). Pursuant to RCW 39.12.021 and RCW 49.04, apprentices must be paid the applicable prevailing hourly rate for an apprentice of that trade. If employing apprentices, the Contractor shall submit to the Owner written evidence showing:

### Each apprentice is enrolled in a program approved by the Washington State Apprenticeship and Training Council;

### The progression schedule for each apprentice; and

### The established apprentice-journey level ratios and wage rates in the project locality upon which the Contractor will base such ratios and rates under the Contract. Any worker for whom an apprenticeship agreement has not been registered and approved by the Washington State Apprenticeship and Training Council shall be paid at the prevailing hourly journey level rate as provided in RCW 39.12.021.

Such evidence shall be submitted with the first payroll upon which the name of the employee appears.

## Payroll Reports

Certified payrolls are required to be submitted by the Contractor to the Owner, for the Contractor and all Subcontractors or lower tier subcontractors, on all Federal-aid projects and, when requested in writing by the Owner, on projects funded with only Owner funds. Certified payrolls shall be submitted to the Contracting Services Division, City of Seattle, mailing address: P.O. Box 94687, Seattle, Washington 98124-4687 within 72 hours after the expiration of each pay period. If these payrolls are not supplied within ten calendar days of the end of the preceding weekly payroll period for Federal-aid projects or within ten calendar days from the date of the written request on projects with only  Owner funds, any or all payments may be withheld until compliance is achieved. Also, failure to provide these payrolls could result in other sanctions as provided by State laws (RCW 39.12.050) and/or Federal regulations (29 CFR 5.12).

All certified payrolls shall be complete and explicit. Employee labor descriptions used on certified payrolls shall coincide exactly with the labor descriptions listed on the minimum wage schedule in the Contract unless the Engineer approves an alternate method to identify the labor used by the Contractor to compare with the labor listed in the Contract Provisions. When an apprentice is shown on the certified payroll at a rate less than the minimum prevailing journey wage rate, the apprenticeship registration number for that employee from the State Apprenticeship and Training Council shall be shown along with the correct employee classification code.

Payroll reports shall contain the following information:

* Name and residence address of each worker.
* Last four digits of Social Security number of each worker.
* Classification of work performed by each worker. The classification must be specific and match the classification categories listed in the Project Manual.
* Total number of hours employed each Day.
* Total number of hours employed during the payroll period.
* Straight time and overtime hourly rate of wages paid to each worker.
* Total or gross amount earned by each worker.
* Deductions for Medical Aid, FICA, federal withholding tax, and any other deductions taken.
* Net amount paid each worker.
* Contractor's (or Subcontractor's) name and address.
* Days and dates worked.
* Date of final Day of pay period.
* Whether fringe benefits were paid to each worker as part of the hourly wage rate or whether fringe benefits were paid into an approved plan, fund, or program.

Payrolls may be submitted on federal payroll form WH‑347 (or equivalent), which may be obtained by contacting the  Government Printing Office’s toll free number (866) 512-1800, 7:30 AM to 4:30 PM Eastern Time, or by accessing their web-site at <http://bookstore.gpo.gov>. The reverse side of the form contains an Affidavit that must be filled out and signed. If the Contractor's payroll reports are computerized, the computerized reports may be submitted along with a Statement of Compliance Affidavit form, which may be photocopied from the sample in the Project Manual.

The first payroll submitted for the Work for both the Contractor and each Subcontractor shall be labeled "Initial". The last payroll submitted for the Work for both the Contractor and each Subcontractor shall be labeled "Final". Payrolls shall be sequentially numbered for all periods in which Work is performed.

# Prevailing Wage Requirements

###### If this contract is subject to prevailing wages, as required by RCW 39.12 (Prevailing Wages on PublicWorks) and RCW 49.28 (Hours of Labor) as amended or supplemented, Contractor shall be responsible for compliance by the Contractor and all subcontractors with all provisions herein.

###### Filing Your Intent: The awarded Contractor and all subcontractors shall file an Intent to Pay Prevailing Wage Form concurrent with the execution of the contract.

* To do so, the Contractor and any of their subcontractors will require a Contract Number and Start Date. The Buyer will tell you the Contract Number; the start date is the date your contract is signed.
* The Contractor shall then promptly submit the Intent to the Department of Labor & Industries (L&I) for approval.
* The Contractor also shall require any subcontractor to also file an Intent with L&I.
* This must be done online at the L&I website: <http://www.lni.wa.gov/TradesLicensing/PrevWage/default.asp>.
* If unable to file on-line, a paper copy of the approved Intent shall instead be promptly provided to the Buyer.
* The Contractor shall notify the Buyer of the Intents that are filed by both the Contractor and all subs.

###### Contractor and any subcontractor shall not pay any laborer, worker or mechanic less than the prevailing hourly wage rates that were in effect at the time of bid opening for the worker classifications that are provided for under Prevailing Wages as issued by the State of Washington for the County in which the work shall be performed.

###### Vocationally handicapped workers, i.e. those individuals whose earning capacity is impaired by physical or mental deficiency or injury, may be employed at wages lower than the established prevailing wage. The Fair Labor Standards Act requires that wages based on individual productivity be paid to handicapped workers employed under certificates issued by the Secretary of Labor. These certificates are acceptable to the Department of Labor and Industries. Sheltered workshops for the handicapped may submit a request to the Department of Labor and Industries for a special certificate, which would, if approved, entitle them to pay their employees at wages, lower than the established prevailing wage.

###### In certain situations, an Intent to Pay Prevailing wages shall be filed with the L&I and the Buyer, but the Contractor may indicate an exception on the Intent form that exempts the prevailing wages rates for the following:

* Sole owners and their spouse.
* Any partner who owns at least 30% of a partnership.
* The president, vice-president, and treasurer of a corporation if each one owns at least 30% of the corporation.
* Workers regularly employed on monthly or per diem salary by state or any political subdivision created by its laws.

###### Prevailing Wage rates in effect at the time of bid opening remain in effect for the duration of this contract, except for annual adjustments required by this agreement for multi-year contracts (where contract is longer than one year) and for building service maintenance (janitorial, waxers, shampooers, and window cleaners).

###### It is the sole responsibility of the Contractor to assign the appropriate classification and associate wage rates to all laborers, workers or mechanics that perform any work under this contract, in conformance with the scope of work descriptions of the Industrial Statistician of the Washington State Department of Labor and Industries.

###### With each invoice, Contractor will attach or write a statement that wages paid were compliant to applicable Prevailing Wage rates, including the Contractor and any subcontractors.

###### Upon contract completion, Contractor shall file the Affidavit of Wages Paid (form L700-007-000) approved by the Industrial Statistician of Washington L&I. This may be performed on-line if the Contractor has initiated the original Intent to Pay Prevailing Wage process on-line. The receipt of the approved affidavit is required before Seattle can pay the final invoice. The City may withhold payment on any invoice due the Contractor until the approved affidavit is received.

###### The Contractor shall also ensure that each Subcontractor likewise files an Affidavit.

###### The Contractor shall notify the Buyer and provide a copy of the Affidavit(s).

###### For jobs above $10,000, Contractor is required to post for employees’ inspection, the Intent form including the list of the labor classifications and wages used on the project. This may be postured in the nearest local office, for road construction, sewer line, pipeline, transmission line, street or alley improvement projects as long as the employer provides a copy of the Intent form to the employee upon request.

###### In the event any dispute arises as to what the prevailing wages are for this Contract, and the dispute cannot be solved by the parties involved, the matter shall be referred to the Director of the Department of Labor and Industries of the State of Washington. In such case, the Director’s decision shall be final, conclusive and binding on all parties. If the dispute involves a federal prevailing wage rate, the matter shall be referred to the U.S. Secretary of Labor for a decision. In such case, the Secretary’s decision shall be final, conclusive and binding on all parties.

# Prevailing Wage rate changes for Service Contracts greater than one year in duration

###### This provision only applies to service contracts that continue beyond a single year in duration, including building service maintenance contracts (janitorial service contractors and work performed by janitors, waxers, shampooers, and window cleaners) and to multi-year service contracts.

###### Contractor and any subcontractor must pay at least the prevailing wage rates that were in effect at time of bid throughout the duration of the contract.

###### Each contract anniversary thereafter, Contractor and any subcontractors shall review the then current Prevailing Wage Rates. The Contractor shall increase wages paid if required to meet no less than the current wage rates in effect at the time of the contract anniversary. Contractor and any subcontractors shall file an affidavit and a new intent prior to contract extension.

###### Any price or rate increases made as a result of a change in the prevailing wages will be compensated by the City on a pass through basis if the Contract requests a price increase in accordance with the price increase request requirements provided elsewhere in this contract. The Contractor must follow the contract instructions for pricing increases, notifying the Buyer at least 45 days prior to the contract anniversary date of any resulting price increase and documenting the increase.

###### Payroll, wage, and cost records shall be retained, and may be audited or inspected. The Contractor, every Subcontractor, and all other individuals or firms required to pay prevailing wages are subject to investigation—including but not limited to on-site compliance interviews—by Purchasing and Contracting (PC) and L&I in regard to payment of the required prevailing wage to workers, laborers, and mechanics employed on the project. If the investigations result in a finding that an individual or firm has violated the requirement to pay the prevailing rate of wage, the Owner may withhold payments to the Contractor. The Contractor or Subcontractor may also be subject to civil penalties and may be prohibited from bidding on any contract within the State of Washington for the period specified by law.

# Background Checks and Immigrant Status

Background checks will not be required for workers that will be performing the work under this contract. The City has strict policies regarding the use of Background checks, criminal checks, immigrant status, and/or religious affiliation for contract workers. The policies are incorporated into the contract and available for viewing on-line at <http://www.seattle.gov/purchasing-and-contracting/social-equity/background-checks>.

# Notification Requirements for Federal Immigration Enforcement Activities:

Unless prohibited by federal law, prior to responding to any requests from an employee or agent of any federal immigration agency including the Immigration and Customs Enforcement (ICE), the U.S. Department of Homeland Security (DHS), Homeland Security Investigations (HSI), Enforcement Removal Operations (ERO), Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) regarding your City contract, Vendors shall notify the Project Manager immediately.

Such requests include, but are not limited to:

###### requests for access to non-public areas in City buildings and venues (i.e., areas not open to the public such as staff work areas that require card key access and other areas designated as “private” or “employee only”); or

###### requests for data or information (written or oral) about workers engaged in the work of this contract or City employees.

No access or information shall be provided without prior review and consent of the City. The Vendor shall request the ICE authority to wait until the Project Manager is able to verify the credentials and authority of the ICE agent and will direct the Vendor on how to proceed.

# Paid Sick Time and Safe Time Ordinance

An ordinance that requires companies to provide employees who work more than 240 hours within a year inside Seattle, with accrued paid sick and paid safe time for use when an employee or a family member needs time off from work due to illness or a critical safety issue. The ordinance applies to employers, regardless of where they are located, with more than four full-time equivalent employees. This is in addition and additive to benefits a worker receives under prevailing wages per WAC 296-127-014(4). City contract specialists may audit payroll records or interview workers as needed to ensure compliance to the ordinance. Please see <http://www.seattle.gov/laborstandards>, or call the Office of Labor Standards at 206.684.4500 with questions.

# Other Labor Standards Requirements

The Vendor shall comply to the extent applicable with the City's Minimum Wage labor standards as required by SMC 14.19, setting wage standards for employees working within city limits as well as the Wage Theft labor standards as required by SMC 14.20, setting basic requirements for payment of wages and tips for employees working within city limits and providing various payment documentation to employees.

# Campaign Contributions (Initiative Measure No. 122)

Elected officials and candidates are prohibited from accepting or soliciting campaign contributions from anyone having at least $250,000 in contracts with the City in the last two years or who has paid at least $5,000 in the last 12 months to lobby the City. Please see Initiative 122, or call 206-684-8500 with questions.

City of Seattle

Federal Contract Supplement

Additional Contract Clauses

# Incorporation of Federal Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by the Federal Highway Administration (FHWA) (and Federal Transit Administration (FTA), as applicable) and/or 2 CFR 200 “Uniform Grant Guidance”, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by the Federal Transit Administration, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FHWA (and FTA, as applicable) mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this contract. The Vendor shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause the City to be in violation of the FHWA (and FTA, as applicable) terms and conditions.

# Additional Federal Funding Requirements

To the extent that the City uses Federal Funds to purchase goods and/or services pursuant to this Contract, the City shall specify, with its order, any applicable additional requirement or certification that must be satisfied by Contractor at the time the order is placed or upon delivery.

# Equal Employment Opportunity

All Contractors must comply with federal Executive Order 11246, “Equal Employment Opportunity,” as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.

###### Access to Services for Persons with Limited English Proficiency Access to Services for Persons with Limited English Proficiency: To the extent applicable and except to the extent that FTA determines otherwise in writing, the Vendor agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and with the provisions of U.S. DOT Notice, “DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries,” 66 Fed. Reg. 6733 et seq., January 22, 2001.

###### **Environmental Justice:** The Recipient agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income.

###### Contractor shall require the inclusion of these Civil Rights requirements in each subcontract at every tier, modified only if necessary, to identify the affected parties.

# Civil Rights Act Title VI

All Contractors must comply with the provisions of the Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, Part 21, nondiscrimination in federally assisted programs of the Department of Transportation issued pursuant to such Act. The law provides that no person in the United States shall, on the grounds of race, color or national origin, or sex, be denied the benefits of, be excluded form participation in, or be subjected to, discrimination under any program or activity receiving federal financial assistance.

The City in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 USC 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award

# No Federal Government Obligation to Third Parties

The City of Seattle (“the City”) and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Vendor agrees to include the above clause in each subcontract at every tier. It is further agreed the clause shall not be modified, except to identify the subcontractor that will be subject to its provisions.

# Program Fraud and False or Fraudulent Statements and Related Acts

The Vendor acknowledges the provisions of the Program Fraud Civil Remedies Act of 1986 as amended, 31 U.S.C § § 3801 et seq. and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Vendor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Vendor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Vendor to the extent the Federal Government deems appropriate.

The Vendor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307 (n)(1) on the Vendor, to the extent the Federal Government deems appropriate.

The Vendor agrees to include the above two paragraphs in each subcontract at every tier. It is further agreed that the clauses shall not be modified, except to identify the subcontractor that will be subject to the provisions.

# Audit

The City, the Federal grant agency if any, the Comptroller General of the United States, or any of their duly authorized representatives shall be provided access to any books, documents, papers and records of the subcontractor or any subcontract which are directly pertinent to this specific contract for the purpose of making audit, examination, excerpts and transcriptions in accordance with FAR 4.703 and the City’s record retention requirements, whichever is stricter. FAR clause 52.215-2 incorporated by reference. The complete clause may be viewed at <https://www.acquisition.gov/far/html/52_215.html>. The OMB A-110 provisions in effect at the time of this order govern. FAR clauses may be viewed at <https://www.acquisition.gov/browsefar>.

###### The Vendor shall permit the authorized representatives of the City, the U.S. Department of Transportation and the Comptroller General of the United States to inspect and audit all data and records of the Consultant/Contractor relating to its performance under the contract until the expiration of three years after final payment under this contract.

###### The Consultant/Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the City, the Department of Transportation and Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of six years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, paper and records of such subcontractor, involving transactions related to the subcontractor. The term "subcontract" as used in this clause excludes purchase orders not exceeding $10,000.

###### The periods of access and examination described above, for records which relate to (1) litigation of the settlement of claims arising out of the performance of this contract, or (2) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims or exceptions have been disposed of.

# Americans with Disabilities Act

The Vendor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this contract. In particular, if the Vendor is providing services, programs, or activities to City employees or members of the public as part of this contract, the Vendor shall not deny participation or the benefits of such services, programs, or activities to people with disabilities on the basis of such disability. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this contract. The Vendor is also required to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC §§ 12101, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; and 49 USC § 5301(d), and the following regulations and any amendments thereto:

###### U.S. Department of Transportation regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;

###### U.S. Department of Transportation regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27;

###### U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local federal government Services," 28 CFR Part 35;

###### DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;

###### U.S. General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19;

###### U.S. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;

###### U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F; and

###### FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609.

###### Activities Not Involving Construction. Federal laws and regulations providing wage and hour protections for nonconstruction employees, including:

### Section 102 of the Contract Work Hours and Safety Standards Act, as amendment, 40 U.S.C. § 3702, and other relevant parts of the Act, 40 U.S.C. § 3701 et seq., and

### U.S. Department of Labor (DOL) regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.

###### Any implementing requirements that the FHWA or FTA may issue.

# OSHA/WISHA

Contractor agrees to comply with conditions of the Federal Occupational Safety and Health Acts of 1970 (OSHA), as may be amended, and, if it has a workplace within the State of Washington, the Washington Industrial Safety and Health Act of 1973 (WISHA), as may be amended, and the standards and regulations issued thereunder and certifies that all items furnished and purchased under this order will conform to and comply with said standards and regulations. Contractor further agrees to indemnify and hold harmless purchaser from all damages assessed against purchaser as a result of Contractor’s failure to comply with the acts and standards thereunder and for the failure of the items furnished under this order to so comply.

# Contract Work Hours and Safety Standards

For all contracts that employ mechanics or laborers, the Contractor and all subs shall comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provide that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

# Beck Notice

Notification of Employee Rights Concerning Payment of Union Dues or Fees (Executive Order 13201) shall apply to all contracts above $100,000.

# Clean Air Act and Federal Water Pollution Control Act

All Contractors and subcontractors shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the City immediately and to the Regional Office of the Environmental Protection Agency (EPA).

# Energy Efficiency

All contractors and subcontractors must comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

# Federal Amendments

Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy, per OMB Circular A-102 Common Rule, Section 36. Contractor shall at all times comply with all applicable FHWA (or FTA, if applicable) regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the City and FHWA (or FTA, if applicable), updated annually, as they may be amended or promulgated from time to time during the term of this contract. Contractor’s failure to so comply shall constitute a material breach of this contract.

# Debarment and Suspension for Primes and all Subcontractors

By signing this contract, the Vendor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Contractor shall immediately notify the City of any suspension or debarment or other action that excludes the Vendor and any subcontractor level from participation in Federal contracting. Prior to performance of any work by the Vendor or any subcontractor under this contract, Contractor shall verify all subcontractors that are intended and/or used by the Vendor for performance of City work are in good standing and are not debarred, suspended or otherwise ineligible by the Federal Government. Contractor shall include this same provision in any subcontractor or lower contract agreements. Debarment shall be verified at [www.sam.gov](http://www.sam.gov). The Vendor shall keep documentation of such verification within the Vendor records.

# Copeland Anti-Kickback Act

All contractors and subcontractors for construction or repair shall comply with the Copeland “Anti-Kickback” Action (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR, part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subcontractor is prohibited from inducing, by any means, any person employed in the construction, completion or repair of public work, to give up any part of the compensation to which s/he is otherwise entitled. The Contractor shall immediately notify the City of any suspected or reported violations.

# Byrd Anti-Lobbying Amendment

Contractors executing contracts with the City shall sign and submit with its Bid, the Lobbying Certification/SF LLL Disclosure Form. (When applicable) the SF LLL Disclosure section of the form evidencing compliance to the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) should be completed. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 13652. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the City.

# Procurement of Recovered Material (Recycled Products)

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

# Disadvantaged Business Enterprise (DBE) and Small Business

###### Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The project specific race-conscious DBE goal for this Contract is 0.0%. A small business voluntary goal for this procurement has been set at 0.0%.

###### The Contractor, at all tiers, shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor or subcontractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City deems appropriate, which includes, but is not limited to, the following: (i) withholding monthly progress payments; (ii) assessing sanctions; (iii) liquidated damages; and/or (iv) disqualifying Contractor from future bidding as non-responsible. 49 C.F.R. § 26.13 (b). Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

###### The Contractor is required to document sufficient DBE participation to meet any goal outlined in subsection A above, or, alternatively document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following as a matter of responsiveness concurrent with and accompanying an initial proposal and at the time of any substitution during contract administration:

### The names and addresses of DBE firms that will participate in this contract;

### A description of the work each DBE will perform;

### The dollar amount of the participation of each DBE firm participating;

### Written documentation of the Contractor’s commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;

### Written confirmation from the DBE that it is participating in the contract as provided in the prime Contractor’s commitment; and contract goal is not met, evidence of good faith efforts to do so.

###### Contractors must present the required forms as a matter of responsiveness with initial proposals (see 49 CFR 26.53(3)).

###### The Contractor must promptly notify the City whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and if this contract includes DBE goals, the Contractor must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the City.

###### In the event the Contractor and/or its subcontractor fail(s) to comply with any substantive requirement of the contract related to non-discrimination, participation by Disadvantaged Business Enterprises or other Small Businesses, or equal employment opportunity, the City may impose sanctions as it may determine to be appropriate, including but not limited to:

### Requiring the Contractor to take remedial action to bring the Contractor or its subcontractor into compliance;

### Withholding payments to the Contractor until the Contractor or its subcontractor is in compliance;

### Suspend this contract;

### Terminate this contract;

### Debar the Contractor or its subcontractor from future contracts with the City; and/or

### File civil and/or criminal action(s) against the Contractor and, if applicable, its subcontractors, suppliers, employees, agents, and representatives.

###### The City may consider any such failure by the Contractor in determining whether to award any future contracts to the Contractor.

###### The Contractor will be required to report its DBE participation obtained throughout the period of performance.

### Reporting Requirement. The City requires that the Contractor report any actual DBE participation based on dollars paid on this contract to enable the City to monitor DBE participation accurately and for reporting purposes. All subcontracted work shall be reported. Contractor shall submit subcontractor Payment Reports electronically through B2Gnow at: <https://seattle.diversitycompliance.com/>

### The first subcontractor payment report shall be reported in B2GNow no later than the 15th of the first month after the date specified in the Notice to Proceed.

### Subsequent monthly subcontractor payment reports shall be submitted by the 15th day of every month thereafter. When no work is performed during a reporting period, the Contractor shall submit monthly report(s) indicating that no work was performed.

### The last subcontractor payment report shall be marked as “Final” and shall be submitted no later than 30 days after the physical completion date. The final report shall list the name of and dollar amount paid to each subcontractor and supplier utilized by the Contractor. The City will not establish the completion date until the completed final subcontractor payment report form has been received.

###### DBE Eligibility. A DBE may be eligible to count toward contract participation if the firm is certified by the Washington State Office of Minority and Women Business Enterprises (OMWBE) and performs work on the contract within their certified scope of work, meeting the provisions below that define DBE utilization.

###### DBE Listing. A Directory of DBE firms certified by OMWBE is available online at the following website address: https://omwbe.diversitycompliance.com/ or the OMWBE can be reached at 360-753-9693.

###### Small Business Eligibility. The City will count any business certified by King County’s Small Contractors and Suppliers (SCS) program. The SCS certification require businesses to meet the following criteria:

### Personal net worth less than $1.32M

### 50% of the SBA business size standards

### Agreement to participate in technical assistance/business development

### Small Business listing. A directory of SCS certified firms is available online at https://blue.kingcounty.gov/EXEC/contractreporting/Public/SCS/default.aspx

###### Counting DBE Participation. The City will count DBE participation toward the overall DBE goal as provided for in 49 CFR 26.55, provided that the following are also met:

### DBE Contractor. The City will only count the work a DBE Contractor performs with its own forces as well as the work performed by DBE subcontractors, with their own work forces.

### Joint Venture. When a DBE performs as a participant in a joint venture, the City will only count that portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work that the DBE performs with its own forces.

### Commercially Useful Function. The City will count expenditures to a DBE Contractor only for DBEs that perform a commercially useful function on that contract.

###### DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (if applicable) and paying for the material itself.

###### DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, pass-through supplier, contract or project through which funds are passed in order to obtain the appearance of DBE participation.

###### A DBE does not perform a commercially useful function if it fails to exercise responsibility with its own work force for at least 30 percent of the total cost of its contract, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved.

### Trucking. Use the following factors in determining whether DBE trucking company is performing a commercially useful function:

###### The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for meeting the DBE goals.

### The DBE must itself own and operate at least one fully licensed, insured, and operational truck that is used on the contract.

### The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

### The DBE may lease trucks from another DBE firm, including an owner-operator that is certified as a DBE. The DBE that leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

### The DBE may also lease trucks from a non-DBE firm and may enter an agreement with an owner-operator who is a non-DBE. The DBE that leases trucks from a non-DBE or employs a non-DBE owner-operator is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

### In any lease or owner-operator situation, as described in subparagraphs iv and v above, the following rules shall apply:

###### A written lease/rental agreement on all trucks leased or rented, showing the true ownership and the terms of the rental must be submitted and approved by the Contracting Agency prior to the beginning of the work. The agreement must show the lessor’s name, trucks to be leased, and the agreed upon method of payment (hour, ton, or per load). All lease agreements shall be for a long-term relationship, rather than for the individual project. Does not apply to owner-operator arrangements.

###### Only the vehicle (not the operator) is leased or rented. Does not apply to owner-operator arrangements.

### In order for DBE project goals to be credited, DBE trucking firms must be covered by a subcontract or a written agreement approved by the City prior to performing their portion of the work.

### For purposes of this subparagraph 4, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

### Expenditures with DBEs. Expenditures with DBEs for materials or supplies shall be counted as provided in the following:

###### Manufacturer. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies towards the DBE goal. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

###### Regular Dealer. If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

###### To be a regular dealer a firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

###### A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business, as provided in this section, if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers’ own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or of the cost of the materials and supplies themselves shall be counted on a contract by contract basis.

###### Packagers, brokers, manufacturers’ representatives, or other persons who arrange or expedite transactions are not regular dealers.

###### Purchases from a DBE. With respect to materials or supplies purchased from a DBE who is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are reasonable and typical for the services rendered. No part of the cost of the materials and supplies themselves shall be counted.

###### The Contractor shall complete and certify DBEs under this contract using the DBE Plan and DBE Written Confirmation forms for the work outlined under the scope of work and any subsequent amendments to this contract for additional scope of work.

###### The Contractor, at any tier, is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 10 days after the Contractor’s receipt of payment for that work from the City. In addition, the Contractor must not hold retainage from its subcontractors.

###### The Contractor must promptly notify City Purchasing and Contracting Services whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the City.

###### The Contractor must provide copies of all contracts with DBE subcontractors and non-DBE subcontractors, including but not limited to, lower-tier subcontractors, upon request by the City within 5 business days of the request.

# Termination

See Section 55, Termination, of City of Seattle Contract Terms and Conditions.

# Buy America

For purchases under this contract using FHWA or FTA funds, all goods supplied shall comply with the Buy America Act statutory and regulatory provisions.

###### FTA’s Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless "the steel, iron, and manufactured goods used in the project are produced in the United States" (49 U.S.C. § 5323(j)(1)). The Contractor shall submit a completed Buy America certificate in accordance with 49 CFR §§661.6 or 661.12 upon delivery.

###### FHWA Buy America FHWA Buy America statutory provisions are in 23 U.S.C.313 and the regulatory provisions are in 23 CFR 635.410. In accordance with Buy America requirements contained in 23 CFR 635.410, the major quantities of steel and iron construction material that is permanently incorporated into the project shall consist of American-made materials only. Buy America does not apply to temporary steel items, e.g., temporary sheet piling, temporary bridges, steel scaffolding and falsework. Minor amounts of foreign steel and iron may be utilized in this project provided the cost of the foreign material used does not exceed one-tenth of one percent of the total contract cost or $2,500.00, whichever is greater.

###### American-made material is defined as material having all manufacturing processes occurring domestically. To further define the coverage, a domestic product is a manufactured steel material that was produced in one of the 50 States, the District of Columbia, Puerto Rico, or in the territories and possessions of the United States. If domestically produced steel billets or iron ingots are exported outside of the area of coverage, as defined above, for any manufacturing process then the resulting product does not conform to the Buy America requirements. Additionally, products manufactured domestically from foreign source steel billets or iron ingots do not conform to the Buy America requirements because the initial melting and mixing of alloys to create the material occurred in a foreign country. Manufacturing begins with the initial melting and mixing, and continues through the coating stage. Any process which modifies the chemical content, the physical size or shape, or the final finish is considered a manufacturing process. The processes include rolling, extruding, machining, bending, grinding, drilling, welding, and coating. The action of applying a coating to steel or iron is deemed a manufacturing process. Coating includes epoxy coating, galvanizing, aluminizing, painting, and any other coating that protects or enhances the value of steel or iron. Any process from the original reduction from ore to the finished product constitutes a manufacturing process for iron. Due to a nationwide waiver, Buy America does not apply to raw materials (iron ore and alloys), scrap (recycled steel or iron), and pig iron or processed, pelletized, and reduced iron ore. The following are considered to be steel manufacturing processes: 1. Production of steel by any of the following processes: a. Open hearth furnace. b. Basic oxygen. c. Electric furnace. d. Direct reduction. 2. Rolling, heat treating, and any other similar processing. 3. Fabrication of the products. a. Spinning wire into cable or strand. b. Corrugating and rolling into culverts. c. Shop fabrication. A certification of materials origin will be required for any items comprised of, or containing, steel or iron construction materials prior to such items being incorporated into the permanent work. The Contractor may use WSDOT Form 350-109EF, or such other form the Contractor chooses, provided it contains the same information as WSDOT Form 350-109EF. The Contractor shall submit the completed Buy America certificate upon delivery.

# Resolution of Disputes, Breaches, or Other Litigation

See Section 10 Disputed Items, of City of Seattle Contract Terms and Conditions.

# Fly America

The Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the project unless that air transportation is provided by US flag air carriers to the extent service by these carriers is available, as required by the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 USC § 40118, in accordance with US GAO regulations, "Uniform Standards and Procedures for Transportation Transactions." 4 CFR Part 52, and US GAO Guidelines for Implementation of the "Fly America Act," B-138942, 1981 US Comp. Gen. LEXIS 2116, March 31, 1981.

# Patent Rights

See Section 44, Intellectual Property Rights, of City of Seattle Contract Terms and Conditions.

# Rights in Data and Copyright

See Section 44, Intellectual Property Rights, of City of Seattle Contract Terms and Conditions.

# Energy Conservation

All contractors and subcontractors must comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

# National Intelligent Transportation Systems Architecture and Standards

The Vendor agrees to conform, to the extent applicable, to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23 U.S.C. § 502 note, and with FTA Notice, "Federal Transit Administration National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and other subsequent Federal directives that may be issued.

# Assignability Clause

See Section 58, Interlocal Cooperation Act, of City of Seattle Contract Terms and Conditions.

# Veterans Preference

Veterans Employment. As provided by 49 U.S.C. § 5325(k): a. To the extent practicable, Contractor agrees that it: 1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and 2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and b. Contractor also assures that its sub-contractor will: 1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and 2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.