

MASTER CONTRACT TERMS AND CONDITIONS

For purchases of materials, supplies, services, and equipment under the Authority of [Chapter 39.26 RCW](#)

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MASTER CONTRACT TERMS and CONDITIONS

This document consists of general provisions and terms for solicitations issued by the Washington State Department of Enterprise services (DES). Should a term within this document conflict with a term in the main solicitation document, the latter will prevail.

1 INSTRUCTIONS TO BIDDERS

1.1 Minority and Women's Business Enterprises (MWBE)

In accordance with the legislative findings and policies set forth in [RCW 39.19](#), the State of Washington encourages participation in all of its contracts by minority and woman-owned businesses firms certified by the [Office of Minority and Women's Business Enterprises](#) (OMWBE). While the state does not give preferential treatment, it does seek equitable representation from the minority and women's business community. In addition, the state welcomes participation by self-identified minority and woman-owned firms and strongly encourages such firms to become certified by OMWBE.

Participation may be either on a direct basis in response to this solicitation or as a subcontractor to a contractor. However, unless required by federal statutes, regulations, grants, or contract terms referenced in the original solicitation, no preference will be included in the evaluation of bids, no minimum level of MWBE participation is required as a condition for receiving an award, and bids will not be evaluated, rejected or considered non-responsive on that basis.

Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the original solicitation will apply. Bidders are encouraged to contact OMWBE for information on becoming a certified firm as set forth in Washington Administrative Code (WAC) Chapters 326-02 and 326-20; or for information on other certified firms for potential sub-contracting arrangements. Nothing in this section is intended to prevent or discourage bidders from inviting participation from non-MWBE firms as well as MWBE firms. Prior to performance, an awarded bidder that is a MWBE or intends to use MWBE subcontractors is encouraged to identify the participating firm(s) to DES.

1.2 Bidder's authorized representative

Bidders must designate an authorized representative in the Bidder Profile appendix who will be the principal point of contact for DES for the duration of this solicitation process.

1.3 Include all cost components in pricing

Bidders must identify and include all elements of recurring and non-recurring costs in their pricing. Unless otherwise specified, this must include, but is not limited to, all administrative fees, maintenance, manuals, documentation, shipping charges, labor, travel, training, consultation services, wiring and supplies needed for the installation (including cost of all uncrating, disposal of shipping materials), set-up, testing and initial instruction to agency personnel, warranty work and maintenance of the products/services, handling charges such as packing, wrapping, bags, containers, reels; or the processing fees associated with the use of credit cards.

Notwithstanding the foregoing, in the event that market conditions, laws, regulations, or other unforeseen factors dictate, at DES's sole discretion, additional charges may be allowed during the contract term.

1.4 Equal or alternate

Bidders may bid a product or service that is an equal to what is specified in the solicitation. An “equal” for purposes of this solicitation is “an offer of materials, supplies, services and/or equipment that meets or exceeds the quality, performance, and use of the specifications identified in a solicitation.” DES reserves the right to determine whether the proposed materials, supplies or services are equal.

Bidders may not bid a product or service that is an “alternate” to those specified in the solicitation except as set out in this section. An “alternate” for purposes of this solicitation is a substitute offer of materials, supplies, services and/or equipment that is not at least a functional equal in features, performance and use and which materially deviates from one or more of the specifications in a competitive solicitation. Bidders may suggest alternates by providing a detailed description, supporting documentation, and any associated exceptions to the specifications to DES in writing at least five business days before the bid-due date. If the proposed alternate is determined by DES to be acceptable, DES will issue a solicitation amendment to notify potential bidders. Otherwise, any bid that does not meet minimum mandatory specifications may be deemed non-responsive.

1.5 Public records and exempt information

All documents submitted by bidders to DES as part of this procurement will become public records as defined by the Public Records Act, Revised Code of Washington (RCW) [42.56](#). DES will not disclose any documents submitted in response to this solicitation until after announcement of Apparent Successful Bidder(s).

In most cases, DES will not ask bidders to submit confidential materials. However, if a bidder chooses to submit such materials, it should read and understand the following:

- DES will maintain the confidentiality of bidder documents only if a bidder clearly and prominently marks them as “CONFIDENTIAL” or “PROPRIETARY” or “TRADE SECRET.”
- DES requires that any confidential or proprietary documents be submitted in a separate envelope(s) marked “CONFIDENTIAL” or “PROPRIETARY” or “TRADE SECRET.”
- DES’s responsibility is limited to:
 1. Taking reasonable steps to protect clearly marked documents; and
 2. Notifying a bidder of any public records request(s) for the documents

When a public records request seeks confidential or proprietary documents or trade secrets submitted by bidders following the procedures above, **DES will:**

- Notify the bidder: DES will identify the requestor and the date that DES will disclose the requested documents unless the bidder gets a court order directing DES to withhold them.
- Disclose the requested documents after giving bidder an opportunity to seek a court order barring disclosure

DES will NOT:

- Evaluate or defend a bidder’s claim of confidentiality. The bidder must defend its claim and take appropriate legal action to do so.
- Withhold or redact any document without a court order.

Questions about confidentiality or exemption to disclosure should be directed to the Procurement Coordinator named on the cover of the IFB or the DES public records office at (360) 407-8768.

1.6 In-state preference/Reciprocity

Pursuant to RCW [39.26](#), DES has established a schedule of price adjustments applicable against any bidders submitting responses from states which grant a preference to their own in-state businesses as identified in the [Preference Table](#). The reciprocity adjustment is applied as follows.

- These adjustments will be applied in formal sealed bid solicitations only.
- The business address from which the response was submitted will determine if an adjustment is to be applied.
- The appropriate percentage will be added to each response bearing the address from a state with in-state preferences rather than subtracting a like amount from Washington state bidders.
- This action will be used only for evaluation. In no instance shall the increase be paid to a supplier whose response is accepted.

1.7 Withdrawal or modification of response

Bidders are liable for all errors or omissions contained in their responses.

a. Prior to response due date and time

Modification: Mistakes in bids or proposals detected prior to the due date and time may be corrected by the bidder by withdrawing the original bid or proposal and submitting a corrected bid or proposal to DES before the due date and time. If there is not sufficient time prior to the due date and time to withdraw the original bid or proposal and submit a corrected bid or proposal, the bidder, or an authorized representative, may correct the mistake on the face of the original bid or proposal provided that the corrected bid or proposal is time stamped by DES upon resubmission prior to the due date and time.

Withdrawal: An authorized bidder representative is permitted to withdraw its response before the due date and time by submitting the withdrawal request in writing. Withdrawn responses will be returned unopened to the bidder.

b. After response due date and time

No modification: If bidder mistakes in a bid or proposal are detected after due date and time, they may not be corrected.

Withdrawal: If the bidder submits evidence in writing satisfactory to DES that a mistake has been made by the bidder in the calculation of its bid or proposal, DES may allow the bid or proposal to be withdrawn provided that the claim of mistake and supporting documentation is provided within three business days after the due date and time. Compliance with this section within the specified time limit shall relieve the bidder of forfeiture of its bid guarantee. If DES subsequently reissues the solicitation, the bidder having made the mistake may not participate in that solicitation.

Clarification: DES reserves the right to contact bidder for clarification of response contents.

1.8 Legal notices

Any notice or demand or other communication required or permitted to be given under the contract or applicable law (except notice of malfunctioning equipment) will be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid, certified mail, return receipt requested, via facsimile or by electronic mail, to the parties at the addresses and fax numbers, e-mail addresses provided in the *Authorized Offer and Contract Signature Page* below.

For purposes of complying with any provision in the contract or applicable law that requires a “writing,” such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be “in writing” or “written” to an extent no less than if it were in paper form. Notices will be effective upon receipt. The notice address as provided herein may be changed by written notice given as provided above.

In the event that a subpoena or other legal process commenced by a third party in any way concerning the equipment or services provided pursuant to the contract is served upon contractor or DES, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. The contractor and DES further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

1.9 Liens, claims and encumbrances

All materials, equipment, supplies and/or services shall be free of all liens, claims, or encumbrances of any kind, and if DES or the purchaser requests, a formal release of same shall be delivered to the respective requestor.

2 STANDARD DEFINITIONS

This section contains definitions of terms commonly used in solicitations conducted by the State of Washington, Department of Enterprise services. Additional definitions may also be found in [Chapter 39.26 RCW](#). All terms contained herein will be read consistently with those definitions.

Acceptance	The products passed appropriate inspection and acceptance testing period, if required.
Acceptance testing	The process for ascertaining that the products meet the standards set forth in the solicitation, prior to acceptance by the purchaser.
Agency	State of Washington institutions, the offices of the elective state officers, the Supreme Court, the court of appeals, the administrative and other departments of state government, and the offices of all appointive officers of the state. "Agency" does not include the legislature but does include colleges, community colleges and universities who choose to participate in state contract(s).
All-or-nothing award	A method of award resulting from a competitive solicitation by which the purchaser will award all items to a single bidder. Also, a designation the bidder may use in its bid or response to indicate its offer is contingent up on full award and it will not accept a partial award.
Alternate	A substitute offer of goods and services which is not at least a functional equal in features, performance and use and which materially deviates from one or more of the specifications in a competitive solicitation.
Amendment	A change to a legal document. Solicitation: For the purposes of a solicitation document, an amendment shall be a unilateral change issued by DES, at its sole discretion. Contract: An agreement between the parties to change the contract after it is fully signed by both parties. Such agreement shall be memorialized in a written document describing the agreed-upon change including any terms and conditions required to support such change. An Order Document shall not constitute an amendment to a contract.
Apparent Successful Bidder(s)	The bidder identified by DES, after evaluation of responses, who is recommended for award.
Authorized representative	An individual designated by the bidder or contractor to act on its behalf and with the authority to legally bind the bidder or contractor.

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Authorized signatory	An individual with the authority to legally bind the bidder or contractor concerning the terms and conditions set forth in solicitation, response and contract documents.
Award	The official act of DES of accepting the offer to enter into a contract as contained in the bidder(s) response.
Bid	A sealed written offer to perform a contract to provide materials, supplies, services, and/or equipment in reply to an Invitation For bid (IFB).
Bidder	A Vendor who submits a response in reply to a solicitation.
Brand	A specification identifying a manufacturer of the goods described in a competitive solicitation to identify a standard of quality against which other products will be evaluated.
Business days	Monday through Friday, 8 a.m. to 5 p.m., Pacific Time, except for holidays observed by the State of Washington.
Calendar days	Consecutive days of the year including weekends and holidays, each of which commence at 12:00:01 a.m. and end at Midnight, Pacific Time. When "days" are not specified, Calendar Days shall prevail.
Contract	An agreement, or mutual assent, between two or more competent parties with the elements of the agreement being offer, acceptance, and consideration.
Contract administrator	The individual authorized by DES who is responsible for administration of a contract.
Contractor	Individual, company, corporation, firm, or combination thereof with whom DES develops a contract for the procurement of materials, supplies, services, and/or equipment. It shall also include any subcontractor retained by contractor as permitted under the terms of the contract.
Department of Enterprise services (DES)	An agency serving state government and the citizens of Washington.
Equal	Materials, supplies, services and/or equipment that meets or exceeds the quality, performance and use of the specifications identified in a solicitation.
Estimated useful life	The estimated time from the date of acquisition to the date of replacement or disposal, determined in any reasonable manner.

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Inspection	An examination of delivered material, supplies, services, and/or equipment prior to acceptance aimed at forming a judgment as to whether such delivered items are what was ordered, were properly delivered and ready for acceptance. Inspection may include a high level visual examination or a more thorough detailed examination as is customary to the type of purchase, as set forth in the solicitation document and/or as agreed between the parties. Inspection shall be acknowledged by an authorized signature of the purchaser.
Intent to Award	Notice of the recommendation for award for a specific solicitation.
Invitation for Bid (IFB)	The form utilized to solicit bids in the formal, sealed bid procedure and any amendments thereto issued in writing by DES. Specifications and qualifications are clearly defined.
Late bids or proposals	A bid or proposal received at the place specified in the solicitation after the time designated for all bids or proposals to be received.
Lead time/After Receipt Of Order (ARO)	The period of time between when the contractor receives the order and the purchaser receives the materials, supplies, equipment, or services order.
Lifecycle cost	The total cost of an item to the state over its Estimated Useful Life, including costs of selection, acquisition, operation, maintenance, and where applicable, disposal, as far as these costs can reasonably be determined, minus the salvage value at the end of its estimated useful life.
Master Contracts and Consulting (MCC)	A unit of the Contracts and Legal services Division of DES authorized under Chapter 39.26 RCW to develop and administer contracts for goods and services on behalf of state agencies, colleges and universities, nonprofit organizations and local governments.
Order document	A written communication, submitted by a purchaser to the contractor, which details the specific requirements of the purchaser within the scope of the contract, such as delivery date, size, color, capacity, etc. An order document may include, but is not limited to field orders, purchase orders, work order or other writings as may be designated by the parties hereto. No additional or alternate terms and conditions on such written communication shall apply unless authorized by the contract and expressly agreed between the purchaser and the contractor.
Original Equipment Manufacturer (OEM)	A supply management term for the purchase of parts and material directly from the manufacturer of the equipment or from an authorized reseller. For example, Ford automotive replacement parts would be purchased from an authorized Ford reseller.

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Procurement Coordinator	The individual authorized by DES who is responsible for conducting a specific solicitation.
product	Materials, supplies, services, and/or equipment provided under the terms and conditions of this contract.
Prompt payment discount	A discount offered by the bidder to encourage timely payment by purchaser within the stated term identified by bidder.
Proposal	A sealed written offer to perform a contract to supply materials, supplies, services, and/or equipment in reply to a Request For Proposal (RFP).
Purchaser	The authorized user of the contract, as identified in the solicitation, who may or actually does make purchases of material, supplies, services, and/or equipment under the resulting contract.
Quotation	An informal written or oral offer to perform a contract to supply materials, supplies, services, and/or equipment in reply to a Request For Quote (RFQ).
Recycled material	Waste materials and by-products that have been recovered or diverted from solid waste and that can be utilized in place of a raw or virgin material in manufacturing a product and consists of materials derived from post-consumer waste, manufacturing waste, industrial scrap, agricultural wastes and other items, all of which can be used in the manufacture of new or recycled products.
Recycled content product	A product containing recycled material.
Request For Proposal (RFP)	The form utilized to solicit Proposals in the formal, sealed solicitation procedure and any amendments thereto issued in writing by DES. The specifications and qualification requirements are written in an outcome based form allowing for consideration of a broad range of different solutions to meet the procurement need.
Request For Quotations (RFQ)	A written or oral request by DES to solicit Quotations in the informal solicitation procedure.
Response	A bid or proposal.
Responsible	The capability in all respects to perform in full the contract requirements; meets the elements of responsibility. (See RCW 39.26 .)
Responsive	Conforms in all material respects to the terms and conditions, the specifications, and other requirements of a solicitation.

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Sealed bid	A formal submission from a bidder submitted in response to a solicitation. It is submitted in a sealed manner to prevent its contents from being revealed before the time and date set for the bid opening.
Solicitation	The process of notifying prospective bidders that DES desires to receive competitive bids or proposals for furnishing specified materials, supplies, services, and/or equipment. Also includes reference to the actual documents used for that process, including: the Invitation For Bids (IFB) or Request For Proposals (RFP), along with all attachments and exhibits thereto.
Specifications	The explicit requirements furnished with a competitive solicitation upon which a purchase order or contract is to be based. Specifications set forth the characteristics of the goods and/or services to be purchased or sold so as to enable the bidder or supplier to determine and understand requirements of the purchaser. Specifications may be in the form of a description of the physical or performance characteristics, a reference brand or both. It may include a description of any requirement for inspecting, testing, or preparing a material, equipment, supplies, or service for delivery.
State	The State of Washington acting by and through DES.
State contract	<p>The written document memorializing the agreement between the successful bidder and DES for materials, supplies, services, and/or equipment, administered by the Master Contracts and Consulting Unit on behalf of the State of Washington.</p> <p>“State contract” does not include the following:</p> <ul style="list-style-type: none">– Colleges and universities that choose to purchase under RCW 28B.10.029– Purchases made in accordance with state purchasing policy;– Purchases made pursuant to authority granted or delegated under RCW 39.26– Purchases authorized as an emergency purchase under RCW 39.26; or– Purchases made pursuant to other statutes granting the agency authority to independently conduct purchases of materials, supplies, services, or equipment.
Subcontractor	A person or business that is, or will be, providing or performing an essential aspect of the contract under the direction and responsibility of the contractor and with the agreement of DES.

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Term contract	A state contract that extends beyond a single purchase and may be available to multiple purchasers.
Vendor	A provider of materials, supplies, services, and/or equipment.
Washington's Electronic Business Solution (WEBS)	The vendor registration and bidder notification system maintained by the Washington State Department of Enterprise services located at: www.ga.wa.gov/webs .

3 STANDARD TERMS & CONDITIONS

3.1 Contract modifications

DES reserves the right to modify a contract (including but not limited to adding or deleting products, services, or delivery locations) by mutual agreement between DES and the contractor, so long as such modification is substantially within the scope of the original contract. Such modifications will be memorialized in a signed written document describing the agreed upon change including any terms and conditions required to support such change.

3.2 Contract administration

- **State contract administrator**

DES will appoint a single point of contact that will be the Contract Administrator for this contract and will provide contract oversight. The Contract Administrator will be the principal contact for the contractor for business activities under this contract. DES will notify contractor, in writing, when there is a new Contract Administrator assigned to this contract.

- **Administration of term contract**

DES may maintain contract information and pricing and make it available on DES's web site. The contract prices are the maximum price contractor can charge. The contractor may also offer volume discounts to purchasers.

3.3 Contractor supervision and coordination

Contractor shall:

- a. Competently and efficiently supervise and coordinate the implementation and completion of all contract requirements specified herein.
- b. Identify the contractor's Authorized Representative, who will be the principal point of contact for DES concerning contractor's performance under this contract.
- c. Immediately notify the Contract Administrator in writing of any change of the designated Authorized Representative assigned to this contract.
- d. Be bound by all written communications given to or received from the contractor's Authorized Representative.

Violation of any provision of this section may be considered a material breach establishing grounds for contract termination.

3.4 Post-award conference

The contractor may be required to attend a post-award conference scheduled by the Procurement Coordinator and/or the contract administrator to discuss contract performance requirements. The time and place of this conference will be scheduled following contract award.

3.5 Term contract management

Upon award of a term contract, the contractor shall:

- a. Review the impact of the award and take the necessary steps needed to ensure that contractual obligations will be fulfilled.
- b. Promote and market the use of this contract to all authorized contract purchasers.

- c. Ensure that those who endeavor to utilize this contract are authorized purchasers under this contract.
- d. At no additional charge, assist purchasers in making the most cost effective, value based purchases which may include, but is not limited to:
 - Having representatives available to provide information regarding products and services, including visiting the purchaser site if needed, and providing purchaser with materials/supplies/equipment recommendations.
 - Providing purchasers with a detailed list of contract items including current contract pricing and part numbers.

The contractor shall designate a customer service representative who will be responsible for addressing purchaser issues including, but not limited to:

- Logging requests for service, ensuring repairs are completed in a timely manner, dispatching service technicians and processing warranty claim documentation.
- Providing purchasers with regular and timely status updates in the event of a delay in repair or order fulfillment.
- Acting as the lead and liaison between the manufacturer and purchaser in resolving warranty claims for contract items purchased.

3.6 Changes

Alterations to any of the terms, conditions, or requirements of this contract shall only be effective upon written issuance of a mutually agreed contract amendment by DES. However, changes to point of contact information may be updated without the issuance of a mutually agreed contract amendment.

3.7 Statewide Payee Desk

Contractors must register with the Statewide Payee Desk, maintained by DES, in order to be paid for contract sales. Washington state agencies cannot make payments to a contractor until it is registered. Registration materials are available here: [Receiving Payment from the State](#).

3.8 Management fee

Contractor will pay a management fee of 0.74 percent to DES on all state contract sales. The management fee must be rolled into the contractor's current pricing, and not shown as a separate line item on an invoice.

DES may increase, reduce or eliminate the management fee, and reserves the right to negotiate contract pricing with the contractor when adjustment of the management fee might justify an increase in pricing. Written notifications of the management fee by DES become effective for new purchases or new change orders to existing purchases 30 calendar days after notification unless DES grants additional time.

The state reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced and all management fees have been paid. Failure to accurately report total net sales, to submit a timely usage report, or remit timely payment of the management fee may be cause for contract termination, the charging of interest or penalties, or the exercise of other remedies provided by law.

The management fee does not include or supersede fee terms owed to other entities such as the Western States Contracting Alliance (WSCA), National Association of State Procurement Officials (NASPO) or governmental entities other than the state of Washington.

Management fee payment must reference the contract number, work request number (if applicable), the year and quarter for which the management fee is being remitted, and the contractor's name as it is known to DES, if not already included on the face of the check. All payments are sent to:

Washington State Department of Enterprise services
Finance Department
1500 Jefferson St. S.E.
PO Box 41460
Olympia, WA 98504-1460

3.9 Contract sales report

The management fee will be based on total contract usage (sales), which must be reported quarterly by the contractor in the [Contract Sales Reporting System](#). DES will provide a login password and a vendor number.

For each report, contractor must identify every purchaser who has made purchases during the reporting period. The "Miscellaneous" option may be used only with prior approval by DES, and use of this option without prior approval by DES may be cause for contract termination. Refer sales reporting questions to the Contract Administrator.

Due date: Reports must be submitted electronically within 30 days after the end of the calendar quarter: no later than April 30, July 31, October 31 and January 31.

Failure to provide reports in accordance with the schedule above may be cause for contract termination.

3.10 Other required term contract reports

DES may require the contractor to provide a detailed annual contract sales history report. This report, if requested, will include at a minimum, but is not limited to: product description, part number or other product identifier, per unit quantities sold, and contract price. This report must be provided to DES in an electronic format that can be read by MS Excel. Unless the solicitation specifies otherwise, all other required reports will be designed and approved by the parties by mutual agreement.

3.11 Common vendor-registration and bid-notification system

Contractor shall be registered in [Washington's Electronic Business Solution](#) (WEBS), the state's common vendor-registration and bid-notification system. Contractors already registered need not re-register. It is the sole responsibility of contractor to properly register and maintain an accurate vendor profile.

3.12 Contractor qualifications and requirements

DES reserves the right to require receipt of proof of compliance with any of the requirements in this section within 10 calendar days from the date of request, and to terminate this contract as a material breach for noncompliance with any requirement of this paragraph. Contractor shall maintain compliance with these requirements throughout the life of this contract.

a. Qualified and established business

Prior to performance, or prior to that time if required by DES, law or regulation, contractor must be an established business with all required licenses, fees, bonding, facilities, equipment, and trained personnel necessary to meet all requirements and perform the work as specified in the solicitation.

b. Authorized Service Provider and product Reseller certifications

Upon request, contractor must provide evidence of its status as an authorized service provider or product reseller. contractor shall maintain its authorized service provider or product reseller status for the initial term and any extensions of the resulting contract. If this status is discontinued, this contract may be terminated.

c. Dealer authorization (when applicable)

The contractor shall maintain dealer authorization from the manufacturer consistent with the requirements outlined in the original solicitation.

d. Personnel substitutions (when applicable)

If at contract award or any time thereafter, any named individual specifically identified in the response to work on this engagement is not available, DES reserves the right to approve or reject any personnel substitutions.

e. Use of subcontractors (when applicable)

Prior to performance, contractor shall identify all subcontractors who will perform services in fulfillment of contract requirements. Additionally contractor may be required to identify contact information as well as federal tax identification number (TIN), and anticipated dollar value of each subcontract.

DES reserves the right to approve or reject any and all subcontractors that identified by the contractor. Any subcontractors not listed in the bidder's response, who are engaged by the contractor, must be pre-approved, in writing, by DES.

Contractor agrees to be responsible for all actions of any subcontractors in the performance of this contract. The contractor shall be responsible to ensure that all requirements of the contract shall flow down to any and all subcontractors. In no event shall the existence of a Subcontract operate to release or reduce the liability of contractor to the state for any breach in the performance of the contractor's duties.

f. Assignment

Contractor shall not assign or otherwise transfer its obligations or any claim arising under this contract without the prior written consent of DES. Such consent will not be unreasonably withheld. Contractor shall provide a minimum of 30 calendar days advance notification of intent to assign or otherwise transfer its obligations under this contract. Violation of this provision may be considered a material breach and be grounds for contract termination. Assignment or transfer of contract shall not relieve the contractor from its responsibilities and obligations under the contract.

g. Contractor authority and infringement

Under this contract, contractor is authorized to sell only those materials, supplies, services and/or equipment as stated herein and allowed for by the contract provisions. contractor

shall not misrepresent to purchasers that they have the contract authority to sell any other materials, supplies, services and/or equipment. Further, contractor may not intentionally infringe on other established state contracts.

h. Hours of labor

In compliance with RCW [49.28](#), contractor agrees that no worker, laborer, or mechanic in the employ of the contractor or subcontractor shall be permitted or required to work more than eight hours in any one calendar day, or 40 hours in any one calendar week. However, in cases of extraordinary emergency such as danger to life or property, the hours of work may be extended but in such cases the rate of pay for time employed in excess of the above shall be at the prevailing overtime rate of pay. Except, contracts will not require the payment of overtime rates for the first two hours worked in excess of eight hours per day when the employer has obtained the employee's agreement (as defined in WAC [296-127-022](#)) to work a four-day, ten-hour work week.

i. Materials and workmanship

The contractor is required to furnish all materials, supplies, equipment and/or services necessary to perform contractual requirements. Materials, supplies, equipment and/or services used in the performance of this contract shall conform to all applicable federal, state, and local codes, regulations and requirements for such equipment, specifications contained herein, and the normal uses for which intended. Materials, supplies, and equipment shall be manufactured in accordance with the best commercial practices and standards for this type of materials, supplies, and equipment.

j. Best pricing

For the term of the contract, pricing for all products will be no greater than the prices quoted in the bidder's response. If, however, during the contract period lower prices and rates become effective through reduction in manufacturer's or contractor's list prices, promotional discounts, or other circumstances, purchasers must be given immediate benefit of such lower prices and rates.

k. Mercury content and preference (when applicable)

Contractor shall provide mercury-free products when available. Should mercury-free products not exist, contractors shall provide products with the lowest mercury content available in meeting performance requirements.

Contractor shall disclose products that contain added mercury and provide an explanation that includes the amount or concentration of mercury, and justification as to why added mercury is necessary for the function or performance of the product. The contractor is to provide any existing technical data pertaining to the addition of mercury or a mercury compound intentionally added to the product.

Contractor shall maintain compliance with these requirements throughout the life of this contract. DES reserves the right to require receipt of proof of compliance within 10 calendar days from the date of request, and to terminate this contract as a material breach for noncompliance.

3.13 Ordering requirements

Contractor must ensure that Authorized purchasers can place orders against this contract either in person, electronically, facsimile or by phone. Once an order is issued, the following shall apply:

- Upon receipt of a purchase order the contractor must send written confirmation to the purchaser.
- If requested, the contractor must supply purchaser with manufacturer's list pricing or other documentation needed to verify contract pricing compliance.
- Contractor must notify purchaser of any surcharges or other price adjustments if applicable and as contract allows.

3.14 Delivery requirements

a. Delivery:

Contractor must ensure that delivery of goods will be made as required in the contract terms, the Purchase Order, or as otherwise mutually agreed in writing between the purchaser and contractor. The following apply to all deliveries:

- The contractor must deliver the goods during purchaser's normal work hours and within contract time frames or as otherwise mutually agreed in writing between the purchaser and contractor at the time of order placement.
- The contractor must verify specific working hours of individual purchasers and instruct carrier(s) to deliver accordingly.
- The purchaser may refuse shipment when delivered after normal working hours.
- Failure to comply with agreed upon delivery times may subject contractor to liquidated damages and/or other damages.
- The acceptance of late delivery does not constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by contractor.
- The contractor must make all deliveries to the applicable delivery location as indicated in the contract or Purchase Order.
- The contractor is responsible for verifying delivery conditions/requirements with the purchaser prior to the delivery.
- When applicable, the contractor must take all necessary actions to safeguard items during inclement weather.
- All packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written materials associated with this contract shall be identified by the contract identifier and the applicable purchaser's order number. Packing lists shall be enclosed with each shipment and clearly identify all contents and any backorders.
- The contractor must not initiate performance prior to receipt of written or verbal authorization from authorized purchasers. Expenses incurred otherwise will be borne solely by the contractor.

b. Receipt of goods:

Inspection and rejection: The purchaser's inspection of all materials, supplies and equipment upon delivery is for the purpose of forming a judgment as to whether such delivered items are what was ordered, were properly delivered, and are ready for

acceptance. If applicable, the state reserves the right to independently test, at contractor's expense, any product of questionable freshness, quality, or origin delivered against this contract. Such inspection shall not be construed as final acceptance, or as acceptance of the materials, supplies or equipment, if the materials, supplies or equipment does not conform to contractual requirements.

If there are any apparent defects in the materials, supplies, or equipment at the time of delivery, the purchaser will promptly notify the contractor. At the purchaser's option and without limiting any other rights, the purchaser may require the contractor to:

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

Alternatively and at the purchaser's option, any possible damage to the product may be noted on the receiving report and the cost deducted from final payment.

Acceptance: Acceptance shall be as specified in the contract or purchase order. In the event that there is a formal acceptance-testing period required in the solicitation document then acceptance is formalized in writing. If there is no acceptance-testing period required, acceptance occurs when the products are delivered and inspected.

c. Shipping and risk of loss:

Unless the contract specifies otherwise, contractor shall ship all goods freight prepaid, FOB purchaser's destination. The method of shipment shall be consistent with the nature of the goods and hazards of transportation. Regardless of FOB point, contractor agrees to bear all risks of loss, damage, or destruction of the goods ordered hereunder that occurs prior to delivery date or acceptance, whichever is applicable, except loss or damage attributable to purchaser's fault or negligence; and such loss, damage, or destruction shall not release contractor from any obligation hereunder. After delivery date or acceptance, whichever is applicable, the risk of loss or damage shall be borne by purchaser, except loss or damage attributable to contractor's fault or negligence.

d. Site security:

While on purchaser's premises, contractor, its agents, employees, or subcontractors shall conform in all respects with physical, fire, or other security regulations.

e. Installation:

When applicable, installation shall be performed in a professional manner in accordance with industry standard best practices. The premises shall be left in a neat, clean, and undamaged condition. The state reserves the right to require contractor to repair any damage caused during installation or provide full compensation as determined by the state.

f. Title to product (if applicable):

Upon delivery or acceptance, whichever is applicable, contractor shall convey to purchaser good title to the goods free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.

g. Labeling:

Individual shipping cartons shall be labeled with the name of the purchaser, order number, contract number, contractor, state stock numbers. Where applicable, date of manufacture, batch number, storage requirements, conditions and recommended shelf life shall also be included.

h. Hazardous materials:

Consistent with WAC [296-839](#), all manufacturers and distributors of hazardous substances, including any of the items listed in this contract, must include a complete material safety data sheet (MSDS) for each hazardous material. Additionally, each container of hazardous materials must be appropriately labeled with:

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

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

3.15 Treatment of assets

Title to all property furnished by DES and/or purchaser shall remain with DES and/or purchaser, as applicable. Any property of DES and/or purchaser furnished to the contractor shall, unless otherwise provided herein or approved by DES and/or purchaser, be used only for the performance of this contract.

The contractor shall be responsible for damages as a result of any loss or damage to property of DES and/or purchaser which results from the negligence of the contractor or which results from the failure on the part of the contractor to maintain, administer and protect that property in a reasonable manner and to the extent practicable in all instances.

If any DES and/or purchaser property is lost, destroyed, or damaged, the contractor shall immediately notify DES and/or purchaser and shall take all reasonable steps to protect the property from further damage.

The contractor shall surrender to DES and/or purchaser all property of DES and/or purchaser prior to settlement upon completion, termination, or cancellation of this contract.

Title to all property furnished by the contractor, the cost for which the contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the purchaser upon delivery of such property by the contractor and acceptance by the purchaser. Title to other property, the cost of which is reimbursable to the contractor under this contract, shall pass to and vest in the purchaser upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the purchaser in whole or in part, whichever first occurs.

All reference to the contractor under this clause shall also include contractor's employees, agents or subcontractors.

3.16 Standard of quality/Consistency over term of contract

If, in the sole judgment of DES or the purchaser, any product is determined not to be equal, the purchaser may take any or all of the following actions:

- The product may be returned at contractor’s expense and the purchaser reimbursed for any payments.
- The contract may be terminated without any liability to the State of Washington or purchaser.

3.17 Payment

a. Advance payment prohibited:

No advance payment shall be made for the products and services furnished by contractor under this contract.

Notwithstanding the above, maintenance payments, if any, may be made on a quarterly basis at the beginning of each quarter.

b. Payment:

Payment is the sole responsibility of, and will be made by, the purchaser.

Under [Chapter 39.76 RCW](#) , if purchaser fails to make timely payment(s), contractor may invoice for 1 percent per month on the amount overdue or a minimum of \$1. Payment will not be considered late if a check or warrant is mailed within the time specified. If no terms are specified otherwise in the solicitation, net 30 days will automatically apply.

Payment(s) made in accordance with contract terms shall fully compensate the contractor for all risk, loss, damages or expense of whatever nature and acceptance of payment shall constitute a waiver of all claims submitted by contractor.

Payment for materials, supplies and/or equipment received and for services rendered shall be made by purchaser and be redeemable in U.S. dollars. Unless otherwise specified, the purchaser’s sole responsibility shall be to issue this payment. Any bank or transaction fees or similar costs associated with currency exchange procedures or the use of purchasing/credit cards shall be fully assumed by the contractor.

Note: when the state has been overcharged or otherwise reimbursed, the purchaser may elect to have either direct payments or written credit memos issued. If the contractor fails to make timely payment(s) or issuance of credit memos, the purchaser may impose a 1% per month on the amount overdue 30 days after notice to the contractor.

c. Invoicing and discounts

Contractor must provide a properly completed invoice to purchaser. All invoices are to be delivered to the address indicated in the purchase order.

Each invoice must be identified by the associated contract number; the contractor’s statewide vendor registration number assigned by the Washington State Office of Financial Management (OFM), the applicable purchaser’s order number, and must be in U.S. dollars. Invoices must be prominently annotated by the contractor with all applicable prompt payment and/or volume discount(s) and shipping charges unless otherwise specified in the solicitation.

Invoices for payment will accurately reflect all discounts due the purchaser. Invoices will not be processed for payment, nor will the period of prompt payment discount commence, until receipt of a properly completed invoice denominated in U.S. dollars and until all invoiced items are received and satisfactory performance of contractor has been accepted by the purchaser. If an adjustment in payment is necessary due to damage or dispute, any prompt payment discount period shall commence on the date final approval for payment is authorized.

3.18 Taxes, fees and licenses

a. Taxes

Where required by statute or regulation, the contractor shall pay for and maintain in current status all taxes that are necessary for contract performance. Unless otherwise indicated, the purchaser agrees to pay State of Washington taxes on all applicable materials, supplies, services and/or equipment purchased. No charge by the contractor shall be made for federal excise taxes and the purchaser agrees to furnish contractor with an exemption certificate where appropriate.

b. Collection of retail sales and use taxes

In general, contractors engaged in retail sales activities within the State of Washington are required to collect and remit sales tax to Department of Revenue (DOR). In general, out-of-state contractors must collect and remit "use tax" to Department of Revenue if the activity carried on by the seller in the State of Washington is significantly associated with contractor's ability to establish or maintain a market for its products in Washington. Examples of such activity include where the contractor either directly or by an agent or other representative:

- Maintains an in-state office, distribution house, sales house, warehouse, service enterprise, or any other in-state place of business;
- Maintains an in-state inventory or stock of goods for sale;
- Regularly solicits orders from purchasers located within the State of Washington via sales representatives entering the State of Washington;
- Sends other staff into the State of Washington (e.g. product safety engineers, etc.) to interact with purchasers in an attempt to establish or maintain market(s); or
- Other factors identified in [WAC 458-20](#).

c. Department of Revenue registration for out-of-state contractors

Out-of-state contractors meeting any of the above criteria must register and establish an account with the Department of Revenue. Refer to [WAC 458-20-193](#), and call the Department of Revenue at 800-647-7706 for additional information. When out-of-state contractors are not required to collect and remit "use tax," purchasers located in the State of Washington are responsible for paying this tax, if applicable, directly to the Department of Revenue.

d. Fees/Licenses

After award of contract, and prior to commencing performance under the contract, the contractor shall pay for and maintain in a current status any licenses, fees, assessments, permit charges, etc., which are necessary for contract performance. It is the contractor's

sole responsibility to maintain licenses and to monitor and determine any changes or the enactment of any subsequent regulations for said fees, assessments, or charges and to immediately comply with said changes or regulations during the entire term of this contract.

e. Customs/Brokerage Fees

Contractor shall take all necessary actions, including, but not limited to, paying all customs, duties, brokerage, and/or import fees, to ensure that materials, supplies, and/or equipment purchased under the contract are expedited through customs. Failure to do so may subject contractor to liquidated damages as identified herein and/or to other remedies available by law or contract. Neither DES nor the purchaser will incur additional costs related to contractor's payment of such fees.

f. Taxes on invoice

Contractor shall calculate and enter the appropriate state and local sales tax on all invoices. Tax is to be computed on new items after deduction of any trade-in in accordance with [WAC 458-20-247](#).

g. Ferry vessel exemption(if applicable)

Orders for tangible personal property which become a component part of ferry vessels of the State of Washington or local government units in the State of Washington are exempt from use tax under [RCW 82.12.0279](#).

h. Minority and Women's Business Enterprise (MWBE) participation

With each invoice for payment and within 30 days of purchaser's request, contractor shall provide purchaser an Affidavit of Amounts Paid. The Affidavit of Amounts Paid shall either state that contractor still maintains its MWBE certification, or state that its subcontractor(s) still maintain(s) its/their MWBE certification(s) and specify the amounts paid to each certified MWBE subcontractor under this contract. Contractor shall maintain records supporting the Affidavit of Amounts Paid in accordance with this contract's Retention of Records section.

i. Overpayments to contractor

Contractor shall refund to purchaser the full amount of any erroneous payment or overpayment under this contract within 30 days' written notice. If contractor fails to make timely refund, purchaser may charge contractor 1 percent per month on the amount due, until paid in full.

j. Contractor expenses (if applicable)

Purchaser shall reimburse contractor for travel and other expenses as identified in this contract, or as authorized in writing, in advance by purchaser in accordance with the then-current rules and regulations set forth in the *Washington State Administrative and Accounting Manual* (<http://www.ofm.wa.gov/policy/default.asp>). contractor shall provide a detailed itemization of expenses, including description, amounts and dates, and receipts for amounts of \$50 or more when requesting reimbursement.

The amount reimbursed to contractor is included in calculating the total amount spent under this contract.

k. Audits

The state reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing may be considered complete cause for contract termination.

3.19 Quality assurance

a. Right of inspection

Contractor shall provide right of access to its facilities to DES, or any of DES's officers, or to any other authorized agent or official of the State of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

b. Contractor commitments, warranties and representations

Any written commitment by contractor within the scope of this contract shall be binding upon contractor. Failure of contractor to fulfill such a commitment may constitute breach and shall render contractor liable for damages under the terms of this contract. For purposes of this section, a commitment by contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by contractor in its bid or contained in any contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its bid or used to effect the sale to purchaser.

c. Warranties

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

d. Date warranty

Contractor warrants that all products provided under this contract: (i) do not have a life expectancy limited by date or time format; (ii) will correctly record, store, process, and present calendar dates; (iii) will lose no functionality, data integrity, or performance with respect to any date; and (iv) will be interoperable with other software used by purchaser that may deliver date records from the products, or interact with date records of the products ("date warranty"). In the event a date warranty problem is reported to contractor by purchaser and such problem remains unresolved after three calendar days, at purchaser's discretion, contractor shall send, at contractor's sole expense, at least one qualified and knowledgeable representative to purchaser's premises. This representative will continue to address and work to remedy the failure, malfunction, defect, or nonconformity on purchaser's premises. This date warranty shall last perpetually. In the event of a breach of any of these representations and warranties, contractor shall indemnify and hold harmless purchaser from and against any and all harm, injury, damages, costs, and expenses incurred by purchaser arising out of said breach.

e. Cost of remedy

Cost of remedying defects: All defects, indirect and consequential costs of correcting, removing or replacing any or all of the defective materials or equipment will be charged against the contractor.

3.20 Information and communications

a. Advertising

Contractor shall not publish or use any information concerning this contract in any format or media for advertising or publicity without prior written consent from DES.

b. Retention of records

The contractor shall maintain all books, records, documents, data and other evidence relating to this contract and the provision of materials, supplies, services and/or equipment described herein, including, but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review, or audit by DES, personnel duly authorized by DES, the Washington State Auditor's Office, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six-year period, the records shall be retained until final resolution of all litigation, claims, or audit findings involving the records.

c. Proprietary or confidential information

To the extent consistent with [Chapter 42.56 RCW](#), the Public Disclosure Act, DES shall maintain the confidentiality of contractor's information marked confidential or proprietary. If a request is made to view contractor's proprietary information, DES will notify contractor of the request and of the date that the records will be released to the requester unless contractor obtains a court order enjoining that disclosure. If contractor fails to obtain the court order enjoining disclosure, DES will release the requested information on the date specified.

The state's sole responsibility shall be limited to maintaining the above data in a secure area and to notify contractor of any request(s) for disclosure for so long as DES retains contractor's information in DES records. Failure to so label such materials or failure to timely respond after notice of request for public disclosure has been given shall be deemed a waiver by contractor of any claim that such materials are exempt from disclosure.

d. Non-endorsement and publicity

Neither DES nor the purchasers are endorsing the contractor's products or services, nor suggesting that they are the best or only solution to their needs. Contractor agrees to make no reference to DES, any purchaser or the State of Washington in any literature, promotional material, brochures, sales presentation or the like, regardless of method of distribution, without the prior review and express written consent of DES.

e. Ownership/rights in data

Purchaser and contractor agree that all data and work products (collectively called “work product”) produced pursuant to this contract shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. §101 *et seq*, and shall be owned by purchaser.

Contractor is hereby commissioned to create the work product. Work product includes, but is not limited to, discoveries, formulas, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such work product.

If for any reason the work product would not be considered a work made for hire under applicable law, contractor assigns and transfers to purchaser the entire right, title and interest in and to all rights in the work product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.

Contractor shall execute all documents and perform such other proper acts as purchaser may deem necessary to secure for purchaser the rights pursuant to this section.

Contractor shall not use or in any manner disseminate any work product to any third party, or represent in any way contractor ownership in any work product, without the prior written permission of purchaser. Contractor shall take all reasonable steps necessary to ensure that its agents, employees, or subcontractors shall not copy or disclose, transmit or perform any Work product or any portion thereof, in any form, to any third party.

Material that is delivered under this contract, but that does not originate therefrom (“preexisting material”), shall be transferred to purchaser with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such preexisting material, and to authorize others to do so except that such license shall be limited to the extent to which contractor has a right to grant such a license. Contractor shall exert all reasonable effort to advise purchaser at the time of delivery of preexisting material furnished under this contract, of all known or potential infringements of publicity, privacy or of intellectual property contained therein and of any portion of such document which was not produced in the performance of this contract. Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of preexisting material. Purchaser shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by contractor with respect to any preexisting material delivered under this contract. Purchaser shall have the right to modify or remove any restrictive markings placed upon the preexisting material by contractor.

f. Protection of confidential and personal information

Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either [Chapter 42.17 RCW](#) or other state or federal statutes (“confidential information”). Confidential information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, law enforcement records, agency source code or object code, agency security data, etc or information identifiable to an

individual that relates to any of these types of information. contractor agrees to hold confidential information in strictest confidence and not to make use of confidential information for any purpose other than the performance of this contract, to release it only to authorized employees or subcontractors requiring such information for the purposes of carrying out this contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without purchaser's express written consent or as provided by law. Contractor agrees to release such information or material only to employees or subcontractors who have signed a non-disclosure agreement, the terms of which have been previously approved by purchaser. contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to confidential Information.

"Personal information" including, but not limited to, "protected health information" (PHI) under the Health Insurance Portability and Accountability Act (HIPAA), individuals' names, addresses, phone numbers, birth dates, and social security numbers collected, used, or acquired in connection with this contract shall be protected against unauthorized use, disclosure, modification or loss.

HIPAA establishes national minimum standards for the use and disclosure of certain health information. The contractor must comply with all HIPAA requirements and rules when determined applicable by the purchaser. If purchaser determines that (1) purchaser is a "covered entity" under HIPAA, and that (2) contractor will perform "business associate" services and activities covered under HIPAA, then at purchaser's request, contractor agrees to execute purchaser's business associate contract in compliance with HIPAA.

Contractor shall ensure its directors, officers, employees, subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as otherwise required by law.

Any breach of this provision may result in termination of the contract and demand for return of all personal information. The contractor agrees to indemnify and hold harmless the State of Washington and the purchaser for any damages related to both: (1) the contractor's unauthorized use of personal information and (2) the unauthorized use of personal information by unauthorized persons as a result of contractor's failure to sufficiently protect against unauthorized use, disclosure, modification, or loss.

Contractor shall maintain a log documenting the following: the confidential information received in the performance of this contract; the purpose(s) for which the confidential information was received; who received, maintained and used the confidential information; and the final disposition of the confidential information. Contractor's records shall be subject to inspection, review or audit in accordance with records-retention law.

Purchaser reserves the right to monitor, audit, or investigate the use of confidential information collected, used, or acquired by contractor through this contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

Violation of this section by contractor or its subcontractors may result in termination of this contract and demand for return of all confidential information, monetary damages, or penalties.

Immediately upon expiration or termination of this contract, contractor shall, at purchaser's option: (i) certify to purchaser that contractor has destroyed all confidential information; or (ii) return all confidential information to purchaser; or (iii) take whatever other steps purchaser requires of contractor to protect purchaser's confidential information.

3.21 General Provisions

a. Governing law and venue

This contract shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

b. Severability

Severability: If any provision of this contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this contract that can be given effect without the invalid provision, and to this end the provisions of this contract are declared to be severable.

c. Survivorship

All transactions executed for products and services provided pursuant to the authority of this contract shall be bound by all of the terms, conditions, prices and price discounts set forth herein, notwithstanding the expiration of the initial term of this contract or any extension thereof. Further, the terms, conditions and warranties contained in this contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this contract shall so survive. In addition, the terms of the sections titled Overpayments to Contractor; Ownership/Rights in Data; Contractor's Commitments, Warranties and Representations; Protection of Purchaser's Confidential Information; Section Headings, Publicity; Retention of Records; Patent and Copyright Indemnification; Contractor's Proprietary Information; Disputes; and Limitation of Liability shall survive the termination of this contract.

d. Independent status of contractor

In the performance of this contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent contractor relationship will be created by this contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under [Chapter 41.06 RCW](#), or [Title 51 RCW](#).

e. Gifts and gratuities

Contractor shall comply with all state laws regarding gifts and gratuities, including but not limited to: [RCW 39.26](#), [RCW 42.52.150](#), [RCW 42.52.160](#), and [RCW 42.52.170](#) under which it is unlawful for any person to directly or indirectly offer, give or accept gifts, gratuities, loans, trips, favors, special discounts, services, or anything of economic value in conjunction with state business or contract activities.

Under [RCW 39.26](#) and the Ethics in Public Service Law, [Chapter 42.52 RCW](#), state officers and employees are prohibited from receiving, accepting, taking or seeking gifts (except as

permitted by [RCW 42.52.150](#)) if the officer or employee participates in contractual matters relating to the purchase of goods or services.

f. Immunity and hold harmless

To the fullest extent permitted by law, contractor shall indemnify, defend and hold harmless state, agencies of state and all officials, agents and employees of state (the "indemnified parties"), from and against all claims for bodily injury, death or damage to property. Contractor's obligation to indemnify, defend, and hold harmless includes any claim by contractor's agents, employees, representatives, or any subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the indemnified parties for any claim arising out of or incident to contractor's or any subcontractor's performance or failure to perform the contract. Contractor shall be required to indemnify, defend, and hold harmless the indemnified parties only to the extent claim is caused in whole or in part by negligent, reckless or willful acts or omissions of contractor, its agents, employees, representatives, or any subcontractor or its employees.

Contractor waives its immunity under Title 51 to the extent it is required to indemnify, defend and hold harmless state and its agencies, officials, agents or employees.

g. Personal liability

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

3.22 Insurance

The following are general insurance provisions for the State of Washington. Additional requirements specific to a good/service may be detailed elsewhere in a solicitation or its appendices.

a. General requirements

Contractor shall, at its own expense, obtain and keep in force insurance as follows until completion of the contract. Upon request, contractor shall furnish evidence in the form of a certificate of insurance satisfactory to the State of Washington that insurance, in the following kinds and minimum amounts, has been secured. Failure to provide proof of insurance, as required, will result in contract cancellation.

Contractor shall include all subcontractors as insureds under all required insurance policies, or shall furnish separate Certificates of Insurance and endorsements for each subcontractor. Subcontractor(s) must comply fully with all insurance requirements stated herein. Failure of subcontractor(s) to comply with insurance requirements does not limit contractor's liability or responsibility.

All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the state.

b. Specific requirements

Employer's Liability (Stop Gap): The contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable and will maintain Employers Liability

insurance with a limit of no less than \$1 million. The State of Washington will not be held responsible in any way for claims filed by the contractor or their employees for services performed under the terms of this contract.

Commercial General Liability Insurance: The contractor shall at all times during the term of this contract, carry and maintain commercial general liability insurance and if necessary, commercial umbrella insurance for bodily injury and property damage arising out of services provided under this contract. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the contractor or its officers, agents, representatives, assigns, or servants.

The insurance shall also cover bodily injury, including disease, illness and death, and property damage arising out of the contractor's premises/operations, independent contractors, products/completed operations, personal injury and advertising injury, and contractual liability (including the tort liability of another assumed in a business contract), and contain separation of insured's (cross liability) conditions.

Contractor waives all rights against the State of Washington for the recovery of damages to the extent they are covered by general liability or umbrella insurance.

The limits of liability insurance shall not be less than as follows:

General aggregate limits (other than products-completed operations)	\$2 million
products-completed operations aggregate	\$2 million
Personal and advertising injury aggregate	\$1 million
Each occurrence (applies to all of the above)	\$1 million
Fire damage limit (per occurrence)	\$50,000
Medical expense limit (any one person)	\$5,000

c. Business Auto Policy (BAP)

In the event that services delivered pursuant to this contract involve the use of vehicles, or the transportation of clients, automobile liability insurance shall be required. The coverage provided shall protect against claims for bodily injury, including illness, disease, and death; and property damage caused by an occurrence arising out of or in consequence of the performance of this service by the contractor, subcontractor, or anyone employed by either.

Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a combined single limit not less than \$1 million per occurrence. The business auto liability shall include Hired and Non-Owned coverage.

Contractor waives all rights against the State of Washington for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

d. Additional insurance provisions

All above insurance policies shall include, but not be limited to, the following provisions:

Additional insured:

The State of Washington and all authorized purchasers shall be named as an additional insured on all general liability, umbrella, excess, and property insurance policies. All policies shall be primary over any other valid and collectable insurance.

Notice of policy cancellation/Non-renewal:

For insurers subject to [Chapter 48.18 RCW](#) (admitted and regulated by the Washington State Insurance Commissioner) a written notice shall be given to the director of purchasing or designee 45 calendar days prior to cancellation or any material change to the policy as it relates to this contract. Written notice shall include the affected contract reference number.

e. Surplus lines

For insurers subject to [Chapter 48.15 RCW](#) (Surplus Lines) a written notice shall be given to the director of purchasing or designee 20 calendar days prior to cancellation or any material change to the policy or policies related to this contract. Written notice shall include the affected contract reference number.

Cancellation for non-payment of premium:

If cancellation on any policy is due to non-payment of premium, a written notice shall be given the director of purchasing or designee 10 calendar days prior to cancellation. Written notice shall include the affected contract reference number.

Identification:

Policies and certificates of insurance shall include the affected contract reference number.

f. Insurance carrier rating

The insurance required above shall be issued by an insurance company authorized to do business within the State of Washington. Insurance is to be placed with a carrier that has a rating of A- Class VII or better in the most recently published edition of Best's Reports. Any exception must be reviewed and approved by the Risk Manager for the State of Washington, by submitting a copy of the contract and evidence of insurance before contract commencement. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with [Chapter 48.15 RCW](#) and [Chapter 284-15 WAC](#) .

g. Excess coverage

The limits of all insurance required to be provided by the contractor shall be no less than the minimum amounts specified. However, coverage in the amounts of these minimum limits shall not be construed to relieve the contractor from liability in excess of such limits.

h. Limit adjustments

The state reserves the right to increase or decrease limits as appropriate.

3.23 Industrial Insurance Coverage

The contractor shall comply with the provisions of [Title 51 RCW](#) Industrial Insurance. If the contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on

behalf of its employees as may be required by law, DES may terminate this contract. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from the contractor.

3.24 Nondiscrimination

During the performance of this contract, the contractor shall comply with all applicable federal and state nondiscrimination laws, regulations and policies, including, but not limited to, Title VII of the Civil Rights Act, 42 U.S.C. section 12101 et. seq.; the Americans with Disabilities Act (ADA); and, [Chapter 49.60 RCW](#), Discrimination – Human Rights Commission.

3.25 OSHA and WISHA requirements

Contractor agrees to comply with conditions of the federal Occupational Safety and Health Administration (OSHA) and, if manufactured or stored in the State of Washington, the Washington Industrial Safety and Health Act (WISHA) and the standards and regulations issued thereunder, and certifies that all items furnished and purchased will conform to and comply with said laws, standards and regulations. Contractor further agrees to indemnify and hold harmless DES and purchaser from all damages assessed against purchaser as a result of contractor's failure to comply with those laws, standards and regulations, and for the failure of the items furnished under the contract to so comply.

3.26 Antitrust

The state maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, the contractor hereby assigns to the State of Washington any and all of the contractor's claims for such price fixing or overcharges which arise under federal or state antitrust laws, relating to the materials, supplies, services and/or equipment purchased under this contract.

3.27 Waiver

Failure or delay of DES or purchaser to insist upon the strict performance of any term or condition of the contract or to exercise any right or remedy provided in the contract or by law; or DES's or purchaser's acceptance of or payment for materials, supplies, services and/or equipment, shall not release the contractor from any responsibilities or obligations imposed by this contract or by law, and shall not be deemed a waiver of any right of DES or purchaser to insist upon the strict performance of the entire agreement by the contractor. In the event of any claim for breach of contract against the contractor, no provision of this contract shall be construed, expressly or by implication, as a waiver by DES or purchaser of any existing or future right and/or remedy available by law.

3.28 Disputes and remedies

a. Problem resolution and disputes

Problems arising out of the performance of this contract shall be resolved in a timely manner at the lowest possible level with authority to resolve such problem. If a problem persists and cannot be resolved, it may be escalated within each organization.

In the event a bona fide dispute concerning a question of fact arises between DES or the purchaser and contractor and it cannot be resolved between the parties through the normal problem escalation processes, either party may initiate the dispute resolution procedure provided herein. The dispute shall be handled by a dispute resolution panel in the following manner. Each party to this contract shall appoint one member to the panel. These two appointed members shall jointly appoint an additional member. The dispute resolution panel shall review the facts, contract terms and applicable statutes and rules and make a determination of the dispute as quickly as reasonably possible. The determination of the dispute resolution panel shall be final and binding on the parties hereto. DES and/or purchaser and contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this contract that are not affected by the dispute.

In the event a bona fide dispute concerning a question of fact arises between DES or the purchaser and contractor and it cannot be resolved between the parties through the normal escalation processes, either party may initiate the dispute resolution procedure provided herein.

The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three business days. The initiating party shall have three business days to review the bid. If after this review a resolution cannot be reached, both parties shall have three business days to negotiate in good faith to resolve the dispute.

If the dispute cannot be resolved after three business days, a dispute resolution panel may be requested in writing by either party who shall also identify the first panel member. Within three business days of receiving the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the dispute resolution panel within the next three business days.

The dispute resolution panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.

Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

Both parties agree to be bound by the determination of the Dispute Resolution Panel.

Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a dispute resolution panel whenever possible.

DES, the purchaser and contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this contract that are not affected by the dispute.

If the subject of the dispute is the amount due and payable by purchaser for materials, supplies, services and/or equipment being provided by contractor, contractor shall continue providing materials, supplies, services and/or equipment pending resolution of the dispute provided purchaser pays contractor the amount purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount contractor, in good faith, believes is due and payable.

b. Administrative suspension

When it is in the best interest of the state, DES may at any time, and without cause, suspend the contract or any portion thereof for a period of not more than 30 calendar days per event by written notice from DES to the contractor's representative. Contractor shall resume performance on the next business day following the 30th day of suspension unless an earlier resumption date is specified in the notice of suspension. If no resumption date was specified in the notice of suspension, the contractor can be demanded and required to resume performance within the 30-day suspension period by DES providing the contractor's representative with written notice of such demand.

c. Force majeure

The term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of war, riots, strikes, fire, floods, windstorms, epidemics or other similar occurrences.

Exceptions: Except for payment of sums due, neither party shall be liable to the other or deemed in breach under this contract if, and to the extent that, such party's performance of this contract is prevented by reason of force majeure.

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

Rights reserved: DES reserves the right to authorize an amendment to this contract, terminate the contract, and/or purchase materials, supplies, equipment and/or services from the best available source during the time of force majeure, and contractor shall have no recourse against the state.

d. Alternative dispute resolution fees and costs

In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

e. Non-exclusive remedies

The remedies provided for in this contract shall not be exclusive but are in addition to all other remedies available under law.

3.29 Liquidated damages

a. Liquidated damages - General

DES and or the purchasers and the contractor agree that the liquidated damages provisions in the contract are a reasonable forecast of the actual damages that would be suffered by the purchaser in the event of contractor's nonperformance, that such liquidated damages are not a penalty but represent the reasonable compensation due purchaser in

the event of a breach, and that such liquidated damages will be assessed as set forth herein.

Any delay by contractor in meeting the Delivery Date, Installation Date, maintenance or repair date, or other applicable date set forth in this contract will interfere with the proper implementation of purchaser's programs and will result in loss and damage to purchaser.

As it would be impracticable to fix the actual damage sustained in the event of any such failure(s) to perform, purchaser and contractor agree that in the event of any such failure(s) to perform, the amount of damage which will be sustained will be the amount set forth in the following subsections and the parties agree that contractor shall pay such amounts as liquidated damages and not as a penalty.

Liquidated damages provided under the terms of this contract are subject to the same limitations as provided in the section titled Limitation of Liability.

b. Limitation of liability

The parties agree that neither contractor, DES nor purchaser shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this contract. This section does not modify any sections regarding liquidated damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled Termination for Default and Retention of Records are not consequential, incidental, indirect, or special damages as that term is used in this section.

The contractor, DES and purchaser are not liable for damages arising from causes beyond their reasonable control and without their fault or negligence. Such causes may include, but are not restricted to, acts of the public enemy, acts of a governmental body other than DES or the purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of the contractor, DES or the purchaser, or their respective subcontractors.

If delays are caused by a subcontractor without its fault or negligence, contractor shall not be liable for damages for such delays, unless the services to be performed were obtainable on comparable terms from other sources in sufficient time to permit contractor to meet its required performance schedule.

Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

c. Federal funding (if applicable)

In the event that a federally funded acquisition results from this procurement, the contractor may be required to provide additional information (free of charge) at the request of DES or purchaser. Further, the contractor may be subject to those federal requirements specific to the commodity.

d. Federal restrictions on lobbying (if applicable)

Contractor certifies that under the requirements of Lobbying Disclosure Act, 2 U.S.C., Section 1601 et seq., no federal appropriated funds have been paid or will be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

e. Federal debarment and suspension (if applicable)

The contractor certifies that neither it nor its “principals” (as defined in 49 CFR. 29.105 (p)) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

3.30 Contract termination

a. Material breach

A contractor may be terminated for cause by DES, at the sole discretion of DES, for failing to perform a contractual requirement or for a material breach of any term or condition.

Material breach of a term or condition of the contract may include but is not limited to:

- Contractor failure to perform services or deliver materials, supplies, or equipment by the date required or by an alternate date as mutually agreed in a written amendment to the contract;
- Contractor failure to carry out any warranty or fails to perform or comply with any mandatory provision of the contract;
- Contractor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder;
- Contractor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors that endangers the contractor’s proper performance hereunder;
- Appointment of any receiver, trustee, or similar official for contractor or any of the contractor’s property and such appointment endangers the contractor’s proper performance hereunder;
- A determination that the contractor is in violation of federal, state, or local laws or regulations and that such determination renders the contractor unable to perform any aspect of the contract.

b. Opportunity to cure

In the event that contractor fails to perform a contractual requirement or materially breaches any term or condition, DES may issue a written cure notice. The contractor may have a period of time in which to cure. DES is not required to allow the contractor to cure defects if the opportunity for cure is not feasible as determined solely within the discretion of DES. Time allowed for cure shall not diminish or eliminate contractor’s liability for

liquidated or other damages, or otherwise affect any other remedies available against contractor under the contract or by law.

If the breach remains after contractor has been provided the opportunity to cure, DES may do any one or more of the following:

- Exercise any remedy provided by law;
- Terminate this contract and any related contracts or portions thereof;
- Procure replacements and impose damages as set forth elsewhere in this contract;
- Impose actual or liquidated damages;
- Suspend or bar contractor from receiving future solicitations or other opportunities;
- Require contractor to reimburse the state for any loss or additional expense incurred as a result of default or failure to satisfactorily perform the terms of the contract.

c. Termination for cause

In the event DES, in its sole discretion, determines that the contractor has failed to comply with the conditions of this contract in a timely manner or is in material breach, DES has the right to suspend or terminate this contract, in part or in whole. DES shall notify the contractor in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days or as otherwise specified by DES, or if such corrective action is deemed by DES to be insufficient, the contract may be terminated. DES reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the contractor from incurring additional obligations of funds during investigation of the alleged breach and pending corrective action by the contractor or a decision by DES to terminate the contract.

In the event of termination, DES shall have the right to procure for all purchasers any replacement materials, supplies, services and/or equipment that are the subject of this contract on the open market. In addition, the contractor shall be liable for damages as authorized by law including, but not limited to, any price difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

If it is determined that: (1) the contractor was not in material breach; or (2) failure to perform was outside of contractor's or its subcontractor's control, fault or negligence, the termination shall be deemed to be a "termination for convenience." The rights and remedies of DES and/or the purchaser provided in this contract are not exclusive and are in addition to any other rights and remedies provided by law.

d. Termination for convenience

Except as otherwise provided in this contract, DES, at the sole discretion of DES, may terminate this contract, in whole or in part by giving 30 calendar days or other appropriate time period written notice beginning on the second day after mailing to the contractor. If this contract is so terminated, purchasers shall be liable only for payment required under this contract for properly authorized services rendered, or materials, supplies and/or equipment delivered to and accepted by the purchaser prior to the effective date of contract termination. Neither DES nor the purchaser shall have any other obligation whatsoever to

the contractor for such termination. This Termination for Convenience clause may be invoked by DES when it is in the best interest of the State of Washington.

e. Termination for withdrawal of authority

In the event that DES and/or purchaser's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this contract and prior to normal completion, DES may terminate this contract, in whole or in part, by seven calendar days written notice, or other appropriate time period, to contractor.

f. Termination for non-allocation of funds

If funds are not allocated to purchaser(s) to continue this contract in any future period, DES may terminate this contract with seven calendar days written notice, or other appropriate time period, to contractor, or work with contractor to arrive at a mutually acceptable resolution of the situation. Purchaser will not be obligated to pay any further charges for materials, supplies, services and/or equipment including the net remainder of agreed-to consecutive periodic payments remaining unpaid beyond the end of the then-current period. DES and/or purchaser agree to notify contractor in writing of such non-allocation at the earliest possible time.

No penalty shall accrue to the purchaser in the event this section shall be exercised. This section shall not be construed to permit DES to terminate this contract in order to acquire similar materials, supplies, services and/or equipment from a third party.

g. Termination for conflict of interest

DES may terminate this contract by written notice to contractor if it is determined, after due notice and examination, that any party to this contract has violated [Chapter 42.52 RCW](#), Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this contract is so terminated, DES and/or purchaser shall be entitled to pursue the same remedies against contractor as it could pursue in the event that the contractor breaches this contract.

h. Termination by mutual agreement

DES and the contractor may terminate this contract in whole or in part, at any time, by mutual agreement.

i. Termination procedure

In addition to the procedures set forth below, if DES terminates this contract, contractor shall follow any procedures DES specifies in the termination notice.

Upon termination of this contract and in addition to any other rights provided in this contract, DES may require the contractor to deliver to the purchaser any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The purchaser shall pay to the contractor the agreed upon price, if separately stated, for completed work and service(s) accepted by the purchaser, and the amount agreed upon by the contractor and the purchaser for (i) completed materials, supplies, services rendered and/or equipment for which no separate price is stated, (ii) partially completed materials, supplies, services rendered and/or equipment, (iii) other materials, supplies, services rendered and/or equipment which are accepted by the purchaser, and (iv) the protection

and preservation of property, unless the termination is for cause, in which case DES and the purchaser shall determine the extent of the liability of the purchaser. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The purchaser may withhold from any amounts due the contractor such sum as DES and purchaser determine to be necessary to protect the purchaser against potential loss or liability.

The rights and remedies of DES and/or the purchaser provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a termination notice, and except as otherwise expressly directed in writing by DES, the contractor shall:

- Stop all work, order fulfillment, shipments, and deliveries under the contract on the date, and to the extent specified, in the notice;
- Place no further orders or subcontracts for materials, services, supplies, equipment and/or facilities in relation to the contract except as is necessary to complete or fulfill such portion of the contract that is not terminated;
- Complete or fulfill such portion of the contract that is not terminated in compliance with all contractual requirements;
- Assign to the purchaser, in the manner, at the times, and to the extent directed by DES on behalf of the purchaser, all of the rights, title, and interest of the contractor under the orders and subcontracts so terminated, in which case the purchaser has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of DES and/or the purchaser to the extent DES and/or the purchaser may require, which approval or ratification shall be final for all the purposes of this clause;
- Transfer title to the purchaser and deliver in the manner, at the times, and to the extent directed by DES on behalf of the purchaser any property which, if the contract had been completed, would have been required to be furnished to the purchaser;
- Take such action as may be necessary, or as DES and/or the purchaser may direct, for the protection and preservation of the property related to this contract which is in the possession of the contractor and in which DES and/or the purchaser has or may acquire an interest.