



OFFICE OF STATE PROCUREMENT

Rm. 201 General Administration Building, P.O. Box 41017 • Olympia, Washington 98504-1017 • (360) 902-7400  
<http://www.ga.wa.gov>

**DELIVERED FUEL: BULK & KEEP FULL / WILL-CALL SERVICE**  
PART 1

**Solicitation 00311 [Contract 00311]**

Edited Original - Associated Petroleum Products Inc.

	OPTIONAL	MANDATORY DEADLINE
<b>Solicitation Number</b>	<b>Pre-bid Conference Date &amp; Time</b>	<b>Bid due date and time</b>
00311	02/04/11 at 9:00 a.m. to 4:00 p.m. (or until completion, if earlier)	02/24/11 at 2:00 PM.
	<b>RSVP to: <a href="mailto:fuelrebid@ga.wa.gov">fuelrebid@ga.wa.gov</a> requested but not required (limited priority to those that RSVP)</b>	

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To request this information in alternative formats call (360) 902-7400, or TDD (360) 664-3799.  
<http://www.ga.wa.gov/webs/>

Bids must be received & time and date stamped on or before  
the Bid due date and time at this location:

210 11th Avenue SW, Rm. 201, P.O. Box 41017  
General Administration Building  
Olympia WA 98504-1017



The GA Enterprise Contracting Team analyzes spending patterns with the goal of effectively leveraging the state's collective buying power. The value proposition is then refined to align with the savings, diversity and environmental goals of the state. Extensive stakeholder work is conducted to ensure that contract users receive the goods and services that meet their needs and the best value. Contract Sales compared to off-contract sales are monitored to assess the success of the contract.

**BIDDER'S AUTHORIZED OFFER**

*00311 – Delivered Fuel: Bulk & Keep Full / Will Call Service*

**Issued by the State of Washington / GA Office of State Procurement**

**Certifications and Assurances**

We make the following certifications and assurances as a required element of the Response, to which it is attached, affirming the truthfulness of the facts declared here and acknowledging that the continuing compliance with these statements and all requirements of the solicitation are conditions precedent to the award or continuation of the resulting Contract.

1. The prices in this Response have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered. The prices in this Response have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before Contract award unless otherwise required by law. No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition. However, we may freely join with other persons or organizations for the purpose of presenting a single Bid or Proposal.
2. The attached Response is a firm offer for a period of 90 days following the Response Due Date specified in the solicitation, and it may be accepted by the Purchasing Activity without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 90 day period. In the case of protest, our Response will remain valid for 180 days or until the protest and any related court action is resolved, whichever is later.
3. In preparing this Response, we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to the State's solicitation, or prospective Contract, and who was assisting in other than his or her official, public capacity. Neither does such a person nor any member of his or her immediate family have any financial interest in the outcome of this Response. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)
4. We understand that the State will not reimburse us for any costs incurred in the preparation of this Response. All Responses become the property of the State, and we claim no proprietary right to the ideas, writings, items or samples unless so stated in the Response. Submission of the attached Response constitutes an acceptance of the evaluation criteria and an agreement to abide by the procedures and all other administrative requirements described in the solicitation document.
5. We understand that any Contract awarded, as a result of this Response will incorporate all the solicitation requirements. Submission of a Response and execution of this Certifications and Assurances document certify our willingness to comply with the Contract terms and conditions appearing in Part II, if selected as a contractor. It is further understood that our standard contract will not be considered as a replacement for the terms and conditions appearing in Part II of this solicitation.
6. We **are not** submitting proposed Contract exceptions.
7. The authorized signatory below acknowledges having read and understood the entire solicitation and agrees to comply with the terms and conditions of the solicitation in submitting and fulfilling the offer made in its Bid.
8. By submitting this Bid, Bidder hereby offers to furnish materials, supplies, services and/or equipment in compliance with all terms, conditions, and specifications contained in this solicitation.

The Bidder signatory identified in the Contract, Signature Section (last page of the Contract) represents that he/she has the authority to bind the company named in the Contract to the Bid submitted and any Contract awarded by the State as a result of this solicitation.

**DO NOT FORGET TO SIGN AND RETURN YOUR FIRM OFFER COMMITMENT IN THE CONTRACT'S SUMMARY OF AWARD AND SIGNATURE PAGE SIGNATURE ON THE LAST PAGE OF THE CONTRACT. SIGNATURES MUST BE IN INK (PREFERABLY IN BLUE INK). FAILURE TO DO SO MAY CAUSE YOUR BID RESPONSE (FIRM OFFER) TO BE REJECTED.**

# CHECKLIST

This checklist is provided for Bidder's convenience only and identifies the documents to be submitted with each Response. Any Response received without any one or more of these documents may be rejected as being non-responsive.

PLEASE INCLUDE YOUR COMPANY NAME OR MARK ON EACH PAGE OF EVERY SUBMITTAL

*(MINIMUM REQUIRED SUBMITTALS)*

**COPY OF ENTIRE SOLICITATION**  
(FORMAT: HARDCOPY)

**SUMMARY OF AWARD AND SIGNATURE PAGE (SIGNED)**  
(form is provided and appears at the end of the contract section)  
(FORMAT: HARDCOPY)

**APPENDIX B - BIDDER PROFILE**  
(form is provided and appears in the appendix section following the contract section)  
(FORMAT: HARDCOPY)

**BIDDER QUALIFICATION STATEMENT**  
(self authored document – five pages maximum)  
(FORMAT: HARDCOPY)

**PRICE WORKBOOKS (AKA PRICE SHEETS)**  
(form is provided and appears in the appendix section following the contract section)  
(form for each region is provided in Appendix C – Price Workbook)  
**(Each Price Workbook contains a Price Sheet Worksheet. Bidders must return the Price Sheet Worksheet with all shaded cells completed)**  
(FORMAT: HARDCOPY)

**PERFORMANCE PLAN STATEMENT**  
(self authored document – ten pages maximum)  
(FORMAT: HARDCOPY)

**REFERENCES (SEVEN REQUIRED)**  
(space provide in the Bidder Profile (see Appendix B))  
(FORMAT: HARDCOPY)

**PDF Scan Copy of the entire Bid placed on CD/DVD (non-rewritable media)**

**(LIST OTHER REQUIRED SUBMITTALS HERE)**

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## 1. SUMMARY OF OPPORTUNITY

### 1.1 PURPOSE

The Department of General Administration (GA), Office of State Procurement (OSP) is the state's centralized contracting office for general goods and services. The purpose of this solicitation is to establish contract(s) for the on-going replenishment of state's network of gasoline, heating oil, diesel (including biodiesel), and other fuels and to establish a contract for the as needed purchase of Diesel Exhaust Fluid (DEF) and delivered fuels, incidentals, and in the following fuel types, categories, or other: (not an exclusive list; other products, other fuel products, additives, incidentals, and services, may be added post award).

- A. Gasoline, Unleaded: Regular, Mid-Grade, Premium, and Ethanol (E10)
- B. Ultra Low Sulfur Diesel #2 Clear
- C. Ultra Low Sulfur Diesel # 2 Dyed
- D. Ultra Low Sulfur Diesel #1 Clear (November through February)
- E. Ultra Low Sulfur Diesel #1 Dyed (November through February)
- F. Biodiesel Clear
- G. Biodiesel Dyed
- H. Heating Oil (based on ULSD #2 Dyed)
- I. Other additives, energy products, incidentals, fuels, and services requested by qualified customers
- J. Diesel Exhaust Fluid (DEF)

### 1.2 INTRODUCTION

The Office of State Procurement (OSP) develops purchasing contracts for use by state agencies, higher education and approximately 500 co-op members which include city, county, school districts and some non-profit organizations throughout Washington. Many of our customers manage an assortment of fuel storage tanks serving police cars, fire engines, school buses, public transportation services and many other essential public services. Because of the large volume, its relative dollar value, and current market volatility, fuel has been identified as an Enterprise contracting opportunity with the resulting contract being designated as mission critical.

Prior to Contract 07705, many of our customers have treated fuel as independent contracting opportunities and therefore the state's collective buying power was not effectively leveraged. Furthermore, because each individual customer initiated refueling orders, the economies of coordinating delivery schedules from an enterprise-wide perspective have not been fully realized. Lastly, because contractors are forced to react to customer initiated orders, fuel suppliers cannot effectively forecast and employ bulk purchasing strategies when market conditions favor such action. Consequently, state agencies, higher education and many co-op members have joined together in this contracting effort to improve efficiencies and thereby reduce fuel costs. This action also opens the door for an enterprise-wide vendor managed "Keep-Full" service which naturally promotes coordination of deliveries as well as empowers the contractor to forecast and employ any variety bulk purchasing strategies. Even so, many other customers' business needs are best served by purchasing fuel as needed (will-call).

Therefore, this contracting effort will offer customers a Contractor managed Keep-Full tank replenishment service and a customer initiated bulk delivery service in addition to a standalone will-call service. So as to best accommodate existing market coverage and to maximize competition, the state has been divided into 8-regions.

1.3 CONTRACT SCOPE

*See Scope in Part II – Contract.*

1.4 PURCHASERS

See Purchasers in Part II – Contract.

1.5 CONTRACT TERM

*See Contract Term in Part II – Contract.*

1.6 ESTIMATED USAGE

*See Estimated Usage in Part II – Contract.*

1.7 EXPECTED RESULT

OSP seeks to acquire the fuel products, incidentals, and services that best meet the State's needs and offers best value.

1.8 AWARD

See the Award section in the Solicitation's Evaluation Section.

2. SOLICITATION OVERVIEW

2.1 ACQUISITION AUTHORITY

The Washington State Department of General Administration (GA), Office of State Procurement (OSP) issues this solicitation acting under the authority of its enabling legislation Revised Code of Washington (RCW) 43.19 which establishes GA and regulates the manner in which state agencies may acquire general goods and services.

2.2 STANDARD DEFINITIONS

*See section Appendix A Standard Definitions*

2.3 SOLICITATION AND CONTRACT FORMATION

This document consists of Part 1 – Solicitation and Part 2 – Contract. The document may also include other appendixes, attachments, submittals, forms, etc; these documents may be attached, embedded, linked or incorporated by reference. Documents of these types (if any) are incorporated by reference. It is imperative the Bidder read and understand all parts in order to make an informed Bid response to OSP. Under no circumstances is a Bidder to submit their own standard contract terms and conditions as a response to this solicitation.

A bid submitted in response to this solicitation document is a firm offer to contract with OSP. Bidder's submission of a response to this solicitation constitutes acceptance of these contract requirements. An Award (partial or full, single or multiple) by OSP may be made anytime during the firm offer period stated in the Certifications and Assurances section.

The terms and conditions of the awarded contract comprise many documents that are incorporated by reference.

Prior to award this entire document and any other documents incorporated by reference may be referred to as the "Solicitation" until it results in a contract or set of contracts. Post award, this entire document and any other documents incorporated by reference may be referred to as the "Contract."

Solicitation (Part I), generally describes what OSP is seeking and includes;

- A. The rules involving your bid response (firm offer) to OSP.
- B. The submittals required in your bid response and the form of the submittal.
- C. The method OSP will use to evaluate the bid response and make an award determination.
- D. Protest procedures.
- E. Other matters involving the competition phase.

Contract (Part II), generally embodies the contract terms and conditions and incorporates by reference all applicable laws and rules, the Solicitation (part 1), any amendments, appendixes, attachments, forms, linked and/or described references, Bidder completed submittals, the OSP accepted and non-conflicting parts of the apparent successful Bidder's bid response, Bidder's responses to OSP's request for clarifications, award letter, etc. It is very important that you also read Part 2 – Contract so that you can make an informed and intelligent firm offer.

For this solicitation or a segment within the solicitation, such as, a category, region, pricing structure, or hierarchy, etc., if used within this solicitation, OSP reserves the right to award by line item, group, aggregately, or all or nothing and the right to make a single/multiple and/or partial/full awards that may or may not provide the overlapping materials, supplies, services, and/or equipment through the awarded Bidder(s).

The Apparent Successful Bidder(s) (ASB) is the basis for the contract award(s). An award by OSP made during the time period forms a contract and commits the Bidder by contract to provide materials, supplies, services, and/or equipment. A bid becomes a contract only when the bid is accepted and legally awarded by OSP signature and communicated back to the Bidder in writing. The award notification is customarily communicated in the form of a copy of the contract signature page and/or separate award letter both of which includes a signature by an authorized OSP employee, or electronic purchase order (without wet signature) that references the solicitation/contract number (incorporation by reference). However, on occasion, an award may be legally cancelled by OSP (without penalty to OSP) under the authority of RCW 43.19 and Washington Administration Code 236-48.

OSP, at its sole discretion, reserves the right to negotiate improvements to the lowest Responsive, Responsible Bidder's (aka ASB's) Response in accordance with RCW 43.19.1911 (6).

Before accepting and awarding the Apparent Successful Bidder(s) firm offer, OSP may detail the specifics of the award in an Award Letter which will define the award or edit the contract, Part 2, and other documents to include but not limited to specific details such as; administrative changes, the Bidders name, and information, the parts of the Solicitation awarded to the Bidder, etc. from the apparent successful bid. The edited contract will be presented to the apparent successful bidder for signature.

If OSP chooses to use an edited contract to complete the award, the apparent successful bidder is expected to sign the edited contract or documents within ten (10) business days of its receipt. If the apparent successful bidder fails to sign the edited contract within the allotted ten (10) business day time frame, OSP may:

- A. Enforce the contract in its initial unedited contract form using an Award Letter that details the award.
- B. Consider the successful bidder to be non-responsive for failure to sign the edited contract. In this case, the apparent successful bidder may not bid on the same commodity or service if the solicitation is subsequently reissued by the OSP.
- C. Award the contract to the next ranked bidder(s) in succession,
- D. Cancel the solicitation, or
- E. Cancel and reissue this solicitation.

POST BID OPENING UPDATE: The solicitation segmented the awards by region and by category. Also, during the solicitation process, several solicitation amendments were issued that amended the primary document. Multiple bidders prevailed and OSP elected to author edited contracts to complete the awards (see section 2.3). The edited document(s) incorporate any solicitation amended language into a single document and is also individually tailored for each apparent successful bidder. The Solicitation also allowed OSP to seek clarification. Clarifications, if any, are detailed in section 6.8 – Clarifications.

## 2.4 SOLICITATION AMENDMENTS

Prior to Bid due date and time, OSP reserves the right to change portions of this Solicitation. Any changes or corrections will be by one or more written Amendment(s), dated, attached to and/or incorporated in and made a part of this Solicitation. Any Amendment must be authorized and issued in writing by the Administrator. If there is conflict between Amendments, or between an Amendment and the Solicitation, whichever document was issued last in time shall be controlling. Only Bidders who have properly registered with the Washington Electronic Business Solutions (WEBS) system and that have downloaded the Solicitation will receive notification of Amendments. The Amendment(s), if any, will detail any additional instructions that may require the Bidder to provide additional documents, material, samples, etc., and if the Amendment must be signed and returned as a Submittal with your Bid. *When in doubt, sign and include the Amendment in the Bid along with any other required documents.*

## 2.5 INCORPORATION OF DOCUMENTS INTO CONTRACT

This Solicitation document, any subsequent Amendments, both of which may include appendixes, attachments, submittals, forms, etc. as attached, embedded or linked files, and the accepted and non-conflicting parts of the Bidder's Response, and any applicable legal requirement, will be incorporated into any resulting Contract(s) (Part II). See also, Part 1, section 2.3 – Solicitation and Contract Formation.

## 2.6 RIGHT TO CANCEL

OSP reserves the right to cancel or cancel and reissue all or part of this Solicitation at any time as allowed by law without obligation or liability.

## 2.7 IN-STATE PREFERENCE/RECIPROCITY

Some or all of the bid responses received by OSP may be subject to preferences or penalties required by law and/or the solicitation.

Regarding in-state preference/reciprocity and Pursuant to RCW 43.19.700, RCW 43.19.702, RCW 43.19.704 and WAC 236-48-085, the Department of General Administration has established a schedule of percentage increases to be added to Bids and Proposals from Bidders in states that grant a preference to Contractors located in their state or for goods manufactured in their state. The percentages related to each respective state are provided in the Reciprocity List located at <http://www.ga.wa.gov/pca/recip.htm> and apply only to Bid responses and from those states listed.

The appropriate percentage will be added to each Bid responses 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 analysis and award purposes. In no instances shall the increase be paid to a Bidder whose Bid response is accepted and awarded a Contract.

## 2.8 MINORITY AND WOMEN OWNED 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 Business Enterprise (MWBE) firms either self-identified or 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.

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 and Proposals, no minimum level of MWBE participation shall be required as condition for receiving an award, and Bids and Proposals 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 may contact Office of Minority and Woman Owned Business Enterprise (OMWBE) to obtain information on certified firms for potential sub-contracting arrangements. Nothing in this section is intended to prevent or discourage Bidders from inviting others from participation from non MWBE firms as well as MWBE firms.

Bidders who are MWBE or intend to use MWBE Subcontractors are encouraged to identify the participating firm on the Bidder Profile submittal.

3. TIMELINE

3.1 PROCUREMENT SCHEDULE

The dates listed below represent the projected procurement schedule. OSP reserves the right to change the schedule. Notification of amendments to the procurement schedule prior to bid opening, will be sent electronically to all properly registered users of the Department of General Administration’s Washington Electronic Business Solution (WEBS) who downloaded this document from WEBS.

Changes to the procurement due date deadline after Bid Opening may be communicated to all bidders properly registered in WEBS, that have maintained their WEBS profile, and that have downloaded the original solicitation.

Projected Schedule of Events:

Date	Time	Event
1/21/11	N/A	Issue Solicitation document (Available for download from <a href="http://www.ga.wa.gov/webs">www.ga.wa.gov/webs</a> ). (Bidders should begin checking the website for any amendments)
1/21/11 – 2/10/11	N/A	Suggested Question and Answer Period. Bidders are encouraged to ask questions as early in the process as possible in order to give OSP an appropriate period of time to consider and respond. OSP is not required to respond and questions asked close to deadline are likely to be unanswered.
2/04/2011		Bidder Pre-Bid Conference. See Pre-Bid Conference section below for expanded details. See also, the face page.
1/21/11 until Bid Due Date Deadline	NA	Amendment issued, if applicable (Bidders should begin checking the website daily for any amendments)
2/24/2011 (unless extended by amendment)	2:00 PM sharp	Bids Due. Bid received after 2:00 PM (using the official bid clock) will be rejected.  Bid opening protocol (the reading of Bids) may be delayed if necessary.

2/25/11 – 3/25/11	NA	Evaluation begins with anticipated end
04/12/11	NA	Anticipated award date (subject to change)

3.2 PRE-BID CONFERENCE

An optional pre-bid conference to address solicitation requirements will be held at the time and location indicated below. While attendance is not mandatory, Bidders are encouraged to attend and actively participate. If interpretations, specifications, or other changes to the solicitation are required as a result of the conference, the Administrator will make amendments to the solicitation and provide those amendments by posting them on WEBS at [www.ga.wa.gov/webs](http://www.ga.wa.gov/webs).

**RSVP: An RSVP is requested but not required.** OSP plans to reserve a room capable of holding approximately 35 attendees. Limited priority will go to companies that have provided OSP with it RSVP identifying a named individual at least five days prior to the Pre-Bid Conference. Limited Priority: Means one (1) spot per company is reserved for 10 minutes after the start time. Therefore, a company providing multiple RSVP's should designate an order of priority. RSVP's must be sent by email to [fuelrebid@ga.wa.gov](mailto:fuelrebid@ga.wa.gov) and the subject line should include the word "RSVP. If a confirmation is not received in 24 hours, contact the OSP Administrator on the face page.

Assistance for disabled, blind or hearing-impaired persons who wish to attend is available with prior arrangement with the Office of State Procurement (OSP). Contact the Administrator identified on the face page of this Solicitation.

Pre Bid Date:	SEE FACE PAGE
Pre Bid Time:	SEE FACE PAGE
Pre Bid Location:	General Administration Building Office of State Procurement, Rm. 201 210 11 <sup>th</sup> Ave. SW Olympia, WA 98504-1017
For a site map to the Capitol Campus, click <a href="#">WA State Capitol Campus Map</a> Driving Directions and parking information, click <a href="#">Parking Information</a>	

3.3 BID RESPONSE OPENING (DEADLINE TO SUBMIT A BID RESPONSE) PROTOCOL

At bid due date and time, only the name of the Bidder and the time of receipt are read aloud at the time of the bid opening. The reading does not determine award of the contract, responsibility of the Bidder, or responsiveness of the bid response. Bidder attendance at bid openings is not required.

In rare instances staff is unavailable to perform the official bid opening. In such circumstances the bid opening procedure, i.e., the reading of the names of the Bidder that have submitted bid responses may be delayed until necessary staff are available. In these cases the deadline to submit a bid response remains unaffected; only the reading will be delayed.

NOTE: Bid information, including price sheets, will not be available for public disclosure until after award of the contract consistent with RCW 43.19.1911(8). After award, information regarding results of the solicitation may be obtained by contacting the Administrator.

### 3.4 CONTRACT INFORMATION AVAILABILITY AFTER AWARD

Upon award, written notification (likely via WEBS) will be sent to all bidders. After award, information regarding results of the solicitation may be obtained by contacting the Administrator.

Bidders may submit a public disclosure request to either schedule an appointment to review the procurement file or obtain specific documents.

### 3.5 PROTEST PROCEDURES

Protests shall be filed and resolved in accordance with the Protest Procedure. See section 7 – Protest Procedures.

## 4. INSTRUCTIONS TO BIDDERS, BIDDER RESPONSIBILITIES, AND BIDDER QUALIFICATIONS

### 4.1 TERMS AND CONDITIONS

It is imperative that the Bidder read, understand, and accept all parts of the Solicitation/Contract document (part 1 and part 2) that also incorporates and includes any and all appendixes, attachments, embedded or linked files, and amending documents as they become part of the Contract upon award. Some terms include but are not limited to the Contract (Part II) are: scope, purchasers, length of term, estimated value, delivery, service fees (aka delivery fees), choice of law, choice of forum, indemnification, save harmless, insurance, price adjustments, payment, breach and termination, legal notice, and confidentiality. Read all Solicitation and Contract terms and all other included/incorporated documents!

### 4.2 BIDDER QUALIFICATIONS

The state recognizes this is a lucrative contract that may generate lots of interest and many Bid responses. Interest notwithstanding, the state cannot accept a high level of risk. For these reasons, this opportunity is not open to brokered transactions where the Bidder's plan if awarded the contract is to act as a prime contractor and use other businesses' refinery supply agreements in satisfaction of the contract.

At the time of bid opening, the bidder must:

- A. Be an existing business of at least 16 months.
- B. Be an authorized supplier of fuel to be delivered.
- C. Be a current fuel delivery service that delivers fuel in Washington State or near Washington State border and/or have an identified current and existing fuel delivery service subcontractor(s) in Washington State or near Washington State border, both/either of which is capable of performing the contract.
- D. Have refinery supply agreements in the Bidder's company name that are local to Washington (Washington State or Washington State Border) and in sufficient quantity to meet the terms of the contract.



- E. Biodiesel: Have biodiesel fuel supply agreements in the Bidder's company name that are local to Washington or its borders and in sufficient quantity to meet the terms of the contract. See also: short implementation period in Contract section, Biodiesel Manufacture, subsections Feedstock Source, Implementation Period.

By submitting a bid, the bidder signifies compliance of these requirements but the state reserves the right to request supporting documentation, conduct a site visit and or schedule a meeting to seek clarification so as to validate claims of qualification compliance. Additionally, the successful bidder(s) may be required to provide copies of their fuel supply contract(s) or letter from their supplier(s) (on supplier's letterhead) showing they have sufficient sources and volumes of fuel available to satisfactorily perform in accordance to contract terms and conditions. If awarded a contract, the bidder must be able fulfill contract deliveries and terms within 30 days of contract award. OSP reserves the right and has the sole discretion to extend the time.

Further, as detailed in the Evaluation section below meeting the qualification above does not guarantee any award. The qualification is only one of many steps.

#### 4.3 ALTERATIONS TO OFFICIAL DOCUMENTS AND CONFLICTING MATERIALS

Bidders are required to read, understand, and agree to the document and any other included/incorporated documents as written. The Bidder shall complete and required documents but shall not alter any language of the document or other included documents. Only OSP is authorized to alter the document's language, which must be done by official Amendment.

If a bid is received containing altered language, OSP may disqualify the bid. Should any of the language be altered by the Bidder or other non-OSP party, it shall have no force and effect. Award of the bid, which includes alterations made by anyone other than OSP, is neither a waiver nor an acceptance of the alteration, whether known or unknown by OSP, and the Bidder agrees that any resulting contract will be enforced as officially written by OSP.

Award of the bid, which includes supplemental materials that either conflict with the solicitation and/or solicitation amendment is neither a waiver nor an acceptance of the supplemental materials, whether known or unknown by OSP, and the Bidder agrees that any resulting contract will be enforced as officially written by OSP.

#### 4.4 AUTHORIZED COMMUNICATION

Upon release of this solicitation, all Bidder communications concerning this solicitation must be directed to the Administrator listed below. Unauthorized contact regarding this solicitation with other state employees involved with the solicitation may result in disqualification.

All oral and written communications will be considered unofficial and non-binding on the Office of State Procurement, State of Washington, and qualified contract customers. Bidders shall rely only on the solicitation document and any follow-on solicitation amendments issued by the OSP Administrator. Relying on any other information is at the Bidder's own risk and expense.

In its effort to help prospective Bidders, OSP may answer a Bidder Inquiry and may provide background or other information in an effort to provide context that seems to indicate an OSP position. This information is informal in nature and may change with no follow-on notice to the Bidder. Again, the Bidder shall rely only on the language of the solicitation and not on informal information.

Solicitation Administrator	Michael Maverick	
Office of State Procurement	E-mail:	<a href="mailto:fuelrebid@ga.wa.gov">fuelrebid@ga.wa.gov</a>
210 11 <sup>th</sup> Ave. SW P.O. Box 41017	Telephone:	360.902.7430
Olympia, WA 98504	FAX:	360.586.2426

4.5 BIDDER COMMUNICATION RESPONSIBILITIES

Bidders will be responsible for communicating to the Solicitation Administrator any issues, exceptions, additions or omissions concerning the solicitation on or before the Bid due date and time. **Where requirements appear to prohibit or restrict your firm’s participation, an explanation of the issue with suggested alternative language should be submitted in writing to the Administrator by the timeframes defined in section 3.1 Procurement Schedule.** The solicitation process may continue. If changes result, written amendments will be made by the Administrator and provided by posting them on WEBS as indicated above.

Bidders are encouraged to communicate as early in the process as possible in order to give OSP an appropriate period of time to consider and respond. OSP is not required to respond and questions asked close to deadline are likely to remain unanswered.

4.6 PREPARATION OF BIDS

Sealed and Delivered to the location on the face page.

- A. Bid must be received at OSP and time stamped by OSP prior to the Bid opening deadline.
- B. Bid must be in a sealed envelope, box, or container.

Signature: Subject to WAC 236-48-071, the Bid must be signed with an original signature by the Bidder’s authorized representative, in ink, and preferably in blue ink. The signature is a demonstration that the Bidder (Contractor - if awarded any portion of the contract) agrees to be bound to the State’s terms and conditions. Additional signing details may be located the solicitation’s Submittal, Evaluation Process, and Award section below.

Identification: Bids should be clearly identified on the outside of the package with the following information at the address below:

- A. Bidders Company Name and return address.
- B. Solicitation Number
- C. Opening Date (deadline to submit a Bid to OSP) and Time
- D. Name of Solicitation Administrator
- E. OSP’s Name and Address

Bid Response Format: OSP requires one complete hard copy and is requesting one complete electronic Portable Document Format (Adobe PDF) scanned copy of the hard copy Bid. Said simply, once the hardcopy is ready to be returned to OSP, make a PDF scan copy of the entire hardcopy.

In addition to the electronic copy of the Bid response, OSP may also require other electronic documents in different programming formats, such as, MS Word, Excel, etc. as indicated in the Submittal, Evaluation Process, and Award section below.

All electronic files should be placed on optical media such as compact disk (CD) or Digital Video Disk (DVD). Re-writable CD's/DVD's and Thumb drives should be avoided because they can be altered; the Bidder using re-writable media does so at its own risk.

The hard copy and electronic PDF copy should be identical; therefore, all changes or erasures to any hardcopy Submittals must be initialed in (blue) ink prior to the scanning of the electronic copy. The hard copy of the Bid must be legible and completed in ink or with electronic printer or other similar office equipment, with wet signatures in ink (preferably blue ink).

The State needs an electronic PDF copy that is identical to all hardcopy documents that are submitted by the Bidder; however, the electronic copy need not include Bidder catalogs and other Bidder pre-printed materials *unless* they are essential to defining the product or service offered. Therefore, to preserve the *identical* nature, the PDF scan copy should be created after the hard copy is complete and ready to be sent to the Office of State Procurement. Thereafter, if the Bidder makes any change to the hard copy then a new PDF scan should be made.

**Conflict:** Conflicts between the hardcopy and the electronic PDF file or other required electronic files: All should be identical to each other; however, in the event of a conflict, the hardcopy shall control. Where there is no known and apparent conflict, the electronic PDF copy and/or other required electronic files provided to OSP in the Bid are deemed a duplicate original copy document for all purposes, including legal action. The Bidder is cautioned to review all required electronic files and verify their accuracy. The Bidder is cautioned to review the electronic PDF copy and verify that it contains the entire Bid and is identical to the hardcopy. The Bidder warrants that all electronic files are identical to its hardcopy counterpart.

#### 4.7 PROPRIETARY OR CONFIDENTIAL INFORMATION

All Bids submitted become the property of the State of Washington and a matter of public record, after the contract has been executed.

The public is generally entitled to and OSP promotes reasonable transparency of process. It is the Office of State Procurement's position that the information needed in response to this solicitation is not sensitive, proprietary, or confidential and does not rise to a level needing protection. Confidence in OSP's procurement process is best achieved when any material used in the evaluation and received from any Bidder to determine an award outcome is available for public review.

The entire bid response received from any Bidder is subject to evaluation. After award, OSP will likely receive request for public disclosure. The State of Washington has very broad public disclosure laws and any information received in response to this Solicitation may be disclosed in satisfaction of a request after an award is made (the letting of a contract).

Bidders must assume that all parts of all bid responses received by OSP will be disclosed to the public with no notice to the Bidder. **The Bidder may contact OSP prior to the Bid deadline if the Bidder believes that any information required by this solicitation rises to a level needing protection.** The OSP will consider any input and may/may not elect to make changes to information safeguard levels. However until such time that a solicitation amendment is issued that modifies this section (Proprietary or Confidential Information), all information received as part of a Bid response is presumed subject to public disclosure without any additional safeguards or notification to the Bidder.

Further, Bid documents marked proprietary, confidential, or other similar term may be ignored and disclosed without any notification to the Bidder.

#### 4.8 USE OF SUBCONTRACTORS

OSP will accept responses that include third party involvement only if the Bidder submitting the response agrees to take complete responsibility for all actions of such subcontractors. The Bidder agrees to take complete responsibility by signing and returning a bid response to OSP. Bidder must state whether subcontractors are/are not being used.

If applicable, Bidder shall identify all subcontractors who will perform services in fulfillment of contract requirements, including their name, the nature of services to be performed, address, telephone, facsimile, email, federal tax identification number (TIN), and anticipated dollar value of each subcontract: Bidder shall complete this section of the Bidder Profile.

OSP reserves the right to approve or reject any and all subcontractors that Bidder proposes.

Specific restrictions apply to contracting with current or former state employees pursuant to Chapter 42.52 RCW. Bidders should familiarize themselves with the requirements identified in the Use of Subcontractors in the contract part prior to submitting a Response.

#### 4.9 WASHINGTON ELECTRONIC BUSINESS SOLUTION (WEBS)

Current procurement law requires public announcement of this opportunity. OSP is using the General Administration's "View bid opportunities" website and the Washington electronic Business Solutions (WEBS) for this solicitation.

OSP encourages Bidders to register with the WEBS site. Registration is free of charge. This will facilitate a uniform, accurate communication link between OSP and Bidders interested in this solicitation.

To ensure receipt of all solicitation documents, the documents for this solicitation must be downloaded from WEBS. Notification of amendments to the solicitation will only be provided to those Vendors who have registered with WEBS and have downloaded the documents from WEBS. Failure to do so may result in a potential Bidder having incomplete, inaccurate, or otherwise inadequate information, or a Bidder submitting an incomplete, inaccurate, or otherwise inadequate Bid or Proposal. Bidders and potential bidders accept full responsibility and liability for failing to receive any documents resulting from their failure to properly register with WEBS and download the document from WEBS, and hold the State of Washington harmless from all claims of injury or loss resulting from such failure.

Bidders are solely responsible for:

- A. Properly registering with the WEBS at <http://www.ga.wa.gov/webs>,
- B. Maintaining an accurate Bidder profile in WEBS,
- C. Downloading the solicitation with all associated attachments, exhibits etc., and
- D. Downloading all current and subsequent solicitation amendments.

Technological Failures: WEBS notification is based on commodity code associations. When a solicitation is issued by OSP, the Administrator researches the available codes and selects what appears to be the best match(s).

Registered Bidders also select codes that determine what notifications they wish to receive from WEBS. Unfortunately, code mistakes can happen and it is possible that a properly registered Bidder does not receive the WEBS notification due to a code mismatch or other technological failure.

In addition, OSP currently provides a failsafe for code mismatch mistakes and other WEBS technological failures. OSP maintains a View Bid Opportunities look-up portal which also satisfies the notification requirement. The information in this portal is drawn from solicitations that are posted on WEBS and allows the public to see the bid opportunity's title using an "All" or "Governmental Organization" search from this site; only the title is available. While this site does not send out a special notification, it does make the initial opportunity information available to anyone free of charge. This site does not alert the reader to any follow-on solicitation amendments. The link is:

<https://fortress.wa.gov/ga/webs/bidcalendar.aspx>. To download the solicitation, the Bidder would use WEBS.

It is in the Bidder's interest to proactively review the View Bid Opportunities look-up portal as a safeguard against technological failures or other problems as this will give the Bidder some awareness of the opportunity. Therefore, Bidders and potential Bidders accept full responsibility and liability for failing to receive any WEBS solicitation notice resulting from technological failures, code mismatches, or other problems and hold the State of Washington harmless from all claims of injury or loss resulting from such failure.

#### 4.10 WITHDRAWAL OR MODIFICATION OF BID OR PROPOSAL

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

After Bid/Proposal submittal but prior to Bid/Proposal opening: The Bidder may modify or withdraw his/her Bid or Proposal at any time prior to the due date and time set for Bid/Proposal opening (deadline to submit) by providing a written request to the Administrator from an authorized representative of the Bidder.

After Bid/Proposal opening deadline: No Bid or Proposal shall be altered or amended. OSP may allow a Bid to be withdrawn if the Bidder demonstrates that the prices were miscalculated. A low Bidder, who claims error and fails to enter into a contract with the state of Washington, may not participate in bidding on the same commodity or service if the solicitation is subsequently reissued by the OSP.

OSP reserves the right to contact Bidder for clarification of bid response contents.

#### 4.11 BIDDER AUTHORIZED REPRESENTATIVE

Bidder must designate an Authorized Representative who will be the principal point of contact for the OSP Administration for the duration of this process. Bidder should complete this section of the Bidder Profile.

#### 4.12 FEDERAL RESTRICTIONS ON LOBBYING

The Bidder certifies by signing and submitting the bid, 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.

#### 4.13 FEDERAL DEBARMENT AND SUSPENSION

The Bidder certifies, by submission of this Bid / Proposal, 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. The Bidder certifies that the Bidder's company is not listed on the U.S. Government's Excluded Parties List System. Link: <https://www.epls.gov/>

### 5. PRICING (COST FACTORS)

#### 5.1 OVERVIEW

The purpose of this section is to address *some* issues of special importance for the Bidder's consideration in forming the Bidder's Price Sheet but many more may apply that are not discussed here. The issues raised below are not an exclusive list; read the entire document.

All pricing shall include the costs of Bid preparation, servicing of accounts, and complying with all contractual requirements. 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 product, service, and/or equipment offered in the Bid.

The Bidder must weigh all cost factors and risk factors and roll them into the pricing in the Price Sheet Submittal unless another Solicitation term specifically indicates differently, such as, fuel taxes.

The State makes no volume commitment in this solicitation. The proposed pricing levels should reflect the market provided by the Contract resulting from this solicitation.

The Bidder shall not assume dollars from other sources will be forthcoming unless a Contract term specifically allows as separate costs to be charged in addition to the price recorded on the price sheet.

The State makes no volume commitment in this Solicitation.

Costs or charges under the proposed Contract incurred before the Contract is fully executed will be the sole responsibility of the Bidder.

#### 5.2 NO BEST AND FINAL OFFER

OSP reserves the right to make an award without further discussion of the response submitted; *i.e.*, there will be no best and final offer request. Therefore, the response should be submitted on the most favorable terms that Bidder intends to offer.

#### 5.3 PRICE SHEET

Bidder must complete the Price Sheet Submittal.

Where there is no charge or rate for required line items on the *Price Sheet Submittal* enter N/C (no charge) or zero (0) on the *Price Sheet Submittal* as applicable.

If the Bidder fails to provide a price in a price sheet cell, it will be treated as a “no bid” which may result in the Bidder’s bid response being disqualified and rejected.

#### 5.4 INTERNAL REVENUE CODE 3402(T) – THREE PERCENT WITHHOLDING

OSP is aware of possible federal legislation to the Internal Revenue Service Code that if enacted may require Government customers to withhold three (3) percent of any payment due to the Contractor.

OSP’s understanding of the legislation, its impact on the Contractor, and implementation timeframe is very limited and may be inaccurate.

Based on OSP’s understanding, there is NO increase in cost to the Contractors (so there should be no price adjustments on the contracts). The funds that the government customer will be required to withhold are the Contractor’s federal taxes. This is money that is always owed so it should already be factored into their pricing.

Because OSP’s understanding is limited or in error, OSP does not and will not offer any guidance except to say that all Bidders should be aware, do not rely on OSP’s understanding, perform your own research on the subject, and bid accordingly.

#### 5.5 FUEL AND SALES TAX

Pricing in the *Price Sheet Submittal* is before tax. *Do not roll fuel and sales tax into the price in the Price Sheet.*

#### 5.6 SHIPPING TERMS

Reference the Shipping and Risk of Loss section in Contract (Part II).

#### 5.7 CREDIT CARDS

Bidder, if offering the use of a credit card, please record the information in the Bidder Profile submittal. If credit cards are offered, the Bidder shall not charge a fee. Where the bidder offers the use of a credit card and offers a PPD, the credit card may be used in satisfaction of the PPD.

5.8 PROMPT PAYMENT DISCOUNT

Bidder, if offering a prompt payment discount (PPD), please record the PPD in the Bidder Profile submittal.

Prompt Payment Discounts will not be an evaluation consideration.

Credit Cards Applied to PPD: Where the bidder offers the use of a credit card and offers a PPD, the credit card may be used in satisfaction of the PPD.

5.9 INSTALLATION COST

Separate installation costs, if any, are not allowed and must be rolled into the unit price in the Price Sheet submittal.

5.10 MISCELLANEOUS EXPENSES

No separate miscellaneous expenses are allowed. All costs are rolled into the unit price of the *Price Sheet Submittal*.

5.11 PRICE ADJUSTMENTS

Price adjustments are a post award matter that is further detailed in the Contract (Part II). Refer to the Contract for expanded details.

5.12 INSURANCE

The successful bidder is required to obtain insurance to protect the state should there be any claims, suits, actions, costs, or damages or expenses arising from any negligent or intentional act or omission of the bidder or its subcontractor(s), or their agents, while performing work under the terms of any Contract resulting from this solicitation. *See Contract (Part II) for expanded details. See also Contract (Part 2) Insurance for expanded details.*

5.13 PRICES IN USA DOLLARS AND EXCHANGE RATES

The prices recorded in U.S. dollars are fixed regardless of market or international exchange rate changes. OSP does not consider changes in the international exchange rate in favor of the state of Washington as sufficient justification to adjust pricing after Contract award.

6. SUBMITTALS, EVALUATION PROCESS, APPARENT SUCCESSFUL BIDDER (ASB), AND AWARD

NOTE: For efficiency this section may also be called the "Evaluation" section.

6.1 GENERAL INFORMATION

No rejection notice will be sent to unsuccessful Bidders. Bidders whose bids are determined to be non-responsive will be rejected and will be notified of the reasons for such rejection.

Contract award (if any) shall be made to the lowest Responsive and Responsible Bidder based on the evaluation and award criteria established herein and subject to consideration of all factors identified in RCW 43.19.1911.

Subject to the provisions of RCW 43.19 et seq. and Chapter 236-48 WAC, the Office of State Procurement (OSP) reserves the right to: (1) Waive any informality; (2) Reject any or all Bids, or portions thereof; (3) Accept any portion of the items bid unless the Bidder conspicuously stipulates all or nothing in their Bid; (4) Cancel a solicitation and/or re-solicit Bids; (5)



Negotiate with the lowest Responsive and Responsible Bidder to determine if that Bid can be improved for the Purchaser; (6) Award by line item, group, aggregate, or on an all or none consolidated basis taking into consideration "lifecycle costs"; and (7) determine the level of Bidder compliance.

## 6.2 SUBMITTALS

**PLEASE INCLUDE YOUR COMPANY NAME OR MARK ON EACH PAGE OF EVERY SUBMITTAL**

### 6.2.1 General Information

As part of the Bidder's Bid response, the Bidder is required to provide the Office of State Procurement with submittals that will be used in the evaluation that facilitate an award. Submittals may be evaluated as pass/fail, numerically scored, formula scored, etc., or are not scored but used in the responsibility analysis. All submittals have a responsiveness component and a responsibility component within the evaluation. The specifics of the individual submittal evaluation are further detailed within the Evaluation section.

### 6.2.2 Complete and return the following:

#### A. Signatures (Bidder's Summary of Award and Signature Page):

The Bidder needs to:

1. Return a complete Solicitation/Contract (the entire document), and
2. Sign the Contract (Summary of Award and Signatures page) located at the end of the contract section.

The OSP treats bid responses as firm offer commitments for the OSP's review and evaluation that will result in an award if accepted and awarded by the OSP in full or part (acknowledged by OSP signature). State law and this Solicitation requires the bid response to have an original wet ink signature (preferably blue ink) that demonstrates the Bidder's firm offer commitment and acknowledgement and acceptance of the resulting contract's terms and conditions as written by the state.

Bidders failing to sign their bid response may be disqualified from receiving an award.

#### B. Bidder Qualifications:

This opportunity is not open to brokered transactions where the Bidder's plan if awarded the contract is to act as a prime contractor and use other businesses' refinery supply agreements in satisfaction of the contract.

Bidder must submit a self-authored Bidder Qualification narrative statement consisting of no more than five pages; the sixth and following pages will be ignored. The narrative shall explain how the Bidder meets the Bidder Qualifications described herein. The Bidder should also include as an attachment to the narrative any copies of documents that validate the Bidder meets the qualification.

**BIDDERS MAY BID ON ONE OR MORE REGIONS FOR EITHER OR BOTH CATEGORY BUT ONLY ONE (1) QUALIFICATION NARRATIVE WILL BE REVIEWED. DO NOT PROVIDE MULTIPLE QUALIFICATION NARRATIVES NO MATTER HOW MANY REGIONS YOUR COMPANY INTENDS TO BID.**

Supplemental Documentation: If supplemental documentation is included, it will not count against the 5-page limitation. However, the Bidder must make their best case in the 5-page Qualification narrative. Bidders are warned not to make a general claim in the narrative and then reference or link the claim to the supplemental information for expanded details. Example of Ineffective Claim: Our company has ample supply agreements to meet the requirements of this contract. Please refer to the supplemental material for dates and volume details. The claim of enough supply is a conclusion and not supported by facts contained in the narrative. It requires the reader to reference another document to learn the substance of the claim.

Bidders remember to include facts that support any claim. The Narrative must succeed or fail in its own merit. In the Narrative Statement the Bidder should address the following:

1. Bidder must be an existing business of at least 16 months at time of bid. Supplemental documentation may include copies of business licenses, etc.
  - a. Bidder, please detail how long your company has operated, where is its base of operations and base of operations in/near Washington State, and the purpose of the business.
2. Bidder must be an authorized supplier of fuel. Supplemental documentation may include copies of business licenses, etc.
  - a. Bidder, please detail how long your company has operated as a fuel supplier in or near Washington and how it has served Washington customer fuel needs.
3. Bidder must be a current fuel delivery service that delivers fuel in Washington or near Washington State border and/or have an identified current and existing fuel delivery service subcontractor(s) in Washington State or near the Washington State border, both/either of which is capable of performing the contract.
4. Refinery Supply Agreements: Bidder must have refinery supply agreements in the Bidder's company name that are local to Washington State (Washington State or Washington State border) and in sufficient quantity to meet the terms of the contract.
  - a. Bidder, detail fuel supply agreements that are in your own company name that includes the company name and address of the supplier, terminals and/or racks that you are authorized to use, the start and end date of the agreement, and if the agreement is for all of the products required by the Solicitation, i.e., gasoline (all types), diesel #2 (clear and dyed), diesel #1 (clear and dyed), biodiesel (clear and dyed and in all percentages), and heating oil. Further, if proof of these agreements are not already included in the Bidder's Bid, be advised that upon OSP request your company shall have five business days to produce sufficient and ample documentation proving your claim or face disqualification. The refinery may be contacted to verify the accuracy of the agreement.

Any proof of supplier agreements should include:

- i. Name and business location of the supplier.
- ii. What products are to be supplied by the supplier?

- iii. Period of time the products are to be supplied.
  - iv. Approximate volume of products to be supplied.
  - v. Authorized fuel pick-up locations.
  - vi. Statement that the Bidder has historically proven to procure products in like quantities from the supplier.
  - vii. Signature (wet signature) of the supplier and date signed.
- b. Bidder, explain how the refinery supply agreements are sufficient to satisfactorily perform the contract terms and conditions.
5. Biodiesel: The Bidder must have biodiesel fuel supply agreements in the Bidder's company name that are local to Washington State or Washington State borders and in sufficient quantity to meet the terms of the contract. See also: short implementation period in Contract section, Biodiesel Manufacture, subsections Feedstock Source, Implementation Period.
- a. Bidder, detail biodiesel fuel supply agreements that are in your own company name that includes the company name and address of the supplier, terminals and/or racks, supply stations that you are authorized to use, the start and end date of the agreement, and if the agreement is for all biodiesel products required by the Solicitation, i.e., biodiesel (clear and dyed and in all percentages). Further, if proof of these agreements are not already included in the Bidder's Bid, be advised that upon OSP request your company shall have five business days to produce sufficient and ample documentation proving your claim or face disqualification. The refinery may be contacted to verify the accuracy of the agreement.  
  
Any supplier agreements should include: See i through vii in the refinery supply agreement above.
  - b. Bidder, explain how the biodiesel supply agreements are sufficient to satisfactorily perform the contract terms and conditions.
  - c. In-State Feedstock (fungible): Bidder, explain how your company will ensure and maintain records demonstrating that the biodiesel supplied to Washington State agencies is predominately (51% or more) made from in-state (Washington State) feedstock and/or biodiesel produced in-state (Washington State) directly and/or through fungible analysis. See Contract section, Biodiesel Manufacture, subsections Feedstock Source, Fungible.
- C. Bidder Profile (Appendix B – Bidder Profile):
- The Profile aids the state in its responsibility analysis and contains other information important in the evaluation, such as References and Prompt Payment Discount (PPD not evaluated). The Appendix B – Bidder Profile is located following the Summary of Award and Signature page.

D. Price Sheet (Appendix C – Price Sheet):

The Price Sheets (Excel Workbooks) appear in this document as embedded MS Excel files segmented by regions (eight regions) and further segmented for a bulk order award and a keep-full/will-call order award. The segmentation results in 16 Price Sheet Workbooks that correspond to the region/category segmentation and the Bidder may bid on one or all or any combination thereof.

The Price Sheet Workbook file consists of four worksheets: Price Sheet, Profile, Fuel Summary, and Delivery Summary. The Fuel Summary and the Delivery Summary are essentially the Profile but are sorted in different ways to calculate the cost of fuel and cost of deliveries (service fees). The tank Profile is provided for informational purposes only. It is not controlling over the other parts of the Price Workbooks.

The Bidder must complete all shaded cells on the Price Sheet Worksheet.

MS Excel formulas: The Workbook formulas used by OSP are a tool used by OSP to aid in determining the low Bid. The Workbook formulas used by OSP are not Solicitation language.

All tank Profiles were developed from customer data received during development of the Solicitation. OSP can issue a solicitation with little or no customer data by simply asking “what is your price for delivered fuel, FOB Destination, Freight Prepaid and Included.” However, OSP believes that providing customer data in the Profile gives the Bidder a better understanding of the risk and rewards and aids the Bidder in crafting a competent bid response.

The Profile describes customer detail such as: tank location, type of fuel needed, estimated annual volume, estimate number of deliveries, etc. The Profile serves two purposes by providing the Bidder with the information that OSP has and to mathematically calculate a low bid based on the data.

The Bidder is cautioned that the tank Profile data is not perfect and represents only directionally correct information. OSP does not guarantee the accuracy of the information contained in the tank Profile. Further, the profile includes non-state agency customers, such as, political subdivisions and institutions of higher education; only state agencies are obliged to use this contract and the others may or may not use the fuel contract.

Calculations: Using the customer provided information, the intention is to calculate the overall costs of fuel, costs of delivery (service fee), and costs of DEF. The Bidder places their pricing and multipliers on the “Price Sheet.” The Bidder’s pricing and multipliers are used by the “Fuel Summary” to calculate the overall costs of Fuel. The Bidder’s pricing is used by the “Delivery Summary” to calculate the overall costs of delivery (service fee). The “Price Sheet” calculates the overall costs for DEF (in some regions this value will be zero). Ultimately, the “Price Sheet” sums the costs for fuel, delivery, and DEF to form a Price Sheet Total that will be further subjected to any preferences or penalties required by law or the Solicitation. The price sheet total displayed on the Price Sheet remains unofficial until its accuracy is verified by OSP. Once verified and accurate, the price sheet total becomes the price used for further evaluation and tabulation.

Errors: Bidders have an on-going obligation to notify OSP of any perceived errors contained in the Price Sheet Workbook. OSP will consider and if deemed necessary by OSP, OSP will issue a revision by Solicitation Amendment on W.E.B.S.

Despite any shortcomings, the information in the Price Sheet Workbook is based on the information OSP has received from potential contract customers, represents the best information OSP has at this time, and will be used to calculate a low Bid.

Further, an error in the Price Sheet Workbook DOES NOT render the Price Sheet evaluation ineffective. An error, if any, is applied uniformly to all Bidders.

Each Price Sheet incorporates one pricing structures, service fees, and drop fees, for the products indicated.

The Price Sheet's Column headings are as follows (it may be helpful to print a copy of a Price Sheet):

1. (Column A) Line Reference #: Self explanatory.
2. (Column B) Fuel Eval. Price: A price selected by OSP for the given product. The price is an evaluation frame of reference used for calculation against the Bidder's OPIS Multiplier.
3. (Column C) Rack Reference City: It is the OPIS reference city for the respective fuel type that will be used by the Bidder to record an OPIS multiplier.
4. (Column D) Fuel Type: Describes the type of fuel required. In the case of "Gasoline, Unleaded, All Types", this would include regular, mid-grade, premium, and Ethanol (E10) blends.
5. (Column E and F): Self explanatory.
6. (Column G): For the entire region, the Bidder records a OPIS multiplier against this product and reference city. Reminder: Bulk delivery orders (an order of 8,000 gallons or more up to the vehicle's volume or weight capacity). Keep Full/Will-Call (an order of less than 8,000 gallons).
7. (Column H): The Bidder records a single countywide Service Fee for the given category.
8. (Column I): The Bidder records a single region-wide Drop Fee for the given category.

For the following regions: Central Puget Sound (CPS), North Central (NC), North Puget Sound (NPS), Northeast (NE), Peninsula (P), South Central (SC), Southeast (SE), Southwest (SW).

1. Bidders must select which region or regions the Bidder intends to offer a bid and within each region, the Bidder, using the appropriate price sheet, must provide bulk or keep full/will-call delivery services or both for all products listed on the Price Sheet.
2. For the region selected, the Bidder must record all OPIS Multipliers for all products listed, all service fees for all counties listed, and all drop fees for the region and any other product or service pricing listed on the price sheet.

For any Price Sheet, Bidders must complete all worksheet pricing cells; failure to do so may result in disqualification from receiving an award.

The pricing offered by the Bidder in the Bid response must include all cost factors except for any fuel tax or sales tax on the service provided (if any). Bidders offering the use of credit cards as a form of payment in the Bidder Profile submittal understand that there shall not be any separate charge card fee; it must be included in the price. Bidder's that offer (1) a prompt payment discount and (2) use of charge cards agree that payment made using the charge card during the discount time period is acceptable.

E. Bidder's Contract Performance Plan (Appendix D – Performance Plan Statement):

Bidder shall read and understand all contract requirements. Understanding the contract is crucial to answering the questions below and crafting the Bidder's Contract Performance Plan.

The Bidder shall provide a statement describing how the Bidder will perform the contract if awarded the contract for any region Bid by the Bidder. The purpose of the Performance Plan Statement is to perform part of a responsibility analysis as required by RCW 43.19.1911(9).

Clarifications: OSP may ask but is not required to ask the Bidder to clarify their Performance Plan Statement.

In addition to the considerations described in RCW 43.19.1911(9), if OSP determines that the Bidder's plan presents a significant safety or operational issue, the Bidder otherwise appearing to be the Apparent Successful Bidder may be disqualified.

The Bidder shall provide a **single** self-authored Performance Plan Statement consisting of no more than ten pages; the eleventh and following pages will be ignored. The Performance Plan should explain how the Bidder intends to carry out the contract as described herein and also address OSP's concerns and objectives described below.

**BIDDERS MAY BID ON ONE OR MORE REGIONS FOR EITHER OR BOTH CATEGORIES BUT ONLY ONE (1) PERFORMANCE PLAN STATEMENT WILL BE REVIEWED. DO NOT PROVIDE MULTIPLE PERFORMANCE PLAN STATEMENTS NO MATTER HOW MANY REGIONS YOUR COMPANY INTENDS TO BID.**

Supplemental Documentation: If supplemental documentation is included, it will not count against the 10-page limitation. However, the Bidder must make their best case in the 10-page Performance Plan Statement. Bidders are warned not to make a general claim in the Plan and then reference or link the claim to the supplemental information for expanded details. Example of Ineffective Claim: Our company has enough staff and equipment to carry out the terms of the contract. Please refer to the supplemental material for a list of staff and equipment. The claim of enough staff is conclusion and not supported by facts contained in the Plan. It requires the reader to reference another document to learn the substance of the claim.

The Bidder is at liberty to structure the self-authored document in a logical manner that the Bidder feels will best explain the Bidder's ability to perform. Some of the questions below overlap which may result in duplication of answer. The Bidder may wish to read all of the questions before crafting a response that covers all of the key points below.

*If the Performance Plan Statement is not uniform for all regions and/or service portions within a region Bid by the Bidder, the Bidder must clearly identify the region or regions and the Bulk or Keep-full/Will-call portion and explain what the differences are from region to region. Do not provide multiple Performance Plan Statements, only one (1) will be reviewed by OSP.*

OSP Concerns and Objectives: The state's contract for delivered fuel is designated mission critical. OSP's contract customers include state level agencies, institutions of higher education, and political subdivisions that are members of OSP's purchasing cooperative.

The contract must serve a diverse customer group made up of large and small users with unique needs. State level agencies have a statutory requirement to use and over time increase the use of biodiesel that includes special blending requirements. Contract customers also require enhanced reporting and invoicing that follows a uniform framework. The state believes its critical fuel supply needs are best served by existing companies that have a presence in Washington with experience serving customers with similar fuel needs.

*OSP reserves the right to request sufficient and ample documentation that substantiates any Bidder claim or addresses any OSP concern. Upon OSP request the Bidder shall have five business days to produce the documentation/proof required by OSP or face disqualification.*

Bidders remember to include facts that support any claim. The Plan must succeed or fail on its own merit. Bidders in the Performance Plan Statement the Bidder should address the following:

1. The current contract 07705 is scheduled to expire on April 12, 2011 and the award may be made only a short time prior to that date. Assume that your company will have an implementation period of 30 days between the date of award and the first day of performance. For instance, does your company already have a business footprint in the region or regions Bid, do you own your own delivery truck equipment (or majority of delivery truck equipment), will your company rely heavily on subcontract work, and does your company already have fuel supply agreements with Washington area terminals and racks and biodiesel supply agreements in your own company name that are in sufficient volume to carry out the contract terms and conditions?

Please address the questions above and how your company can meet a short implementation timeline for all products, including biodiesel.

2. Please describe your companies staffing and delivery equipment or subcontracted delivery equipment (employee number, average age of delivery equipment, numbers, condition, etc.) and how it is or is not enough to service all of the regions Bid by your company. For any current deficiencies, please explain the plan to remove the performance defects and how it will be corrected and accomplished within the 30 day implementation period.

3. The Solicitation / Contract require biodiesel in any range from B1 to B100. The biodiesel must be mixed as detailed in the Contract section. OSP does not anticipate contract customers ordering unusual percentages (67.3 percent for example); it is OSP's expectation that percentage blends will initially be biodiesel B5, B10, B15, B20, B30, B40, etc. However, over the entire life of the contract customers may require higher blends up to and including B99/B100. See Contract section, Fuel Types, subsection F. - Biodiesel and Biodiesel Blending, all subsections, and Biodiesel Manufacture, subsection Feedstock Source, and subsection Sampling.

Bidders, acknowledge your understanding of this requirement and explain how your company can and will carry out the biodiesel contract requirement including the handling, blending, mix percentages, in-state feedstock requirements, and sampling detailed in the contract section.

4. Contract customers have identified a need for uniform information and uniform calculations on the invoice. One Contract 07705 customer reports that one company calculates taxes differently than another similarly situated company.

Assume a customer orders 8,000 gallons of B20, please explain the description and the manner of calculation for the product, taxes, etc. that will appear on the invoice. Also, if the state has an issue with your invoice, please explain your company's willingness and ability to alter the invoice to meet customer needs.

5. Reporting: The state has a need for enhanced customer service reporting that is both accurate and timely. Please describe the strengths and weaknesses of your company's information system and how it can/cannot accomplish the reporting requirements. See Sales Reports, subsections A, B, and C in the contract section.

6. Partnering: OSP and the State of Washington views this opportunity as a long term contract of up to ten (10) years. Because of its criticality, the state cannot remain in a long term contract that does not meet its customers need nor can the state run an opportunity of this type every year. For these reasons, it is paramount that the state's Contractor is also an exceptional partner.

While the contract by its own language may expire at earlier intervals, for any reason or no reason, this method allows for a possible long term partnership. It is OSP's expectation that the Contractor look for reasonable business ways to reduce costs to Contract customers.



During the development of this opportunity, some customers felt their “keep full” tank was serviced more frequently than the 20 percent level which drove up service fees and left the customer disappointed. Another customer reports that they were charged two service fees for two tanks that were physically side by side. In both cases, the customers felt there was no rational business reason for this practice and felt the Contractor was possibly exploiting every aspect of the contract even when the true delivery service costs could not support such an action (“nickel and dime”).

OSP wants the Bidder to understand our contract expectation and our meaning of partnership and OSP’s ability to not extend the contract for any or no reason. OSP wants the Bidder to explain in some detail your general business philosophy and your business philosophy regarding “partnership”, and how your philosophy may help the state reduce costs and maintain a pleasant long term relationship.

- 7. Subcontracting: Fuel supply must be in the Bidder’s company name (not subcontracted). Fuel delivery may be subcontracted. Bidders should be aware of the state’s concern where a critical contract is heavily serviced using subcontractors. Bidders are reminded that the Bidder absorbs all of the risks and responsibilities of their subcontractors.

Bidder, explain in detail how much subcontracting (if any) will play a part in performing the contractual obligations. Bidders explain any backup plans should the relationship with your fuel delivery subcontractor sour.

- 8. Insurance: Bidder’s review the Contract’s Insurance section and briefly explain how your company currently meets the insurance requirements or will meet the insurance requirements within fifteen (15) days of receiving any contract award. See Contract section, Insurance.

- F. References (Appendix B – Bidder’s Profile): Bidders must provide (7) seven references in their bid response focusing on comparable, service, materials, supplies, or equipment similar in scope (i.e. size, volume, type) to this Solicitation. While not required, OSP’s desire is for references for fuel delivery services to government customers in Washington State.

The Bidder should record the seven references on the Appendix A – Bidder Profile.

DO NOT INCLUDE REFERENCES FROM THE FOLLOWING PEOPLE (The Agency is Acceptable):

Brodeur, Paul - WSDOT (Ferries)	Lien, Nancy - City of Seattle
Case, Christopher - WSDOT	McQuillan, Ralph - K.C. Metro Transit
Castro, Frank - Tacoma Public Utilities	Mitchell, Allen - Snohomish County
Edick, Jon - Tacoma Public Utilities	Moulton, Peter - WA Commerce
Hansen, Greg - WSDOT	Perkins, Allen - WSDOT
Hupp, Stacy - Community Transit	Raftery, Robert - WA Corrections
Kahler, Ron - U. of Washington	Rovetto, Dennis - WSU
Lang, Mary Beth - WA Agriculture	Torrence, Steve - Snohomish County
Licht, Jon - Intercity Transit	

Submittal Summary: Provided only as a courtesy and does not displace any additional requirement in the body of the Solicitation. **PLEASE INCLUDE YOUR COMPANY NAME OR MARK ON EACH PAGE OF EVERY SUBMITTAL**

SUBMITTAL	FORMAT	EVALUATION
Copy of the entire Solicitation	Hardcopy	
Summary of Award and Signature Page	Hardcopy signed with wet signature, preferably in blue ink	Pass/Fail
Solicitation Amendment (if applicable). If the amendment also requires the Bidder to provide additional or replacement submittals, those submittals will be evaluated in conformity with what is stated in the amendment.	Hardcopy signed with wet signature, preferably in blue ink.	Pass/Fail
Bidder Profile	Hardcopy, substantively complete.	No scoring - But may be used in performing the responsibility analysis.
Bidder Qualification	Hardcopy. Five pages – self authored. ONLY PROVIDE ONE	Pass/Fail. Only the first five pages will be evaluated.
Price Sheet	Hardcopy. Use form provided by OSP.	Completion: Pass/Fail followed by Numerical Calculation.
Performance Plan Statement	Hardcopy, Ten pages - self authored. ONLY PROVIDE ONE.	Pass/Fail. Only the first ten pages will be evaluated.
References (recorded in the Bidder Profile) (seven references)	Hardcopy	Pass/Fail. Failure constitutes negative information received that the reference would not engage in future business due to the Bidder's conduct.

### 6.3 EVALUATION

OSP reserves the right to consider the actual level of Bidder's compliance with the requirements specified in this solicitation and to waive informalities in a Bid. An informality is an immaterial variation from the exact requirements of the competitive solicitation, having no effect or merely a minor or negligible effect on quality, quantity, or delivery of the supplies or performance of the services being procured, and the correction or waiver of which would not meaningfully affect the relative standing of, or be otherwise prejudicial to bidders.

Phases: The evaluation is divided into four distinct parts. The initial evaluation (responsiveness), price sheet evaluation (competitive), bidder qualification (qualifications), responsibility evaluation (responsibility). The competition occurs only in the price sheet evaluation phase. Thereafter, the Bidder with the lowest evaluated costs will be reviewed to ensure the bidder, in OSP's discretionary view, is qualified (qualifications) and has the wherewithal (responsibility) to carry out the contract. Any Bidder failing to receive a fifty percent pass rate in the Bidder Qualification or Responsibility Evaluation will be disqualified and the Bidder next in line will move forward for the Bidder Qualification and Responsibility Evaluation.

### 6.3.1 Initial Evaluation

Evaluation of the bid responses will be as follows. Bids will be initially reviewed for responsiveness. Including but not limited to, did the bid response arrive before the deadline (also called the Bid Opening), in a sealed container or envelope, with all required submittals substantively completed, and signed with an original signature on the Summary of Award and Signature Page which is the Bidder's acknowledgement of obligation of contract if awarded the Contract.

### 6.3.2 Price Sheet Evaluation

Price sheets are divided by region and further divided by Bulk service or Keep-full/Will-call service. The Bidder's Price Sheet submittal will be reviewed and OSP will verify that the Bidder properly completed all cells including but not limited to OPIS multiplier cells, Delivery Service cells, and Drop Fee cells.

OSP will apply the Bidder's Price Sheet values to the Fuel and Delivery Summary (worksheets used to calculate the fuel and or delivery costs) and to the DEF calculation for that region/service and record the Price Sheet Subtotal.

McNeil Island: The Delivery Service Fee (service fee) for McNeil Island is separately listed on the Central Puget Sound Price Sheet. The Bidder's recorded McNeil service fee price will be applied to the McNeil portion of the tank Profile. **McNeil Island is prone to operational conditions that may delay delivery.** See 9.7 – Special McNeil Island Condition for expanded details.

DEF/UREA: Bidders shall record a per gallon price for DEF/UREA in both 275 gallon totes and 4,500 gallon bulk delivery. The price per gallon for both will be averaged and then multiplied against the 2011 estimate to form a DEF price. The DEF price will be added to the Price Sheet Subtotal. In some regions, the DEF subtotal may equal zero. The per gallon price stated by the Bidder is FOB Destination, Freight Prepaid and Included. Price adjustments for DEF are detailed in the Contract – Part 2, Price Adjustment section.

The Price Sheet Subtotal will be subjected to any preferences and penalties required by law, rule, or Solicitation to form an Evaluation Price Sheet Total. Preference and penalties are used to adjust the Bidders pricing for evaluation purposes only; in no instances shall the increase/decrease be paid to a Bidder whose Bid is accepted and awarded a Contract.

By region and Bulk service or Keep-full/Sill-call service, OSP will tabulate all evaluated Price Sheet Totals to determine the lowest bid (lowest firm offer) price to the region/service. The Bidder with the lowest evaluated bid price will move forward to the Bidder Qualification evaluation and if successful move on to the Responsibility Evaluation for each region/service and will be further evaluated for overall responsiveness and responsibility, e.g., Bidder Profile, References, Performance Plan Statement, etc., to determine the lowest responsive and responsible Bidder for each Region/service.

### 6.3.3 Bidder Qualifications

Qualification evaluations are discretionary in nature. Does OSP, in its discretionary view, believe the Bidder having prevailed in the competition phase meets the qualifications set out in the solicitation? As stated in section 6.1 OSP reserves the right to "(7) determine the level of Bidder compliance."

The Bidder's Qualifications in the form of a five page self-authored narrative will be reviewed to ensure the Bidder meets the qualifications. However, while clarification is not required, OSP may request clarification of the Bidder if the submittal is not clear to OSP. The Bidder's five (5) page self-authored Qualification Narrative may be evaluated by OSP or an evaluation committee selected by OSP (single or multiple evaluators). The evaluation of the Bidder Qualification is pass/fail. The Bidder must achieve at least a fifty percent pass rate.

### 6.3.4 Responsibility Evaluation

Responsibility evaluations are discretionary in nature. Does OSP in its discretionary view believe the Bidder having prevailed in the competition phase have the wherewithal to carry out the contract? As stated in section 6.1 OSP reserves the right to "(7) determine the level of Bidder compliance."

#### A. RCW 43.19.1911

Pursuant to RCW 43.19.1911 (9), in determining Bidder responsibility, the following elements shall be given consideration:

1. The ability, capacity, and skill of the Bidder to perform the contract or provide the service required;
2. The character, integrity, reputation, judgment, experience, and efficiency of the Bidder;
3. Whether the Bidder can perform the contract within the time specified;
4. The quality of performance of previous contracts or services;
5. The previous and existing compliance by the Bidder with laws relating to the contract or services;
6. Such other information as may be secured having a bearing on the decision to award the contract:

During evaluation, the OSP reserves the right to make reasonable inquiry to determine the responsibility of any Bidder. Requests may include, but are not limited to, financial statements, credit ratings, references, record of past performance, clarification of Bidder's offer, and on-site inspection of Bidder's or Bidder's subcontractor's facilities. Failure to respond to said request(s) may result in Response being rejected as non-responsive/non-responsible.

**B. Bidder Profile Submittal**

The Bidder Profile is reviewed to ensure it is substantively complete. The Bidder Profile aids in the Responsibility analysis by providing information on the Bidder's company. Failure to complete may prevent a thorough examination of the Bidder and may result in the disqualification of the Bid.

**C. Performance Plan Statement**

The Bidder's ten (10) page self-authored Performance Plan Statement may be evaluated by OSP or an evaluation committee selected by OSP (single or multiple evaluators). The Performance Plan Statement is evaluated as pass/fail. However, while clarification is not required, OSP may request clarification of the Bidder if the submittal is not clear to OSP. The Bidder must achieve at least a fifty percent pass rate.

**D. References Check**

OSP will make a reasonable attempt to contact the reference to verify the Bidder's services. If OSP can't reach or gain the needed information the Bidder may be disqualified. OSP reserves the right to demand additional references and the Bidder shall have two business days to provide the reference to OSP or face disqualification. If negative information is received from any reference, in that the reference would not engage in future business the Bidder may be disqualified from receiving an award. OSP reserves the right to waive the reference check. Bidders should record their seven references on the Reference space provided in the Submittal Appendix.

The state reserves the right to solicit and substitute other references to determine the sufficiency of the Bidder's level of responsibility.

**E. Oral Presentation (optional):**

OSP at its sole discretion may require the Bidder to appear for an oral presentation. The Oral Presentation may be evaluated by OSP or an evaluation committee selected by OSP. If OSP elects to hold oral presentations, it will contact the Bidder to schedule a date, time, and location of OSP's choosing. Failure by the Bidder to commit to the date, time, and location set by OSP may result in bid disqualification. The Bidder shall not be reimbursed for this activity. Representations made by the Bidder during the oral presentation that are acceptable to OSP will be considered binding.

**F. Equipment and Operations Demonstration (optional):**

OSP at its sole discretion may require the Bidder to demonstrate its equipment and operations. The Equipment and Operations Demonstrations may be evaluated by OSP or an evaluation committee selected by OSP. If OSP elects to hold an Equipment and Operations Demonstration, it will contact the Bidder to schedule a date and time to meet at the Bidder's business location. Failure by the Bidder to commit to the date and time set by OSP may result in Bid disqualification. The Bidder shall not be reimbursed for this activity. Representations made by the Bidder during the Equipment and Operations Demonstration that are acceptable to OSP will be considered binding.

#### 6.4 Evaluation Committee

OSP may assemble and preside over an evaluation committee. The evaluation committee, if used, may be responsible for reviewing and scoring (pass/fail) applicable Bidder Qualification, Responsibility Submittals, oral presentation, or equipment demonstrations, etc.

If deemed necessary by OSP, committee members may be substituted and/or the evaluation committee may be disbanded and reconstituted.

The committee or committee member will evaluate these Submittal consistent with their values. The committee member will primarily focus on the considerations stated in the Solicitation.

OSP will not likely evaluate any Submittal that is also evaluated by an evaluation committee. However, in addition to presiding over the evaluation committee, OSP may review the Submittals, provide input, assemble evaluation aids, or perform other functions helpful to the evaluation committee. The committee may engage in a free flow of discussion with other committee members and the Administrator prior to, during, and after the evaluation.

The evaluation of the submittal may be performed in isolation or together as a group, or a combination of both. Each committee member will give a particular Submittal a pass or fail. All of the committee members' decisions for that Submittal will be tabulated. Whether a single OSP representative or an evaluation committee, the Bidder must achieve a fifty percent pass rate or better or be disqualified. If the Bidder is disqualified, this process will repeat using the Bidder next in line until a successful Bidder is identified.

#### 6.5 APPARENT SUCCESSFUL BIDDER (ASB)

##### 6.5.1 Selection of Apparently Successful Bidder(s)

The lowest responsive and responsible Bidder will be declared the Apparent Successful Bidder.

##### 6.5.2 Notification of Apparently Successful Bidder (ASB)

Designation as an Apparent Successful Bidder does not imply that the OSP will issue an award to your firm. It merely suggests that at this moment in time the OSP believes your Bid to be responsive. This designation allows OSP to perform an additional responsibility analysis and ask for additional documentation. OSP is also at liberty to re-review and determine whether the Bid is truly responsive/responsible as initially believed. The Bidder must not construe a notification of ASB as a notification of award, impending award, an attempt to negotiate, etc. If you act or fail to act in reliance of this notification, you do so at your own risk and expense.

##### 6.5.3 Negotiation with ASB

Revised Code of Washington 43.19.1911(6) allows OSP and the ASB to engage in negotiations to see if the Bid can be improved. Improvements may include but are not limited to price, quality, service, warranty, etc. Negotiated terms, if any, will become part of the Contract Award.

## 6.6 AWARD

By region, OSP intends to award no more than one contract for the Bulk service and one contract for the Keep-full/Will-Call service on this opportunity. **Each region will have two awards that may result in two separate Contractors or a single Contractor if a single Contractor is successful in both the Bulk and Keep-Full/Will-Call category for that region.**

However, resulting total cost to the agency must not exceed its budget authority, which might result in no contract award. OSP reserves the right to award by line item, group, aggregate, or all-or-nothing. Should the Bidder be awarded a contract, the Bidder understands and agrees that this shall not be seen as the OSP's acceptance of the Bidder's conflicting documentation, term, or conditions (if any and whether unknown or unknown to the OSP), nor is it a waiver of the OSP's terms and conditions in favor of the Bidder. The Bidder understands and agrees that the OSP's terms and conditions shall prevail and be enforced.

Mechanics of an award: An award, in part of full, is made by OSP signature on the Summary of Award and Signature Page and accompanying Award Letter (if any) that is also delivered to the ASB. In some circumstances OSP will include an Award Letter that will accompany the signed copy of the Summary of Award and Signature Page; the Award Letter will further define the award. OSP may/may not elect to make an Intent to Award notification in advance of an actual award notification.

Cancellation: Under some circumstances cancellations are necessary and may be made without penalty to the Office of State Procurement and the State of Washington. Solicitations may be canceled under Revised Code of Washington 43.19.1911 (4) and Awards may be cancelled under Washington Administrative Code 23-48-143.

## 6.7 POST AWARD CONFERENCE

The contractor may be required to attend a post award conference scheduled by the OSP to discuss contract performance requirements. The time and place of this conference will be scheduled following contract award.

## 6.8 Clarifications

During the solicitation process OSP reserved the right to contact Bidder for clarification of bid response contents. Depending on the subject matter and the response to the same, a bidder's clarification may be incorporated by reference and become part of the contract award.

Clarifications, if any, may be summarized in this section and/or attached to the Attachment section below.

There were no clarification responses made to Associated Petroleum Products, Inc. that needed to be recorded as part of the contract.

## 7. PROTEST PROCEDURE

### 7.1 PROTEST PRIOR TO AWARD:

#### 7.1.1 PROTEST PRIOR TO AWARD CRITERIA:

Protests prior to Award will be considered only if the protest concerns:

1. the bid of another Bidder,
2. the specifications or
3. the manner in which the solicitation process has been conducted.

#### 7.1.2 INITIATING THE PROTEST PROCESS:

The protesting Bidder must notify the State Procurement Coordinator in charge of the solicitation of his/her intent to file a protest as soon as possible after he/she becomes aware of the reason(s) for the protest. The protest(s) must be received in writing by the State Procurement Coordinator not later than five (5) business days after the Bidder's notification to the State Procurement Coordinator of the intent to protest.

If an Intent to Award is announced, any protest must be received in writing by the State Procurement Coordinator not later than five (5) business days after the announcement or as otherwise specified in the Solicitation document.

If a protest is not received within these time frames it will be untimely and the State Procurement Coordinator may proceed with the award without further obligation.

The Procurement Coordinator will consider all the facts available and issue a decision in writing within ten (10) business days after receipt of the protest, unless more time is needed.

If additional time is necessary the State Procurement Coordinator will notify the protesting Bidder and, where applicable, the Bidder(s) against whom the protest is made.

#### 7.1.3 APPEAL OF PROTEST PRIOR TO AWARD DECISION:

The protesting Bidder or the Bidder against whom the protest is made has the right to appeal the decision of the State Procurement Coordinator to the GA Assistant Director in charge of the Office of State Procurement.

The appeal must be received by the GA Assistant Director within five (5) business days after notification of the State Procurement Coordinator's decision.

The GA Assistant Director will consider all of the facts available and issue a decision in writing within ten (10) business days after receipt of the appeal, unless more time is needed. The appealing Bidder will be notified if additional time is necessary.



Award of the contract will be postponed until after the GA Assistant Director has issued a decision unless an emergency exists necessitating the award of the contract as determined by the GA Assistant Director.

The decision of the GA Assistant Director on the protest appeal is final. The GA Assistant Director may issue further clarifications if determined necessary.

## 7.2 PROTEST AFTER AWARD:

### 7.2.1 PROTEST AFTER AWARD CRITERIA:

Protests after Award will be considered only if the protest concerns:

1. A matter which arises after the Award or
2. Could not reasonably have been known or discovered prior to Award.

### 7.2.2 INITIATING THE PROTEST AFTER AWARD DECISION:

The protesting Bidder must notify both the State Procurement Coordinator in charge of the solicitation process and the Bidder that has received the Award that a protest of the Award is being made. This notification must be made as soon as possible after the Notice of Award is issued by an immediate communication method such as telephone or e-mail. The protesting Bidder must provide documentation demonstrating that they have notified the Bidder that has received the Award of their protest.

In addition to the above notification requirement, the written protest must be received by the GA Assistant Director in charge of the Office of State Procurement not later than five (5) business days after Notice of Award is issued by the Office of State Procurement.

The GA Assistant Director will:

Issue a decision on the protest within ten (10) business days after the protest was received, unless more time is needed.

The protesting Bidder and the Bidder who has received the Award shall be notified of any delay in issuing the GA Assistant Director's decision if more time is needed.

The decision of the GA Assistant Director is final if the award is upheld. The GA Assistant Director may subsequently issue further clarifications, if necessary.

If the GA Assistant Director finds that the protest should be upheld and the Award canceled, all Bidders, including the protesting Bidder and the Bidder who received the Award, will be notified of the intent to cancel the Award and the reasons therefore.

### 7.2.3 APPEAL OF PROTEST AFTER AWARD PROCESS

The Bidder who has received the Award has five (5) business days after receipt of notification of the intent to cancel the award in which to appeal the decision to the Director of General Administration. Copies of the Bidder's appeal must also be sent to the GA Assistant Director and the State Procurement Coordinator responsible for the solicitation.

The Director of General Administration or designee will:

Issue a decision

- a. to both the appealing Bidder and the original protesting Bidder
- b. within ten (10) business days after receipt of the appeal, unless more time is needed
  - i. If more time is needed to issue a decision, all Bidders, including the appealing Bidder and the original protesting Bidder, will be notified.

#### 7.2.3.1 DECISION FINAL

The appeal decision of the Director of General Administration is final. The Director of General Administration may subsequently issue further clarifications if necessary,

##### 7.2.3.1.1 APPEAL UPHELD AND CONTRACT AWARD UPHELD

If the Director of General Administration upholds the appeal and upholds the contract as awarded, the State Procurement Coordinator will notify all Bidders of the decision.

##### 7.2.3.1.2 APPEAL DENIED AND AWARD CANCELED

If the Director of General Administration upholds the decision of the GA Assistant Director the Office of State Procurement will proceed with cancellation of the award.

If the award is cancelled, the Assistant director of GA may reject all bids, quotes or proposals pursuant to RCW 43.1911(4) and solicit new bids, quotes or proposals.

If the Assistant director of GA does not decide to reject all bids, an award will be made to the next lowest responsive and responsible Bidder.

### 7.3 PROTEST AND APPEALS – FORM AND SUBSTANCE

All protests and appeals must:

1. be in writing,
2. signed by the protesting or appealing Bidder or an authorized agent
3. delivered within the time frame(s) outlined herein

4. addressed to that individual within the Office of State Procurement or General Administration assigned review responsibilities as specified above

The protesting or appealing Bidder must:

1. state all facts and arguments on which the protesting or appealing Bidder is relying as the basis for its action
2. attach any relevant exhibits related, or referred to in the written protest or appeal
3. mail, fax or deliver copies of all protests, appeals, and exhibits to the Bidder or Bidders against whom the protest is made at the same time such protest, appeal, and exhibits are submitted to the Office of State Procurement or General Administration.

#### 7.4 COMMUNICATION DURING PROTESTS AND APPEALS

All communications relative to a solicitation that is being protested or appealed must be coordinated through that person conducting the official review for the Office of State Procurement or General Administration.

**END OF PART 1 - SOLICITATION**



**General Administration**  
STATE OF WASHINGTON

OFFICE OF STATE PROCUREMENT

*Rm. 201 General Administration Building, P.O. Box 41017 • Olympia, Washington 98504-1017 • (360) 902-7400*  
*<http://www.ga.wa.gov>*

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## **DELIVERED FUEL: BULK & KEEP FULL / WILL-CALL SERVICE**

PART 2

### **CONTRACT 00311**

**Edited Original - Associated Petroleum Products Inc.**

For Purchases of Materials, Supplies, Services, and Equipment  
Under the Authority of Chapter 43.19 RCW

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Keith Farley

Administrator

Phone (360) 902-7423 / Alt. 902-7400 (Reception)

Fax (360) 586-2426

E-mail: [keith.farley@ga.wa.gov](mailto:keith.farley@ga.wa.gov)

## 8. OVERVIEW

POST BID OPENING UPDATE: The solicitation segmented the awards by region and by category. Also, during the solicitation process, several solicitation amendments were issued that amended the primary document. Multiple bidders prevailed and OSP elected to author edited contracts to complete the awards (see section 2.3). The edited document(s) incorporate any solicitation amended language into a single document and is also individually tailored for each apparent successful bidder. The Solicitation also allowed OSP to seek clarification. Clarifications, if any, are detailed in section 6.8 – Clarifications.

### 8.1 CONTRACT SCOPE

The Department of General Administration (GA), Office of State Procurement (OSP) is the state's centralized contracting office for general goods and services. The purpose of this solicitation is to establish contract(s) for the on-going replenishment of state's network of gasoline, heating oil, diesel (including biodiesel), and other fuels and to establish a contract for the as needed purchase of *Diesel Exhaust Fluid (DEF)* and delivered fuels, incidentals, and in the following fuel types, categories, or other: (not an exclusive list; *other products*, other fuel products, additives, incidentals, and services, may be added post award).

- A. Gasoline, Unleaded: Regular, Mid-Grade, Premium, and Ethanol (E10)
- B. Ultra Low Sulfur Diesel #2 Clear
- C. Ultra Low Sulfur Diesel # 2 Dyed
- D. Ultra Low Sulfur Diesel #1 Clear (November through February)
- E. Ultra Low Sulfur Diesel #1 Dyed (November through February)
- F. Biodiesel Clear
- G. Biodiesel Dyed
- H. Heating Oil (based on ULSD #2 Dyed)
- I. Other additives, energy products, incidentals, fuels, and services requested by qualified customers
- J. *Diesel Exhaust Fluid (DEF)*

Refueling services for the San Juan Islands will not be an initial part of any award but may be negotiated in at a later point in time. Barge and pier refueling services fall outside the scope of this contract. Other over-the-water (OTW) fueling is not outside the scope but if needed it must be separately negotiated as contemplated by Contract Scope and Modifications, section 8.2. The contract is for tank fueling. Wet-hose fueling (fueling into a vehicle/fleet) is not outside the scope but must be separately negotiated as contemplated by Contract Scope and Modifications.

Besides satisfying our customer's tank refueling requirements, the state expects contractors to play a leadership role in maximizing efficiencies and savings. To that end, the state endeavors to partner with the most conscientious fuel suppliers who are committed and capable of optimizing the replenishment of the state's network fuel storage tanks. The refueling services to be offered include KEEP-FULL/WILL-CALL and BULK DELIVERY SERVICES. Contracts will be awarded for all eight regions and either/both of the Bulk services or Keep-full/Will-call services identified herein.

Be advised that Bidders were allowed to bid on any or all eight regions and either/both of the Bulk services or Keep-full/Will-call services and therefore it is conceivable that one bidder could be awarded the entire contract (16 awards) for all Washington counties except San Juan county.

## 8.2 CONTRACT SCOPE AND MODIFICATIONS

The OSP reserves the right to modify this Contract by mutual agreement between the OSP and the Contractor, so long as such modification is substantially within the scope of the original Contract. Such modifications will be construed liberally and will be evidenced by issuance of a written authorized amendment by the Contract Administrator.

Contractors have many and varied products and services. Likewise, contract customers have many and varied needs. The contract is intended to provide enhanced flexibility allowing the Customer to receive additional products and services.

Contract Customers may request OSP to negotiate the enhancement by OSP contract amendment. Should OSP decline but authorize in writing, Contract customers and Contractors may mutually agree to additional product and service obligations under this contract provided the agreement is in writing and references this contract, and is within the scope of the contract. The parties may request a consult from the Office of State Procurement (OSP). However, the parties shall indemnify OSP and the state of Washington and hold OSP and the state of Washington harmless under the same term/condition set forth in the Immunity and Hold Harmless provision below, and the parties remain solely responsible and liable for issues that develop as a result of their tailored agreement. In this case the Immunity and Hold Harmless is applicable to both the Contractor and the Customer and is a protection for the benefit of the OSP/state.

## 8.3 RECITALS

The state of Washington, acting by and through the Office of State Procurement (OSP), issued a solicitation for the purpose of purchasing fuel and fuel delivery services in accordance with its authority under Chapter 43.19 RCW.

*The Contractor identified in the Summary of Award and Signature page submitted a timely Response to OSP.*

OSP evaluated all properly submitted responses to the above-referenced solicitation and has identified the *Contractor identified in the Summary of Award and Signature page* as the apparently successful Contractor.

OSP has determined that entering into a Contract with the *Contractor identified in the Summary of Award and Signature* page will meet Customer’s needs and will be in Customer’s best interest.

NOW THEREFORE, OSP awards to the *Contractor identified in the Summary of Award and Signature* page this Contract, the terms and conditions of which shall govern Contractor’s furnishing to Customer the fuel and fuel delivery products and services. This Contract is not for personal use.

IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

8.4 ESTIMATED USAGE

Based on past and/or projected usage, it is estimated that purchases over the initial term of the Contract may approximate \$100 Million. This estimate was provided solely for the purpose of assisting Bidders in preparing their Response. Orders will be placed only on an as needed basis.

The State of Washington does not represent or guarantee any minimum purchase. The data provided in this section is for informational purposes only.

Total: (4/13/05 through 6/30/10)	
\$468,945,683.93	
Quarter Average: (17 quarters)	
\$27,585,040.23	
2006 (3 Qs)	\$67,074,887.00
2007	\$107,451,218.00
2008	\$134,675,378.00
2009	\$90,905,697.59
2010 (2 Qs)	\$68,838,503.34
Total:	\$468,945,683.93
<div style="border: 1px solid black; padding: 5px; width: fit-content;">                 Fuel Spend Data.xls             </div>	

The value of the bid solicitation over any term cannot be precisely known. The Bidder shall be mindful that non-Washington State agencies, e.g., political subdivisions, Washington State Purchasing Cooperative (WSPC) members, etc., are not obliged to use this contract nor can the State compel the political subdivisions, cooperative members and non-profit corporations or any other customer to purchase on this contract when awarded. The Contractor when in the earlier role of the Bidder made its own interpretation of the informational data and understands, accepts and assumes all sales volume usage risks including but not limited to the potential for zero sales.

## 8.5 CONTRACT TERM

The initial contract term for Keep-Full/Will-Call and Bulk Land delivery services will be for one (1) year. The state reserves the right to extend any of the resulting contracts for a total life of not more than 10 years from the awards effective date (first actual day of performance) but some exceptions apply (see below). When formulating bid prices, be advised that it is the intention of the state that the contract reaches the maximum 10-year life. However, the resulting contract by its own language self-expires at earlier intervals unless extended by mutual agreement of the parties. The decision by OSP to allow the contract to expire at an earlier point in time is completely discretionary, may be made for any reason or no reason, and does not require any OSP justification. Likewise the decision to extend this contract with any or all contractors will be at the discretion of the OSP. Upon mutual agreement with the selected contractor, the contract may be extended for additional terms. Further, the contract by mutual agreement may be extended past the 10-year maximum for a six-month period to deal with administrative matters and for any reasonable period of time to deal with exceptional circumstances and/or emergencies.

## 8.6 PURCHASERS

### General Use

The resulting contract is for use by all members of the Washington State Purchasing Cooperative (WSPC) including where applicable: State Agencies, Institutions of Higher Education, Political Subdivisions, and Non-Profit Corporations.

While use of the contract by Political Subdivisions and Non-Profit Corporations that are members of the WSPC is optional, the Office of State Procurement encourages them to use state contracts. Their use of the contracts may significantly increase the purchase volume. Their orders are subject to the same contract terms, conditions and pricing as state agencies. The Office of State Procurement accepts no responsibility for orders or payment by WSPC members.

A list of WSPC members is available at <http://www.ga.wa.gov/PCA/SPC.htm>.

### Purchases by Nonprofit Corporations

Legislation allows nonprofit corporations to participate in State Contracts for purchases administered by the Office of State Procurement (OSP). By mutual agreement with OSP, the contractor may sell goods or services at contract pricing awarded under this solicitation and resulting contract to self certified nonprofit corporations. Such organizations purchasing under the State Contract shall do so only to the extent they retain eligibility and comply with other contract and statutory provisions. The contractor may make reasonable inquiry of credit worthiness prior to accepting orders or delivering goods or services on contract. The State accepts no responsibility for payments by nonprofit corporations. Their use of the contracts may significantly increase the purchase volume. Their orders are subject to the same contract terms, conditions and pricing as state agencies.



8.7 COST MITIGATION STRATEGIES

In accordance with SHB 2746: Fuel Purchasing - State and Local Agencies and any future cost mitigation strategy legislation the State reserves the right to employ various cost mitigation strategies (i.e. hedging) in acquiring fuel via our contractors. These strategies may include but are not limited to futures contracts, swap transactions, option contracts, costless collars, and long-term storage at no additional costs to our contractor(s). The cost mitigation strategies are intended to reduce overall fuel costs and offer our customers an improved level of budgetary certainty when procuring fuel. Customers must receive written approval from the State Contract Administrator before utilizing these financial instruments via this contract and the state accepts no responsibility for payment for the financial services provided to contract users. Customers who elect to utilize these cost mitigation strategies may be charged a fee or other funding mechanisms may be applied to cover the cost of deployment of these cost mitigation strategies.

9. FUEL DELIVERY SERVICES AND SEGMENTATION

9.1 CONTRACT REGIONS

The eight award regions for Bulk and/or Keep-Full/Will-Call are as follows:

Region	Counties within the Region
(CPS) Central Puget Sound	King, Pierce, Thurston, Special: McNeil Island has its own delivery fee
(NC) North Central	Chelan, Douglass, Grant, Okanogan
(NE) Northeast	Ferry, Lincoln, Pend Oreille, Spokane, Stevens
(NPS) North Puget Sound	Island, Skagit, Snohomish, Whatcom
(P) Peninsula	Clallam, Grays Harbor, Jefferson, Kitsap, Mason,
(SC) South Central	Benton, Kittitas, Klickitat, Yakima,
(SE) Southeast	Adams, Asotin, Columbia, Franklin, Garfield, Walla Walla, Whitman
(SW) Southwest	Clark, Cowlitz, Lewis, Pacific, Skamania, Wahkiakum
Not Serviced	San Juan – Is not initially a part of this contract. By mutual negotiation, it may become a part of this contract at a later time.

In the event that a delivery site is in close proximity to a regional boundary as identified in the map below, the state reserves the right to utilize the neighboring contractor to service these tanks if it is in the best interest of the state.

## 9.2 FUEL TYPES

Streamlining fuel types to be purchased and advancing the use of biodiesel are important objectives of this contracting effort. The state recognizes that to meet these objectives and to achieve savings goals will require coordination with our business partners and the exchange of strategic information. The price worksheets identify the types of fuel to be purchased for each tank as well as customer forecasting data. The tank Profile data is not perfect and represents only directionally correct information. OSP does not guarantee the accuracy of the information contained in the tank Profile.

ASTM International is formerly known as American Society for Testing and Materials (ASTM). ASTMs are used throughout the entire document.

All fuel must meet state fuel quality standards as provided by the state's Motor Fuel Quality Act, Chapter 19.112 RCW, as administered by the Washington State Department of Agriculture (WSDA). Current WSDA rules adopt the national standard for the Definitions and requirements for standard fuel specifications: Uniform Engine Fuels and Automotive Lubricants Regulation as adopted by the National Conference on Weights and Measures and published in NIST Handbook 130, 2009 Edition and, effective June 1, 2011, the 2010 Amendments to the 2009 Edition of NIST Handbook 130 to Section 2.1. Gasoline and Gasoline-Oxygenate Blends in the Engine Fuels and Automotive Lubricants Regulation. The national standards are developed by ASTM, the national voluntary standards organization formed to develop standards on the characteristics and performance of fuels and other materials, products, systems and services. Any reference to an ASTM shall mean the most current version of the ASTM fuel standard as adopted by the Washington State Department of Agriculture (Agriculture).

### A. Gasoline, Unleaded: ASTM D 4814

ASTM D4814. For gasoline tanks, the state intends to standardize on unleaded regular gasoline and/or its Ethanol (E10) counterpart. The purchase of other gasoline grades or E10 counterpart via this contract is not expected to be a large component but will remain available to contract customers. Conventional Gasoline is not currently available for the OPIS Reference City of Spokane.

### B. Ultra Low Sulfur #2 Diesel (ULSD#2) Dyed and Clear:

ASTM D975, Grade Number 2-D, Sulfur 15 PPM. State agencies intend to standardize on Ultra Low Sulfur Diesel (ULSD) #2 dyed diesel. The purchase of clear ULSD #2 via this contract is not expected to be a large component but will remain available to contract customers.

### C. Ultra Low Sulfur #1 Diesel (ULSD#1) Dyed and Clear:

ASTM D975, Grade Number 1-D, Sulfur 15 PPM. The purchase of clear and dyed ULSD #1 via this contract is not expected to be a large component but will remain available to contract customers November through February. ULSD #1 is intended primarily as a winter additive.

D. Dyed Diesel:

Contract purchasers operating highway maintenance vehicles, publicly owned firefighting equipment, and public transportation systems are authorized to purchase red dyed diesel fuel which is exempt from federal and state highway taxes. Other customers may also purchase red dyed diesel by completing the Department of Licensing Special Use Fuel User Permit and conforming to requirements. Nonetheless, there are a few large volume customers who are required to purchase clear fuel.

E. Heating Oil #2 Ultra Low Sulfur Diesel (ULSD) Dyed:

The state accepts ULSD #2 dyed as a suitable fuel for use as Heating Oil. Heating oil made from other fuel types remains an available option to contract customers.

F. Biodiesel (B<sub>1</sub>):

The standard for pure biodiesel (B100) is ASTM D6751. Any biodiesel used for blending must meet ASTM D6751 specifications. The remainder of the fuel must be a diesel fuel that meets ASTM D975 specifications.

Biodiesel blends of up to 5 volume percent (B5) must meet the ASTM D975 diesel fuel specification. Biodiesel blends of 6 to 20 volume percent (B6 to B20) are to meet the ASTM D7467 specification.

Consistent with RCW 43.19.642 (2&3), state agencies are currently required to use a minimum of 20% biodiesel as compared to total volume of all diesel purchases made by the agencies for the operation of the agencies' diesel-powered vessels, vehicles, and construction equipment. All state agencies using biodiesel fuel shall, file biannual reports with GA documenting the use of the fuel and a description of how any problems encountered were resolved.

Although contract sales reporting requirements as outlined in section 10.7 – Sales Report provides the OSP will agency biodiesel usage data, the OSP will not have access to diesel purchases outside of OSP fuel contracts. Therefore, agencies purchasing diesel or biodiesel outside of OSP fuel contracts are required to submit quarterly usage reports to the OSP as required by RCW 43.19.642 (3). Be advised, current law calls for the use of biofuels to increase in 2013 and 2015. A number of high volume co-op members already use biodiesel fuels and other customers have expressed a desire to do so. Many potential contract customers have stringent biodiesel specification and blending requirements that must be met to function properly and/or to fulfill environmental mandates.

Contractor shall provide biodiesel in any percentage range from B1 to B100. It is OSP's expectation that contract customers order percentages in fives and tens, i.e., 5, 10, 15, 20, etc. The Washington State Department of Transportation has a need in these increments: Increments of 5 up to B20, then increments of 10 from B20 to B100.

G. Product Unavailability:

Contractor's must provide the product if the product is available and it is deemed available if OPIS posts it in the OPIS Report for the reference city. See OPIS Rack Reference Cities Matrix for expanded details.

H. Future Types:

The OPIS price index coupled with the OPIS multiplier will serve as the basis for establishing contract pricing. Future fuel types will be added by mutual negotiation. In negotiating multipliers OSP will look at many sources including but not limited to other multipliers applied to all gasoline and diesel family of fuels and compare negotiated costs against the price charged by other suppliers.

I. Additives/Conditioners/Treatment:

At the purchaser's request, contractors may be required to supply and blend a fuel additive, conditioner or treatment products to the fuel purchased. The price charged for additives, conditioners or treatments shall not exceed the lowest price charged to other purchasers and the prices are to be comparable to current market rates of other suppliers. At the customer's request, the contractor is to provide supporting documentation to validate price compliance.

DEF/UREA: Many mass transit customers have a need for DEF/UREA. Contractor must provide this product upon customer request. The Bidder must provide DEF/UREA in 275/gal totes or 4,500/gal bulk quantities if requested by the customer. During the solicitation phase (part 1), the Bidders were instructed to provide pricing for DEF/UREA on the price sheet for the region/category bid. The per gallon price stated by the Bidder is FOB Destination, Freight Prepaid and Included. Price adjustments for DEF are detailed in the Contract – Part 2, Price Adjustment section.

9.3 BIODIESEL MANUFACTURE

Contractor shall ensure the biodiesel provided to the state shall adhere to government and industry quality standards, and also meet the following conditions:

- A. The facility manufacturing the biodiesel must be BQ-9000 certified or shall strictly adhere to a quality systems program that includes storage, sampling, testing, blending, shipping, distribution, and fuel management practices as if it were a BQ-9000 certified facility.
- B. The biodiesel may be made from any feedstock, including plant oils, animal fats, and recycled cooking oils.
- C. The biodiesel may be made from multiple feedstock or from a single feedstock. The biodiesel must meet the ASTM biodiesel specification, ASTM D6751, and does not depend on the oil or fat used to produce the biodiesel or the specific production process employed.
- D. Be free of contamination resulting in bacteria or condensation. If bacteria are present, the appropriate treatment shall be applied to the biodiesel at contractor's expense.
- E. Be filter-cleaned to 5 microns or less.

F. Biodiesel Product Age: Biodiesel in its pure form (B-100) is known to degrade due to age. The state seeks to obtain as fresh a product as practical but in no case shall the product be older than four months from the date of manufacture.

G. **Feedstock Source:** Contract customers include state level agencies (state agencies) and non-state level customers (political subdivisions).

State law (RCW 43.19. 646 and .647 ) provide for OSP to use long-term contracts to secure biodiesel manufactured from predominately in-state feedstock (51% or more) for state agencies and to secure a sufficient and stable supply of alternative fuels for state and local government.

Therefore, the Contractor must: Provide state agencies with biodiesel made from at least 51 percent in-state (Washington State) feedstock and/or biodiesel produced in-state (Washington State).

**Implementation Period:** Contractors must provide customers with biodiesel on the first effective day of contract performance. The Contractor shall have six months from the effective date (first day of contract performance) to implement and comply with the 51 percent in-state requirement for state agencies. OSP reserves the right and shall have the sole discretion to extend this time. OSP strongly encourages the Contractor to reduce the implementation period.

**Feedstock Record Keeping:** It is the Contractor's responsibility to assemble and maintain records for compliance verification. In addition to the records described above, upon Office of State Procurement request the Contractor shall provide OSP a quarterly report (calendar quarter) detailed in numerical form data with a written summary. The report shall describe the amount of biodiesel supplied over the quarter to state agencies and political subdivisions, the amount that was manufactured from in-state feedstock or produced in-state, and general information about the supply chain origin (in-state feedstock source and in-state production).

**Fungible:** The predominately in-state stock is considered fungible. Example: Contractor X supplied 20,000 gallons of biodiesel during the quarter. One half went to state level agencies (10,000 gallons). Contractor must have provided at least 5,100 gallons traceable to an in-state feedstock source or in-state production source. Fungible might include a credit for in-state feedstock/production supplied by the Contractor to political subdivisions or received earlier in the supply chain by the Contractor's fuel supplier. Any fungible analysis may be scrutinized by OSP.

**Political Subdivisions – Open Source:** While the WA in-state feedstock/in-state production source requirement DOES NOT APPLY TO POLITICAL SUBDIVISIONS, OSP encourages the contractor to offer biodiesel that is predominately Washington in-state feedstock/production to political subdivisions that desire a predominantly Washington in-state feedstock/production source.

- H. Certificate of Origin: Upon request of the contract purchaser, a certificate of origin shall be provided for the biodiesel ordered. The vendor shall retain this certificate for a period of three years and tracked against the contractor's invoice. Testing will be required if any failures point to a biodiesel fuel related issue, at the contractor's expense.
- I. Contractor Samples: The contractor shall take a delivery sample (sample of the properly blended diesel/biodiesel product taken at the delivery location prior to tank filling) of the biodiesel product and store the samples for a period of seven (7) months. Upon request of OSP, the contractor shall supply the sample for testing purposes. Testing will be required if any failures point to a biodiesel fuel related issue, at the contractor's expense. Should a failure occur with the delivered product, OSP will first look to the Contractor for any available recourse, remedy, claim, etc. It is the Contractor's responsibility to determine where any upstream failure may have occurred. Because OSP will look first at the Contractor, it is the Contractor's responsibility to take any business protective measures it may need regarding upstream failures.

Minimum Process:

1. Fuel delivery trucks may contain many compartments. As stated in other parts of the contract, each compartment must be properly blended to the customer requested ratio meaning all compartments should be uniform. The Contractor at the point of delivery and prior to tank filling shall take a one-quart sample of the biodiesel product and store the samples for a period of seven (7) months. For purposes of the sampling section, a batch is the product being loaded into the customer tanks.
2. In a clean and dry container, the Contractor shall place the sample in a container appropriate for the sample, such as, a glass jar.
3. Customer must know exactly where the customer's last biodiesel loads came from and who was the biodiesel supplier.
4. All quart samples are tagged with the supplier information, the date the sample was taken, the product, the blend if applicable, the driver, the customer the product was delivered to, and the corresponding invoice number. This information shall also be stored in contractor's biodiesel log books.
5. All quart samples that have been tagged are stored in a heated room for seven months.

9.4 BIODIESEL BLENDING

- A. Unless otherwise specified, the blending and handling of biodiesel must conform to the most current Biodiesel Handling and Use Guidelines as published by the U.S. Department of Energy. The most current guide as of December 2010 is: NREL/TP-540-43672, Revised December 2009, <http://www.nrel.gov/docs/fy09osti/43672.pdf>

- B. The biodiesel is to be transferred using clean hoses. If the delivery vehicle has dedicated hose capability, it is OSP's expectation that the Contractor use dedicated hoses properly labeled for that purpose. Contractor must ensure hoses used will not contaminate the fuels or tanks and contractor shall use cleaning techniques that prevents contamination, such as but not limited to, purging.
- C. All biodiesel transfers shall be metered into the haulers truck compartments.
- D. Each compartment in the haulers vehicle shall be loaded with the correct percentage of biodiesel corresponding to the blend ordered. If for example a B-20 blend was ordered, each compartment shall contain 20% by volume of biodiesel. Likewise, if a B-5 blend was ordered, each compartment shall contain 5% by volume of biodiesel.
- E. Blending: In conformity of the blending requirements above, the blending of the biodiesel product and the diesel product must be accomplished in the following manner:
  - 1. Where the customer's blend ratio is available as a standard product at a commercial rack and the blend is consistently and reliably at the proper ratio, simply fill the storage compartment. When the customer's blend ratio is not available as a standard product, the contractor must blend the biodiesel and diesel using a true in-line computerized system, the two-hose method, or bottom load method, all as described immediately below. One additional loading method is authorized for the Southwest region – Keep Full / Will-Call category (see below).
  - 2. Using a true in-line computerized injection system that regulates the flow so that both products proportionally mix (both start and finish at the same time). Example: the computerized system available at Sound Refining in Tacoma, Washington is acceptable. If not already properly mixed, both products must mix just prior to entering the truck storage compartment. Or,
  - 3. Two hose method: The biodiesel hose (hose 1) and the diesel hose (hose 2) form a "Y" connection just prior to entering the truck storage compartment. Under this method the smaller volume product will likely end before the other product's portion ends. The contractor shall adjust flow rates to ensure the proper mix and concentration is made for each storage compartment as required above. Or,
  - 4. Bottom Load Method: After the biodiesel is loaded into the haulers truck, the tanks are then to be filled from the bottom and under pressure with petroleum diesel so as to achieve the requested biodiesel blend ratio and to achieve proper mixing for each storage compartment. The contractor shall adjust flow rates to ensure the proper mix and concentration is made for each storage compartment as required above. And/or only for the SW region – Keep-Full/Will-Call category,

5. Top Load Method (additionally authorized only for SW region - Keep-full/Will-call category ): Using a top load stinger that is placed into the biodiesel, diesel delivered at a pressure of approximately 40 PSI, which causes the biodiesel and diesel to be thoroughly mixed as evidenced by the two fuels being pushed up the sides of the container.
6. **Performance Integrity: The biodiesel and diesel blended product must not reduce the ASTM performance requirements of the diesel product that were present prior to blending the two products.** As with all parts of this contract, OSP reserves the right to waive partially or in its entirety or amend by mutual agreement with the Contractor. However, Contractor must not rely on any possible changes or waivers that may never be forthcoming by OSP.

#### 9.5 DELIVERY OVERVIEW

There will be no minimum order quantities as the bidders' service fee is to cover costs (other than fuel costs) regardless of the amount of fuel delivered. Keep-Full contractors will be expected to optimize the states network of small volume tanks and therefore initiate orders as tanks near the minimum allowable volume. Bulk deliveries are intended to be full transport loads of at least 8,000 gallons up to vehicles capacity or weight restriction, but customers may order split loads as well.

During development, contract customers expressed an interest in reducing their delivery service costs relative to the cost of fuel. Customers do not want a separate delivery service fee especially when tanks are in near proximity to each other or for split loads. The contract uses two pricing structures as a form of risk sharing. It is the volume of the order that determines the pricing structure. Bulk is any order 8,000 gallon or more up to the vehicle's volume or weight capacity. Keep Full / Will-Call is for an order less than 8,000 gallons.

Fuel delivery service fees are deemed not to exceed fees; they represent a ceiling but not a floor. It is OSP's expectation that Contractor will over time find innovative ways to reduce the impact of service fees.

#### 9.6 DELIVERY QUALITY STANDARDS

The Keep-Full Contractor(s) are to optimize and coordinate delivery schedules of all Keep-Full Customers so as to improve efficiencies resulting in savings. Bulk and Will-call deliveries will be initiated on an as needed basis which may include on-going regularly scheduled deliveries. The following shall apply to all deliveries:

- A. Deliveries are to be made in a professional manner and in accordance with industry standard best practices. The Contractor shall comply with all applicable laws, ordinances, permits, and not unreasonably encumber the premises with equipment, materials and personnel. Delivery sites are to be kept free of the accumulation of waste, spillage or other debris caused by the delivery and the unloading of the fuel.



- B. Tanks are to be filled in accordance with industry standard best practices and are not to be overfilled such that tank monitoring equipment malfunctions. The customer will be allowed to deduct any costs associated to resetting a tank's monitoring equipment from the invoice should an overfill cause the equipment to malfunction.
- C. The Contractor has the responsibility to verify delivery hours of each location placing orders. If the contractor arrives outside the scheduled delivery hours and is unable to or denied access to making the delivery, the customer shall incur no expense and the Contractor assumes all liabilities and responsibility for that attempted delivery.
- D. If the customer and the Contractor arrange a mutually agreeable delivery date and time and the contractor is unable to fulfill the delivery because no customer representative was available (within ½ hour of the agreed upon time) the contractor may bill the customer the service fee and then reschedule the delivery.

#### 9.7 DELIVERY

Delivery must be made during customer's normal work hours and within timeframes either:

- A. required in the Solicitation, or
- B. if requested in the Solicitation, proposed by Contractor in its Bid or Proposal and subsequently accepted by the Purchasing Activity or
- C. as otherwise mutually agreed in writing between the Purchaser and Contractor at the time of order placement.

Failure to comply with agreed upon delivery times may subject Contractor to damages. The customer may refuse shipment when delivered after normal working hours. The Contractor shall verify specific working hours of individual customer and instruct carrier(s) to deliver accordingly. The acceptance by the customer of late performance, with or without objection or reservation by the customer, shall not waive the right to claim damage for such breach, nor preclude the OSP or customer from pursuing any other remedy provided herein, including termination, nor shall such acceptance of late performance constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Contractor.

All deliveries are to be made to the applicable delivery location as indicated in the Order Document. When applicable, the Contractor shall take all necessary actions to safeguard items during inclement weather. In no case shall the Contractor initiate performance prior to receipt of written or verbal authorization from authorized Purchasers. Expenses incurred otherwise shall be borne solely by the Contractor.

**Special McNeil Island Condition:** McNeil Island is prone to operational conditions that may delay delivery. Historically, the Barge leaves for McNeil Island from Steilacoom as follows: Monday 9:20 a.m.\Wednesday 11:20 a.m.\Friday-9:20 a.m. Contractors are cautioned that ferry runs used for fuel delivery are subject to change. During the solicitation phase a Bidder Inquiry was received requesting additional detail that was addressed by McNeil Island staff. The response is provided for informational purposes only and is subject to change.

Q. Is our truck and trailer (approximately 70 ft long) able to ride the McNeil Island ferry? Answer: Yes.

Q. Is there a cost to take our truck & trailer on the ferry? If so, how much is it and who is responsible for paying it? Answer: No cost the ferry is owned by DOC

Q. How does the Ferry schedule work? Do we need to make a reservation for a specific time? Answer: Yes. A DOC staff contact will set up the schedule. We have been using the 1230 "ON" and the 1545 "OFF".

Q. How much time before we could return on the Ferry to the main land? Answer: There is a 2-hour window.

Q. Is there an issue with our equipment taking the Ferry when there are extremely low tides? Answer: DOC/McNeil Island has not had any to this point.

Q. Are there security requirements for our drivers? Answer: The driver(s) needs to have a NCIC back ground check done by and at DOC expense

#### 9.8 DELIVERY DEFAULT

In the event that the contractor fails to fulfill delivery terms the customer may purchase fuel from another supplier and the Contractor will be responsible for paying any additional acquisition costs. Habitually late or otherwise non-compliance to delivery terms shall be grounds for contract termination and recovery of damages.

#### 9.9 DEMURRAGE

OSP's understanding is that it is an industry standard to allow one (1) hour to unload fuel at the destination. Customers are typically billed a rate for customer caused delays in excess of the one-hour standard. Demurrage fees are not contractually allowed at this time. However, during contract performance, if demurrage issues arise, the Contractor should bring them to the attention of OSP. If necessary, OSP may implement a demurrage fee by contract amendment. McNeil Island Correctional Facility is a unique customer and their special delivery issues are already addressed in this document. Given this is a known condition, it is unlikely OSP will allow a demurrage fee for this customer.

9.10 BULK

A. Bulk Overview

The Bulk deliveries are generally intended to service those fuel storage tanks that are capable accommodating a full truck and trailer load (an order placement of 8,000 gallons or more up to the vehicle's volume or weight capacity), in a single fuel type or split load, in accordance with industry standard best practices. Each customer will initiate a bulk delivery order but it's not uncommon for bulk deliveries to be ordered on a regular basis. Customers are to provide contractors with as much advance notice of an order as practical. However, some high volume purchasers on occasion will only be able to provide the contractor with one day advance notice of an order. The OPIS reference price coupled with the multiplier and coupled with the Service fee and the Drop fee (if applicable) is to cover all cost associated to a typical Bulk delivery.

Besides conforming to the standard contract terms as defined herein, the following will be applicable to Bulk Land deliveries:

B. Routine Deliveries

Unless otherwise indicated, Bulk deliveries are to be scheduled during normal working hours and the contractor is to guarantee order fulfillment of not more than 2-calendar days after receipt of an order. The Central Puget Sound contractor shall guarantee order fulfillment of not more than 1-calendar day after receipt of an order. Unless authorized by OPS by Contract Amendment.

C. Bulk Delivery Additions

The state reserves the right to add bulk land delivery sites not identified in the price worksheet. The Contractor's already established OPIS multiplier will be used to calculate the fuel price.

D. Bulk Service Fees

Each Bulk order is entitled to a single service fee.

For contract purposes, the contractor will charge a single service fee for the service of at least two (2) tanks that are within a facility (base, prison, college campus, etc.) or within one (1) mile of the first tank (whichever distance is greater in size). A tank (a limit of one tank) that is within two-hundred feet (200 ft.) of the first tank is not considered a separate tank for purposes of the "single service fee for the service of at least two (2) tanks ..." requirement. A third tank or more tanks within the facility/mile may each be charged a drop fee. Additional tanks outside of the facility/mile may be charged a new service fee using the same rules above. Fuel delivery service fees are deemed not to exceed fees; they represent a ceiling but not a floor. It is OSP's expectation that Contractor will over time find innovative ways to reduce the impact of service fees.

#### E. Emergency Bulk Deliveries

In the event of an emergency, the contractor will guarantee fulfillment of an emergency bulk delivery within a maximum of 6-hours of a verbal, electronic, written or faxed order. Emergency orders are to be top priority and the contractor must be equipped and prepared to successfully fulfill an emergency delivery 7-days a week, 24-hours a day. The contractor shall furnish emergency order contact information and always be poised to receive and respond to an emergency order. Contractor may charge their standard emergency fee charged to other customers that will appear on the invoice in place of the standard delivery service fee. If no standard emergency fee exists then a reasonable emergency premium that is to be added to the invoice (as a separate line item) in addition to normal contract service fees.

#### F. Retained Fuel

The customer must ensure the amount of fuel ordered will fit into the fuel tank. Retained fuel leaves the Contractor with fuel without a customer. The Contractor may charge a reasonable retained fuel fee that is customary in the industry. However, it is the state's expectation and the Contractor must exercise best effort to mitigate any retained fuel situation in an effort to remove or reduce the cost impact to the contract customer.

### 9.11 KEEP FULL / WILL-CALL

#### 9.11.1 Keep-Full / Will-Call Overview

The Keep-Full and Will-Call service is generally intended to refuel those tanks that cannot accommodate a full truck & trailer load. A Keep-Full and/or Will-Call order is an order of less than 8,000 gallons. The OPIS reference price coupled with the multiplier and coupled with the Service fee and the Drop fee (if applicable) is to cover all cost associated to a typical Will-Call delivery. Besides conforming to the standard contract terms as defined herein, the following will be applicable to Keep Full and Will-Call deliveries:

#### 9.11.2 Tank Testing

There may be occasions when customer tanks need to be "topped off" for testing purposes. In such cases, the customer will be allowed to initiate a "top off" order and the already established contract pricing is to be applied. If the customer requires the delivery to occur on a specific date, the customer is to provide the contractor with at least 7-days advance notice.

#### 9.11.3 Remote Small Capacity Tanks

Although bidders will be required to provide pricing and coverage for all tanks identified in the price worksheet (relevant to the regions bid), the state recognizes that it may be more economical to have a more localized hauler service some small capacity remotely located tanks. In such cases the state reserves the right to solicit competitive bids outside of this contract, for the service of these tanks. The State Contract Administrator will determine and notify the Contractor in writing, which refueling sites apply and these tanks will be designated as "OPTIONAL" use.

#### 9.11.4 WSDOT Special Condition

For current operational reasons, the Department of Transportation will not accept keep-full/will-call orders after the 25th of any month. This condition does not currently apply to bulk orders but may become a future condition by WSDOT notification to the Contractor. Invoices must follow within 24 hours of delivery. If circumstances change WSDOT will notify the Contractor in writing.

#### 9.11.5 Will-Call Order Placement

**Will-Call:** With the Will-Call service, the customer will place an order as needed. In the event of an emergency, the contractor will guarantee fulfillment of an emergency will-call delivery within a maximum of 24-hours of a verbal, electronic, written or faxed order. Emergency orders are to be top priority and the contractor must be equipped and prepared to successfully fulfill an emergency delivery 7-days a week, 24-hours a day. The contractor shall furnish emergency order contact information and always be poised to receive and respond to an emergency order. Contractor may charge their standard emergency fee charged to other customers that will appear on the invoice in place of the standard delivery service fee. If no standard emergency fee exists then a reasonable emergency premium that is to be added to the invoice (as a separate line item) in addition to normal contract service fees.

#### 9.11.6 Will-Call Service Fees

**Will-call orders** are entitled to a single service fee.

For contract purposes, the contractor will charge a single service fee for the service of at least three (3) that are within a facility (base, prison, college campus, etc.) or within one (1) mile of the first tank (whichever distance is greater in size). A tank (a limit of one tank) that is within two-hundred feet (200 ft.) of the first tank is not considered a separate tank for purposes of the "single service fee for the service of at least three (3) tanks ..." requirement. A fourth tank or more tanks within the facility/mile may each be charged a drop fee. Additional tanks outside of the facility/mile may be charged a new service fee using the same rules above. Fuel delivery service fees are deemed not to exceed fees; they represent a ceiling but not a floor. It is OSP's expectation that Contractor will over time find innovative ways to reduce the impact of service fees.

#### 9.11.7 Keep-Full Service Fees

It is OSP position that Contractor/customer negotiated keep-full agreement provides the Contractor with a level of predictability that is less costly to the Contractor. It is OSP expectation that this should result in lower delivery service fees to the contract customers utilizing the Keep-full service versus the will-call service.

Absent any written negotiated service fees between the Contractor/customer, the service fee for keep full orders shall be the same as the will-call Service Fees above.

### 9.11.8 Keep-Full Setup and Order Placement

**Keep Full:** The Keep Full service requires the customer and the Contractor to have a post award dialog in setting up a schedule that meets the customer's needs. With the Keep-Full service, the contractor is to guarantee that that storage tanks always retain sufficient inventory to satisfy the customer's needs and never go dry. In general, the state expects that tank levels never go below 20% of capacity before refueling occurs but the customer will be allowed to adjust this percentage up or down in writing depending upon their own unique business requirements. Further, service fees are expensive and it is the state's expectation that Contractor will avoid small volume top-off deliveries. *As an example, Contractor is in the area and decides to top-off a tank that is above the 35 % level.* Refills that are not maximized greatly increase the costs of service relative to the cost of the fuel. **Absent a written and signed agreement with the customer, tanks that are 35% full (15 increments of tank capacity above the lower threshold) will not incur a delivery fee or drop fee.**

Keep-Full customers will be responsible for ensuring that the contractor is sufficiently informed of tank level volumes and whenever possible notify the contractor of any anticipated unusual increases in fuel demand. So as to promote enterprise-wide delivery schedule coordination, customers will be encouraged to identify the broadest possible refueling time windows allowable and immediately notify the contractor of any schedule changes. Be advised that many customer delivery parameters do not allow unrestricted access to fuel storage tanks. In such cases the contractor is to accommodate the customer's delivery profiles and timelines when ensuring that tanks always have an adequate amount of fuel to meet the customer's requirements. Besides conforming to the standard contract terms as defined herein, the following will be applicable to Keep-Full deliveries:

#### A. Initiating Keep-Full contract coverage

Prior to initiating Keep-Full coverage, customers will be required to provide the contractor with a completed delivery profile questionnaire (See APPENDIX E: Keep-Full Activation Sheet) which identifies such information as:

1. Fuel tank profile information (i.e. site location, site contact, tank size, fuel type, etc.)
2. Available delivery time frames and or the days and times when deliveries can or cannot occur.
3. Minimum allowable tank level percentage before refueling is to occur.
4. Delivery access procedures and protocols and or special instructions if any.
5. Requested activation date (not to exceed 5-calander days of request).
6. Place lower delivery service fees, if any, in the Special Instructions box.

Once the contractor is in receipt of the completed delivery profile questionnaire, the contractor is to identify on the questionnaire how often the tank level readings are to be provided by the customer so as to ensure that the tanks covered never go dry (see below).

Afterwards, the contractor is to sign and return (fax, mail, email) the completed delivery profile questionnaire to the customer and Keep-Full coverage is then to become active.

#### B. Keep-Full Inventory Management

To most effectively manage tank inventories, Contractors will need to monitor tank inventory levels. Therefore, Keep-Full customers will be responsible for providing tank level data to the Contractor. The Contractor is to identify via the delivery profile questionnaire how often tank level data is to be communicated relevant to the customer's fuel demand profile and the preferred communication method (e.g. email, fax, voice mail etc). Alternatively, if Keep-Full tanks are equipped with an electronic tank level monitoring system, the customer may (at their own discretion) choose to grant the contractor remote access to the data on a read only basis. Additionally, if both parties agree, the Contractor (at their own expense) may equip tanks with electronic tank level monitoring equipment. The contractor will be responsible for the cost of maintaining the equipment. Equipment Removal Upon Expiration: Contractors desiring equipment return upon contract expiration/termination must make arrangements with the customer and the Contractor at their own expense may remove the equipment in a workman like manner leaving no removal damage behind. Contractor agrees that equipment not removed within 60 days of contract expiration/termination is deemed abandoned and becomes the property of the Customer.

#### C. Keep-Full Contract Additions

During the life of the contract, customers may activate additional tanks or new customers may initiate Keep-Full coverage for fuel storage tanks not identified in the price worksheet. The award made under this contract is by region and for any qualified contract customer (see Purchasers). The awarded Contract should anticipate orders from customers not originally identified on the price worksheet.

The contractor's already established fuel price multiplier, service fee, and drop fee will be extended to new customers and new tanks for the awarded region. However, the customer will initiate the dialog using the Keep-full process described above.

#### D. Keep-Full deactivation

There may be occasions when a fuel storage tank is to be deactivated and in such cases the customer is to immediately notify the Contractor of this decision and state the last day of Keep-Full service in writing. Contractor shall timely acknowledge the notification within two business days.

### 10. CONTRACT ADMINISTRATION

#### 10.1 OSP CONTRACT ADMINISTRATOR

OSP shall appoint a single point of contact that will be the Contract Administrator for this Contract and will provide oversight of the activities conducted hereunder. The Contract Administrator will be the principal contact for Contractor concerning business activities under this Contract. The OSP will notify Contractor, in writing by email or regular correspondence, when there is a new Contract Administrator assigned to this Contract.

## 10.2 ADMINISTRATION OF CONTRACT

GA will maintain Contract information and pricing and make it available on the GA web site. The Contract prices are the maximum price Contractor can charge. The Contractor may also offer volume discounts and voluntary price reductions to contract Customers.

A Contractor may propose a revision to its offerings to reflect changed Products appropriate to the scope of the Contract, and may propose such new Products with associated prices to the GA Contract Administrator for approval. Contract Administrator has the sole discretion in approval of addition of revised offerings and pricing. New or changed Products proposed by Contractor must meet the requirements established in this solicitation document or subsequent revisions. If approved by GA, the new Products will be added to the Contract by written amendment.

For the term of the Contract, the OPIS Multiplier quoted on the Price Sheet will remain firm and fixed. If, however, during any term of the Contract lower prices and rates become effective for like quantities of Products under similar terms and conditions, through reduction in list prices, promotional discounts, or other circumstances, Purchasers must be given immediate benefit of such lower prices and rates.

## 10.3 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 Representative, who will be the principal point of contact for the Purchasing Activity Contract Administrator concerning Contractor's performance under this Contract.
- C. Immediately notify the Contract Administrator in writing of any change of the designated Contractor's Representative assigned to this Contract; and
- D. Violation of any provision of this paragraph may be considered a material breach establishing grounds for Contract termination.

Be bound by all written communications given to or received from the Contractor's Representative.

## 10.4 CONTRACT MANAGEMENT

Upon award of this 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 the following manner to make the most cost effective, value based, purchases including, but not limited to:



1. Visiting the Purchaser site and providing Purchaser with materials/supplies/equipment recommendations.
  2. Providing Purchasers with a detailed list of contract items including current contract pricing and part numbers.
- E. The contractor shall designate a customer service representative who will be responsible for addressing Purchaser issues including, but not limited to:
1. Logging requests for service, ensuring repairs are completed in a timely manner, dispatching service technicians, and processing warranty claim documentation.
  2. Providing Purchasers with regular and timely status updates in the event of an order or repair fulfillment delay.
- F. Acting as the lead and liaison between the manufacturer and Purchaser in resolving warranty claims for contract items purchased.

#### 10.5 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 the Contract Administrator. However, changes to point of contact information may be updated without the issuance of a mutually agreed Contract Amendment.

#### 10.6 STATEWIDE VENDOR PAYMENT REGISTRATION

Contractors are required to be registered in the Statewide Vendor Payment system, prior to submitting a request for payment under this Contract. Purchasers who are Washington state agencies require registration to be completed prior to payment.

The Washington State Office of Financial Management (OFM) maintains a central contractor registration file for Washington State agencies to process contractor payments.

To obtain registration materials go to <http://www.ofm.wa.gov/accounting/vendors.asp> the form has two parts; Part 1 is the information required to meet the above registration condition. Part 2 allows the state to pay invoices electronically with direct deposit and is the state's most efficient method of payment and you are encouraged to sign up for this form of payment.

#### 10.7 SALES REPORT

##### A. Sales and Subcontractor Required Report

***OSP is self funded and generates revenue from contract customers based on accurate Contractor sales (aka usage) reporting. Following contract award, the Contractor shall designate a primary and alternate Usage Reporting point of contact that will ensure this provision is properly satisfied. The point of contact shall be reasonably available with no lengthy delays. OSP cannot tolerate delinquent or inaccurate reporting by the Contractor. Failure of this provision is grounds for immediate contract suspension or immediate contract termination without opportunity to cure, in addition to other remedies that may be allowed by the contract or law.***

The Contractor shall provide a Sales and Subcontractor Report to the Office of State Procurement on a quarterly basis in the electronic format provided by the Office of State Procurement at: <https://fortress.wa.gov/ga/apps/CSR/Login.aspx>.

Reports must be submitted electronically within thirty (30) days after the end of the calendar quarter, i.e., no later than April 30th, July 31st, October 31st and January 31st.

**B. State Contract Administrator Required Report**

This report will be designed by the State Contract Administrator. At a minimum, the contractor must have the information available to report (in an electronic spreadsheet format) on a quarterly (calendar quarter) basis the following:

1. Gallons delivered (per fuel type) per quarter (within 15 days following any calendar quarter).
2. Data shall be individualized for each customer entity by name, i.e., WSDOT, DOC, King County, King County Metro.
3. If requested by OSP, must use OSP naming convention which includes a numerical customer identification system for state agencies, institutions of higher education and political subdivisions.
4. Agency Name
5. Agency Title
6. Delivery Location
7. Date of delivery
8. Gallons delivered
9. Fuel type: i.e., gas, diesel, biodiesel, heating oil, whether it was clear or dyed.

**10.8 OTHER REQUIRED REPORT(S)**

All reports required under this contract must be delivered to the Contract Administrator. Contractor may be required to provide a detailed annual contract sales history report that may include but is not limited to products description, part number, per unit quantities sold, contract price in an electronic format that can be read by MS Excel. Other required reports will be designed and approved by the parties by mutual agreement.

**10.9 WASHINGTON'S ELECTRONIC BUSINESS SOLUTION (WEBS)**

Contractor shall be registered in the Contractor registration system, Washington's Electronic Business Solution (WEBS) [www.ga.wa.gov/webs](http://www.ga.wa.gov/webs), maintained by the Washington State Department of General Administration. Contractors already registered need not re-register. It is the sole responsibility of Contractor to properly register with WEBS and maintain an accurate Contractor profile in WEBS.

## 11. PRICING

### 11.1 PRICING OVERVIEW

Although there are slight variations to Keep-Full/Will-Call and Bulk Delivery contract pricing both services will include a combination of a SERVICE FEE and FUEL PRICING methodology. So as to insulate the Contractor(s) from the impact of any modifications to fuel related taxes and fees (i.e. first possessor fees or hazmat fees), all fuel related taxes and fees are to be added to invoices on a pass through basis and identified as a separate line item. Below is an overview of how fuel prices will be calculated and how the service fees will be applied.

### 11.2 FUEL PRICING

Absent critical circumstances and OSP approval by contract amendment, OPIS multipliers shall not change during the life of the contract. The price a customer pays will be the OSP identified OPIS fuel price plus the multiplier bid by the awarded Contractor. What OSP designates is further explained in the section below (OPIS Rack Reference Cities Matrix). Contractors are reminded that the cost charged to contract customers is a ceiling and not a floor. Contractors may always extend a voluntary price discount to contract customers.

### 11.3 OPIS RACK REFERENCE CITIES MATRIX

The Department of General Administration, Office of State Procurement receives two daily reports from the Oil Producing Information Service (OPIS). One is for biodiesel and the second is for the other fuels (diesel, gasoline, and heating oil). Per OPIS, the reports are called the OPIS Daily Gross Contract pricing report (10:00 A.M. EST Benchmarking) for Biodiesel (one report) and the other fuels (second report).

The pricing for the reference cities is ultimately posted on a GA website usually delayed by one day. The site's structure or appearance may change from time-to-time. The date of the posted pricing coupled with the multiplier determines the fuel price paid by the customer.

The site used for the 07705 and 02207 contracts is located at:

<https://fortress.wa.gov/ga/apps/priceinfo/default.aspx?date=NA>. While the 07705 or 02207 site is still active you are invited to view the site as a sample site and view the appearance, and current and approximately 20 days of pricing history.

The matrix below reflects the Region, OPIS Reference City, and the Fuel Type / Specific OPIS Reference and if applicable, any further detail.

The Price Sheets require the Bidder to provide an OPIS multiplier against the product or set of products for an identified Rack Reference City. Prior to posting the Solicitation, the price sheets were reviewed against the OPIS report that OSP receives daily. This was done to ensure that products for the "Fuel Type" for the reference city were available against a specific OPIS reference and aided in the creation of the OPIS Rack Reference Cities Matrix below. Contractor's must provide the product if the product is available and **it is deemed available if OPIS posts it in the OPIS Report for the reference city**. As an example: At the time of solicitation release, Bidders were required to provide a multiplier for "Gasoline."

Unleaded: All Types” which includes its E10 counterpart. For the Spokane Reference City conventional gasoline is not posted; however, E10 is posted. The Contractor need not provide conventional gasoline but must provide the E10 counterpart. If/when OPIS posts conventional for Spokane, the Contractor will provide that fuel if ordered by a customer.

Reference Steps:

- A. OPIS Daily Gross Contract pricing report (10:00 A.M. EST Benchmarking) for Biodiesel (one report) and the other fuels (second report) for the delivery date in question.
- B. Reference the OPIS Reference City for the identified fuel for the region in question.
- C. Reference the appropriate Title, e.g., Ultra-Low Diesel, Conventional Clear 9.0 RVP MID, Conventional Ethanol 10% 9.0 RVP PRE.
- D. Contract Average. Regarding Biodiesel check matrix below to determine if OSP is using the contract average with RIN or without RIN.

<b>NPS = North Puget Sound, CPS = Central Puget Sound, P = Peninsula, SW = Southwest, NC = North Central, SC = South Central, NE = North East, SE = South East</b>		
Region	OPIS Reference City	<b>Fuel Type / Specific OPIS Reference</b> The Department of General Administration uses the OPIS DAILY GROSS CONTRACT (10:00 A.M. EST) pricing report as a cost basis. Refer to the matrix for specifics.
CPS	Tacoma	Biodiesel / OPIS Gross Wholesale B99 Combined Feedstock Biodiesel (contract average without RIN)
CPS	Anacortes	ULSD #1 Clear / Ultra Low Sulfur No. 1 (contract average)
CPS	Anacortes	ULSD #1 Dyed / Ultra Low Sulfur No. 1 Red Dye (contract average)
CPS	Tacoma	ULSD #2 Clear / Ultra-Low Diesel (contract average)
CPS	Tacoma	ULSD #2 Dyed (also used for Heating Oil) / Ultra-Low Red Diesel (contract average)
CPS	Tacoma	Gasoline Unleaded Regular / Conventional Clear 9.0 RVP UNL (contract average)
CPS	Tacoma	Gasoline E10 Unleaded Regular / Conventional Ethanol 10% 9.0 RVP UNL (contract average)
CPS	Tacoma	Gasoline Unleaded Midgrade / Conventional Clear 9.0 RVP MID (contract average)
CPS	Tacoma	Gasoline E10 Unleaded Midgrade / Conventional Ethanol 10% 9.0 RVP MID (contract average)
CPS	Tacoma	Gasoline Unleaded Premium / Conventional Clear 9.0 RVP PRE (contract average)
CPS	Tacoma	Gasoline E10 Unleaded Premium / Conventional Ethanol 10% 9.0 RVP PRE (contract average)

<b>NPS = North Puget Sound, CPS = Central Puget Sound, P = Peninsula, SW = Southwest, NC = North Central, SC = South Central, NE = North East, SE = South East</b>		
Region	OPIS Reference City	<b>Fuel Type / Specific OPIS Reference</b> The Department of General Administration uses the OPIS DAILY GROSS CONTRACT (10:00 A.M. EST) pricing report as a cost basis. Refer to the matrix for specifics.
NC	Tacoma	Biodiesel / OPIS Gross Wholesale B99 Combined Feedstock Biodiesel (contract average without RIN)
NC	Spokane	ULSD #1 Clear / Ultra Low Sulfur No. 1 (contract average)
NC	Spokane	ULSD #1 Dyed / Ultra Low Sulfur No. 1 Red Dye (contract average)
NC	Spokane	ULSD #2 Clear / Ultra-Low Diesel (contract average)
NC	Spokane	ULSD #2 Dyed (also used for Heating Oil) / Ultra-Low Red Diesel (contract average)
NC	Spokane	Gasoline Unleaded Regular / Conventional Clear 9.0 RVP UNL (contract average)
NC	Spokane	Gasoline E10 Unleaded Regular / Conventional Ethanol 10% 9.0 RVP UNL (contract average)
NC	Spokane	Gasoline Unleaded Midgrade / Conventional Clear 9.0 RVP MID (contract average)
NC	Spokane	Gasoline E10 Unleaded Midgrade / Conventional Ethanol 10% 9.0 RVP MID (contract average)
NC	Spokane	Gasoline Unleaded Premium / Conventional Clear 9.0 RVP PRE (contract average)
NC	Spokane	Gasoline E10 Unleaded Premium / Conventional Ethanol 10% 9.0 RVP PRE (contract average)
<b>NPS = North Puget Sound, CPS = Central Puget Sound, P = Peninsula, SW = Southwest, NC = North Central, SC = South Central, NE = North East, SE = South East</b>		
Region	OPIS Reference City	<b>Fuel Type / Specific OPIS Reference</b> The Department of General Administration uses the OPIS DAILY GROSS CONTRACT (10:00 A.M. EST) pricing report as a cost basis. Refer to the matrix for specifics.
NPS	Tacoma	Biodiesel / OPIS Gross Wholesale B99 Combined Feedstock Biodiesel (contract average without RIN)
NPS	Anacortes	ULSD #1 Clear / Ultra Low Sulfur No. 1 (contract average)
NPS	Anacortes	ULSD #1 Dyed / Ultra Low Sulfur No. 1 Red Dye (contract average)
NPS	Anacortes	ULSD #2 Clear / Ultra-Low Diesel (contract average)
NPS	Anacortes	ULSD #2 Dyed (also used for Heating Oil) / Ultra-Low Red Diesel (contract average)
NPS	Anacortes	Gasoline Unleaded Regular / Conventional Clear 9.0 RVP UNL (contract average)

NPS	Anacortes	Gasoline E10 Unleaded Regular / Conventional Ethanol 10% 9.0 RVP UNL (contract average)
NPS	Anacortes	Gasoline Unleaded Midgrade / Conventional Clear 9.0 RVP MID (contract average)
NPS	Anacortes	Gasoline E10 Unleaded Midgrade / Conventional Ethanol 10% 9.0 RVP MID (contract average)
NPS	Anacortes	Gasoline Unleaded Premium / Conventional Clear 9.0 RVP PRE (contract average)
NPS	Anacortes	Gasoline E10 Unleaded Premium / Conventional Ethanol 10% 9.0 RVP PRE (contract average)

**NPS** = North Puget Sound, **CPS** = Central Puget Sound, **P** = Peninsula, **SW** = Southwest, **NC** = North Central, **SC** = South Central, **NE** = North East, **SE** = South East

Region	OPIS Reference City	Fuel Type / Specific OPIS Reference The Department of General Administration uses the OPIS DAILY GROSS CONTRACT (10:00 A.M. EST) pricing report as a cost basis. Refer to the matrix for specifics.
NE	Tacoma	Biodiesel / OPIS Gross Wholesale B99 Combined Feedstock Biodiesel (contract average without RIN)
NE	Spokane	ULSD #1 Clear / Ultra Low Sulfur No. 1 (contract average)
NE	Spokane	ULSD #1 Dyed / Ultra Low Sulfur No. 1 Red Dye (contract average)
NE	Spokane	ULSD #2 Clear / Ultra-Low Diesel (contract average)
NE	Spokane	ULSD #2 Dyed (also used for Heating Oil) / Ultra-Low Red Diesel (contract average)
NE	Spokane	Gasoline Unleaded Regular / Conventional Clear 9.0 RVP UNL (contract average)
NE	Spokane	Gasoline E10 Unleaded Regular / Conventional Ethanol 10% 9.0 RVP UNL (contract average)
NE	Spokane	Gasoline Unleaded Midgrade / Conventional Clear 9.0 RVP MID (contract average)
NE	Spokane	Gasoline E10 Unleaded Midgrade / Conventional Ethanol 10% 9.0 RVP MID (contract average)
NE	Spokane	Gasoline Unleaded Premium / Conventional Clear 9.0 RVP PRE (contract average)
NE	Spokane	Gasoline E10 Unleaded Premium / Conventional Ethanol 10% 9.0 RVP PRE (contract average)

**NPS** = North Puget Sound, **CPS** = Central Puget Sound, **P** = Peninsula, **SW** = Southwest, **NC** = North Central, **SC** = South Central, **NE** = North East, **SE** = South East

Region	OPIS Reference City	Fuel Type / Specific OPIS Reference The Department of General Administration uses the OPIS DAILY GROSS CONTRACT (10:00 A.M. EST) pricing report as a cost basis. Refer to the matrix for specifics.
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P	Tacoma	Biodiesel / OPIS Gross Wholesale B99 Combined Feedstock Biodiesel (contract average without RIN)
P	Anacortes	ULSD #1 Clear / Ultra Low Sulfur No. 1 (contract average)
P	Anacortes	ULSD #1 Dyed / Ultra Low Sulfur No. 1 Red Dye (contract average)
P	Tacoma	ULSD #2 Clear / Ultra-Low Diesel (contract average)
P	Tacoma	ULSD #2 Dyed (also used for Heating Oil) / Ultra-Low Red Diesel (contract average)
P	Tacoma	Gasoline Unleaded Regular / Conventional Clear 9.0 RVP UNL (contract average)
P	Tacoma	Gasoline E10 Unleaded Regular / Conventional Ethanol 10% 9.0 RVP UNL (contract average)
P	Tacoma	Gasoline Unleaded Midgrade / Conventional Clear 9.0 RVP MID (contract average)
P	Tacoma	Gasoline E10 Unleaded Midgrade / Conventional Ethanol 10% 9.0 RVP MID (contract average)
P	Tacoma	Gasoline Unleaded Premium / Conventional Clear 9.0 RVP PRE (contract average)
P	Tacoma	Gasoline E10 Unleaded Premium / Conventional Ethanol 10% 9.0 RVP PRE (contract average)
<b>NPS = North Puget Sound, CPS = Central Puget Sound, P = Peninsula, SW = Southwest, NC = North Central, SC = South Central, NE = North East, SE = South East</b>		
<b>Region</b>	<b>OPIS Reference City</b>	<b>Fuel Type / Specific OPIS Reference</b> The Department of General Administration uses the OPIS DAILY GROSS CONTRACT (10:00 A.M. EST) pricing report as a cost basis. Refer to the matrix for specifics.
SC	Tacoma	Biodiesel / OPIS Gross Wholesale B99 Combined Feedstock Biodiesel (contract average without RIN)
SC	Pasco	ULSD #1 Clear / Ultra Low Sulfur No. 1 (contract average)
SC	Pasco	ULSD #1 Dyed / Ultra Low Sulfur No. 1 Red Dye (contract average)
SC	Pasco	ULSD #2 Clear / Ultra-Low Diesel (contract average)
SC	Pasco	ULSD #2 Dyed (also used for Heating Oil) / Ultra-Low Red Diesel (contract average)
SC	Pasco	Gasoline Unleaded Regular / Conventional Clear 9.0 RVP UNL (contract average)
SC	Pasco	Gasoline E10 Unleaded Regular / Conventional Ethanol 10% 9.0 RVP UNL (contract average)
SC	Pasco	Gasoline Unleaded Midgrade / Conventional Clear 9.0 RVP MID (contract average)
SC	Pasco	Gasoline E10 Unleaded Midgrade / Conventional Ethanol 10% 9.0 RVP MID (contract average)

SC	Pasco	Gasoline Unleaded Premium / Conventional Clear 9.0 RVP PRE (contract average)
SC	Pasco	Gasoline E10 Unleaded Premium / Conventional Ethanol 10% 9.0 RVP PRE (contract average)
<p><b>NPS = North Puget Sound, CPS = Central Puget Sound, P = Peninsula, SW = Southwest, NC = North Central, SC = South Central, NE = North East, SE = South East</b></p>		
<b>Region</b>	<b>OPIS Reference City</b>	<b>Fuel Type / Specific OPIS Reference</b> The Department of General Administration uses the OPIS DAILY GROSS CONTRACT (10:00 A.M. EST) pricing report as a cost basis. Refer to the matrix for specifics.
SE	Tacoma	Biodiesel / OPIS Gross Wholesale B99 Combined Feedstock Biodiesel (contract average without RIN)
SE	Pasco	ULSD #1 Clear / Ultra Low Sulfur No. 1 (contract average)
SE	Pasco	ULSD #1 Dyed / Ultra Low Sulfur No. 1 Red Dye (contract average)
SE	Pasco	ULSD #2 Clear / Ultra-Low Diesel (contract average)
SE	Pasco	ULSD #2 Dyed (also used for Heating Oil) / Ultra-Low Red Diesel (contract average)
SE	Pasco	Gasoline Unleaded Regular / Conventional Clear 9.0 RVP UNL (contract average)
SE	Pasco	Gasoline E10 Unleaded Regular / Conventional Ethanol 10% 9.0 RVP UNL (contract average)
SE	Pasco	Gasoline Unleaded Midgrade / Conventional Clear 9.0 RVP MID (contract average)
SE	Pasco	Gasoline E10 Unleaded Midgrade / Conventional Ethanol 10% 9.0 RVP MID (contract average)
SE	Pasco	Gasoline Unleaded Premium / Conventional Clear 9.0 RVP PRE (contract average)
SE	Pasco	Gasoline E10 Unleaded Premium / Conventional Ethanol 10% 9.0 RVP PRE (contract average)
<b>Region</b>	<b>OPIS Reference City</b>	<b>Fuel Type / Specific OPIS Reference</b> The Department of General Administration uses the OPIS DAILY GROSS CONTRACT (10:00 A.M. EST) pricing report as a cost basis. Refer to the matrix for specifics.
SW	Tacoma	Biodiesel / OPIS Gross Wholesale B99 Combined Feedstock Biodiesel (contract average without RIN)
SW	Pasco	ULSD #1 Clear / Ultra Low Sulfur No. 1 (contract average)
SW	Pasco	ULSD #1 Dyed / Ultra Low Sulfur No. 1 Red Dye (contract average)
SW	Portland	ULSD #2 Clear / Ultra-Low Diesel (contract average)
SW	Portland	ULSD #2 Dyed (also used for Heating Oil) / Ultra-Low Red Diesel (contract average)



SW	Portland	Gasoline Unleaded Regular / Conventional Clear 9.0 RVP UNL (contract average)
SW	Portland	Gasoline E10 Unleaded Regular / Conventional Ethanol 10% 9.0 RVP UNL (contract average)
SW	Portland	Gasoline Unleaded Midgrade / Conventional Clear 9.0 RVP MID (contract average)
SW	Portland	Gasoline E10 Unleaded Midgrade / Conventional Ethanol 10% 9.0 RVP MID (contract average)
SW	Portland	Gasoline Unleaded Premium / Conventional Clear 9.0 RVP PRE (contract average)
SW	Portland	Gasoline E10 Unleaded Premium / Conventional Ethanol 10% 9.0 RVP PRE (contract average)

11.4 OPIS DAILY POSTING

The state will make available to our customers the OPIS daily averages for the purpose of validating contract prices have been correctly calculated. The pricing posted on the GA website is delayed and lags by approximately 24 hours. If it appears that an error has occurred with regard to an OPIS posting, the state shall contact the publisher for clarification and the correct average price shall be applicable. Contractor shall be required to maintain their own subscription to OPIS in order to correctly calculate contract fuel prices.

11.5 PRICE CHECKING

OSP creates master contracts for use by contract customers. Pricing and ordering instructions are posted on the GA Website Contract Portal. OSP does not and will not sample check or monitor customer invoices or the pricing charged by the Contractor to the customer. If the customer needs guidance interpreting the GA Contract Portal the customer may contact OSP. If the customer believes the Contractor invoice is inaccurate and the customer cannot resolve the issue at their level, the customer may contact OSP for assistance. Otherwise, the customer ordering and the Contractor billing practices are blind to OSP and OSP will only become involved if contacted by the customer or Contractor.

11.6 BIODIESEL PRICING

All Bidders are to propose a biodiesel bid multiplier for biodiesel as defined herein. The Tacoma OPIS Biodiesel daily report, OPIS Gross Wholesale B99 Combined Feedstock Biodiesel (contract average without RIN) will serve as the basis for establishing biodiesel contract pricing. This reference already accounts for the Blenders Credit. Biodiesel purchasers are to receive the appropriate proportion of B100 necessary to achieve the requested biodiesel blend. For example if the customer desires 1,000 gallons of a ULSD-B20 blend, the contractor would acquire and blend (in accordance with biodiesel specifications) 800 gallons of ULSD with 200 gallons of B100.

Credits: If the reference used does not already account for the Blender's Credit, the customer is to receive all applicable "Blender" tax credits which are to be identified on the invoice as a separate line item as a credit.

Changes to Reference: Changes to the reference city or the reference within the target city may be changed by mutual agreement of OSP and the Contractor. However, it is OSP's expectation that the Contractors bid profit margins does not increase as a result of such action.

#### 11.7 SERVICE FEE

Within each region the service fee is segmented by county. Absent critical circumstances and OSP approval by contract amendment, the service fee is fixed for the life of the contract at the price bid by the awarded Contractor on their price sheet submittal. The service fee will be added to each invoice (as a separate line item) whenever the tank is fueled. The fuel price coupled with the service fee is expected to cover all costs that are normally associated to fueling a tank and fulfillment of contract terms. However, an emergency service fee and standby fee may also be applied to deliveries when applicable. See also, Bulk (subsection Service Fees), Will-call Service Fees, and Keep-full Service Fees in Contract section.

#### 11.8 DROP FEE (IF APPLICABLE)

A single drop fee applies to the entire region. Absent critical circumstances and OSP approval by contract amendment, the drop fee is fixed for the life of the contract at the price bid by the awarded Contractor on their price sheet submittal. If applicable, the drop fee will be added to each invoice (as a separate line item) whenever the tank is fueled. The fuel price coupled with the service fee is expected to cover all costs that are normally associated to fueling a tank and fulfillment of contract terms. However, an emergency service fee and standby fee may also be applied to bulk deliveries when applicable. See also, Bulk (subsection Service Fees), Will-call Service Fees, and Keep-full Service Fees in Contracts section.

#### 11.9 OPIS UNAVAILABILITY

The Oil Price Information Service (OPIS) is what Office of State Procurement (OSP) uses for product pricing coupled with a multiplier. Should OPIS become unavailable or if the OPIS reference OSP uses for pricing become unavailable, the OSP may totally or partially terminate the contract or terminate and rebid the contract and the Contractor accepts and agrees to hold the state, OSP, and all contract customers harmless with no right to damages resulting from the early termination. The OSP reserves the right to negotiate a substitute pricing mechanism with the Contractor that results in a mutually agreed contract amendment.

#### 11.10 PRICE PROTECTION

For the term of the Contract, pricing and OPIS Multipliers for all Products will be no greater than those quoted in the response to the solicitation. If, however, during any term of the contract lower prices and rates become effective for like quantities of products under similar terms and conditions, through reduction in contractor's list prices, promotional discounts, or other circumstances, purchasers must be given immediate benefit of such lower prices and rates.

#### 11.11 NO ADDITIONAL CHARGES

Unless otherwise specified in the solicitation, no additional charges by the Contractor will be allowed including, but not limited to: restocking fees, 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 the Contract Administrators sole discretion, additional charges may be allowed.

#### 11.12 PRICE ADJUSTMENTS

Contractor understands that except as stated below, no other price increases will be considered. However, OSP reserves the right to waive this condition for good cause.

**B&O Tax:** The state recognizes that fuel market fluctuations can impact the haulers B&O taxes as well as the cost of fuel needed to perform deliveries. Even so, the fixed service fee in combination with the OPIS fuel price multiplier allows bidders to protect profit margins regardless of market fluctuations. Furthermore, because all fuel related taxes are to be charged to customers on a pass-through basis, any fuel related tax code adjustments will not impact the bidder's profit margin. The only tax adjustment that could potentially impact the contractor(s) profit margins is B&O. Therefore, in the event the B&O tax increases (or decreases) the contractors OPIS fuel price multiplier may be adjusted relative to the adjustment to the B&O tax rate. No other price increases will be considered.

**Diesel Exhaust Fluid (DEF):** As a default, the moving party shall provide the other party 30 days notice of request for price adjustment with attached supporting documentation. OSP desires governmental data such as the BLS Producer Price Index as a validating mechanism for the change in price. However, OSP will consider other data but cautions the Contractor of the following. It is OSP's expectation that the Contractor keep its DEF supplier in check and not simply accept an unchallenged increase. OSP will not simply authorize and upward adjustment simply because the supplier is charging more. The increase must be reasonable under the circumstances and the Contractor must provide justification to OSP's satisfaction that the price charged represents a fair market value for the product, in that quantity, for the given delivery area, for that period of time. The parties may mutually agree to a modification from the default.

Contractors shall not make extensions contingent on price adjustments.

Price increases will not be considered without supporting documentation sufficient to justify the requested increase. Documentation must be based on reliable government data.

Contractor shall provide a detailed breakdown of their costs. The grant of any price adjustment will be at the sole discretion of the OSP and, if granted, shall not produce a higher profit margin for the Contractor than that established by the original contract pricing. The Contractor shall be notified in writing by the Contract Administrator of any price adjustment granted by the OSP, and such price adjustment shall be set forth in a written amendment to the contract. Price adjustments granted by the OSP shall remain unchanged for at least 365 calendar days thereafter, and no request for adjustments in price will be considered during that time period.

Other Agreements: During contract life, should the contractor enter into an agreement (of similar in scope and value) with another customer which incorporates improved benefits or pricing, the contractor shall immediately notify the State Contract Administrator and amend the state contract to provide similar benefits or pricing.

#### 11.13 DIRECT PURCHASE

Washington procurement law provides: That any agency may purchase material, supplies, services, and equipment for which the agency has notified the purchasing and material control director that it is more cost-effective for the agency to make the purchase directly from the vendor.

This is commonly referred to as the Best Buy Program. It generally allows an agency to purchase materials from a non-awarded supplier if the awarded contractor refuses to match the non-awarded supplier's firm and similar written "obligation". See the Washington Purchasing Manual Part 6.11 Best Buy Program for additional details. Link: <http://www.ga.wa.gov/PCA/manual.htm>

### 12. CONTRACTOR QUALIFICATIONS AND REQUIREMENTS

#### 12.1 ESTABLISHED BUSINESS AND QUALIFICATIONS

Prior to commencing performance, or prior to that time if required by the Purchasing Activity, law or regulation, Contractor must be an established business firm 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. Contractor shall maintain compliance with these requirements throughout the life of this contract.

The Contractor previously in the role of Bidder met a set of bidder qualifications. The qualifications represent a continuing requirement upon the Contractor. See Bidder Qualifications.

The OSP reserves the right to require receipt of proof of compliance with said requirements within ten (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.

## 12.2 USE OF SUBCONTRACTORS

In accordance with solicitation requirements, Contractor agrees to take complete responsibility for all actions of such Subcontractors.

Prior to performance, Contractor shall identify all subcontractors who will perform services in fulfillment of contract requirements, including their name, the nature of services to be performed, address, telephone, facsimile, email, federal tax identification number (TIN), and anticipated dollar value of each subcontract:

The OSP 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 the OSP.

Specific restrictions apply to contracting with current or former state employees pursuant to Chapter 42.52 RCW.

## 12.3 SUBCONTRACTS AND ASSIGNMENT

Contractor shall not Subcontract, assign, or otherwise transfer its obligations under this Contract without the prior written consent of the Contract Administrator. Contractor shall provide a minimum of thirty (30) calendar days advance notification of intent to Subcontract, assign, or otherwise transfer its obligations under this Contract. Violation of this condition may be considered a material breach establishing grounds for Contract termination. 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.

## 12.4 CONTRACTOR AUTHORITY AND INFRINGEMENT

Contractor is authorized to sell under this Contract, only those materials, supplies, services and/or equipment as stated herein and allowed for by the provisions of this Contract. Contractor shall not represent to any 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.

## 12.5 MATERIALS AND WORKMANSHIP

The Contractor shall be required to furnish all materials, supplies, equipment and/or services necessary to perform Contractual requirements. Materials, supplies and workmanship used in the construction of equipment for 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.

### 13. PAYMENT

#### 13.1 ADVANCE PAYMENT PROHIBITED

No advance payment shall be made for the Products and Services furnished by Contractor pursuant to this Contract.

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

#### 13.2 IDENTIFICATION

All invoices, packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written materials associated with this Contract shall be identified by the Contract number and the applicable Purchaser's order number. Packing lists shall be enclosed with each shipment and clearly identify all contents and any backorders.

#### 13.3 PAYMENT, INVOICING AND DISCOUNTS

##### A. General:

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

Contractor shall provide a properly completed invoice to Purchaser. All invoices are to be delivered to the address indicated in the purchase order within 24 hours of delivery.

Each invoice shall be identified by the associated Contract Number; the Contractor's Statewide Vendor registration number assigned by Washington State Office of Financial Management (OFM), the applicable Purchaser's order number, and shall be in U.S. dollars. Invoices shall 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. Hard copy credit memos are to be issued when the state has been overcharged.

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.

Under Chapter 39.76 RCW, if Purchaser fails to make timely payment(s), Contractor may invoice for 1% per month on the amount overdue or a minimum of \$1.00. Payment will not be considered late if a check or warrant is mailed within the time specified. If no terms are specified, net 30 days will automatically apply. Payment(s) made in accordance with Contract terms shall fully compensate the Contractor for all risk, loss, damages or expense of whatever nature and acceptance of payment shall constitute a waiver of all claims submitted by Contractor. 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.

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.

**B. Fuel Specific:**

The state recognizes payment delays can be costly but vendors should also recognize that the inability to readily validate contract pricing has been correctly calculated and that delivery terms have been fulfilled is the primary cause of payment delays. Therefore, so as to streamline invoice audits and to empower contractors to get paid more quickly, all invoices are to be accompanied with all supporting documentation needed to readily verify that contract prices have been correctly calculated and delivery terms have been met. This may include but may not be limited to:

1. A copy of the applicable OPIS posting used to calculate contract pricing
2. A copy of the meter ticket or bill of lading as applicable
3. Record of before & after delivery stick level readings
4. Delivery receipt signed by the appropriate customer representative

*Note: If no customer representative is available to sign the delivery receipt, the before and after delivery stick level readings coupled with the meter ticket or bill of lading will serve as acceptable proof of delivery.*

Invoices (as well as supporting documentation) are to be sent to the customer within 1-business days of the delivery and electronic invoices are to be followed up with hard copies. To ensure that invoices are processed in a timely manner contractors are to be diligent in preparing invoices as incorrect invoices may be returned unpaid for correction, reissue, and will likely result in delayed payments. A Sample Invoice can be found in Appendix D. The contractor shall submit a separate invoice for each delivery and at a minimum identify the following:

1. Contract number 00311
2. Customer name
3. Customer Purchase Order Number
4. Customer account number
5. Invoice number
6. Delivery location
7. Date of invoice
8. Date and time of delivery
9. Amount of fuel delivered (in gallons)
10. Description of fuel delivered (separate line item for each fuel type delivered)

11. Contractor's OPIS Daily bid multiplier
12. OPIS Daily average reference price
13. Fuel additives or conditioners (if applicable)
14. Contractors service fee (relevant to that delivery site)
15. Emergency delivery fee (if applicable)
16. Standby fee (if applicable)
17. Fuel tax credits (if applicable)
18. Applicable fuel related taxes
19. Applicable fuel related fees (i.e. Hazmat, First Possessor)

#### 13.4 TAXES, FEES AND LICENSES

##### 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.

##### 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 State. Examples of such activity include where the Contractor either directly or by an agent or other representative:

1. Maintains an in-state office, distribution house, sales house, warehouse, service enterprise, or any other in-state place of business;
2. Maintains an in-state inventory or stock of goods for sale;
3. Regularly solicits orders from Purchasers located within the State of Washington via sales representatives entering the State of Washington;
4. 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
5. Other factors identified in WAC 458-20.

##### 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.

**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.

**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 the Purchasing Activity nor the Purchaser will incur additional costs related to Contractor's payment of such fees.

**Taxes on Invoice:**

Contractor shall calculate and enter the appropriate Washington 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.

### 13.5 VOLUME VERIFICATION REQUIREMENTS

To ensure that delivery volumes are accurately calculated the following shall apply:

- A. Dispensing meters are to be certified by the Washington State Department Agriculture's Weights and Measures Program and delivery volumes shall not be temperature corrected.
- B. Deliverer is to perform and record before and after delivery stick level readings for each delivery.
- C. All invoices are to be accompanied with the appropriate volume delivery verification documentation including but not limited to bill of lading as well as a record of before and after delivery stick level readings, and for any Keep-Full/Will-Call delivery, a metered ticket. Metered tickets are not required for any Bulk category order.
- D. The customer may require that transport containers be sealed until the fuel is unloaded. For sealed container deliveries, if there is a significant difference between the metered quantity and the reading obtained by sticking the tank, the customer will pay the metered quantity, provided that the customer representative verifies that the container was completely emptied.

- E. Should a customer representative be unavailable to sign the delivery receipt, stick level readings will serve as proof of delivery. In such cases, the driver is to note on the receipt that “no one available to sign” and sign the receipt themselves. Invoices and payments shall be for gross gallons delivered.
- F. Net Volume at 60 Degrees Fahrenheit: At time of order placement, if Customer requests, Contractor will detail the net volume of fuel at sixty degrees Fahrenheit on the invoice.
- G. Net Pricing: Net pricing is a temperature correction to 60 degrees. In conformity with the Contract Scope and Modifications section, the parties may agree to a net pricing structure.

### 13.6 ORDER FULFILLMENT REQUIREMENTS

Authorized Customers may place orders against this contract either in person, electronically, facsimile or by phone. Once an order is issued, the following shall apply:

- A. For purposes of price verification and auditing, upon receipt of a purchase order the contractor shall send the Customer an order confirmation.
- B. Upon the request of the Purchaser, the Contractor shall supply Purchaser with other documentation needed to verify Contract pricing compliance.
- C. Product damaged prior to acceptance will either be replaced or repaired in an expedited manner at contractor’s expense. Alternatively, at the Purchaser’s option, any possible damage to the product can be noted on the receiving report and the cost deducted from final payment.

The Contractor is responsible to verify delivery conditions/requirements with the Purchaser prior to the delivery.

### 13.7 MINORITY AND WOMEN’S BUSINESS ENTERPRISE (MWBE) PARTICIPATION

With each invoice for payment and within thirty (30) days of Purchasers 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.

### 13.8 OVERPAYMENTS TO CONTRACTOR

Contractor shall refund to Purchaser the full amount of any erroneous payment or overpayment under this Contract within thirty (30) days’ written notice. If Contractor fails to make timely refund, Purchaser may charge Contractor one percent (1%) per month on the amount due, until paid in full.

### 13.9 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.

## 14. SAFETY, SECURITY, NEGLIGENCE, SPILL, ENVIRONMENTAL, SHIPPING, SECURITY, INSPECTION, INSTALLATION, TITLE, TREATMENT

### 14.1 SAFETY STANDARDS

The handling of the fuel shall comply with all applicable safety laws and standards of the State of Washington and standards established by the United States Department of Transportation, the United States Department of Labor's Occupational Safety and Health Act (OSHA), accepted industry practices, and City/County requirements.

### 14.2 SECURITY

Some delivery sites have security restrictions requiring delivery personnel pass a criminal background check before access is granted. In such cases, any drivers used to service these accounts must complete the necessary paperwork in order to perform the criminal background check. The customer is to coordinate this activity and provide the contractor sufficient advance notification of this requirement.

### 14.3 NEGLIGENCE

The contractor assumes all liability and responsibilities for the handling and transportation of the fuel until it has been placed in the storage tank(s). The contractor shall be responsible for any and all damage to buildings and/or properties caused by delivery trucks, operating personnel and damages or services necessitated by the failure to deliver fuel or the delivery of faulty product and equipment. Any repair or clean up services shall be made at the contractor's expense and to the satisfaction of the customer. If the contractor fails to comply with these requirements within a reasonable time, the customer may deem it expedient to repair damages and perform the necessary services at the expense of the contractor. Should the fuel be negligently unloaded into the wrong tank (i.e. diesel fuel into a gasoline storage tank), the contractor is responsible for the immediate removal, cleaning and replacement of both products, for any resulting damage, and the loss of revenue.

### 14.4 SPILL RESPONSIBILITIES

The contractor is solely responsible for any and all spills, leaks or releases, which occur as a result of, or are contributed to by, the actions of its agents, employees, or subcontractors. Therefore, the contractor shall take all measures as required by law to prevent fuel spills (which includes but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping into or onto any land or water). In the event of a fuel spill, leak, or release, the contractor shall be responsible for the required notifications, containment, clean up, and disposal of the oil spilled and agrees to take the following actions:

- A. If warranted, evacuate and warn those persons that may be affected by the spill.
- B. Immediately contact the appropriate Emergency Response Agencies as required.
- C. Notify the appropriate customer representative of the spill.
- D. Clean up the spill in a manner that complies with federal, state and local laws, regulations, rules and standards.
- E. For spills, that occur other than on a customer's owned or leased property; provide all notifications and reports as specified by federal, state and local laws, regulations, rules, standards and permits.
- F. Possibly attend additional spill prevention training (at the contractor's expense).
- G. Possibly acquire (at the contractor's expense) additional spill prevention equipment.

Should the contractor fail or refuse to take the appropriate and timely containment, clean up, disposal actions, the customer may do so and the contractor shall reimburse the customer for all expenses incurred including fines levied by appropriate agencies of federal or local governments. If there are no moneys due, the remediation costs shall be the responsibility of the contractor or submitted as a claim to the bonding company.

#### 14.5 ENVIRONMENTAL CONSIDERATIONS

Contractors shall comply with all environmental regulations relevant to the contracted refueling service provided.

#### 14.6 SHIPPING AND RISK OF LOSS

Contractor shall ship all products purchased pursuant to this Contract, freight prepaid and add, FOB Purchaser's destination. The method of shipment shall be consistent with the nature of the products and hazards of transportation. Regardless of FOB point, Contractor agrees to bear all risks of loss, damage, or destruction of the products ordered hereunder that occurs prior to *acceptance*, 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 *acceptance*, the risk of loss or damage shall be borne by Purchaser, except loss or damage attributable to Contractor's fault or negligence.

#### 14.7 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.

#### 14.8 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 ready for Acceptance. 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. Without limiting any other rights, the Purchaser may require the Contractor to: (1) repair or replace, at Contractor's expense, any or all of the damaged goods; (2) refund the price of any or all of the damaged goods; or (3) accept the return of any or all of the damaged goods.

The state reserves the right to independently test, at supplier's expense, any product of questionable freshness, quality, or origin delivered against this contract.

#### 14.9 INSTALLATION

Installation shall be performed in a professional manner in accordance with industry standard best practices. The premises shall be left in a clean condition. The state reserves the right to require Contractor to repair all damages or provides full compensation as determined by the state.

#### 14.10 TITLE TO PRODUCT

Upon delivery, Contractor shall convey to Purchaser good title to the Product free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.

Transfer of title to the Product shall include an irrevocable, fully paid-up, perpetual license to use the internal code (embedded software) in the Product. If Purchaser subsequently transfers title to the Product to another entity, Purchaser shall have the right to transfer the license to use the internal code with the transfer of Product title. A subsequent transfer of this software license shall be at no additional cost or charge to either Purchaser or Purchaser's transferee.

#### 14.11 TREATMENT OF ASSETS

- A. Title to all property furnished by the Purchasing Activity and/or Purchaser shall remain in the Purchasing Activity and/or Purchaser, as appropriate. 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.

- B. Any property of the Purchasing Activity and/or Purchaser furnished to the Contractor shall, unless otherwise provided herein or approved by the Purchasing Activity and/or Purchaser, be used only for the performance of this Contract.
- C. The Contractor shall be responsible for damages as a result of any loss or damage to property of the Purchasing Activity 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.
- D. If any Purchasing Activity and/or Purchaser property is lost, destroyed, or damaged, the Contractor shall immediately notify the Purchasing Activity and/or Purchaser and shall take all reasonable steps to protect the property from further damage.
- E. The Contractor shall surrender to the Purchasing Activity and/or Purchaser all property of the Purchasing Activity and/or Purchaser prior to settlement upon completion, termination, or cancellation of this contract.
- F. All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

## 15. QUALITY ASSURANCE

### 15.1 STANDARD OF QUALITY/CONSISTENCY OVER TERM OF CONTRACT

If, in the sole judgment of the OSP or the Customer, any item is determined not to be an equal, the Customer may take any or all of the following actions:

- A. the product may be returned at Contractor's expense;
- B. the contract may be terminated without any liability to the State of Washington or Purchaser.

### 15.2 RIGHT OF INSPECTION

Contractor shall provide right of access to its facilities to Purchasing Activity, or any of Purchasing Activity'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.

### 15.3 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 Response 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 Response or used to effect the sale to Purchaser.

#### 15.4 PRODUCT WARRANTY

Warranty(ies): Unless otherwise specified, full parts and labor warranty period shall be for a minimum period of one (1) year after receipt of materials or equipment by the Purchaser. All materials or equipment provided shall be new, unused, of the latest model or design and of recent manufacture.

In the event of conflict between Contract terms and conditions and Contractor's submitted warranty, the Contract terms and conditions shall prevail; except, to afford the State maximum benefits, the Purchasing Activity may avail itself of the Contractor's warranty if deemed more beneficial to the State.

#### 15.5 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.

If due to either bad quality fuel or an incorrect fuel mix (such as getting B100 delivered instead of B20), the contractor shall assume all liability for cleaning all tanks, replacing the fuel in said tanks and any damage incurred to the vehicles including towing etc.

#### 15.6 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.

### 16. INFORMATION AND COMMUNICATIONS

#### 16.1 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 the Contract Administrator.

## 16.2 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 (6) 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 the Purchasing Activity, personnel duly authorized by the Purchasing Activity, the Washington State Auditor's Office, and federal and state officials so authorized by law, regulation or agreement.

This shall include, but not be limited to, all records pertaining to actual contract performance from the date of contract award. It shall also include information necessary to document the level of utilization of MWBE's and other businesses as subcontractors and suppliers in this contract as well as any efforts the contractor makes to increase the participation of MWBE's. The contractor shall also maintain, for at least six (6) years after completion of this contract, a record of all quotes, bids, estimates, or proposals submitted to the Contractor by all businesses seeking to participate as subcontractors or suppliers in this contract. The State shall have the right to inspect and copy such records. If this contract involves federal funds, Contractor shall comply with all record keeping requirements set forth in any federal rules, regulations, or statutes included or referenced in the contract documents.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until final resolution of all litigation, claims, or audit findings involving the records.

## 16.3 PROPRIETARY OR CONFIDENTIAL INFORMATION

To the extent consistent with Chapter 42.56 RCW, the Public Disclosure Act, the OSP shall maintain the confidentiality of Contractor's information marked confidential or proprietary. If a request is made to view Contractor's proprietary information, the Purchasing Activity 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, the Purchasing Activity 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 the Purchasing Activity retains Contractor's information in the Purchasing Activity 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.



#### 16.4 NON-ENDORSEMENT AND PUBLICITY

Neither the Purchasing Activity 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 the Purchasing Activity, 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 the Purchasing Activity.

#### 16.5 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 42.56 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, 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 nondisclosure 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 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 Retention of Records.

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.

## 17. GENERAL PROVISIONS

### 17.1 GOVERNING LAW/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.

### 17.2 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.

### 17.3 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, Incorporated Documents and Order of Precedence; Publicity; Retention of Records; Patent and Copyright Indemnification; Contractor's Proprietary Information; Disputes; and Limitation of Liability shall survive the termination of this Contract.

### 17.4 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 venturers, 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.

### 17.5 GIFTS AND GRATUITIES

Contractor shall comply with all state laws regarding gifts and gratuities, including but not limited to: RCW 43.19.1937, RCW 43.19.1939, 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 43.19.1937 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.

### 17.6 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, from and against all claims for injuries, death or damage to property arising out of or resulting from the performance of the contract. Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractors' agents, employees, representatives, or any subcontractor or its employees.

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

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.

#### 17.7 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.

#### 17.8 INSURANCE

##### General Requirements:

Contractor shall, at their 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.

##### Specific Requirements:

**Employers 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 \$1,000,000.00. 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.

Pollution Coverage: Contractor shall obtain pollution legal liability coverage for the duration of the contract, including investigation and legal defense costs, for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically damaged or destroyed. Such coverage shall provide coverage for both on-site and off-site clean-up costs and cover gradual and sudden pollution. The Office of State Procurement reserves the right to waive the Pollution Coverage insurance condition or reduce the Pollution Coverage insurance condition.

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)	\$5,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury Aggregate	\$1,000,000
Each Occurrence (applies to all of the above)	\$1,000,000
Fire Damage Limit (per occurrence)	\$ 50,000
Medical Expense Limit (any one person)	\$ 5,000
Pollution Liability: to include loading and unloading of all petroleum products.	\$5,000,000

**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 \$5,000,000 per occurrence. MSC90 endorsement and CA 9948 endorsement including upset and overturn. 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.

**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(ies) 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 forty-five (45) calendar days prior to cancellation or any material change to the policy(ies) as it relates to this Contract. Written notice shall include the affected Contract reference number.

**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 twenty (20) calendar days prior to cancellation or any material change to the policy(ies) as it relates to this Contract. Written notice shall include the affected Contract reference number.

**Cancellation for Non-payment to 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 ten (10) calendar days prior to cancellation. Written notice shall include the affected Contract reference number.

**Identification:**

Policy(ies) and Certificates of Insurance shall include the affected Contract reference number.

**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.

**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.

Limit Adjustments:

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

17.9 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, the Purchasing Activity 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.

17.10 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.

17.11 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 there under, 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 Purchasing Activity 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.

17.12 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.

### 17.13 WAIVER

Failure or delay of the OSP 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 the Purchasing Activity'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 the Purchasing Activity 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 the Purchasing Activity or Purchaser of any existing or future right and/or remedy available by law.

### 17.14 FEMA GRANT CONTRACTING

#### 17.14.1 Overview

The FEMA Grant Contracting Terms and Conditions below were provided by the Washington State Emergency Management Division's Public Assistance unit. Per the Public Assistance unit, these terms and conditions help place the state's contract in federal regulation compliance increasing the possibility of FEMA grant reimbursement. To the extent possible these terms and conditions will be read consistently with existing terms and conditions.

#### 17.14.2 Terminology

For purposes of the FEMA Grant Contracting provisions the following descriptions or examples provide additional guidance.

- A. Applicant: The agency receiving the disaster assistance grant from FEMA. Generally the Applicant notifies the Contractor that this is a federally funded project. The Applicant in addition to the Contractor has to make sure the Contractor is complying with these provisions.
- B. Contractor (or any like term): The party that was awarded or received a contract.
- C. Recipient: The recipient is the same as applicant. See Applicant.
- D. Sub-Contractor (or any like term): The party that was awarded or received a contract from the Contractor to perform some portion of the Contractor's obligation.
- E. Subrecipient: Subrecipient means the legal entity to which a subaward/subgrant is made and which is accountable to the recipient for the use of the funds provided. Example - The Dept. of Health is providing funds or vaccines to its sub-recipients like private non-profit health providers.
- F. Tier: A tier in this context is the level of contractor; prime, sub, etc. Assuming the prime contractor is tier 1, the contractor can't assert that they aren't responsible for their sub-contractor or "tier 2" contractor actions.



17.14.3 FEMA Grant Contracting Provisions

It is the Contractor's responsibility to comply with all State and Federal Laws in performing the tasks undertaken with respect to this Contract. As applicable and required by Federal and State Law, the following provisions and references are included in this Contract:

A. Equal Employment Opportunity

All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

B. Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)

All contracts and subgrants in excess of \$2,000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

C. Contract Work Hours and Safety Standards Act (40 U.S.C 327-333)

Where applicable, all contracts awarded by recipients in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

D. Rights to Inventions Made Under a Contract or Agreement

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

E. Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended

Contractors and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.) Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

F. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying in non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

G. PUBLIC LAW 88-352, TITLE VI OF THE CIVIL RIGHTS ACT OF 1964(42 U.S.C. 2000d et seq.) (24 CFR Part 1)

The APPLICANT must comply with the provisions of "Public Law 88-352," which refers to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.). The law provides that no person in the United States shall, on the grounds of race, color or national origin, be denied the benefits of, be excluded from participation in, or be subjected to discrimination under any program or activity receiving federal financial assistance.

H. SECTION 504 OF THE REHABILITATION ACT, 1973, AS AMENDED (29 U.S.C. 794)

The APPLICANT must comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits or be subjected to discrimination under any program or activity receiving federal assistance funds.

I. AMERICANS WITH DISABILITIES ACT (42 U.S.C. 12101, et seq.)

The APPLICANT shall comply with the provisions of the Americans with Disabilities Act, 42 U.S.C. 12101, et seq. That Act provides a comprehensive national mandate to eliminate discrimination against individuals with disabilities. The Act may impose requirements on the APPLICANT in four principle ways: 1) with respect to employment; 2) with respect to the provision of public services; 3) with respect to transportation; 4) with respect to existing facilities and new construction.

J. THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 (NEPA) (42 U.S.C Section 4321 et seq., and 24 CFR Part 58)

The APPLICANT shall comply with the provisions of the National Environmental Policy Act of 1969. The purpose of this Act is to attain the widest use of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences. Environmental review procedures, including determining and publishing a Finding of Significance or of No Significance for a proposal, are a necessary part of this process. Pursuant to these provisions, the APPLICANT must also submit environmental certifications to the DEPARTMENT when requesting that funds be released for the project. The APPLICANT must certify that the proposed project will not significantly impact the environment and that the APPLICANT has complied with environmental regulations and fulfilled its obligations to give public notice of the funding request, environmental findings and compliance performance.

K. EXECUTIVE ORDER 11990, MAY 24, 1977: PROTECTION OF WETLANDS (42 F.R. 26961 et seq.)

The APPLICANT shall comply with Executive Order 11990. The intent of this Executive Order is (1) to avoid, to the extent possible, adverse impacts associated with the destruction or modification of wetland, and (2) to avoid direct or indirect support of new construction in wetlands wherever there is a practical alternative.

The APPLICANT, to the extent permitted by law, must avoid undertaking or providing assistance for new construction located in wetlands unless (1) there is no practical alternative to such construction, and (2) the proposed action includes all practical measures to minimize harm to wetlands which may result from such use. In making this determination, the APPLICANT may take into account economic, environmental and other pertinent factors.

L. EXECUTIVE ORDER 11988, MAY 24, 1977: FLOODPLAIN MANAGEMENT (42 F.R. 26951 et seq.)

The APPLICANT shall comply with the provisions of Executive Order 11988. The intent of this Executive Order is to (1) avoid, to the extent possible, adverse impacts associated with the occupancy and modification of floodplains, and (2) avoid direct or indirect support of floodplain development wherever there is a practical alternative. If the APPLICANT proposes to conduct, support or allow an action to be located in a floodplain, the APPLICANT must consider alternatives to avoid adverse effects and incompatible involvement in the floodplain. If sitting in a floodplain is the only practical alternative, the APPLICANT must, prior to taking any action (1) design or modify its actions in order to minimize any potential harm to the floodplain, and (2) prepare and circulate a notice containing an explanation of why the action is proposed to be located in a floodplain.

M. THE WILD AND SCENIC RIVERS ACT OF 1968, AS AMENDED (16 U.S.C. 1271 et seq.)

The APPLICANT shall comply with the Wild and Scenic Rivers Act. The purpose of this Act is to preserve selected rivers or sections of rivers in their free-flowing condition, to protect the water quality of such rivers and to fulfill other vital national conservation goals. Federal assistance by loan, grant, license, or other mechanism cannot be provided to water resources construction projects that would have a direct and adverse effect on any river included or designated for study or inclusion in the National Wild and Scenic River System.

N. COASTAL ZONE MANAGEMENT ACT OF 1972, AS AMENDED (16 U.S.C. 1451 et seq.)

The APPLICANT shall comply with the Coastal Zone Management Act of 1972, as amended. The intent of this Act is to preserve, protect, develop, and where possible, restore or enhance the resources of the nation's coastal zone. Federal agencies cannot approve assistance for proposed projects that are inconsistent with the state's Coastal Zone Management program except upon a finding by the U.S. Secretary of Commerce that such a project is consistent with the purpose of this chapter or necessary in the interests of national security.

O. THE ENDANGERED SPECIES ACT OF 1973, AS AMENDED (16 U.S.C. 1531 et seq.)

The APPLICANT shall comply with the Endangered Species Act of 1973, as amended. The intent of this Act is to ensure that all federally assisted projects seek to preserve endangered or threatened species. Federally authorized and funded projects must not jeopardize the continued existence of endangered and threatened species or result in the destruction of or modification of habitat of such species which is determined by the U.S. Department of the Interior, after consultation with the state, to be critical.

P. THE RESERVOIR SALVAGE ACT OF 1960, AS AMENDED BY THE ARCHAEOLOGICAL AND HISTORIC PRESERVATION ACT OF 1974 (16 U.S.C. 469 et seq.)

Under the Reservoir Salvage Act, the APPLICANT must comply with provisions for the preservation of historical and archaeological data (including relics and specimens) that might otherwise be irreparably lost or destroyed as a result of any alteration of the terrain caused as a result of any federal construction project or federally licensed activity or program. Whenever the APPLICANT finds, or is notified in writing by an appropriate historical or archaeological authority, that its activities in connection with any federal funded construction project or federally licensed project, activity or program may cause irreparable loss or destruction of significant scientific, prehistoric, historical or archaeological data, the APPLICANT must stop work immediately and must notify the U.S. Secretary of Interior and the Department in writing and provide appropriate information concerning the project or program activity.

- Q. THE ARCHAEOLOGICAL AND HISTORICAL DATA PRESERVATION ACT OF 1974 (16 U.S.C. 469 a-1 et seq.)

The APPLICANT shall comply with the Archaeological and Historical Data Preservation Act, which provides for the preservation of historic and archaeological information that would be lost due to development and construction activities as a result of federally funded activities.

- R. THE SAFE DRINKING WATER ACT OF 1974, AS AMENDED (42 U.S.C. Section 201, 300(f) et seq., and U.S.C. Section 349)

The APPLICANT must comply with the Safe Drinking Water Act, as amended, which is intended to protect underground sources of water. No commitment for federal financial assistance, according to this Act, shall be entered into for any project, which the U.S. Environmental Protection Agency determines, may contaminate an aquifer that is the sole or principal drinking water source for an area.

- S. THE FEDERAL WATER POLLUTION CONTROL ACT OF 1972, AS AMENDED, INCLUDING THE CLEAR WATER ACT OF 1977, PUBLIC LAW 92-212 (33 U.S.C. SECTION 1251 et seq.)

The APPLICANT must assure compliance with the Water Pollution Control Act, as amended, which provides for the restoration of chemical, physical and biological integrity of the nation's water.

- T. THE SOLID WASTE DISPOSAL ACT, AS AMENDED BY THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976 (42 U.S.C. SECTION 6901 et seq.)

The APPLICANT must assure compliance with the Solid Waste Disposal Act, as amended. The purpose of this Act is to promote the protection of health and the environment and to conserve valuable material and energy resources.

U. THE FISH AND WILDLIFE COORDINATION ACT OF 1958, AS AMENDED (16 U.S.C. SECTION 661 et seq.)

The APPLICANT must assure compliance with the Fish and Wildlife Coordination Act, as amended. The Act assures that wildlife conservation receives equal consideration and is coordinated with other features of water resources development programs.

V. RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICY, CHAPTER 8.26 RCW

The APPLICANT shall comply with the provisions of Chapter 8.26 RCW and Chapter 365-24 WAC when its activities involve any acquisition of real property assisted under this Grant Agreement or the displacement of any family, individual, business, nonprofit organization or farm that results from such acquisition.

W. STATE ENVIRONMENTAL POLICY ACT (SEPA), CHAPTER 43.21 (C) RCW

The APPLICANT shall comply with the provisions of Chapter 43.21(C) RCW and Chapter 197-11 WAC, the guidelines by which local agencies will (1) require environmental checklists from private and public entities considering an action potentially subject to the Environmental Impact Statement (EIS) requirement of SEPA, (2) make "threshold determinations" that such an action will not have a significant environmental impact, (3) provide for the preparation of a draft and final EIS if the action has significant impact, and (4) circulate the EIS to other agencies and interested parties.

X. NOISE CONTROL, CHAPTER 70.107 RCW

The APPLICANT shall assure compliance with the state Noise Control Act. Objectives of the Act are to assist local governments in implementing local noise ordinances and to control and reduce excessive noise in Washington.

Y. SHORELINE MANAGEMENT ACT OF 1971, CHAPTER 90.58 RCW

The APPLICANT shall comply with the provisions of Chapter 90.58 RCW. This Act defines a planning program and a permit system, which are initiated at the local government level under state guidance. Its purpose is to protect and enhance the state's shoreline and it includes a comprehensive shoreline inventory process and a master program for regulation of shoreline uses. A permit application at the local level must be in compliance with those plans and consistent with the state Coastal Zone Management program if substantial developments and shoreline modifications occur, and a record of the application and decision must be submitted to the state.

Z. STATE BUILDING CODE, CHAPTER 19.27 RCW; ENERGY RELATED BUILDING STANDARDS, CHAPTER 19.27A RCW; AND PROVISIONS IN BUILDINGS FOR AGED AND HANDICAPPED PERSONS, CHAPTER 70.92 RCW

The APPLICANT shall comply with the provisions of Chapter 19.27 RCW, Chapter 19.27A RCW, Chapter 70.92 RCW and the regulations for building construction and for barrier free facilities adopted by the Washington State Building Code Council pursuant to these statutes.

The State Building Code Act provides for a uniform state building code and mandates counties, cities and towns to administer and enforce its provisions. Local governments are authorized to modify the state building code to fit local conditions as long as such modifications do not result in a code that is less than the minimum performance standards and objectives contained in the state code.

**AA. OPEN PUBLIC MEETINGS ACT, CHAPTER 42.30 RCW**

The APPLICANT shall comply with provisions of Chapter 42.30 RCW which require that all meetings of the governing body which pertain to this Grant Agreement shall be open to the public except those where specific provision is made for executive sessions pursuant to RCW 42.30.110.

**BB. LAW AGAINST DISCRIMINATION, CHAPTER 49.60 RCW**

The APPLICANT shall comply with the provisions of Chapter 49.60 RCW in all activities relating to this Grant Agreement.

**CC. GOVERNOR'S EXECUTIVE ORDER 89-10, DECEMBER 11, 1989: PROTECTION OF WETLANDS, AND GOVERNOR'S EXECUTIVE ORDER 90-04, APRIL 21, 1990: PROTECTION OF WETLANDS**

The APPLICANT shall ensure that it avoids any activities that would adversely affect wetlands and adequately mitigates unavoidable impacts. For the purposes of this requirement, except where a contrary definition is provided by statute, mitigation means: (1) avoiding the impact altogether by not taking certain action or part of an action; (2) minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts; (3) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; (5) compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and (6) monitoring the impact and taking appropriate corrective measures.

Mitigation for individual actions may include a combination of the above measures. Mitigation may not include any of the above measures to the extent that they may be contrary to statute as applied under the particular circumstances. Emergency work that is essential to save lives and protect property and public health is exempt from these provisions.

**DD. CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting this Contract, the Contractor certifies as follows:

The certification in this clause is a material representation of fact relied upon by the State of Washington and all Purchasers authorized to use this contract. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to the State of Washington, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any Contract that may arise from this Contract. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## 18. DISPUTES AND REMEDIES

### 18.1 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 Purchasing Activity 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 (3) Business Days. The initiating party shall have three (3) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.

If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of 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 (3) 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.

#### 18.2 ADMINISTRATIVE SUSPENSION

When it is in the best interest of the state, the OSP may at any time, and without cause, suspend the Contract or any portion thereof for a period of not more than thirty (30) calendar days per event by written notice from the Contract Administrator to the Contractor's Representative. Contractor shall resume performance on the next business day following the 30<sup>th</sup> 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 the Contract Administrator providing the Contractor's Representative with written notice of such demand.

#### 18.3 FORCE MAJEURE

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

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 forty-eight (48) hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall 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: The Purchasing Activity 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.

#### 18.4 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.

#### 18.5 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.

#### 18.6 LIMITATION OF LIABILITY

The parties agree that neither Contractor, OSP 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.

Neither the Contractor, the OSP nor Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of the Contractor, the Purchasing Activity or Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than the Purchasing Activity 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, the Purchasing Activity 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.

#### 18.7 FEDERAL FUNDING

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 the OSP or purchaser: Further, the contractor may be subject to those federal requirements specific to the commodity.

#### 18.8 FEDERAL RESTRICTIONS ON LOBBYING

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.

#### 18.9 FEDERAL DEBARMENT AND SUSPENSION

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.

The Contractor certifies during the life of this contract that its company name does not appear on the Excluded Parties List System. Link: <https://www.epls.gov/>

### 19. CONTRACT TERMINATION

#### 19.1 MATERIAL BREACH

A Contractor may be Terminated for Cause by the OSP, at the sole discretion of the Contract Administrator, 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:

- A. 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;
- B. Contractor failure to carry out any warranty or fails to perform or comply with any mandatory provision of the contract;
- C. Contractor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder;
- D. 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;
- E. 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;
- F. 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.

## 19.2 OPPORTUNITY TO CURE

In the event that Contractor fails to perform a contractual requirement or materially breaches any term or condition, the OSP may issue a written cure notice. The Contractor may have a period of time in which to cure. The OSP 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 the Purchasing Activity. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages, or otherwise affects 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, the OSP may do any one or more of the following:

- A. Exercise any remedy provided by law;
- B. Terminate this Contract and any related Contracts or portions thereof;
- C. Procure replacements and impose damages as set forth elsewhere in this Contract;
- D. Impose actual or liquidated damages;
- E. Suspend or bar Contractor from receiving future Solicitations or other opportunities;
- F. 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.

## 19.3 TERMINATION FOR CAUSE

In the event the Contract Administrator, 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, the Contract Administrator has the right to suspend or terminate this Contract, in part or in whole. The Contract Administrator shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within thirty (30) calendar days or as otherwise specified by the Contract Administrator, or if such corrective action is deemed by the Contract Administrator to be insufficient, the Contract may be terminated. The Contract Administrator 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 the Contract Administrator to terminate the Contract.

In the event of termination, the OSP 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 the Purchasing Activity and/or the Purchaser provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

#### 19.4 TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract, the Purchasing Activity, at the sole discretion of the Contract Administrator, may terminate this Contract, in whole or in part by giving thirty (30) calendar days 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 the Purchasing Activity nor the Purchaser shall have any other obligation whatsoever to the Contractor for such termination. This Termination for Convenience clause may be invoked by the Purchasing Activity when it is in the best interest of the State of Washington.

#### 19.5 TERMINATION FOR WITHDRAWAL OF AUTHORITY

In the event that the Purchasing Activity 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, the Purchasing Activity may terminate this Contract, in whole or in part, by seven (7) calendar day's written notice to Contractor.

#### 19.6 TERMINATION FOR NON-ALLOCATION OF FUNDS

If funds are not allocated to Purchaser(s) to continue this Contract in any future period, Purchasing Activity may terminate this Contract by seven (7) calendar day's written notice 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. Purchasing Activity and/or Purchaser agrees 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 Purchasing Activity to terminate this Contract in order to acquire similar materials, supplies, services and/or equipment from a third party.

#### 19.7 TERMINATION FOR CONFLICT OF INTEREST

OSP 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, the Purchasing Activity 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.

19.8 TERMINATION BY MUTUAL AGREEMENT

The OSP and the Contractor may terminate this Contract in whole or in part, at any time, by mutual agreement.

19.9 TERMINATION PROCEDURE

In addition to the procedures set forth below, if the OSP terminates this Contract, Contractor shall follow any procedures the Contract Administrator specifies in the termination notice.

Upon termination of this Contract and in addition to any other rights provided in this Contract, Contract Administrator 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 the Purchasing Activity 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 the Contract Administrator and Purchaser determine to be necessary to protect the Purchaser against potential loss or liability.

The rights and remedies of the Purchasing Activity 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 the Contract Administrator, the Contractor shall:

- A. Stop all work, order fulfillment, shipments, and deliveries under the Contract on the date, and to the extent specified, in the notice;
- B. 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;
- C. Complete or fulfill such portion of the Contract that is not terminated in compliance with all contractual requirements;

- D. Assign to the Purchaser, in the manner, at the times, and to the extent directed by the Contract Administrator 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.
- E. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contract Administrator and/or the Purchaser to the extent Contract Administrator and/or the Purchaser may require, which approval or ratification shall be final for all the purposes of this clause;
- F. Transfer title to the Purchaser and deliver in the manner, at the times, and to the extent directed by the Contract Administrator on behalf of the Purchaser any property which, if the contract had been completed, would have been required to be furnished to the Purchaser;
- G. Take such action as may be necessary, or as the Contract Administrator 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 the Purchasing Activity and/or the Purchaser has or may acquire an interest.

## 20. CONTRACT EXECUTION

### 20.1 PARTIES

This Contract ("Contract") is entered into by and between the state of Washington, acting by and through *OSP*, an agency of Washington State government ("*OSP*, Purchasing Activity" or "*State*" located at 210 11<sup>th</sup> Ave. SW, Olympia, Washington 98501, and the Contractor identified in the Summary of Award and Signature page, a corporation or sole proprietor or other business form, licensed to conduct business in the state of Washington ("*Contractor*"), located at Contractor's address identified in the Summary of Award and Signature page for the purpose of providing fuel and fuel delivery services in conformity with this contract.

### 20.2 ENTIRE AGREEMENT

This Contract document and all subsequently issued amendments comprise the entire agreement between the Purchasing Activity and the Contractor. No other statements or representations, written or oral, shall be deemed a part of the Contract.

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled Contractor Commitments, Warranties and Representations, understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, Price, quality, or Specifications of this Contract will be effective without the written consent of both parties.

## 20.3 INCORPORATED DOCUMENTS, ORDER OF PRECEDENCE, CONFLICT AND CONFORMITY

### 20.3.1 Incorporated Documents:

Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.

- A. The OSP's Solicitation document with all attachments and exhibits, and all amendments thereto
- B. Contractor's response to the Solicitation
- C. OSP's Award Letter Notification to the Apparent Successful Bidder;

The terms and conditions contained on Purchaser's Order Documents, if used; and All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to Purchaser and used to affect the sale of the Product to the Purchaser.

### 20.3.2 Order of Precedence

In the event of a conflict in such terms, or between the terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- A. Applicable Federal and State of Washington statutes and regulations
- B. Mutually agreed written amendments to this Contract
- C. OSP's Award Letter Notification to the Bidder
- D. This Contract
- E. The OSP's Solicitation document with all attachments and exhibits, and all amendments thereto
- F. Contractor's non-conflicting response to the Solicitation
- G. Any other provision, term, or materials incorporated into the Contract by reference.

### 20.3.3 Conflict

To the extent possible, the terms of this Contract shall be read consistently.

### 20.3.4 Conformity

If any provision of this Contract violates any Federal or State of Washington statute or rule of law, it is considered modified to conform to that statute or rule of law.

## 20.4 LEGAL NOTICES

Any legal notice or demand or other communication required or permitted to be given under this Contract or applicable law (except notice of malfunctioning Equipment) is 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, to the parties at the addresses provided in this section. *The words "Legal Notice" must conspicuously appear on the outside of any envelope or container to OSP.*



The parties may provide emergency notifications or advance courtesy notifications in addition to but not as a substitute for the correspondence requirements described above.

To Contractor at:	To OSP at:
Associated Petroleum Products, Inc.	State of Washington Office of State Procurement (OSP)
Attn: Brad Buckhalter	Attn: <i>Legal Notice – Chief Procurement Officer</i>
P. O. Box 1397	210 11 <sup>th</sup> Ave. SW, Rm. 201
Tacoma, WA 98401	P.O. Box 41017
	Olympia, WA 98504-1017
Emergency Notification or Advance Courtesy Notification In Addition To But Not As A Substitute For The Correspondence Requirement Described Above.	
Phone: 253.627.6179	Phone: (360) 902-7423 <u>and</u> 7400 (reception)
Fax: 253.627.3637	Fax: (360) 586-2426
E-mail:  <u>bradb@associatedpetroleum.com</u>	E-mail: <u>keith.farley@ga.wa.gov</u> and <u>csmail@ga.wa.gov</u>

Notices are effective upon receipt or four (4) Business Days after mailing, whichever is earlier. 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 this Contract is served upon Contractor or OSP, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and OSP 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.

**20.5 LIENS, CLAIMS AND ENCUMBRANCES [REQUIRED]**

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

**20.6 AUTHORITY TO BIND [REQUIRED]**

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

20.7 COUNTERPARTS

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

**SUMMARY OF AWARD AND SIGNATURES**

**Office of State Procurement Use Only**

*The Office of State procurement reserves the right to make single and multiple awards and to award all-or-nothing, aggregate, groups, or by line item.*

Summary of Award:

<input type="checkbox"/> Central Puget Sound Region (Bulk)	<input checked="" type="checkbox"/> Central Puget Sound Region (K-F/W-C)
<input type="checkbox"/> North Central Region (Bulk)	<input type="checkbox"/> North Central Region (K-F/W-C)
<input checked="" type="checkbox"/> North Puget Sound Region (Bulk)	<input checked="" type="checkbox"/> North Puget Sound Region (K-F/W-C)
<input type="checkbox"/> Northeast Region (Bulk)	<input type="checkbox"/> Northeast Region (K-F/W-C)
<input checked="" type="checkbox"/> Peninsula Region (Bulk)	<input checked="" type="checkbox"/> Peninsula Region (K-F/W-C)
<input type="checkbox"/> South Central Region (Bulk)	<input type="checkbox"/> South Central Region (K-F/W-C)
<input type="checkbox"/> Southeast Region (Bulk)	<input type="checkbox"/> Southeast Region (K-F/W-C)
<input type="checkbox"/> Southwest Region (Bulk)	<input type="checkbox"/> Southwest Region (K-F/W-C)

\*\*\*\*\*

<input checked="" type="checkbox"/> Full Award / <input type="checkbox"/> Partial Award	<input checked="" type="checkbox"/> Single Award / <input type="checkbox"/> Multiple Award
---	--

\*\*\*\*\*

The Award is identified/detailed or further identified/detailed in OSP's formal Award Letter to the Apparent Successful Bidder dated 4/20/2011 and is incorporated by reference.

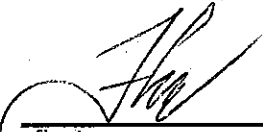
**In Witness Whereof**, the parties hereto, having read and understood this Contract in its entirety, including but not limited to, the Bidder's Authorized Offer (Firm Offer), Certification of Assurances, and all attachments, do agree in each and every particular and have thus set their hands hereunto.

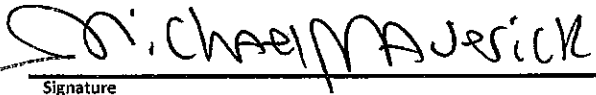
This Contract is effective this 20 day of April, 2011.  See Award Letter

Date completed by State Procurement only

Approved – Bidder (Contractor if Awarded)

Approved – State of Washington

  
 \_\_\_\_\_  
 Signature  
 Frank D. Pupo, Jr. 4-11-11  
 \_\_\_\_\_  
 Print or Type Name Date  
 Executive V.P./COO  
 \_\_\_\_\_  
 Title

  
 \_\_\_\_\_  
 Signature  
 Michael Maverick 4/20/11  
 \_\_\_\_\_  
 Print or Type Name Date  
 Procurement Unit Manager  
 \_\_\_\_\_  
 Title

**Associated Petroleum Products, Inc.**

**Department of General Administration  
Office of State Procurement**

Business Name

Business Name

2320 Milwaukee Way  
P.O. Box 1397  
Tacoma, WA 98401

210 11<sup>th</sup> Ave. SW, Room 201  
P.O. Box 41017  
Olympia, WA 98504-1017

Address

Address

253.627.6179

(360) 902-7430

(360) 902-7400 - Reception

Telephone

Telephone

253.627.3637

(360) 586-2426

Facsimile

Facsimile

fpupo@associatedpetroleum.com

[michael.maverick@ga.wa.gov](mailto:michael.maverick@ga.wa.gov)

[csmail@ga.wa.gov](mailto:csmail@ga.wa.gov) (alternate)

E-Mail

E-Mail

\*\*\*\*\*

*Michael Jones, Unit Manager*  
Additional State Procurement Approval (if necessary)

*4-20-11*  
Date

END OF PART 2 – CONTRACT  
APPENDIXES AND/OR SUBMITTALS BEGIN BELOW


*Joe Carlson*      *4-20-11*  
Procurement Unit Manager

*Keth Farley*      *4-20-11*

**DUPLICATE**  
**ORIGINAL**  
MM

## APPENDIX A STANDARD DEFINITIONS

**This section contains definitions of terms commonly used in Solicitations conducted by the State of Washington, Office of State Procurement. Additional definitions may also be found in Chapter 43.19 RCW and WAC 236-48-003, and all terms contained herein will be read consistently with those definitions.**

- Acceptance                    The materials, supplies, services, and/or equipment have passed appropriate inspection. 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, acceptance may occur when the Products are delivered and inspected.
- Acceptance Testing        The process for ascertaining that the materials, supplies, services, and/or equipment meets the standards set forth in the Solicitation, prior to Acceptance by the Purchaser.
- Agency                      Includes 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. In addition, colleges, community colleges, and universities who choose to participate in State Contract(s) are included. "Agency" does not include the legislature.
- All or Nothing              The result of a competitive Solicitation that requires that a Contract be executed with a single Bidder for delivery of goods and/or services. In the event that suppliers are unable to deliver the entirety of the goods and/or services required, no Contract is executed. No partial fulfillment opportunities are available as a result of the Solicitation  
A method of award resulting from a competitive Solicitation by which the Purchasing Activity will award the resulting Contract to a single Bidder.
-  Also, a designation the Bidder may use in its Bid or Response to indicate its offer is contingent upon full award and it will not accept a partial award.

Alternate	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.
Amendment	A change to a legal document. For the purposes of a Solicitation document, an amendment shall be a unilateral change issued by the Purchasing Activity, at its sole discretion.
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 concerning the terms and conditions set forth in Solicitation, Bid and Contract documents.
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 Bid or Proposal in reply to a Solicitation.
Business Days	Monday through Friday, 8:00 a.m. to 5:00 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 person designated to manage the resultant Contract for the Purchasing Activity. The primary contact for the Purchasing Activity with Purchasers and Contractor on a specific Contract.
Contractor	Individual, company, corporation, firm, or combination thereof with whom the Purchasing Activity 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.
Equal	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.
Estimated Useful Life	The estimated time from the date of acquisition to the date of replacement or disposal, determined in any reasonable manner.

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.
Invitation For Bid (IFB)	The form utilized to solicit Bids in the formal, sealed Bid procedure and any amendments thereto issued in writing by the Purchasing Activity. Specifications and qualifications are clearly defined.
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.
Life Cycle 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.
Office Of State Procurement	The Purchasing Activity within the Washington Department of General Administration, Services Division authorized under Chapter 43.19 RCW to develop and administer contracts for goods and services on behalf of state agencies, colleges and universities, non-profit organizations and local governments.
Order Document	A written communication, submitted by a Purchaser to the Contractor, which details the specific transactional elements required by 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.
Procurement Coordinator	The individual authorized by the Purchasing Activity who is responsible for conducting a specific Solicitation.
Product	Materials, supplies, services, and/or equipment provided under the terms and conditions of this Contract.

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.
Purchasing Activity	The Office of State Procurement or an Agency authorized by law to conduct acquisition of materials, supplies, services, and/or equipment or delegated that authority by the Office of State Procurement.
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 Bid procedure and any amendments thereto issued in writing by the Purchasing Activity. 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.
Responsible	The ability, capacity, and skill to perform the Contract or provide the service required, including, but not limited to the character, integrity, reputation, judgment, experience, and efficiency of the Bidder; Further considerations may include, but are not limited to whether the Bidder can perform the contract within the time specified, the quality of performance of previous contracts or services, the previous and existing compliance by the Bidder with laws relating to the contract or services and such other information as may be secured having a bearing on the decision to award the contract:
Responsive	A Bid or Proposal that meets all material terms of the Solicitation document.
Response	A Bid or Proposal

Solicitation	The process of notifying prospective Bidders that the Purchasing Activity 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.
State	The State of Washington acting by and through the Purchasing Activity.
State Contract	<p>The written document memorializing the agreement between the successful Bidder and the Purchasing Activity for materials, supplies, services, and/or equipment and/or administered by the Office of State Procurement on behalf of the State of Washington.</p> <p>“State Contract” does not include the following:</p> <ul style="list-style-type: none"><li>• Colleges and universities that choose to purchase under <u>RCW 28B.10.029</u></li><li>• Purchases made in accordance with state purchasing policy under <u>Washington Purchasing Manual Part 6.11 Best Buy Program</u>;</li><li>• Purchases made pursuant to authority granted or delegated under <u>RCW 43.19.190(2) or (3)</u></li><li>• Purchases authorized as an emergency purchase under <u>RCW 43.19.200(2)</u>; or</li><li>• Purchases made pursuant to other statutes granting the Agency authority to independently conduct purchases of materials, supplies, services, or equipment.</li></ul>
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 the Purchasing Activity.
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 General Administration located at: <a href="http://www.ga.wa.gov/webs">www.ga.wa.gov/webs</a> .



## APPENDIX B BIDDER PROFILE

### COMPANY INFORMATION

Contractor Information: Provide the below information, which will be used for contract administration: For example: the legal business name, legal status (*e.g.*, corporation, sole proprietor, etc.) and the year the entity was organized to do business as the entity now substantially exists, Washington State Uniform Business Identification (UBI) number, the home office address, and telephone and fax numbers, web site URL (if any), and organizational chart of the legal entity with whom the Purchasing Activity may execute any Contract arising from this IFB, including the names and titles of Bidder's principal officers.

1. Federal Tax Identification number: 91-1186058
2. WA State Department of Revenue Registration Tax number 600-644-597
3. Company Internet URL Address (if available): [www.associatedpetroleum.com](http://www.associatedpetroleum.com)

4. Company Mailing Addresses 

Associated Petroleum Products, Inc. PO Box 1397 Tacoma, WA 98401
--
5. Orders to be sent to: 

Associated Petroleum Products, Inc. 2320 Milwaukee Way, Tacoma, WA 98421 Fax: 253.627.3637
--
6. Billing will be from 

Associated Petroleum Products, Inc. 2320 Milwaukee Way Tacoma, WA 98421
---
7. Payment to be sent to 

Associated Petroleum Products, Inc. PO Box 1397 Tacoma, WA 98421
--

**RECIPROCITY**

Firms bidding from California only: Is your firm currently certified as a small business under California Code, Title 2, Section 1896.12? Yes  No

**REFERENCES**

Provide a minimum of seven (7) commercial or governmental references for which Bidder has delivered goods and/or services similar in scope as describe in the IFB.

1) Agency/Company Name:	Gordon Trucking Inc.
Address:	151 Stewart Rd. SW, Pacific, WA 98047
Contact Person:	Kimberly Boyd – <a href="mailto:kboyd@gordontrucking.com">kboyd@gordontrucking.com</a>
Telephone:	800.426.8486 x4134
Product Provided /Approx. Dollar Cost	Bulk Clear ULSD #2 – Approx. \$3.5 Million Annually

2) Agency/Company Name:	King County Metro
Address:	640 S. Massachusetts Street, Seattle, WA 98134
Contact Person:	Elie Kourdahi – <a href="mailto:elie.kourdahi@kingcounty.gov">elie.kourdahi@kingcounty.gov</a>
Telephone:	206.684.2743
Product Provided /Approx. Dollar Cost	Bulk Dyed ULSD #2 – Approx. \$30 Million Annually

3) Agency/Company Name:	SSA Terminals
Address:	PO Box 24868, Seattle, WA 98124
Contact Person:	John Bell – <a href="mailto:john.bell@ssamarine.com">john.bell@ssamarine.com</a>
Telephone:	Office 206.654.3770 / Cell 206.786.2572
Product Provided /Approx. Dollar Cost	Bulk Fleet Fueling – Approx. \$3 Million Annually

4) Agency/Company Name:	Skagit Transit System
Address:	600 County Shop Lane, Burlington, WA 98233
Contact Person:	Ben Haigh – <a href="mailto:bhaigh@skat.org">bhaigh@skat.org</a>
Telephone:	360.757.8801
Product Provided /Approx. Dollar Cost	Bulk Clear ULSD #2 – Approx. \$1 Million

Bidder Company Name: \_\_\_\_\_

5) Agency/Company Name:	Washington Department of Transportation
Address:	5720 Capital Blvd., Bldg #2, Tumwater, WA 98501
Contact Person:	Linda Jones – <a href="mailto:jonesl@wsdot.wa.gov">jonesl@wsdot.wa.gov</a>
Telephone:	360.357.2635
Product Provided /Approx. Dollar Cost	Bulk Dyed ULSD #2 & Gasoline – Approx. \$3 Million Annually

6) Agency/Company Name:	Washington State Department of Transportation
Address:	6431 Corson Ave. S, Seattle, WA 98108
Contact Person:	John Werner – <a href="mailto:wernerj@wsdot.wa.gov">wernerj@wsdot.wa.gov</a>
Telephone:	206.768.5820
Product Provided /Approx. Dollar Cost	Bulk Dyed ULSD #2 & Gasoline – Approx. \$4 Million Annually

7) Agency/Company Name:	Defense Logistics Agency Energy
Address:	8725 John J Kingman Rd. Ste. 3938, Ft. Belvoir, VA 22060
Contact Person:	Nick Ignacio – <a href="mailto:Nicholas.ignacio@dla.mil">Nicholas.ignacio@dla.mil</a>
Telephone:	703.767.9526
Product Provided /Approx. Dollar Cost	Bulk Dyed ULSD #2, Clear ULSD #2 & Gasoline – Approx. \$3.5 Million

**SUBCONTRACTORS:**

Identify any subcontractors who will perform services in fulfillment of contract requirements; the nature of services to be performed and include federal tax identification (TIN) number for each subcontractor.

Name/Address/Contact/Phone	T.I.N.:	Brief description of the nature of Service Provided (e.g. testing, sampling, pick-up, etc):
N/A	N/A	N/A

Bidder Company Name: \_\_\_\_\_

**SALES & ORDERING INFORMATION**

Bidder shall complete the following information and return with bid response.

1.

Sales Representative(s): Indicate below the contact information and specific territories covered:			
Name:	<u>Frank Pupo, Jr.</u>	Name:	<u>Kelli McCann</u>
Telephone:	<u>253.627.6179</u>	Telephone:	<u>253.627.6179</u>
Toll Free No.	<u>800.929.5243</u>	Toll Free No.	<u>800.929.5243</u>
Mobile Phone	<u>N/A</u>	Mobile Phone	<u>253.255.5652</u>
Territory	<u>All</u>	Territory	<u>All</u>
Fax:	<u>253.627.3637</u>	Fax:	<u>253.627.3637</u>
Email:	<u>fpupo@associatedpetroleum.com</u>	Email:	<u>kmccann@associatedpetroleum.com</u>

2. Payment Term: Prompt Payment Discount 0 (zero) % 30 days. Note: Prompt payment IS NOT an evaluation consideration.

SEE ALSO, SECTION 5.8

3. Purchasing (Credit) Cards accepted: Yes  No

(Washington State Purchasing card is VISA) If yes, please list cards accepted:

Visa  Master Card  American Express  Discover  Other \_\_\_\_\_

SEE ALSO, SECTION 5.7

4. Pricing Components: To better estimate market fluctuations and influences with regard to the product(s) being bid, bidders are to identify the percent breakdown for the following:

Contracted Products: 95 %  
 Service Costs: 3 %  
 Overhead: 2 %  
 Total: 100%

**Note: The Successful Bidder(s) may be required to provide a more detailed breakdown and supporting documentation to validate.**

Bidder Company Name: \_\_\_\_\_

**APPENDIX C PRICE WORKBOOKS BY REGION / CATEGORY**

<b>Region</b>	<b>Counties within the Region</b>
(CPS) Central Puget Sound	King, Pierce, Thurston, Special: McNeil Island has its own delivery fee
(NC) North Central	Chelan, Douglass, Grant, Okanogan
(NE) Northeast	Ferry, Lincoln, Pend Oreille, Spokane, Stevens
(NPS) North Puget Sound	Island, Skagit, Snohomish, Whatcom
(P) Peninsula	Clallam, Grays Harbor, Jefferson, Kitsap, Mason,
(SC) South Central	Benton, Kittitas, Klickitat, Yakima,
(SE) Southeast	Adams, Asotin, Columbia, Franklin, Garfield, Walla Walla, Whitman
(SW) Southwest	Clark, Cowlitz, Lewis, Pacific, Skamania, Wahkiakum
Not Serviced	San Juan – Is not initially a part of this contract. By mutual negotiation, it may become a part of this contract at a later time.

**Bulk = Bulk Category**

Each Excel File (workbooks) contains a “Price Sheet” worksheet. For each region the Bidder intends to bid, the Price Sheet must be returned with all shaded cells properly completed.

CPS Bulk.xls	NC Bulk.xls	NE Bulk.xls	NPS Bulk.xls	P Bulk.xls	SC Bulk Rev01.xls
SE Bulk.xls	SW Bulk.xls				

**KFWC = Keep-full / Will-call Category**

Each Excel File (workbooks) contains a “Price Sheet” worksheet. For each region the Bidder intends to bid, the Price Sheet must be returned with all shaded cells properly completed.

CPS KFWC.xls	NC KFWC.xls	NE KFWC Rev01.xls	NPS KFWC.xls	P KFWC.xls	SC KFWC Rev01.xls
SE KFWC.xls	SW KFWC.xls				

APPENDIX D SAMPLE INVOICE—KEEP-FULL / WILL-CALL & BULK DELIVERY

Keep-Full or Bulk Delivery—Sample Invoice ONLY						
Customer Name:	Department of Transportation		Date of Delivery :	04/15/10		
Customer P. O. Number:						
Delivery Location:	123 Smith Street NE, Olympia, WA		Customer Account #:	DOT-123		
Fuel Type	OPIS Daily Average	x	OPIS Multiplier	x	Gallons Delivered	Fuel Price
ULSD Dyed #2	\$2.34	x	0.9876	x	3800	\$8781.74
ULSD Dyed #1	\$2.56	x	0.9876	x	3800	\$9,607.37
B100 (Biodiesel)	\$3.45	x	1.2345	x	400	\$1,703.61
Biodiesel "Blender" Tax Credit (if applicable)			(\$1.00 per gallon)	x	400	(\$400.00)
Additives / Conditioners					\$0.00	
Service Fee (for 123 Smith Street NE, Olympia, WA)					\$100.00	
Emergency Service Fee			N/A		\$0.00	
Prompt Payment Discount (If applicable)			N/A		(\$0.00)	
Taxes		Gasoline	Diesel	Heating		
Washington State and Local Sales Tax		(As Applicable)	(As Applicable)	N/A		\$640.00
Washington State Hazardous Substance Tax		\$0.007/gal	\$0.007/gal	\$0.007/gal		\$56.00
Washington State Fuel Tax		\$0.31 /gal	\$0.31 /gal	N/A		\$248.00
Washington State Oil Spill Tax (per gallon)		\$0.010/gal	\$0.010/gal	\$0.010/gal		\$80.00
Federal Excise Tax		\$0.184/gal	\$0.244/gal	N/A		\$1,792.00
Heating Oil Insurance Fee		N/A	N/A	\$0.006/gal		\$0.00
Federal Lust Tax		.001/gal	.001/gal	.001/gal		\$8.00
Total					\$22,616.72	

**APPENDIX E KEEP-FULL SERVICE ACTIVATION WORKSHEET**  
**Contract 07705**  
**Customer Delivery Profile**

<b>Customer Name:</b>		<b>Proposed Activation Date:</b>	
<b>Delivery Site Location:</b>		<b>Send Invoices to:</b>	
<b>Address:</b>		<b>Address:</b>	
<b>City:</b>		<b>City:</b>	
<b>Zip:</b>		<b>Zip:</b>	
<b>Customer Representative #1</b>		<b>Customer Representative #1</b>	
<b>Name:</b>		<b>Name:</b>	
<b>Phone:</b>		<b>Phone:</b>	
<b>Mobile:</b>		<b>Mobile:</b>	
<b>Email:</b>		<b>Email:</b>	

Customer is to complete tank delivery profile information to the contractor at least 15-days prior to the requested activation date. So as to promote enterprise wide coordination of delivery schedules, customers are to identify the broadest possible refueling delivery windows allowable and immediately notify the contractor of any changes. Lastly, please be sure to indicate the days and times when a delivery can occur or cannot occur (i.e. and any special instructions if any).

<b>Tank #</b>	<b>Tank Size (gallons):</b>			<b>Fuel Type</b>			
<b>Consumption: (gallons)</b>	<b>Annual</b>	<b>Jan-Mar</b>	<b>Apr-Jun</b>	<b>Jul-Sep</b>	<b>Oct-Dec</b>		
Tank is above ground: <input type="checkbox"/> Tank is below ground: <input type="checkbox"/>							
A Keep-Full delivery must occur before the tank level reaches _____% of available capacity (default is 20%)							
Contractor to be granted remote access to electronic tank level monitoring system? Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>							
Contractor to identify how often tank level readings are to be reported by customer and by what method:							
<input type="checkbox"/> Weekly <input type="checkbox"/> Monthly <input type="checkbox"/> Other _____ <input type="checkbox"/> Fax # _____ <input type="checkbox"/> Email							
<b>Deliveries</b>	<b>Monday</b>	<b>Tuesday</b>	<b>Wednesday</b>	<b>Thursday</b>	<b>Friday</b>	<b>Saturday</b>	<b>Sunday</b>
<b>Can occur:</b>							
<b>Cannot occur:</b>							
<b>Special Instructions and Service Fees:</b>							

Customer Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Contractor Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## Attachments

The Bidder's Bid response package is incorporated by reference. The Attachments section does not change that condition. This section simply allows OSP to attach certain documents for ease of administrative operation.

The documents listed below are attached following this page.

**1. Copies of Associated Petroleum Products, Inc. Price Sheets that were verified and awarded under Contract 00311 (5 pages total).**

- Bulk – North Puget Sound
- Bulk – Peninsula
- Keep Full / Will Call – Central Puget Sound
- Keep Full / Will Call – North Puget Sound
- Keep Full / Will Call – Peninsula

**2. Copy of Award Letter (when available).**

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**REGION: NORTH PUGET SOUND (NPS) Bulk**

Bidder's must complete all shaded cells, i.e., OPIS Multiplier, Delivery Fees, Drop Fees, and DEF.  
Failure to complete will cause bid disqualification.

Line #	Eval. Fuel Price (For Eval. Purpose Only)	Rack Reference City	Fuel Type	County	Region	OPIS Multiplier (Bulk Order) (max of 4 digits to right of decimal)	Delivery Fee (Bulk Order)	Drop Fee (Bulk Order)	
1	\$2.51	Anacortes	Gasoline, Unleaded: All Types	NA	NPS	0.9995 ✓	NA	NA	
2	\$2.65	Anacortes	Diesel, ULSD #2 (CLEAR & DYED)	NA	NPS	0.9995 ✓	NA	NA	
3	\$2.83	Anacortes	Diesel, ULSD #1 (CLEAR & DYED)	NA	NPS	1.0250 ✓	NA	NA	
4	\$3.67	Tacoma	Biodiesel (B100) (CLEAR & DYED)	NA	NPS	0.9950 ✓	NA	NA	
5	\$2.65	Anacortes	Heating Oil	NA	NPS	0.9995 ✓	NA	NA	
6	NA	NA	NA	Island	NPS	NA	\$40.00 ✓	✓ \$25.00	
7	NA	NA	NA	Skagit	NPS	NA	\$40.00 ✓		
8	NA	NA	NA	Snohomish	NPS	NA	\$50.00 ✓		
9	NA	NA	NA	Whatcom	NPS	NA	\$40.00 ✓		
10	(unofficial) Fuel & Service Sub-total:						\$15,741,750.38	✓	
11	<p align="center"><b>DIESEL EXHAUST FLUID (DEF)</b>                  (Prices are FOB Destination, Freight Prepaid and Included)                  API Certified high quality DEF.                  ISO 22241 standards for handling, transporting and storing.                  Do not include pumping equipment or taxes (billed separately on invoice).                  All other costs rolled into the per gallon price. Totes are subject to tote exchange.</p>								
12	Year	Est. in Gallons	Per Gallon Price 275/gal Tote	Per Gallon Price 4,500/gal Bulk	Average	Total Est. x Ave. (unofficial)			
13	2011	20,000	\$1.85 ✓	\$1.05 ✓	\$1.45 ✓	\$29,000.00 ✓			
14	(unofficial) Price Sheet Total (Fuel & Service Sub-Total plus DEF Total):						\$15,770,750.38	✓	

Verified 3/2/11  
MM

Bidder Company Name: Associated Petroleum Products, Inc.

**REGION: Peninsula (P) Bulk**

Bidder's must complete all shaded cells, i.e., OPIS Multiplier, Delivery Fees, Drop Fees, and DEF.  
Failure to complete will cause bid disqualification.

Line #	Eval. Fuel Price (For Eval. Purpose Only)	Rack Reference City	Fuel Type	County	Region	OPIS Multiplier (Bulk Order) (max of 4 digits to right of decimal)	Delivery Fee (Bulk Order)	Drop Fee (Bulk Order)	
1	\$2.54	Tacoma	Gasoline, Unleaded: All Types	NA	P	0.9995 ✓	NA	NA	
2	\$2.67	Tacoma	Diesel, ULSD #2 (CLEAR & DYED)	NA	P	0.9995 ✓	NA	NA	
3	\$2.83	Anacortes	Diesel, ULSD #1 (CLEAR & DYED)	NA	P	1.0350 ✓	NA	NA	
4	\$3.67	Tacoma	Biodiesel (B100) (CLEAR & DYED)	NA	P	0.9950 ✓	NA	NA	
5	\$2.67	Tacoma	Heating Oil	NA	P	0.9995 ✓	NA	NA	
6	NA	NA	NA	Clallam	P	NA	\$90.00 ✓	✓ \$25.00	
7	NA	NA	NA	Gray Harbor	P	NA	\$65.00 ✓		
8	NA	NA	NA	Jefferson	P	NA	\$65.00 ✓		
9	NA	NA	NA	Kitsap	P	NA	\$30.00 ✓		
10	NA	NA	NA	Mason	P	NA	\$40.00 ✓		
11	(unofficial) Fuel & Service Sub-total:						\$1,918,198.04	✓	
12	<p align="center"><b>DIESEL EXHAUST FLUID (DEF)</b>                  (Prices are FOB Destination, Freight Prepaid and Included)                  API Certified high quality DEF.                  ISO 22241 standards for handling, transporting and storing.                  Do not include pumping equipment or taxes (billed separately on invoice).                  All other costs rolled into the per gallon price. Totes are subject to tote exchange.</p>								
13	Year	Est. in Gallons	Per Gallon Price 275/gal Tote	Per Gallon Price 4,500/gal Bulk	Average	Total Est. x Ave. (unofficial)			
14	2011	0	\$2.15 ✓	\$1.35 ✓	\$1.75 ✓	\$0.00 ✓			
15	(unofficial) Price Sheet Total (Fuel & Service Sub-Total plus DEF Total):						\$1,918,198.04	✓	

Verified 3/2/11

MM

Bidder Company Name: Associated Petroleum Products, Inc.

**REGION: CENTRAL PUGET SOUND (CPS) KF/WC**

Bidder's must complete all shaded cells, i.e., OPIS Multiplier, Delivery Fees, Drop Fees, and DEF.  
Failure to complete will cause bid disqualification.

Line #	Eval. Fuel Price (For Eval. Purpose Only)	Rack Reference City	Fuel Type	County	Region	OPIS Multiplier (Keep Full / Will Call) (max of 4 digits to right of decimal)	Delivery Fee (Keep Full / Will Call Order)	Drop Fee (Keep Full / Will Call Order)	
1	\$2.54	Tacoma	Gasoline, Unleaded: All Types	NA	CPS	0.9990 ✓	NA	NA	
2	\$2.67	Tacoma	Diesel, ULSD #2 (CLEAR & DYED)	NA	CPS	0.9990 ✓	NA	NA	
3	\$2.83	Anacortes	Diesel, ULSD #1 (CLEAR & DYED)	NA	CPS	1.0000 ✓	NA	NA	
4	\$3.67	Tacoma	Biodiesel (B100) (CLEAR & DYED)	NA	CPS	0.9850 ✓	NA	NA	
5	\$2.67	Tacoma	Heating Oil	NA	CPS	0.9990 ✓	NA	NA	
6	NA	NA	NA	King	CPS	NA	\$50.00 ✓	✓ \$25.00	
7	NA	NA	NA	Pierce	CPS	NA	\$50.00 ✓		
8	NA	NA	NA	McNeil Island	CPS	NA	\$150.00 ✓		
9	NA	NA	NA	Thurston	CPS	NA	\$55.00 ✓		
10	Unofficial Fuel and Service Sub-total:						\$11,938,887.43	✓	
11	<p align="center"><b>DIESEL EXHAUST FLUID (DEF)</b>                      (Prices are FOB Destination, Freight Prepaid and Included)                      API Certified high quality DEF.                      ISO 22241 standards for handling, transporting and storing.                      Do not include pumping equipment or taxes (billed separately on invoice).                      All other costs rolled into the per gallon price. Totes are subject to tote exchange.</p>								
12	Year	Est. in Gallons	Per Gallon Price 275/gal Tote	Per Gallon Price 4,500/gal Bulk	Average	Total Est. x Ave. (unofficial)			
13	2011	49,000	\$1.85 ✓	\$1.05 ✓	\$1.45 ✓	\$71,050.00 ✓			
14	Unofficial Price Sheet Total (Fuel and Service Subtotal plus DEF Total):						\$12,009,937.43	✓	

Verified 3/3/11

MM

Bidder Company Name: Associated Petroleum Products, Inc.

**REGION: NORTH PUGET SOUND (NPS) KF/WC**

Bidder's must complete all shaded cells, i.e., OPIS Multiplier, Delivery Fees, Drop Fees, and DEF.  
Failure to complete will cause bid disqualification.

Line #	Eval. Fuel Price (For Eval. Purpose Only)	Rack Reference City	Fuel Type	County	Region	OPIS Multiplier (Keep Full / Will Call) (max of 4 digits to right of decimal)	Delivery Fee (Keep Full / Will Call Order)	Drop Fee (Keep Full / Will Call Order)	
1	\$2.51	Anacortes	Gasoline, Unleaded: All Types	NA	NPS	0.9995 ✓	NA	NA	
2	\$2.65	Anacortes	Diesel, ULSD #2 (CLEAR & DYED)	NA	NPS	0.9995 ✓	NA	NA	
3	\$2.83	Anacortes	Diesel, ULSD #1 (CLEAR & DYED)	NA	NPS	1.0250 ✓	NA	NA	
4	\$3.67	Tacoma	Biodiesel (B100) (CLEAR & DYED)	NA	NPS	0.9950 ✓	NA	NA	
5	\$2.65	Anacortes	Heating Oil	NA	NPS	0.9995 ✓	NA	NA	
6	NA	NA	NA	Island	NPS	NA	\$55.00 ✓	✓ \$25.00	
7	NA	NA	NA	Skagit	NPS	NA	\$55.00 ✓		
8	NA	NA	NA	Snohomish	NPS	NA	\$65.00 ✓		
9	NA	NA	NA	Whatcom	NPS	NA	\$55.00 ✓		
10	(unofficial) Fuel & Service Sub-total:						\$2,984,035.21	✓	
11	<p align="center"><b>DIESEL EXHAUST FLUID (DEF)</b>                  (Prices are FOB Destination, Freight Prepaid and Included)                  API Certified high quality DEF.                  ISO 22241 standards for handling, transporting and storing.                  Do not include pumping equipment or taxes (billed separately on invoice).                  All other costs rolled into the per gallon price. Totes are subject to tote exchange.</p>								
12	Year	Est. in Gallons	Per Gallon Price 275/gal Tote	Per Gallon Price 4,500/gal Bulk	Average	Total Est. x Ave. (unofficial)			
13	2011	20,000	\$1.85 ✓	\$1.05 ✓	\$1.45 ✓	\$29,000.00 ✓			
14	(unofficial) Price Sheet Total (Fuel & Service Sub-total plus DEF Total):						\$3,013,035.21	✓	

Verified 3/3/11  
NM

Bidder Company Name: Associated Petroleum Products, Inc

**REGION: Peninsula (P) KF/WC**

Bidder's must complete all shaded cells, i.e., OPIS Multiplier, Delivery Fees, Drop Fees, and DEF.  
Failure to complete will cause bid disqualification.

Line #	Eval. Fuel Price (For Eval. Purpose Only)	Rack Reference City	Fuel Type	County	Region	OPIS Multiplier (Keep Full / Will Call) (max of 4 digits to right of decimal)	Delivery Fee (Keep Full / Will Call Order)	Drop Fee (Keep Full / Will Call Order)	
1	\$2.54	Tacoma	Gasoline, Unleaded: All Types	NA	P	1.0025 ✓	NA	NA	
2	\$2.67	Tacoma	Diesel, ULSD #2 (CLEAR & DYED)	NA	P	1.0025 ✓	NA	NA	
3	\$2.83	Anacortes	Diesel, ULSD #1 (CLEAR & DYED)	NA	P	1.0350 ✓	NA	NA	
4	\$3.67	Tacoma	Biodiesel (B100) (CLEAR & DYED)	NA	P	1.0025 ✓	NA	NA	
5	\$2.67	Tacoma	Heating Oil	NA	P	1.0025 ✓	NA	NA	
6	NA	NA	NA	Clallam	P	NA	\$115.00 ✓	✓ \$25.00	
7	NA	NA	NA	Gray Harbor	P	NA	\$95.00 ✓		
8	NA	NA	NA	Jefferson	P	NA	\$95.00 ✓		
9	NA	NA	NA	Kitsap	P	NA	\$75.00 ✓		
10	NA	NA	NA	Mason	P	NA	\$85.00 ✓		
11	(unofficial) Fuel & Service Subtotal:						\$4,140,472.50 ✓		
12	<p align="center"><b>DIESEL EXHAUST FLUID (DEF)</b>                      (Prices are FOB Destination, Freight Prepaid and Included)                      API Certified high quality DEF.                      ISO 22241 standards for handling, transporting and storing.                      Do not include pumping equipment or taxes (billed separately on invoice).                      All other costs rolled into the per gallon price. Totes are subject to tote exchange.</p>								
13	Year	Est. in Gallons	Per Gallon Price 275/gal Tote	Per Gallon Price 4,500/gal Bulk	Average	Total Est. x Ave. (unofficial)			
14	2011	0	\$2.15 ✓	\$1.35 ✓	\$1.75 ✓	\$0.00 ✓			
15	(unofficial) Price Sheet Total (Fuel & Service Subtotal plus DEF Total):						\$4,140,472.50 ✓		

Verified 3/3/11

MM

Bidder Company Name: Associated Petroleum Products, Inc.





State of Washington

**Department of General Administration**

210 11<sup>th</sup> Avenue, SW • PO Box 41017 • Olympia, WA 98504-1017  
(360) 902.7400 • FAX (360) 586.4944

April 20, 2011

Associated Petroleum Products, Inc.  
Mr. Frank D. Pupo, Jr.  
2320 Milwaukee Way  
P.O. box 1397  
Tacoma, WA 98401

**SUBJECT:** Award Letter - WA State Solicitation 00311 – Delivered Fuel:  
Bulk and Keep Full / Will Call Service

Congratulations! The State of Washington has accepted the portion of your 00311 bid offer described below for an award on Solicitation 00311.

You should have already received OSP's Notification of Apparent Successful Bidder and Intent to Award (3/25/11) and the Notification of Award (4/20/11).

OSP has to Associated Petroleum Products Inc. the following region/categories:

- North Puget Sound (BULK)
- Peninsula (BULK)
- Central Puget Sound (KF/WC)
- North Puget Sound (KF/WC)
- Peninsula (KF/WC)

An award is accomplished by the state signing the reedited contract that you previously signed and by OSP notifying you of that result and/or sending to you one of the duplicate originals. However, as part of that process I need to cover a few important details in this Award Letter that is incorporated by reference into your contract.

**COPY**

The state reserved the right to award by line item, group, aggregate, or all-or-nothing. As such, the solicitation could have resulted in partial or multiple awards. In the Summary of Award and Signatures section (Signature Page) that follows section 20.7, the state has designated your award as a full award and as a single award. A full award means that for your region/category that OSP is not limiting any part of the award. A single award means that for your region/category your company is not sharing any portion of the region/category with any other bidder.

Conditional Award: Under WA's procurement law, awards can be cancelled if we later learn we've made a mistake warranting cancellation. Therefore, I recommend your company refrain from any large business expenditures until it is clear that the award will hold; business expenditures are at your risk and expense.

Clarifications: Solicitation 00311 allowed for clarifications. Clarifications made by the ASB may be made part of the contract. Any clarifications that were accepted were identified in the reedited contract in section 6.8 – Clarifications.

Registration in WEBS: In conformity with the Contract section 10.9 - WEBS, Contractor shall be registered in the Contractor registration system, Washington's Electronic Business Solution (WEBS) [www.ga.wa.gov/webs](http://www.ga.wa.gov/webs), maintained by the Washington State Department of General Administration. Contractors already registered need not re-register. It is the sole responsibility of Contractor to properly register with WEBS and maintain an accurate Contractor profile in WEBS.

Registration in Statewide Vendor Payment System: In conformity with the Contract section 10.6 – Statewide Vendor Payment Registration, Contractor shall be registered in the Contractor registration system. To obtain registration materials go to <http://www.ofm.wa.gov/accounting/vendors.asp>

Purchasers: The contract requires the Contractor to police sales to only those authorized to use the contract for your region/category. Please refer to Contract section 8.6 – Purchasers for contract details and the web links that direct you to our list of current authorized customers.

Expiration: This contract will may run for two years from the first day of performance unless both parties mutually agree to an extension. Within the Signature Page is a line stating the effective date of the contract that includes an option box directing the reader to refer to this letter. That date stated in that section is the date of award and is not the date of the first day of performance. The first day of performance includes the 30-day implementation window and is anticipated to be May 21, 2011 but may have to be modified depending on circumstances not yet known. Should the anticipated date be modified, OSP will contact you by separate written communication as follow-on to this letter.

CADW



Sales and Subcontractor Reports: In conformity with Contract section 10.7 – Sales Reports, the Contractor shall provide a Sales and Subcontractor Report to the Office of State Procurement on a quarterly basis in the electronic format provided by the Office of State Procurement at: <https://fortress.wa.gov/ga/apps/CSR/Login.aspx>. Reports must be submitted electronically within thirty (30) days after the end of the calendar quarter, i.e., no later than April 30th, July 31st, October 31st and January 31st.

*OSP is self funded and generates revenue from contract customers based on accurate Contractor sales (aka usage) reporting. Following contract award, the Contractor shall designate a primary and alternate Usage Reporting point of contact that will ensure this provision is properly satisfied. The point of contact shall be reasonably available with no lengthy delays. OSP cannot tolerate delinquent or inaccurate reporting by the Contractor. Failure of this provision is grounds for immediate contract suspension or immediate contract termination without opportunity to cure, in addition to other remedies that may be allowed by the contract or law.*

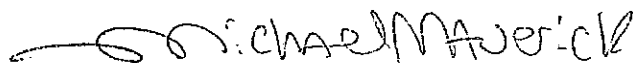
Insurance: The insurance provision of the Model Contract, section 17.8 is lengthy. Upon request, the Contractor is required to provide a Certificate of Insurance (COI) within 15 business days or be in breach and subject to termination. In the past, Contractors or their brokers have provided a COI that contains additional language that seems to conflict with the states contract requirements. Such deviations include pen and ink changes or preprinted language on the back of the COI. *Understand that OSP would read the COI's front and back for compliance. If the form has preprinted but conflicting language you'll need to have an accompanying signed document that directs us to ignore the conflicting language.*

Direct Purchase (Best Buy) Legislation: Current WA Purchasing law allows an authorized purchaser to make a best buy challenges. Please refer to Contract section 11.13 – Direct Purchases for expanded details.

The items and issues identified in this letter are not an exclusive list. Many more contract terms apply that are equally important.

In closing, the Office of State Procurement is excited to be partnering with Associated Petroleum Products. Congratulations on your award.

Sincerely,

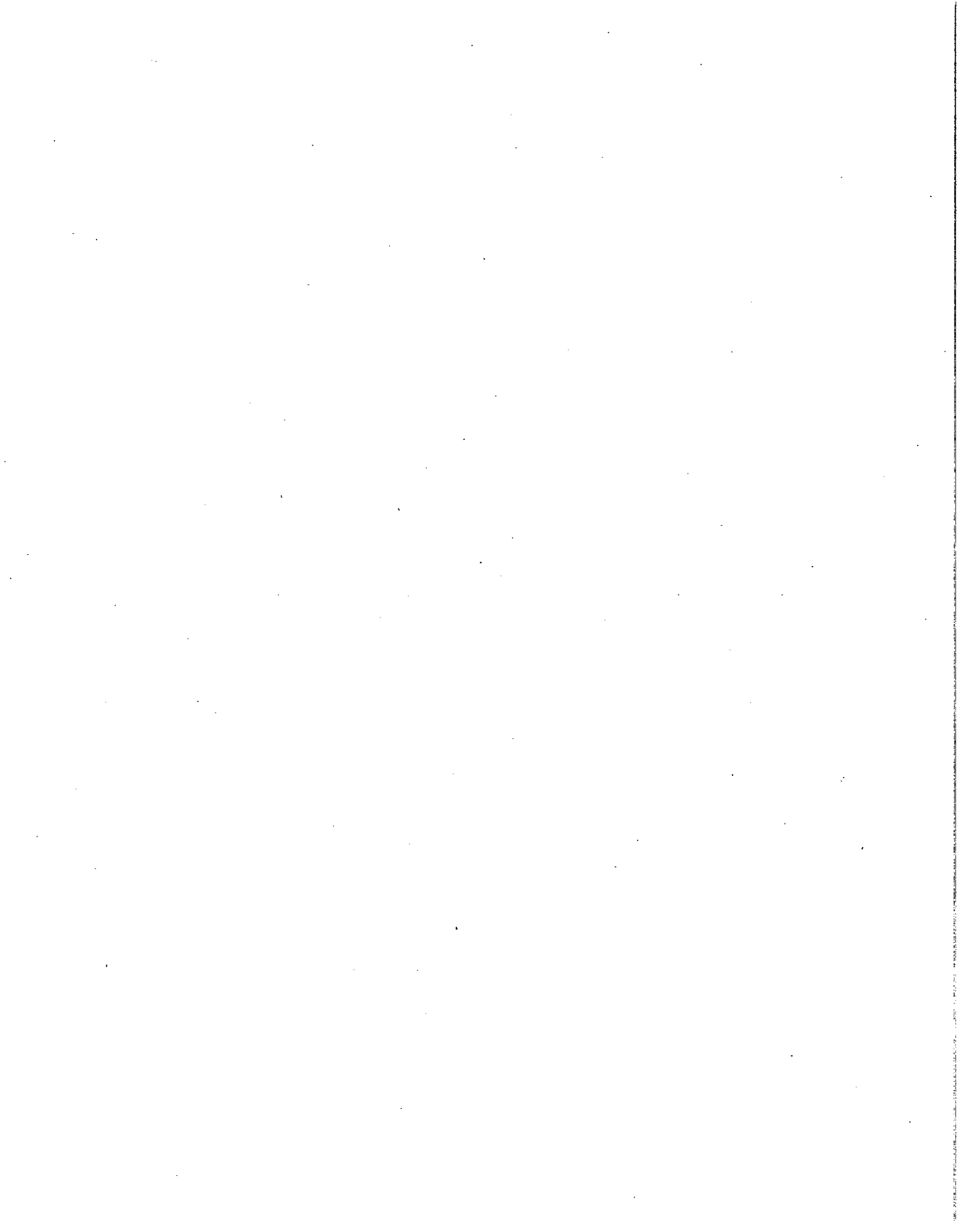


MICHAEL MAVERICK

Manager – Team 3

cc: contract file # 00311

COPY



## **Maverick, Michael (GA)**

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**From:** Maverick, Michael (GA) on behalf of GA Fuel Rebid  
**Sent:** Thursday, April 21, 2011 8:10 AM  
**To:** 'Frank Pupo, Jr.'; 'Kelli McCann'; 'bids@colemanoil.com'; 'Jim Cach'; 'stolton@petrocard.com'; 'Debra D. Parsons'; 'Tony Christensen'; 'travisp@seaportpetroleum.com'; 'aaron@wilcoxandflegel.com'  
**Cc:** Farley, Keith M. (GA)  
**Subject:** 00311 Award Letter Correction (Initial Term Period is One Year)

Good Morning Everyone,

Yesterday I issued a Notification of Award to all 00311 bidders and then to the awarded contractors, I issued an Award Letter that is incorporated by reference into the 00311 contract that I'll be sending out today by mail to your companies.

I've been alerted to an error in the Award Letter document. It states that the contract will run for two years from the first day of performance; a drafting error on my part. The 00311 contract in section 8.5 clearly states that it is a one year period from the first day of performance. Therefore, the initial term on contract 00311 is one year from first day of performance.

My normal practice is to immediately issue a formal correction on letterhead but I know the moment I do, I'll learn of another drafting error. I'd like to use emails as temporary placeholders for a period of time and then issue an Award Letter Correction Letter sometime in the near future. For now, please print this out and attach to your official Award Letter.

I pride myself with an overdeveloped sense of attention to detail which failed me and I apologize for my error.

**Michael Maverick** ■ **Manager - Team 3** ■ 360.902.7430 ■ **NOTE:** email address has changed to - [michael.maverick@ga.wa.gov](mailto:michael.maverick@ga.wa.gov)

**WA DEPARTMENT OF GENERAL ADMINISTRATION** ■ 210 -11<sup>TH</sup> AVENUE SW ■ PO BOX 41017 ■ OLYMPIA, WA 98504-1000 ■ [www.ga.wa.gov](http://www.ga.wa.gov)

*Defeat is temporary; giving up is permanent*

