

## Invitation for Bid 04915-2

### Fencing Materials and Related Products

The Washington State Department of Enterprise Services, Contracting Procurement and Risk Management (DES), issues this Invitation for Bid (IFB) under the authority of the Revised Code of Washington (RCW) [39.26](#). DES reserves the right to modify dates and times. Any changes will be sent electronically as amendments to all users of Washington's Electronic Business Solution (WEBS) who download this IFB. Commodity Codes: 330-13, 330-58.

#### Important Dates

**Posting date**.....August 28, 2015  
**Question-and-answer period** .....August 28, 2015- Sept. 10, 2015 NLT 12p.m.  
**Answers Due Posted on WEBS**.....Sept. 11, 2015  
**Bids are due**.....Sept. 25, 2015, NLT 2 p.m.  
**Announce Apparent Successful Bidder**.....Sept. 29, 2015  
**Anticipated award date**.....October 16, 2015

#### IFB Contact Information

**Procurement coordinator**..... Teri Lund  
 (360) 407-8529  
[teri.lund@des.wa.gov](mailto:teri.lund@des.wa.gov)  
**Email bids to**..... [DESFacilitiGroundRec@des.wa.gov](mailto:DESFacilitiGroundRec@des.wa.gov)  
 Subject Line will be:  
 IFB 04915, Fencing Materials and Related Products

#### Bid Submittals Checklist

- Signature (REQUIRED):** Complete as instructed a signed copy of the [Bidder's Authorized Offer](#).
- Price Worksheet (REQUIRED):** Complete as instructed and return a copy of the [Price Worksheet Appendix B](#). Failure to complete this submittal as instructed may result in a bid being rejected for lack of responsiveness.
- Bidder Profile (REQUIRED):** Complete as instructed and return a copy of the [Bidder Profile Appendix C](#).
- IFB amendments (AS INSTRUCTED):** If instructed to do so in any amendment to this IFB, sign and return a copy. Failure to sign and return any required amendments to this IFB, may result in a bid being rejected for lack of responsiveness. When in doubt, sign and return a copy of all IFB amendments.

## CONTENTS

<b>1</b>	<b>SUMMARY OF OPPORTUNITY</b>	<b>4</b>
1.1	Purpose of the IFB	4
1.2	Purchasers	4
1.3	Contract term	4
1.4	Estimated sales	4
1.5	Material requirements (if applicable)	4
1.6	Contractor Qualifications and Requirements	4
1.7	Delivery requirements (if applicable)	5
<b>2</b>	<b>IFB OVERVIEW</b>	<b>5</b>
2.1	Announcement and special information	5
2.2	Complaint, debrief and protest (general information)	6
2.3	Washington's Electronic Business Solution (WEBS)	6
2.4	Amendments	7
2.5	Bidder communication responsibilities	7
2.6	Bidder responsiveness	7
2.7	Pricing	7
2.8	Management fee	8
2.9	Contract sales report	8
2.10	Non-endorsement and publicity	9
2.11	No costs or charges	9
2.12	Dealer authorization	9
2.13	Economic and environmental goals	9
<b>3</b>	<b>PREPARATION OF BIDS</b>	<b>10</b>
3.1	Bid submittals checklist	10
3.2	Format	10
3.3	Electronic Bids	10
3.4	Confidentiality, proprietary material and trade secrets	11
3.5	Due date and time	11
3.6	Bid opening	11
<b>4</b>	<b>EVALUATION AND AWARD</b>	<b>11</b>
4.1	General provisions	11
4.2	Determination of responsiveness	12
4.3	Determination of responsibility	12
4.4	Price evaluation	13
4.5	Technical specifications evaluation	13
4.6	Selection of Apparent Successful Bidder	13
4.7	Announcement of Apparent Successful Bidder	14
4.8	Award	14
4.9	Bid information availability after award	14
<b>5</b>	<b>CONTRACT INFORMATION</b>	<b>14</b>
5.1	Incorporated documents and order of precedence	14
5.2	Parties	15
5.3	Authority to bind	15
5.4	Counterparts	15
5.5	Changes	15
5.6	Price adjustments	15
5.7	Miscellaneous expenses	16

<b>6</b>	<b>APPENDICES .....</b>	<b>16</b>
	Appendix A: Master Contract Terms and Conditions .....	16
	Appendix B: Price Worksheet .....	16
	Appendix C: Bidder Profile.....	16
	Appendix D: Complaint, Debrief and Protest procedures .....	16
	Appendix E: Procurement Reform Small Business Fact Sheet .....	16
	Appendix F: Technical Specifications.....	16
<b>7</b>	<b>CERTIFICATIONS AND ASSURANCES .....</b>	<b>17</b>
<b>8</b>	<b>BIDDER'S AUTHORIZED OFFER and CONTRACT SIGNATURE PAGE .....</b>	<b>18</b>

## **1 SUMMARY OF OPPORTUNITY**

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### **1.1 Purpose of the IFB**

The purpose of this IFB is to establish up to three (3) contracts per Service Regional Area 33 to replace previous contract 02609. Purchasers will use the resulting contracts to purchase material, such as chain link and field fencing, for both the construction of new fences and maintenance/renewal of existing fences.

### **1.2 Purchasers**

The contract will be available for use by all Washington state agencies and authorized parties to the [Master Contracts Usage Agreement](#) (MCUA), including institutions of higher education, cities and counties, other political subdivisions or special districts, and nonprofit corporations. Their orders are subject to the same contract terms, conditions and pricing as state agencies.

The contract will also be available for use by the Oregon Cooperative Purchasing Program (ORCPP) based on the contractor's acceptance.

While use of the contract is optional for political subdivisions and nonprofit corporations authorized by the MCUA and ORCPP, these entities' use of the contracts can significantly increase the purchase volume. DES accepts no responsibility for orders or payment by MCUA or ORCPP members.

MCUA members: <https://fortress.wa.gov/ga/apps/ContractSearch/MCUAListing.aspx>

ORCPP members: <http://www.oregon.gov/DAS/EGS/ps/ORCPP/orcppMemberList.pdf>

### **1.3 Contract term**

The initial term of this Contract is two (2) years from date of award with the option to extend for additional term(s) or portions thereof. Extension for each additional term shall be offered at the sole discretion of the Purchasing Activity and are subject to written mutual agreement. The total Contract term, including the initial term and all subsequent extensions, shall not exceed ten (10) years unless an emergency exists and/or special circumstances require a partial term extension. The state reserves the right to extend with all or some of the Contractors, solely determined by the state.

### **1.4 Estimated sales**

Based on projected usage, it is estimated that purchases over the two initial term of the Contract may approximate \$500,000.00. 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.

### **1.5 Material and Workmanship requirements**

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.

### **1.6 Contractor Qualifications and Requirements**

The following are minimum Contractor qualifications to be considered for award of this contract:

- a) Bidder has two years of experience providing services similar in scope as described herein.
- b) Bidder has equipment and personnel to meet service time frame as described herein.
- c) Bidder employs Contractor representative(s) and technical trained personnel, with practical experience in assisting Purchasers with products as described herein.
- d) Bidder has capacity of providing routine, will call and emergency services as described herein.

Prior to commencing performance, or prior to that time if required by the Procurement Coordinator, 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 Procurement Coordinator 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.

In accordance with IFB requirements, Contractor agrees to take complete responsibility for all actions of such Subcontractor as related to this Contract.

Prior to performance, Contractor shall identify all Subcontractor 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 Procurement Coordinator reserves the right to approve or reject any and all Subcontractor that identified by the Contractor. Any Subcontractor not listed in the Bidder's Response, who is engaged by the Contractor, must be pre-approved, in writing, by the Purchasing Activity.

### **1.7 Delivery requirements**

See [Appendix F, Technical Specifications](#)

## **2 IFB OVERVIEW**

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### **2.1 Announcement and special information**

The IFB, its appendices, attachments, amendments and any incorporated documents will comprise the entire IFB which will become the resulting contract between DES and the awarded contractor when it is countersigned by DES.

By responding to this IFB, a bidder acknowledges having read and understood the entire IFB and accepts all information contained within the IFB without modification.

NOTE: The [Appendix A, Master Contract Terms and Conditions](#), to this IFB, contains general provisions and terms for solicitations issued by DES. Should a term within the Master Contract Terms and Conditions conflict with a term elsewhere in the IFB, and there is no reconciliation of the conflict before the bid-due date, the IFB will prevail.

## 2.2 Complaint, debrief and protest (general information)

NOTE: See also [Appendix D, Complaint, Debrief and Protest Procedures](#), located in the Appendices section below.

**Complaint:** This solicitation offers a complaint period for bidders wishing to voice objections to this solicitation. The complaint period ends five business days before the bid due date. The complaint period is an opportunity for the bidder to voice objections, raise concerns or suggest changes. Failure by the bidder to raise a complaint at this stage may waive its right for later consideration. DES will consider all complaints but is not required to adopt a complaint, in part or full. If bidder complaints result in changes to the IFB, written amendments will be issued and posted on WEBS.

Complaints must be sent to the Procurement Coordinator located on the face page of this document.

**Debrief:** Debrief meetings are an opportunity for the bidder and the Procurement Coordinator to meet and discuss the bidder's bid. A debrief is a required prerequisite for a bidder wishing to lodge a protest. Following the evaluation of the bids, DES will issue an announcement of the Apparent Successful bidder (ASB). That announcement may be made by any means, but DES will likely use email to the bidder's email address provided in the bidder's bid. Bidders will have three business days to request a debrief meeting. Once a debrief meeting is requested, DES will offer the requesting bidder one meeting opportunity and notify the bidder of the debrief meeting place, date and time. Please note, because the debrief process must occur before making an award, DES will likely schedule the debrief meeting shortly following the announcement of the ASB and the bidder's request for a debrief meeting. DES will not allow the debrief process to delay the award or be used as a delaying tactic. Therefore, bidders should plan for contingencies and alternate representatives; bidders unwilling or unable to attend the debrief meeting will lose the opportunity to protest.

**Protest:** Bidders wishing to protest must do so in conformity with [Appendix D, Complaint, Debrief and Protest Procedures](#).

## 2.3 Washington's Electronic Business Solution (WEBS)

Bidders are solely responsible for:

- Properly registering with Washington's Electronic Business Solution (WEBS) at <https://fortress.wa.gov/ga/webs/>, and maintaining an accurate vendor profile in WEBS.
- Downloading the IFB packet consisting of the IFB, all appendices, and incorporated documents related to the IFB for which you are interested in bidding.
- Downloading all current and subsequent amendments to the IFB to ensure receipt of all IFB documents.

Notification of amendments to the IFB will only be generated by the WEBS system and be provided only to those vendors who have registered with WEBS **and** have downloaded the IFB from WEBS. Failure to do so may result in a bidder having incomplete, inaccurate, or otherwise inadequate information and bid.

## **2.4 Amendments**

Prior to the bid due date and time, DES reserves the right to change portions of this IFB. Any change will be issued in writing by DES as an amendment and incorporated into the IFB. If there is any conflict between amendments, or between an amendment and the IFB, the document issued last in time will be controlling. Only bidders who have properly registered and downloaded the original IFB directly via WEBS will receive notification of amendments and other correspondence pertinent to the procurement.

## **2.5 Bidder communication responsibilities**

During the IFB process, all bidder communications about this IFB must be directed to the Procurement Coordinator. Unauthorized contact regarding this IFB with other state employees involved with the IFB may result in disqualification. All oral and written communications will be considered unofficial and non-binding on DES. Bidders should rely only on written amendments issued by the Procurement Coordinator.

Bidders are encouraged to make any inquiry as early in the process as possible to allow DES to consider and respond; however, no response is required from the Procurement Coordinator.

If a bidder does not notify DES of an issue, exception, addition, or omission, DES may consider the matter waived by the bidder for protest purposes.

If bidder inquiries result in changes to the IFB, written amendments will be issued and posted on WEBS.

## **2.6 Bidder responsiveness**

Bidders are to respond to each question/requirement contained in this IFB. Failure to comply with any applicable item may result in a bid being deemed non-responsive and disqualified.

DES reserves the right to determine the actual level of bidders' compliance with the requirements specified in this IFB and to waive informalities in a bid. An informality is an immaterial variation from the exact requirements of the competitive IFB, 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 affect the relative standing of, or be otherwise prejudicial, to bidders.

## **2.7 Pricing**

Bid prices must include all cost components needed for the delivery of the goods as described in this IFB. Failure to identify all costs in a manner consistent with the instructions in this IFB is sufficient grounds for disqualification.

Bidder must complete [Appendix B, Price Worksheet](#).

The proposed pricing levels should reflect the market provided by the contract resulting from this IFB.

NOTE: Pricing provided on the Price Worksheet is to be rounded to the nearest whole cent.

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

containers, reels; or the processing fees and surcharge fees associated with the use of credit cards.

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

## 2.8 Management fee

All master contracts executed as a result of this IFB will be subject to a management fee, paid by the contractor to DES. The management fee will be **0.74 percent** of contract sales/purchase price for work orders. The purchase price is defined as total invoice price less sales tax. No taxes will be assessed against the management fee.

Example: Total sales (less sales tax) x .0074 = management fee.

Payment instructions:

- A. DES will provide an invoice within 30 days of [Sales Reporting](#). Payment is due within 30 days of the invoice date.
- B. With every payment, reference the following:
  1. This contract number;
  2. Contractor's name as it is known to DES;
  3. Year and quarter for which the management fee is being remitted;
  4. All work order numbers awarded through this contract for which sales amounts were invoiced during the reporting period.
- C. Remit management fee to:

Washington State Department of Enterprise Services  
Finance Office  
PO Box 41460  
Olympia, WA 98504-1460

Note: **DO NOT** send payment to the DES Contract Administrator and do not pay prior to receiving the invoice.

DES may, at its sole discretion, increase, decrease, or eliminate the management fee upon 30 days written notice to contractor. In the case of an increase to the management fee, DES may negotiate pricing with contractor. Any decrease to, or elimination of, the management fee shall be reflected in contract pricing commensurate with the adjustment.

The management fee is further described in Section 2.9 (Contract sales report) and in [Appendix A, Master Contract Terms and Conditions](#), Section 3.8 (Management fee) and Section 3.9 (Contract sales report).

## 2.9 Contract sales report

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

"Zero" sales: Contractor is required to report "zero" sales even if no sales occurred during the reporting period.

The report shall identify:



- A. Purchasers who have been invoiced for work orders awarded through this contract;
- B. Amounts invoiced for each purchaser during the reporting period

Report due dates:

<b>For sales invoiced during ...</b>	<b>Due date</b>
Q1 (Jan / Feb / March)	April 30
Q2 (April / May / June)	July 31
Q3 (July / Aug / Sept.)	Oct. 31
Q4 (Oct / Nov / Dec.)	Jan. 31

The report may be corrected or modified by DES with subsequent written notice to the contractor. Upon request, contractor is required provide contact information for all purchasers during the term of this contract.

A further description of the sales reporting requirement and the management fee based upon it can be found in sections 3.8 and 3.9 of [Appendix A, Master Contract Terms and Conditions](#).

#### **2.10 Non-endorsement and publicity**

In selecting a bidder to supply goods/purchased services specified herein to contract purchasers, neither DES nor the purchasers are endorsing the bidder's goods/services, nor suggesting they are the best or only solution to their needs.

#### **2.11 No costs or charges**

Costs or charges incurred before a contract is fully executed will be the sole responsibility of the bidder.

#### **2.12 Dealer authorization**

The bidder, if other than the manufacturer, must provide upon request a current, dated and signed authorization from the manufacturer that the bidder is an authorized distributor, dealer or service representative and is authorized to sell the manufacturer's products. Failure to provide manufacturer's authorization upon request may result in bid rejection.

#### **2.13 Economic and environmental goals**

In support of the state's economic and environmental goals, although not an award factor (unless otherwise specified herein), bidders are encouraged to consider the following in responding to this IFB:

- Support for a diverse supplier pool, including small, veteran-owned, minority-owned and women-owned business enterprises. DES has established for this IFB voluntary numerical goals of:
  - 3 percent women-owned businesses (WBE);
  - 3 percent minority-owned businesses (MBE);
  - 3 percent small businesses (SB);
  - 3 percent veteran-owned businesses (VB).

Achievement of these goals is encouraged whether directly or through subcontractors. Bidders may contact the [Office of Minority and Women's Business Enterprises](#) for information on certified firms or to become certified. Also see [Appendix E, Procurement Reform Small Business Fact Sheet](#).

- Use of environmentally preferable goods and services to include post-consumer waste and recycled content.
- Products made or grown in Washington.

### 3 PREPARATION OF BIDS

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#### 3.1 Bid submittals checklist

The following checklist identifies the electronic submittals which will comprise a bid. Please identify each page of the submittals and any supplemental materials with your company name or other identifiable company mark. Failure to complete this submittal as instructed and return REQUIRED documents below may result in a bid being rejected for lack of responsiveness.

**X Signature (REQUIRED):** Complete as instructed a signed copy of the [Bidder's Authorized Offer](#).

**X Price Worksheet (REQUIRED):** Complete as instructed and return a copy of the [Price Worksheet-Appendix B](#).

**X Bidder Profile (REQUIRED):** Complete as instructed and return a copy of the [Bidder Profile-Appendix C](#).

**X IFB amendments (AS INSTRUCTED):** If instructed to do so in any amendment to this IFB, sign and return a copy. When in doubt, sign and return a copy of all IFB amendments.

#### 3.2 Format

All responses must be sent by email addressed to [DESFacilitiGroundRec@des.wa.gov](mailto:DESFacilitiGroundRec@des.wa.gov). Bids must be legible and properly signed by an authorized representative of the bidder. All changes and/or erasures must be initialed in ink. Unsigned bids will be rejected on opening unless satisfactory evidence was submitted clearly establishing the bidder's desire and intent to be bound by the bid, such as a signed cover letter. Incomplete or illegible bids may be rejected.

#### 3.3 Electronic Bids

DES prefers the same file format(s) as the format(s) used to create the submittals (i.e. MS Word, Excel) unless written information is included as a part of the submittal, such as a signature. For submittals with written information or copies of other documents such as licenses, please submit as a pdf.

Bidders are cautioned to keep email sizes to less than 25 Mb. Also, to keep file sizes to a minimum, Bidders are cautioned not to use graphics in their Responses.

Responses may not be transmitted using facsimile transmission.

All proposals and any accompanying documentation become the property of DES and will not be returned.

### 3.4 Confidentiality, proprietary material and trade secrets

All documents submitted by bidders to DES as part of this procurement will become public records. They are subject to disclosure unless specifically exempt under Revised Code of Washington (RCW) [42.56](#) (The Public Records Act).

**Confidential documents:** DES strongly discourages submittal of confidential material. DES considers confidential material to be any portion of your submittal clearly marked all or in part “Confidential,” “Proprietary” or “Trade Secret” (or the equivalent).

- DES reserves the right to return, reject or disqualify any submittal that includes confidential material.

**Public records requests:** If a public records request seeks to view or obtain a copy of your RFP submittal, and if your submittal includes content clearly marked “Confidential,” “Proprietary” or “Trade Secret” (or the equivalent), DES will:

- Notify you of the date DES will disclose the requested records;
- Give you an opportunity to seek a court order that stops DES from disclosing the records.

DES will not:

- Evaluate or defend your claim of confidentiality. It is your responsibility to support your claim and take appropriate legal action to do so;
- Withhold or redact your documents without a court order.

Questions about the confidentiality of your submittal can be directed to the Procurement Coordinator or the DES Public Records Officer at (360) 407-8768 or [publicrecords@des.wa.gov](mailto:publicrecords@des.wa.gov).

### 3.5 Due date and time

Bids must be received on or before the due date and time at the location specified on the cover page. Time of receipt will be determined by the official time on the email.

If a bid is late or received at a location other than that specified it will be rejected.

### 3.6 Bid Received

After the bid due date and time, emails will be open. The names of the bidders will be recorded and made available upon request. Bid contents will not be available for public view until after the announcement of Apparent Successful Bidder(s). ([RCW 39.26.030](#)).

## 4 EVALUATION AND AWARD

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### 4.1 General provisions

- Bidder responsiveness, responsibility and price factors will be evaluated based on the evaluation process described in this section.
- Contract award will be based on the evaluation and award criteria established herein and will be subject to consideration of all factors identified in [RCW 39.26](#) and other criteria identified in the IFB.
- Bidders whose bids are determined to be non-responsive will be rejected and will be notified of the reasons for rejection.

- After bids have been submitted, DES may require individual bidders to appear at a time and place determined by DES to discuss contract requirements. Any such meeting should not be construed as negotiations or an indication of DES's intention to award.
- DES 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 stipulates all or nothing in their bid; (4) Cancel an IFB and re-solicit bids; (5) Negotiate with the lowest responsive and responsible bidder to determine if that bid can be improved for the purchaser.
- Preferences and penalties: Preferences and penalties that are required by law, rule, or IFB will be applied to bid pricing. Some preferences and penalties may be added by contract language and could be applied to bid pricing. A preference reduces the bidder's stated price by the amount of the preference and is an advantage to the bidder. A penalty increases the bidder's stated price by the amount of the penalty and is a disadvantage to the bidder. Preferences and penalties are applied to the pricing for evaluation purposes only but are not applied for purchasing purposes.
- References: DES reserves the right to use references to confirm satisfactory customer service, performance, satisfaction with service/product, knowledge of products/service/industry and timeliness. Any negative or unsatisfactory reference can be reason for rejecting a bidder as non-responsible. DES reserves the right to waive the reference check. In the event of a tie in Total Evaluation Cost, references will be used to determine the ASB.

### **Scoring**

Contract award shall be made to the lowest Responsive and Responsible Bidder(s) based on the evaluation and award criteria established herein and subject to consideration of all factors identified in ([RCW 39.26.030](#)).

Step 1: Responsiveness, based on bid submittal completeness. If it appears responsive, move to Step 2

Step 2: Pricing Evaluation. The bidder offering the lowest **Total Evaluation Cost** will be determined to be the lowest bidder.

### **4.2 Determination of responsiveness**

Bids will be reviewed initially on a pass/fail basis to determine compliance with administrative requirements as specified herein.

DES reserves the right to determine at its sole discretion whether a bidder's response to a minimum IFB requirement is sufficient to pass. However, if all bidders fail to meet any single IFB requirement, DES may reject all bids and cancel the IFB or waive the requirement from the IFB's criteria for responsiveness.

Responsive bids will be further evaluated based on the requirements in this IFB.

### **4.3 Determination of responsibility**

During evaluation, DES reserves the right to make reasonable inquiry to determine the responsibility of any bidder. Requests may include financial statements, credit ratings, references, record of past performance, clarification of bidder's offer, on-site inspection of bidder's or subcontractor's facilities, or other information as necessary. Failure to respond to these requests might result in a bid being rejected as non-responsive.

#### 4.4 Price evaluation

Evaluated price from responsive bids is calculated as shown on the price sheet embedded in the attached [Appendix B: Price Worksheet](#).

**Price sheet:** Bidders must record their bid pricing in the appropriate cells on the price sheet.

Bidders are to indicate the manufacturer being offered, with the percent discounts from catalog/dated price sheet for each of the categories being offered.

Bidders must bid a net price for all of the items listed in the price sheets. Failure to bid all items will be grounds to consider your bid non-responsive. Net pricing is to be arrived at by using the following formula:

Example: List price of \$100.00 with 40% discount;  $\$100.00 \text{ times } (1.00 - .40) = \$60.00 \text{ Net Price}$

Bidders are to enter net pricing. Then multiply the net price by the estimated quantity for the extended price. Extended prices in each category will be added together, to create a total for each group then divided by six (6) groups, for the **total evaluation cost**.

In addition to supplying the items in the “price sheets”, the successful bidder(s) will be required to supply the balance of the product line(s) at the same margin bid for the “price sheets”. The subsequent contract price shall be the price list bid minus the discount percentage bid, or Contractor’s current promotional price, whichever is less. Items bid must be those items routinely inventoried and/or supplied by the bidder.

Note: Bidders are to provide an additional discount on the price sheet, if any, that applies to large dollar orders over \$15,000. This discount will not be part of the evaluation; however, it may become part of any subsequent contract(s)

#### 4.5 Special Terms and Conditions (Technical Requirements)

DES reserves the right to request that the Apparent Successful Bidder document that its product or service meets the technical specifications. Failure to fulfill this request within 10 business days of the request may be cause for rejection. [Appendix F: Special Terms and Conditions \(Technical Requirements\)](#)

#### 4.6 Selection of Apparent Successful Bidder

The responsive and responsible bidder(s) that meet(s) all of the IFB requirements, has the lowest price evaluation total as calculated in [Appendix B: Price Worksheet](#) will be the Apparent Successful Bidder(s).

DES reserves the right to request additional information or perform tests and measurements as part of the evaluation process before award. Failure to provide requested information within 10 calendar days may result in disqualification.

Before award, DES may negotiate with an Apparent Successful Bidder to determine if a bid can be improved.

Designation as an Apparent Successful Bidder does not imply that DES will issue an award to your firm. It merely suggests that at this moment in time, DES believes your bid to be responsive. This

designation allows DES to perform a responsibility analysis and ask for additional documentation. DES may also re-examine the bid to determine whether the bid is truly as responsive as initially believed. The bidder must not construe this as an award, impending award, attempt to negotiate, etc. If a bidder acts or fails to act as a result of this notification, it does so at its own risk and expense.

#### **4.7 Announcement of Apparent Successful Bidder**

Following the announcement of the Apparent Successful Bidder, bidders may request a debrief conference. See also Section 2.2 – Complaints, Debriefs and Protests (General Information) and [Appendix D – Complaint, Debrief and Protest Procedures](#). Failure to follow instructions could result in your claim being denied.

#### **4.8 Award**

An award, in part or full, is made and a contract formed by signature of DES and awarded bidder on the Authorized Offer and Contract Signature page. In some circumstances, DES may include an award letter which further defines the award and is included by reference to accompany the signature page.

DES reserves the right to award on an all-or-nothing consolidated basis.

Following the award, all bidders will receive a Notice of Award, usually through a WEBS notification.

#### **4.9 Bid information availability after award**

After the contract has been awarded, bidders may see results of the IFB evaluation and award by accessing [www.des.wa.gov](http://www.des.wa.gov) or contacting the procurement coordinator. Bidders may also schedule an appointment to review the bidding process.

## **5 CONTRACT INFORMATION**

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### **5.1 Incorporated documents and order of precedence**

A bid submitted to this IFB is an offer to contract with DES.

A bid becomes a contract only when awarded and accepted by signature of DES and bidder on the Authorized Offer and Contract Signature page. The documents listed below are, by this reference, incorporated into a contract resulting from this IFB as though fully set forth herein. No other statements or representations, written or oral, are a part of the contract.

- a. The IFB
- b. The awarded vendor's bid
- c. All appendices
- d. IFB amendments (if any)
- e. Award letter (if any)

In the event of a conflict in such terms, or between the terms and any applicable statute or rule, the inconsistency will 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 the resulting contract

c. The contract, including all documents incorporated in the subsection immediately above.

**Conflict:** To the extent possible, the terms of the contract must be read consistently.

**Conformity:** If any provision of the 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.

## 5.2 Parties

This contract is entered into by and between the state of Washington, acting by and through DES, and the awarded contractor with the parties more fully described on the Authorized Offer and Contract Signature page.

## 5.3 Authority to bind

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

## 5.4 Counterparts

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

## 5.5 Changes

DES reserves the right to modify the resulting contract (including but not limited to adding or deleting products) by mutual agreement between DES and the contractor. Alterations to any of the terms, conditions or requirements of this contract will only be effective upon written issuance of a mutually-agreed contract amendment by DES. Changes to point-of-contact information may be updated without the issuance of a mutually accepted contract amendment.

## 5.6 Price adjustments

Firm and fixed period: Pricing will remain firm and fixed for (one year) from date of award of the contract.

Price protection: The contract prices are the maximum prices the contractor may charge.

If lower pricing for similar quantities becomes effective for the contractor, purchasers must be given immediate benefit of such lower pricing. The contractor may also offer volume and promotional discounts.

Contractor agrees all the prices, terms, warranties, and benefits provided in this contract are comparable to or better than the terms presently being offered by the contractor to any other governmental entity purchasing similar quantities under similar terms. If, during the term of this contract, the contractor enters into contracts with other governmental entities providing greater benefits or more favorable terms than those provided by this contract, the contractor is obligated to provide the same to purchasers for subsequent purchases. DES will be notified of changes in contract pricing.

Price increases: The contractor may propose price increases on a semi-annual basis by written notice to the Contract Administrator. Price increases are to be on a pass-through basis only and must not produce a higher profit margin for the contractor than that established by original contract pricing. Requests must include supporting documentation such as price increases at the manufacturer's level and/or other documentation of cost increases.

Consideration of price increases will be at the sole discretion of the Contract Administrator. If a price increase is approved in part or in full, the resulting new contract pricing will be implemented through a contract amendment.







Contract extensions and price adjustments: Contractors may not make contract extensions contingent on price adjustments.

**5.7 Miscellaneous expenses**

Expenses related to day-to-day contract performance (including but not limited to travel, lodging, meals, and incidentals) will not be reimbursed to the contractor. However, DES recognizes that there may be occasions when the purchaser requires the bidder to travel. In such cases the purchaser must provide written pre-approval of such expenses on a case-by-case basis. Any such reimbursement will be at rates not to exceed the guidelines for state employees published by the Washington State Office of Financial Management set forth in the [Washington State Administrative & Accounting Manual](#), and not to exceed expenses actually incurred.

**6 APPENDICES**

Reminder: By responding to this IFB, a bidder acknowledges reading, understanding, and accepting all information contained within the entire IFB without modification.

Appendix A: Master Contract Terms and Conditions.....	 Master Contract Terms and Conditions
Appendix B: Price Worksheet .....	 Appendix B-Price Sheet.docx
Appendix C: Bidder Profile .....	 Bidder Profile.doc
Appendix D: Complaint, Debrief and Protest procedures .....	 Complaint, Debrief & Protest Procedures.d
Appendix E: Procurement Reform Small Business Fact Sheet.....	 Procurement Reform Small Business Fact S
Appendix F: Special Terms and Conditions (Technical Requirements) .....	 Appendix F- Special Terms and Conditions



## 7 CERTIFICATIONS AND ASSURANCES

---

We make the following Certifications and Assurances as a required element of submitting this bid, affirming the truthfulness of the facts declared here and acknowledging that the continuing compliance with these statements and all requirements of the IFB are conditions precedent to the award or continuation of the resulting contract.

1. We have read, understand, and agree to abide by all information contained in the IFB, all appendices, and incorporated documents.
2. The prices in this bid have been arrived at independently, without engaging in collusion, bid rigging, or any other illegal activity, and without for the purpose of restricting competition any consultation, communication, or agreement with any other bidder 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 bid have not been and will not be knowingly disclosed by the bidder, directly or indirectly, to any other bidder or competitor before contract award unless otherwise required by law. No attempt has been made or will be made by the bidder 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 bid.
3. The attached bid is a firm offer for a period of 90 days following the bid due date specified in the IFB, and it may be accepted by DES 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 a protest, our bid will remain valid for 90 days or until the protest and any related court action is resolved, whichever is later.
4. In preparing this bid, 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 IFB, 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 bid.
5. We understand that the state will not reimburse us for any costs incurred in the preparation of this bid. All bids become the property of the state, and we claim no proprietary right to the ideas, writings, items or samples unless so stated in the bid. Submittal of the attached bid constitutes an acceptance of the evaluation criteria and an agreement to abide by the procedures and all other administrative requirements described in the IFB.
6. We understand that any contract awarded as a result of this bid will incorporate all IFB requirements. Submittal of a bid and execution of this Certifications and Assurances document certify our willingness to comply with the contract terms and conditions appearing in the IFB, all appendices, and incorporated documents if selected as a contractor. It is further understood that our standard contract will not be allowed as a replacement for the terms and conditions appearing in the IFB, all appendices, and incorporated documents of this IFB.
7. 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 IFB.
8. We are not submitting any exceptions.

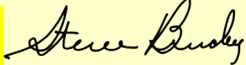
## 8. BIDDER'S AUTHORIZED OFFER and CONTRACT SIGNATURE PAGE

In submitting this bid, the authorized signatory below acknowledges having read and understood the entire IFB and amendments incorporated prior to the bid due date, and agrees to comply with its terms and conditions, as written, including the Certifications and Assurances. The authorized signatory also agrees to fulfill the offer regions made in this bid and any subsequently awarded contract.

**In witness whereof**, the parties hereto, having read this contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

This contract is effective as of **Month --**, 2015, or date of last signature, whichever is later.

<b>APPROVED (MCC)</b>	
Department of Enterprise Services Contracting Procurement and Risk Management 1500 Jefferson Building 1500 Jefferson Street SE Olympia, WA 98501	
Washington State Department of Enterprise Services	
Signature	Date
Teri Lund, Procurement Coordinator	
Typed or Printed Name, Title	
Manager Signature (if applicable)	Date
Kim Ward, Unit Manager	
Manager's Typed or Printed Name, Title	
<b>Contact Information</b>	
Contact:	
Title:	Procurement Coordinator
Phone:	(360) 407-9431
Fax:	360-586-2426
Email:	first.last@des.wa.gov

<b>APPROVED (BIDDER)</b>	
Steve Brindley	
Bidder's Company Name & Address	
Pacific Fence & Wire Co. 13770 SE Ambler Rd. / POB 125 Clackamas, OR. 97015-0125	
Signature	Date
	9-25-15
Typed or Printed Name, Title	
Steve Brindley Vice President & General Manager	
<b>Contact Information</b>	
Contact: <u>Steve Brindley</u>	
Title:	<u>V.P. &amp; General Manager</u>
Phone:	<u>503-659-6881</u>
Fax:	<u>503-659-3565</u>
Email:	<u>steveb@pacificfence.com</u>

**Appendix A- Invitation for Bid 04915**  
**MASTER CONTRACT TERMS AND CONDITIONS**

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

<b>1</b>	<b>INSTRUCTIONS TO BIDDERS</b> .....	<b>2</b>
1.1	Minority and Women’s Business Enterprises (MWBE) .....	2
1.2	Bidder’s authorized representative .....	2
1.3	Include all cost components in pricing.....	2
1.4	Equal or alternate .....	3
1.5	Public records and exempt information .....	3
1.6	In-state preference/Reciprocity .....	3
1.7	Withdrawal or modification of response.....	4
1.8	Legal notices .....	4
1.9	Liens, claims and encumbrances .....	5
<b>2</b>	<b>STANDARD DEFINITIONS</b> .....	<b>6</b>
<b>3</b>	<b>STANDARD TERMS &amp; CONDITIONS</b> .....	<b>12</b>
3.1	Contract modifications .....	12
3.2	Contract administration .....	12
3.3	Contractor supervision and coordination .....	12
3.4	Post-award conference.....	12
3.5	Term contract management.....	12
3.6	Changes .....	13
3.7	Statewide Payee Desk .....	13
3.8	Management fee .....	13
3.9	Contract sales report .....	14
3.10	Other required term contract reports.....	15
3.11	Common vendor-registration and bid-notification system.....	15
3.12	Contractor qualifications and requirements .....	15
3.13	Ordering requirements.....	17
3.14	Delivery requirements.....	17
3.15	Treatment of assets .....	20
3.16	Standard of quality/Consistency over term of contract.....	20
3.17	Payment .....	20
3.18	Taxes, fees and licenses.....	21
3.19	Quality assurance .....	23
3.20	Information and communications.....	24
3.21	General Provisions.....	27
3.22	Insurance.....	29
3.23	Industrial Insurance Coverage.....	31
3.24	Nondiscrimination .....	31
3.25	OSHA and WISHA requirements .....	31
3.26	Antitrust.....	32
3.27	Waiver.....	32
3.28	Disputes and remedies .....	32
3.29	Liquidated damages.....	34
3.30	Debarment and suspension.....	35
3.31	Contract termination.....	35

## **MASTER CONTRACT TERMS and CONDITIONS**

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

### **1 INSTRUCTIONS TO BIDDERS**

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#### **1.1 Minority and Women's Business Enterprises (MWBE)**

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

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

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

#### **1.2 Bidder's authorized representative**

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

#### **1.3 Include all cost components in pricing**

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

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

#### **1.4 Equal or alternate**

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

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

#### **1.5 Public records and exempt information**

All documents submitted by bidders to DES as part of this procurement will become public records. They are subject to disclosure unless specifically exempt under Revised Code of Washington (RCW) [42.56](#) (The Public Records Act).

**Confidential documents:** DES strongly discourages submittal of confidential material. DES considers confidential material to be any portion of your submittal clearly marked all or in part “Confidential,” “Proprietary” or “Trade Secret” (or the equivalent).

- DES reserves the right to return, reject or disqualify any submittal that includes confidential material.

**Public records requests:** If a public records request seeks to view or obtain a copy of your RFP submittal, and if your submittal includes content clearly marked “Confidential,” “Proprietary” or “Trade Secret” (or the equivalent), DES will:

- Notify you of the date DES will disclose the requested records;
- Give you an opportunity to seek a court order that stops DES from disclosing the records.

DES will not:

- Evaluate or defend your claim of confidentiality. It is your responsibility to support your claim and take appropriate legal action to do so;
- Withhold or redact your documents without a court order.

Questions about the confidentiality of your submittal can be directed to the Procurement Coordinator or the DES Public Records Officer at (360) 407-8768 or [publicrecords@des.wa.gov](mailto:publicrecords@des.wa.gov).

#### **1.6 In-state preference/Reciprocity**

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

- These adjustments will be applied in formal sealed bid solicitations only.

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

## **1.7 Withdrawal or modification of response**

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

### **a. Prior to response due date and time**

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

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

### **b. After response due date and time**

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

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

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

## **1.8 Legal notices**

Any notice or demand or other communication required or permitted to be given under the contract or applicable law (except notice of malfunctioning Equipment) will be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid, certified mail, return receipt requested, via facsimile or by electronic mail, to the

parties at the addresses and fax numbers, e-mail addresses provided in the *Authorized Offer and Contract Signature Page* below. For purposes of complying with any provision in the contract or applicable law that requires a “writing,” such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be “in writing” or “written” to an extent no less than if it were in paper form. Notices will be effective upon receipt or four 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 the contract is served upon contractor or DES, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. The contractor and DES further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

### **1.9 Liens, claims and encumbrances**

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

## 2 STANDARD DEFINITIONS

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

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



**Master Contract Terms and Conditions**

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

<b>Authorized signatory</b>	An individual with the authority to legally bind the bidder or contractor concerning the terms and conditions set forth in solicitation, response and contract documents.
<b>Award</b>	The official act of DES of accepting the offer to enter into a contract as contained in the bidder(s) response.
<b>Bid</b>	A sealed written offer to perform a contract to provide materials, supplies, services, and/or equipment in reply to an Invitation For bid (IFB).
<b>Bidder</b>	A Vendor who submits a response in reply to a solicitation.
<b>Brand</b>	A specification identifying a manufacturer of the goods described in a competitive solicitation to identify a standard of quality against which other products will be evaluated.
<b>Business days</b>	Monday through Friday, 8 a.m. to 5 p.m., Pacific Time, except for holidays observed by the State of Washington.
<b>Calendar days</b>	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.
<b>Contract</b>	An agreement, or mutual assent, between two or more competent parties with the elements of the agreement being offer, acceptance, and consideration.
<b>Contract administrator</b>	The individual authorized by DES who is responsible for administration of a contract.
<b>Contractor</b>	Individual, company, corporation, firm, or combination thereof with whom DES develops a contract for the procurement of materials, supplies, services, and/or equipment. It shall also include any subcontractor retained by contractor as permitted under the terms of the contract.
<b>Department of Enterprise Services (DES)</b>	An agency serving state government and the citizens of Washington.
<b>Equal</b>	Materials, supplies, services and/or equipment that meets or exceeds the quality, performance and use of the specifications identified in a solicitation.
<b>Estimated useful life</b>	The estimated time from the date of acquisition to the date of replacement or disposal, determined in any reasonable manner.

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

<b>Inspection</b>	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.
<b>Intent to Award</b>	Notice of the recommendation for award for a specific solicitation.
<b>Invitation for Bid (IFB)</b>	The form utilized to solicit bids in the formal, sealed bid procedure and any amendments thereto issued in writing by DES. Specifications and qualifications are clearly defined.
<b>Late bids or proposals</b>	A bid or proposal received at the place specified in the solicitation after the time designated for all bids or proposals to be received.
<b>Lead time/After Receipt Of Order (ARO)</b>	The period of time between when the contractor receives the order and the purchaser receives the materials, supplies, equipment, or services order.
<b>Lifecycle cost</b>	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.
<b>Contracts, Procurement and Risk Management (CPRM)</b>	A unit of the Contracts and Legal Services Division of DES authorized under Chapter 39.26 RCW to develop and administer contracts for goods and services on behalf of state agencies, colleges and universities, nonprofit organizations and local governments.
<b>Order document</b>	A written communication, submitted by a purchaser to the contractor, which details the specific requirements of the purchaser within the scope of the contract, such as delivery date, size, color, capacity, etc. An order document may include, but is not limited to field orders, purchase orders, work order or other writings as may be designated by the parties hereto. No additional or alternate terms and conditions on such written communication shall apply unless authorized by the contract and expressly agreed between the purchaser and the contractor.
<b>Original Equipment Manufacturer (OEM)</b>	A supply management term for the purchase of parts and material directly from the manufacturer of the equipment or from an authorized reseller. For example, Ford automotive replacement parts would be purchased from an authorized Ford reseller.

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

<b>Procurement Coordinator</b>	The individual authorized by DES who is responsible for conducting a specific solicitation.
<b>Product</b>	Materials, supplies, services, and/or equipment provided under the terms and conditions of this contract.
<b>Prompt payment discount</b>	A discount offered by the bidder to encourage timely payment by purchaser within the stated term identified by bidder.
<b>Proposal</b>	A sealed written offer to perform a contract to supply materials, supplies, services, and/or equipment in reply to a Request For Proposal (RFP).
<b>Purchaser</b>	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.
<b>Quotation</b>	An informal written or oral offer to perform a contract to supply materials, supplies, services, and/or equipment in reply to a Request For Quote (RFQ).
<b>Recycled material</b>	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.
<b>Recycled content product</b>	A product containing recycled material.
<b>Request For Proposal (RFP)</b>	The form utilized to solicit Proposals in the formal, sealed solicitation procedure and any amendments thereto issued in writing by DES. The specifications and qualification requirements are written in an outcome based form allowing for consideration of a broad range of different solutions to meet the procurement need.
<b>Request For Quotations (RFQ)</b>	A written or oral request by DES to solicit Quotations in the informal solicitation procedure.
<b>Response</b>	A bid or proposal.
<b>Responsible</b>	The capability in all respects to perform in full the contract requirements; meets the elements of responsibility. (See RCW <a href="#">39.26</a> .)
<b>Responsive</b>	Conforms in all material respects to the terms and conditions, the specifications, and other requirements of a solicitation.

**Master Contract Terms and Conditions**

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

<b>Sealed bid</b>	A formal submission from a bidder submitted in response to a solicitation. It is submitted in a sealed manner to prevent its contents from being revealed before the time and date set for the bid opening.
<b>Solicitation</b>	The process of notifying prospective bidders that DES desires to receive competitive bids or proposals for furnishing specified materials, supplies, services, and/or equipment. Also includes reference to the actual documents used for that process, including: the Invitation For Bids (IFB) or Request For Proposals (RFP), along with all attachments and exhibits thereto.
<b>Specifications</b>	The explicit requirements furnished with a competitive solicitation upon which a purchase order or contract is to be based. Specifications set forth the characteristics of the goods and/or services to be purchased or sold so as to enable the bidder or supplier to determine and understand requirements of the purchaser. Specifications may be in the form of a description of the physical or performance characteristics, a reference brand or both. It may include a description of any requirement for inspecting, testing, or preparing a material, equipment, supplies, or service for delivery.
<b>State</b>	The State of Washington acting by and through DES.
<b>State contract</b>	<p>The written document memorializing the agreement between the successful bidder and DES for materials, supplies, services, and/or equipment, administered by the Contracts, Procurement and Risk Management Unit 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 <a href="#">RCW 28B.10.029</a></li><li>– Purchases made in accordance with state purchasing policy;</li><li>– Purchases made pursuant to authority granted or delegated under <a href="#">RCW 39.26</a></li><li>– Purchases authorized as an emergency purchase under <a href="#">RCW 39.26</a>; 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>
<b>Subcontractor</b>	A person or business that is, or will be, providing or performing an essential aspect of the contract under the direction and responsibility of the contractor and with the agreement of DES.

**Master Contract Terms and Conditions**

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

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

### **3 STANDARD TERMS & CONDITIONS**

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#### **3.1 Contract modifications**

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

#### **3.2 Contract administration**

- **State contract administrator**

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

- **Administration of term contract**

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

#### **3.3 Contractor supervision and coordination**

Contractor shall:

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

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

#### **3.4 Post-award conference**

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

#### **3.5 Term contract management**

Upon award of a term contract, the contractor shall:

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

## Master Contract Terms and Conditions

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

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

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

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

### 3.6 Changes

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

### 3.7 Statewide Payee Desk

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

### 3.8 Management fee

Contractor will pay a management fee of 0.74 percent to DES on all state contract sales/purchase price for work orders. The purchase price is defined as total invoice price less sales tax.

The management fee must be rolled into the contractor's current pricing; the fee must not be shown as a separate line item on an invoice unless specifically requested and approved by DES.

How to determine the fee: Total sales (not including sales tax) x .0074 = management fee.

DES may increase, reduce or eliminate the management fee, and reserves the right to negotiate contract pricing with the contractor when adjustment of the management fee might justify an increase in pricing.

For purposes of the management fee, the parties agree that the initial management fee is included in the pricing. Therefore, any increase or reduction of the management fee must be reflected in contract pricing commensurate with the adjustment.

Taxability (if applicable): In 2013, the Washington Department of Revenue ruled that if the underlying transaction requires sales tax, the DES management fee portion of the transaction is also subject to a sales tax.

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

The management fee does not include or supersede fees owed to other entities such as the NASPO ValuePoint or government entities other than the state of Washington.

DES will invoice the contractor every quarter based on sales reported by contractor. Contractors are **not to remit payment until they receive an invoice from DES.**

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

Remit management fee to:

Washington State Department of Enterprise Services  
Finance Office  
PO Box 41460  
Olympia, WA 98504-1460

Note: **DO NOT** send payment to the DES Contract Administrator and do not pay prior to receiving the invoice.

### **3.9 Contract sales report**

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

Each sales report must identify every authorized purchaser by name as it is known to DES and its total combined sales amount **invoiced** during the reporting period (i.e., sales of an **entire agency** or political subdivision, not its individual subsections). The "Miscellaneous" option may be used only with prior approval by DES, and use of this option without prior approval by DES may be cause for contract termination.

**Due date:** Reports must be submitted electronically within 30 days after the end of the calendar quarter:

<b>For sales invoiced during ...</b>	<b>Due date</b>
Q1 (Jan / Feb / March)	April 30
Q2 (April / May / June)	July 31
Q3 (July / Aug / Sept.)	Oct. 31
Q4 (Oct / Nov / Dec.)	Jan.. 31



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

The report may be corrected or modified by DES with subsequent written notice to the contractor.

Upon request, contractor shall provide contact information for all purchasers during the term of this contract. Refer sales reporting questions to the Contract Administrator.

### **3.10 Other required term contract reports**

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

### **3.11 Common vendor-registration and bid-notification system**

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

### **3.12 Contractor qualifications and requirements**

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

#### **a. Qualified and established business**

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

#### **b. Authorized Service Provider and Product Reseller certifications**

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

#### **c. Dealer authorization (when applicable)**

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

#### **d. Personnel substitutions (when applicable)**

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

**e. Use of subcontractors** (when applicable)

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

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

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

**f. Assignment**

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

**g. Contractor authority and infringement**

Under this contract, contractor is authorized to sell only those materials, supplies, services and/or equipment as stated herein and allowed for by the contract provisions. contractor shall not misrepresent to purchasers that they have the contract authority to sell any other materials, supplies, services and/or equipment. Further, contractor may not intentionally infringe on other established state contracts.

**h. Hours of labor**

In compliance with RCW [49.28](#), contractor agrees that no worker, laborer, or mechanic in the employ of the contractor or subcontractor shall be permitted or required to work more than eight (8) hours in any one calendar day, or forty (40) hours in any one calendar week. However, in cases of extraordinary emergency such as danger to life or property, the hours of work may be extended but in such cases the rate of pay for time employed in excess of the above shall be at the prevailing overtime rate of pay. Except, contracts will not require the payment of overtime rates for the first two hours worked in excess of eight (8) hours per day when the employer has obtained the employee's agreement (as defined in WAC [296-127-022](#)) to work a four-day, ten-hour work week.

**i. Materials and workmanship**

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

equipment shall be manufactured in accordance with the best commercial practices and standards for this type of materials, supplies, and equipment.

**j. Best pricing**

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

**k. Mercury content and preference (when applicable)**

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

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

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

**3.13 Ordering requirements**

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

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

**3.14 Delivery requirements**

**a. Delivery:**

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

- The contractor must deliver the goods during purchaser's normal work hours and within contract time frames or as otherwise mutually agreed in writing between the purchaser and contractor at the time of order placement.
- The contractor must verify specific working hours of individual purchasers and instruct carrier(s) to deliver accordingly.

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

**b. Receipt of goods:**

Inspection and rejection: The purchaser's inspection of all materials, supplies and equipment upon delivery is for the purpose of forming a judgment as to whether such delivered items are what was ordered, were properly delivered, and are ready for Acceptance. If applicable, the state reserves the right to independently test, at contractor's expense, any product of questionable freshness, quality, or origin delivered against this contract. Such inspection shall not be construed as final acceptance, or as acceptance of the materials, supplies or equipment, if the materials, supplies or equipment does not conform to contractual requirements.

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

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

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

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

**c. Shipping and risk of loss:**

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

**d. Site security:**

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

**e. Installation:**

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

**f. Title to product (if applicable):**

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

**g. Labeling:**

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

**h. Hazardous materials:**

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

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

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

### **3.15 Treatment of assets**

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

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

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

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

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

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

### **3.16 Standard of quality/Consistency over term of contract**

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

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

### **3.17 Payment**

#### **a. Advance payment prohibited:**

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

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

#### **b. Payment:**

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

Under [Chapter 39.76 RCW](#), if purchaser fails to make timely payment(s), contractor may invoice for 1 percent per month on the amount overdue or a minimum of \$1. Payment will

not be considered late if a check or warrant is mailed within the time specified. If no terms are specified otherwise in the solicitation, net 30 days will automatically apply.

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

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

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

**c. Invoicing and discounts**

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

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

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

**3.18 Taxes, fees and licenses**

**a. Taxes**

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

**b. Collection of retail sales and use taxes**

In general, contractors engaged in retail sales activities within the State of Washington are required to collect and remit sales tax to Department of Revenue (DOR). In general, out-of-state contractors must collect and remit "use tax" to Department of Revenue if the activity carried on by the seller in the State of Washington is significantly associated with

contractor's ability to establish or maintain a market for its products in Washington. Examples of such activity include where the contractor either directly or by an agent or other representative:

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

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

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

**d. Fees/Licenses**

After award of contract, and prior to commencing performance under the contract, the contractor shall pay for and maintain in a current status any licenses, fees, assessments, permit charges, etc., which are necessary for contract performance. It is the contractor's sole responsibility to maintain licenses and to monitor and determine any changes or the enactment of any subsequent regulations for said fees, assessments, or charges and to immediately comply with said changes or regulations during the entire term of this contract.

**e. Customs/Brokerage Fees**

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

**f. Taxes on invoice**

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

**g. Ferry vessel exemption(if applicable)**

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

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



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

**i. Overpayments to contractor**

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

**j. Contractor expenses (if applicable)**

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

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

**k. Audits**

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

**3.19 Quality assurance**

**a. Right of inspection**

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

**b. Contractor commitments, warranties and representations**

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

descriptions, other written representations, and any other communication medium accompanying or referred to in its bid or used to effect the sale to purchaser.

**c. Warranties**

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

**d. Date warranty**

Contractor warrants that all products provided under this contract: (i) do not have a life expectancy limited by date or time format; (ii) will correctly record, store, process, and present calendar dates; (iii) will lose no functionality, data integrity, or performance with respect to any date; and (iv) will be interoperable with other software used by purchaser that may deliver date records from the products, or interact with date records of the products ("Date Warranty"). In the event a Date Warranty problem is reported to contractor by purchaser and such problem remains unresolved after three calendar days, at purchaser's discretion, contractor shall send, at contractor's sole expense, at least one (1) qualified and knowledgeable representative to purchaser's premises. This representative will continue to address and work to remedy the failure, malfunction, defect, or nonconformity on purchaser's premises. This Date Warranty shall last perpetually. In the event of a breach of any of these representations and warranties, contractor shall indemnify and hold harmless purchaser from and against any and all harm, injury, damages, costs, and expenses incurred by purchaser arising out of said breach.

**e. Cost of remedy**

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

**3.20 Information and communications**

**a. Advertising**

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

**b. Retention of records**

The contractor shall maintain all books, records, documents, data and other evidence relating to this contract and the provision of materials, supplies, services and/or equipment described herein, including, but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. contractor shall retain such records for a period of six (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 DES, personnel duly authorized by DES, the Washington State Auditor's Office, and federal and state officials so authorized by law, regulation or agreement.

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

**c. Proprietary or confidential information**

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

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

**d. Non-endorsement and publicity**

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

**e. Ownership/rights in data**

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

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

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

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

Contractor shall not use or in any manner disseminate any work product to any third party, or represent in any way contractor ownership in any work product, without the prior written permission of purchaser. Contractor shall take all reasonable steps necessary to ensure

that its agents, employees, or subcontractors shall not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.

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

**f. Protection of confidential and personal information**

Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either [Chapter 42.17 RCW](#) or other state or federal statutes (“confidential information”). Confidential information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, law enforcement records, agency source code or object code, agency security data, etc or information identifiable to an individual that relates to any of these types of information. contractor agrees to hold confidential information in strictest confidence and not to make use of confidential information for any purpose other than the performance of this contract, to release it only to authorized employees or subcontractors requiring such information for the purposes of carrying out this contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without purchaser’s express written consent or as provided by law. Contractor agrees to release such information or material only to employees or subcontractors who have signed a non-disclosure agreement, the terms of which have been previously approved by purchaser. contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

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

HIPAA establishes national minimum standards for the use and disclosure of certain health information. The contractor must comply with all HIPAA requirements and rules when determined applicable by the purchaser. If purchaser determines that (1) purchaser is a “covered entity” under HIPAA, and that (2) contractor will perform “business associate”

services and activities covered under HIPAA, then at purchaser's request, contractor agrees to execute purchaser's business associate contract in compliance with HIPAA.

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

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

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

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

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

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

### **3.21 General Provisions**

#### **a. Governing law and venue**

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

#### **b. Severability**

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

#### **c. Survivorship**

All transactions executed for products and Services provided pursuant to the authority of this contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this contract or any extension thereof. Further, the terms, conditions and warranties contained in this contract

that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this contract shall so survive. In addition, the terms of the sections titled Overpayments to contractor; Ownership/Rights in Data; contractor's Commitments, Warranties and Representations; Protection of purchaser's Confidential Information; Section Headings, Publicity; Retention of Records; Patent and Copyright Indemnification; contractor's Proprietary Information; Disputes; and Limitation of Liability shall survive the termination of this contract.

**d. Independent status of contractor**

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

**e. Gifts and gratuities**

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

Under [RCW 39.26](#) and the Ethics in Public Service Law, [Chapter 42.52 RCW](#), state officers and employees are prohibited from receiving, accepting, taking or seeking gifts (except as permitted by [RCW 42.52.150](#)) if the officer or employee participates in contractual matters relating to the purchase of goods or services.

**f. Immunity and hold harmless**

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

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

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

**g. Personal liability**

It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of the State of Washington when executing their official duties in good faith, be in any way personally liable or responsible for any agreement herein contained

whether expressed or implied, nor for any statement or representation made herein or in any connection with this agreement.

### **3.22 Insurance**

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

#### **a. General requirements**

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

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

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

#### **b. Specific requirements**

**Employer's Liability (Stop Gap):** The contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable and will maintain Employers Liability insurance with a limit of no less than \$1,000,000.00. 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.

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:

**Master Contract Terms and Conditions**

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

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

**c. Business Auto Policy (BAP)**

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

Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a combined single limit not less than \$1,000,000 per occurrence. The business auto liability shall include Hired and Non-Owned coverage.

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

**d. Additional insurance provisions**

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

**Additional insured:**

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

**Notice of policy cancellation/Non-renewal:**

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

**e. Surplus lines**

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

**Cancellation for non-payment of premium:**



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

**Identification:**

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

**f. Insurance carrier rating**

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

**g. Excess coverage**

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

**h. Limit adjustments**

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

**3.23 Industrial Insurance Coverage**

The contractor shall comply with the provisions of [Title 51 RCW](#) Industrial Insurance. If the contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, DES may terminate this contract. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from the contractor.

**3.24 Nondiscrimination**

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

**3.25 OSHA and WISHA requirements**

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

### **3.26 Antitrust**

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

### **3.27 Waiver**

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

### **3.28 Disputes and remedies**

#### **a. Problem resolution and disputes**

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

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

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

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

If the dispute cannot be resolved after three business days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member.

Within three business days of receiving the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute Resolution Panel within the next three business days.

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

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

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

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

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

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

**b. Administrative suspension**

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

**c. Force majeure**

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

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

**Notification:** If either party is delayed by force majeure, said party shall provide written notification within 48 hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall likewise be provided. So far as consistent with the Rights Reserved below, the time of completion shall be extended by contract amendment for a

period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this contract.

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

**d. Alternative dispute resolution fees and costs**

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

**e. Non-exclusive remedies**

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

**3.29 Liquidated damages**

**a. Liquidated damages - General**

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

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

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

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

**b. Limitation of liability**

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

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

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

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

**c. Federal funding** (if applicable)

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

**d. Federal restrictions on lobbying** (if applicable)

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

**3.30 Debarment and suspension**

Respondent certifies, by submitting this bid or proposal, that neither it nor its affiliates presently are debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this procurement/contract by any government agency. Respondent also agrees to notify DES if its debarment status changes during the bid process or after receiving notice of contract award, if any. If respondent cannot certify this statement, attach a written explanation to the bid response for review.

**3.31 Contract termination**

**a. Material breach**

A contractor may be terminated for cause by DES, at the sole discretion of DES, for failing to perform a contractual requirement or for a material breach of any term or condition. Material breach of a term or condition of the contract may include but is not limited to:

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

**b. Opportunity to cure**

In the event that contractor fails to perform a contractual requirement or materially breaches any term or condition, DES may issue a written cure notice. The contractor may have a period of time in which to cure. DES is not required to allow the contractor to cure defects if the opportunity for cure is not feasible as determined solely within the discretion of DES. Time allowed for cure shall not diminish or eliminate contractor's liability for liquidated or other damages, or otherwise affect any other remedies available against contractor under the contract or by law.

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

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

**c. Termination for cause**

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

from incurring additional obligations of funds during investigation of the alleged breach and pending corrective action by the contractor or a decision by DES to terminate the contract.

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

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

**d. Termination for convenience**

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

**e. Termination for withdrawal of authority**

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

**f. Termination for non-allocation of funds**

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

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

**g. Termination for conflict of interest**

DES may terminate this contract by written notice to contractor if it is determined, after due notice and examination, that any party to this contract has violated [Chapter 42.52 RCW](#),

Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this contract is so terminated, DES and/or purchaser shall be entitled to pursue the same remedies against contractor as it could pursue in the event that the contractor breaches this contract.

**h. Termination by mutual agreement**

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

**i. Termination procedure**

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

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

The purchaser shall pay to the contractor the agreed upon price, if separately stated, for completed work and service(s) Accepted by the purchaser, and the amount agreed upon by the contractor and the purchaser for (i) completed materials, supplies, services rendered and/or equipment for which no separate price is stated, (ii) partially completed materials, supplies, services rendered and/or equipment, (iii) other materials, supplies, services rendered and/or equipment which are Accepted by the purchaser, and (iv) the protection and preservation of property, unless the termination is for cause, in which case DES and the purchaser shall determine the extent of the liability of the purchaser. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The purchaser may withhold from any amounts due the contractor such sum as DES and purchaser determine to be necessary to protect the purchaser against potential loss or liability.

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

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

- Stop all work, order fulfillment, shipments, and deliveries under the contract on the date, and to the extent specified, in the notice;
- Place no further orders or subcontracts for materials, services, supplies, equipment and/or facilities in relation to the contract except as is necessary to complete or fulfill such portion of the contract that is not terminated;
- Complete or fulfill such portion of the contract that is not terminated in compliance with all contractual requirements;
- Assign to the purchaser, in the manner, at the times, and to the extent directed by DES on behalf of the purchaser, all of the rights, title, and interest of the contractor under the orders and subcontracts so terminated, in which case the purchaser has



**Master Contract Terms and Conditions**

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

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the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

- Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of DES and/or the purchaser to the extent DES and/or the purchaser may require, which approval or ratification shall be final for all the purposes of this clause;
- Transfer title to the purchaser and deliver in the manner, at the times, and to the extent directed by DES on behalf of the purchaser any property which, if the contract had been completed, would have been required to be furnished to the purchaser;
- Take such action as may be necessary, or as DES and/or the purchaser may direct, for the protection and preservation of the property related to this contract which is in the possession of the contractor and in which DES and/or the purchaser has or may acquire an interest.

## 04915 Appendix B- Fencing Materials and Related Products

### Pricing Worksheet

Bidders are to indicate the manufacturer being offered, with the percent discounts from catalog/dated price sheet for each of the categories being offered.

Bidders must bid a Net Price, and Extended Price for the items listed in the price sheets for a particular group on these sheets to be considered responsive to this IFB. The net prices listed below must represent the percentage discount offered off the corresponding manufacturers' list price. These discounts will be applied to all products within that manufacturer's product line for each category. The subsequent contract price shall be the price list bid minus the discount percentage bid, or Contractor's current promotional price, whichever is less. Extended Price will be Net Unit Price multiplied by the Estimated Quantity for each item.

Note: The vendor must state in writing if the products being bid deviate from that stated in the Price Sheets below.

#### Group A – Fencing

INDICATE THE MANUFACTURER OFFERED	PRICE LIST/ _____ /	DATED	PERCENT DISCOUNT OFF LIST	LARGE ORDERS PERCENT DISCOUNT OFF LIST (REFERENCE PARAGRAPH 7.2 OF IFB)
<u>Pacific Fence &amp; Wire Co.</u>	<u>0</u> /	9/25/2015	<u>0</u> %	<u>2</u> %

Item	Type	Description	Manufacturer Product Number	Estimated Quantity	U/M	Bidder's Product Number	Net Unit Price	Extended Price
1.	Fencing/Chain Link	11 GA 2" Mesh 1.2 Galv -- 10'		100	FT	0A-02120	3.57	357.00
2.	Fencing/Chain Link	11 GA 2" Mesh 1.2 Galv -- 12'		1	FT	0A-02144	4.28	4.28
3.	Fencing/Chain Link	11 GA 2" Mesh 1.2 Galv -- 4'		720	FT	0A-02048	1.35	972.00
4.	Fencing/Chain Link	11 GA 2" Mesh 1.2 Galv -- 5'		20	FT	0A-02060	1.66	33.20
5.	Fencing/Chain Link	11 GA 2" Mesh 1.2 Galv -- 6'		3,650	FT	0A-02072	1.95	7,117.50
6.	Fencing/Chain Link	11 GA 2" Mesh 1.2 Galv -- 7'		1	FT	0A-02084	2.31	2.31
7.	Fencing/Chain Link	11 GA 2" Mesh 1.2 Galv -- 8'		230	FT	0A-02096	2.64	607.20
8.	Fencing/Chain Link	6 GA 2" Mesh 1.2 Galv -- 12'		1	FT	0A-06144	13.04	13.04
9.	Fencing/Chain Link	9 GA 2" Mesh 1.2 Galv -- 10'		220	FT	0A-03120	5.05	1,111.00
10.	Fencing/Chain Link	9 GA 2" Mesh 1.2 Galv -- 12'		416	FT	0A-03144	6.03	2,508.48
11.	Fencing/Chain Link	9 GA 2" Mesh 1.2 Galv -- 4'		420	FT	0A-03048	2.03	852.60
12.	Fencing/Chain Link	9 GA 2" Mesh 1.2 Galv -- 5'		150	FT	0A-03060	2.50	375.00
13.	Fencing/Chain Link	9 GA 2" Mesh 1.2 Galv -- 6'		3,130	FT	0A-03072	3.00	9,390.00
14.	Fencing/Chain Link	9 GA 2" Mesh 1.2 Galv -- 7'		100	FT	0A-03084	3.71	371.00

Item	Type	Description	Manufacturer Product Number	Estimated Quantity	U/M	Bidder's Product Number	Net Unit Price	Extended Price
15.	Fencing/Chain Link	9 GA 2" Mesh 1.2 Galv -- 8'		150	FT	0A-03096	4.26	639.00
16.	Fencing/Chain Link, Vinyl Coated	2" Mesh/8GA Finish -- 5'		1	FT	08-BK060	3.11	3.11
17.	Fencing/Chain Link, Vinyl Coated	2" Mesh/8GA Finish -- 6'		2,280	FT	08-BK072	3.80	8,664.00
18.	Fencing/Chain Link, Vinyl Coated	2" Mesh/9 GA Finish -- 4'		85	FT	01-BK048	2.05	174.25
19.	Fencing/Chain Link, Vinyl Coated	2" Mesh/9 GA Finish -- 6'		150	FT	01-BK072	2.86	429.00
20.	Fencing/Field, Galvanized	1047-6-12.5, 300 ft rolls, woven wire class III; ASTM designation A 116.		209	RL	10-61347	217.21	45,396.89
21.	Fencing/Pacific Privacy Slatted	3-1/2" x 5-1/2" Mesh -- 5'		1	FT	02-BK060	5.43	5.43
22.	Fencing/Pacific Privacy Slatted	3-1/2" x 5-1/2" Mesh -- 6'		592	FT	02-BK072	5.52	3,267.84
<b>Total for this Group:</b>								<b>82,294.13</b>

**Group B – Fittings**

<b>INDICATE THE MANUFACTURER OFFERED</b>	<b>PRICE LIST/</b>	<b>DATED</b>	<b>PERCENT DISCOUNT OFF LIST</b>	<b>LARGE ORDERS PERCENT DISCOUNT OFF LIST (REFERENCE PARAGRAPH 7.2 OF IFB)</b>
<u>Hearne Steel / Guardian Whsl / FTF</u>	<u>0</u> /	9/25/2015	<u>0</u> %	<u>2</u> %

Item	Type	Description	Manufacturer Product Number	Estimated Quantity	U/M	Bidder's Product Number	Net Unit Price	Extended Price
1.	Brace Bands/Heavy 1/8"	1-7/8"		1	EA	BB-HV178	.50	.50
2.	Brace Bands/Heavy 1/8"	2-7/8"		116	EA	BB-HV278	.64	74.24
3.	Brace Bands/Heavy 1/8"	4"		28	EA	BB-HV400	1.09	30.52
4.	Carriage Bolts	3/8 x 1-1/4		372	EA	CB-38125	.17	63.24
5.	Carriage Bolts	5/16 x 1-1/4		14	EA	CB-31125	.10	1.40
6.	Extension Arm/Corner/Malleable	2-7/8		1	EA	CE-AM276	12.57	12.57
7.	Extension Arm/Corner/Malleable	4-0/0		1	EA	CEAM400	14.16	14.16
8.	Extension Arm/One Piece Barb/Pressed Steel	2-3/8 x 1-5/8 45 Degree		47	EA	OP-DBA23	6.85	321.95
9.	Eye Tops/Pressed Steel	2-3/8 x 1-5/8		67	EA	ET-DM235	3.69	247.23
10.	Post Caps/Pressed Steel	4"		6	EA	PC-DM400	4.78	28.68
11.	Rail Ends/Pressed Steel	1-5/8"		105	EA	RE-DM158	2.08	218.40
12.	Tension Bands/Heavy 1/8" x 1"	1-7/8"		1	EA	TB-HV178	.60	.60
13.	Tension Bands/Heavy 1/8" x 1"	2-3/8"		205	EA	TB-HV238	.66	135.30
14.	Tension Bands/Heavy 1/8" x 1"	2-7/8"		280	EA	TB-HV278	.76	212.80
15.	Tension Bands/Heavy 1/8" x 1"	4"		6	EA	TB-HV400	1.07	6.42
16.	Tension Bands/Heavy 1/8" x 1"	6-5/8"		1	EA	TB-HV658	1.82	1.82
17.	Tension Bars 1/4" x 3/4 (C)	10'		20	EA	TB-C0120	4.68	93.60
18.	Tension Bars 1/4" x 3/4 (C)	12'		56	EA	TB-C0144	5.73	320.88
19.	Tension Bars 3/16" x 3/4 (B)	6'		10	EA	TB-B0072	1.99	19.90
20.	Tension Bars 3/16" x 3/4 (B)	8'		1	EA	TB-B0096	2.69	2.69
21.	Tie Wires/Aluminum	9 ga Aluminum -- 6-1/2", ASTM		1,300	EA	AL-FT650	.05	65.00
22.	Tie Wires/Aluminum	9 ga Aluminum -- 8-1/4", ASTM.		1,700	EA	AL-FT825	.07	119.00
23.	Tie Wires	9 ga Steel -- 6-1/2"		1	EA	ST-11650	.10	.10
24.	Tie Wires	9 ga Steel -- 8-1/4"		2,200	EA	ST-11825	.08	176.00

Item	Type	Description	Manufacturer Product Number	Estimated Quantity	U/M	Bidder's Product Number	Net Unit Price	Extended Price
25.	Hog Rings	Hog Rings, 25 lb box, 9 Gage Galvanized		166	LB	HR-9CLS3	1.92	318.72
26.	Truss Rod	Tighteners		140	EA	TT-DM002	1.42	198.80
27.	Truss Rod	12'		140	EA	TT-GR144	2.95	413.00
28.	Hog Rings	10 Gage Galvanized		1	LB	HR-10GAS	15.39	15.39
<b>Total for this Group:</b>								<b>3,112.91</b>

**Group C – Gates**

<b>INDICATE THE MANUFACTURER OFFERED</b>	<b>PRICE LIST/</b>	<b>DATED</b>	<b>PERCENT DISCOUNT OFF LIST</b>	<b>LARGE ORDERS PERCENT DISCOUNT OFF LIST</b> <small>(REFERENCE PARAGRAPH 7.2 OF IFB)</small>
<u>Hearne Steel/Pacific Fence &amp; Wire Co.</u>	_____0_____ /	9/25/2015	___0___%	___2___%

Item	Type	Description	Manufacturer Product Number	Estimated Quantity	U/M	Bidder's Product Number	Net Unit Price	Extended Price
1.	Hinge/ Industrial Bull Dog Hinge	2-7/8" x 1-5/8" or 1-7/8"		1	EA	PH-BUL27	15.56	15.56
2.	Hinge/ Industrial Bull Dog Hinge	4" x 1-5/8 or 1-7/8"		1	EA	PH-BULL4	17.50	17.50
3.	Industrial Double Swing Gates	20' Opening x 6' High		1	EA	29-02006	505.44	505.44
4.	Industrial Double Swing Gates	24' Opening		1	EA	29-02406	605.33	605.33
5.	Industrial Double Swing Gates	30' Opening		1	EA	29-03006	731.88	731.88
6.	Industrial Double Swing Gates	8' Opening		1	EA	29-00806	309.15	309.15
7.	Industrial Walk & Single Swing Gates	4' Opening		1	EA	27-00406	139.58	139.58
8.	Industrial Walk & Single Swing Gates	8' Opening		1	EA	28-00509	191.43	191.43
<b>Total for this Group:</b>								<b>2,515.87</b>

**Group D – Tubing**

<b>INDICATE THE MANUFACTURER OFFERED</b>	<b>PRICE LIST/</b>	<b>DATED</b>	<b>PERCENT DISCOUNT OFF LIST</b>	<b>LARGE ORDERS PERCENT DISCOUNT OFF LIST</b> <small>(REFERENCE PARAGRAPH 7.2 OF IFB)</small>
<u>Gregory Galvanizing, Western Tube, Wheatland Tube</u>	0 /	9/25/2015	0 %	2 %

Item	Type	Description	Manufacturer Product Number	Estimated Quantity	U/M	Bidder's Product Number	Net Unit Price	Extended Price
1.	Fence/Tubing and Pipe	C-Section (Rolled Formed) Post 1.875" x 1.625"--8'8"		1	EA	15-CL088	35.28	35.28
2.	Fence/Tubing and Pipe	C-Section Top & Brace Rail 1.625" x 1.25" -- 20'		1	EA	15-CRAIL	61.43	61.43
3.	Fence/Tubing and Pipe	PF-10 Fence Tubing -- 1-5/8"		840	FT	47-15821	1.01	848.40
4.	Fence/Tubing and Pipe	(1) Domestic - Standard Weight -- 4-0/0"		161	FT	52-40021	12.09	1946.49
5.	Fence/Tubing and Pipe	(1) Domestic - Standard Weight Sch 40 Pipe -- 1-5/8"		5,009	FT	52-15821	3.02	15,127.18
6.	Fence/Tubing and Pipe	(1) Domestic - Standard Weight Sch 40 Pipe -- 1-7/8"		1,656	FT	52-17821	3.61	5978.16
7.	Fence/Tubing and Pipe	(1) Domestic - Standard Weight Sch 40 Pipe -- 2-3/8"		1,106	FT	52-23821	4.83	5341.98
8.	Fence/Tubing and Pipe	(1) Domestic -Standard Weight Sch 40 Pipe -- 2-7/8"		833	FT	52-27821	7.69	6405.77
9.	Fence/Tubing and Pipe	(2) Domestic - Structural Weight Pipe -- 1-5/8"		1	FT	52-15821	3.02	3.02
10.	Fence/Tubing and Pipe	(2) Domestic - Structural Weight Pipe -- 1-7/8"		1	FT	52-17821	3.61	3.61
11.	Fence/Tubing and Pipe	(2) Domestic - Structural Weight Pipe -- 2-3/8"		1	FT	52-23821	4.83	4.83
<b>Total for this Group:</b>								<b>35,756.15</b>

(1) - Domestic Schedule 40 Galvanized Pipe. Specification: ASTM F1083-3, ASTM1043-11a

**Group E – Tee Posts**

<b>INDICATE THE MANUFACTURER OFFERED</b>	<b>PRICE LIST/</b>	<b>DATED</b>	<b>PERCENT DISCOUNT OFF LIST</b>	<b>LARGE ORDERS PERCENT DISCOUNT OFF LIST</b> <small>(REFERENCE PARAGRAPH 7.2 OF IFB)</small>
<u>CMC Southern Post</u>	_____0_____ /	9/25/2015	___0___%	__2___%

Item	Type	Description	Manufacturer Product Number	Estimated Quantity	U/M	Bidder's Product Number	Net Unit Price	Extended Price
1.	Tee Post/Fittings	Clips		28,200	EA	14-CLIPS	.05	1,410.00
2.	Tee Post/Fittings	Staples, barbed, galvanized, 1-3/4" x 9", 50 lb box, ASTM Designation A 116, Class I		100	BX	WS-00150	67.60	6,760.00
3.	Tee Post/Heavy/Galvanized	7', steel, 1.33#		196	EA	14-1337G	10.49	2,056.04
4.	Tee Post/Heavy	10', steel, 1.33# pen ft green with white top		1,610	EA	14-13310	10.02	16,132.20
5.	Tee Post/Heavy	6', steel, 1.33# pen ft green with white top		3,860	EA	14-13360	5.34	20,612.40
<b>Total for this Group:</b>								<b>46,970.64</b>



**Group F – Wire**

INDICATE THE MANUFACTURER OFFERED	PRICE LIST/ _____ /	DATED	PERCENT DISCOUNT OFF LIST	LARGE ORDERS PERCENT DISCOUNT OFF LIST <small>(REFERENCE PARAGRAPH 7.2 OF IFB)</small>
<u>Allied Tube / Pacific Fence &amp; Wire Co / Davis Wire</u>	0	9/25/2015	__0__%	__2__%

Item	Type	Description	Manufacture r Product Number	Estimated Quantity	U/ M	Bidder's Product Number	Net Unit Price	Extended Price
1.	Razor Ribbon	18" Single Coil - Spiral 50'		1	RL	BT-MBBT4	32.29	32.29
2.	Wire, Barb/Domestic Pacific Class III	2 Point 12-1/2 GA 4" Spacing, 80 rod roll, galvanized		1	RL	17-C3204	98.80	98.80
3.	Wire, Barb/Domestic Pacific Class III	4 Point 12-1/2 GA 5" Spacing, 80 rod roll, galvanized		9	RL	17-C3405	97.76	879.84
4.	Wire, Coil (Tension Wire)	9 Ga Galvanized, ASTM Designation A 116, galvanizing Class III		260	LB	20-03017	.74	192.40
5.	Wire, Coil (Tension Wire)	Class III Spring Coil -- 7 Ga Galvanized, ASTM Designation A 116		50	LB	20-07312	1.08	54.00
<b>Total for this Group:</b>								<b>1,257.33</b>

1. For Non-standard items: indicate if any the restocking fee for the returned items:  
Non-Standard items not eligible for return or refund.

2. Note: Bidders are to provide an additional discount on the price sheet, if any, that applies to large dollar orders over \$15,000. This discount will not be part of the evaluation; however, it may become part of any subsequent contract(s)

**04915 Appendix C- Fencing Materials and Related Products**

Bidder Profile

**1) COMPANY INFORMATION** (for contract administration purposes)

Company name and address: <u>Pacific Fence &amp; Wire Co</u> <u>13770 SE Ambler Rd / POB 125</u> <u>Clackamas, OR. 97015-0125</u>	Authorized representative: Steve Brindley
	Phone/Cell: <u>503-659-6880 / Cell: 503-407-9306</u>
	Email: <u>steveb@pacificfence.com</u>
Ordering contact/Address: <u>Name/Email Bill Schoenheit</u> <u>bills@pacificfence.com</u> <u>Address: 13770 SE Ambler Rd.</u> <u>Clackamas, OR. 97015</u> <u>Phone:503-659-6881</u>	Sales reporting contact information: <u>Name/Email: Dan Schoenheit / dans@pacificfence.com</u> <u>Phone: 503-659-6881</u>
Management fee contact: Dan Schoenheit <u>Name/Email:dans@pacificfence.com</u> <u>Phone:503-659-6881</u>	Address to send management fee invoices: <u>Company name: Pacific Fence &amp; Wire Co.</u> <u>Attn: Dan Schoenheit</u> <u>Address:13770 SE Ambler Rd. / POB 125</u> <u>City/State/Zip: Clackamas, OR. 97015-0125</u>
Emergency Contact: Bill Schoenheit <u>Name/Email: bills@pacificfence.com</u> <u>Phone 503-659-6881</u>	
Federal Tax ID number (If SSN only last 4) .....	93-0245325
Wash. Dept. of Revenue Registration No.....	409-005-2229

**2) SUBCONTRACTORS**

If applicable, 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. If a subcontractor is a minority or women owned business please include their OMWBE Certification Number (if certified). If necessary, attach additional sheets (please stamp or mark each page with a company name, mark, or initial). Do not include any Social Security Numbers.

The contractor, by including subcontractor(s) as part of your signed bid is your agreement to take complete responsibility, contract obligations, and liability for all actions of such subcontractors. All subcontractors are subject to DES approval. DES reserves the right to approve or disapprove any subcontractor.

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


**3) PURCHASING CARDS ACCEPTED** (note: any Visa purchasing card fees must be rolled into the unit price of the bid):

Visa  Master Card  American Express  Discover

**MINORITY/WOMEN OWNED BUSINESS STATUS**

a) Is your firm a Minority/Women Owned Business? Yes No

MWBE certification #

b) STATE OF OREGON:

If required, indicate percent increase to bid pricing for delivery to State of Oregon  
DASCPP/ORCPP Members: \_\_\_\_\_%

**4) BRANCH LOCATIONS/SALES/CUSTOMER SERVICE**

Service Area Store Outlet Coverage, Bidder shall provide a list of branch locations that will support this contract.

Contact Name: Address: City, State, Zip: Phone: Fax: Email:	Contact Name: Address: City, State, Zip: Phone: Fax: Email:
Contact Name: Address: City, State, Zip: Phone: Fax: Email:	Contact Name: Address: City, State, Zip: Phone: Fax: Email:
Contact Name: Address: City, State, Zip: Phone: Fax: Email:	Contact Name: Address: City, State, Zip: Phone: Fax: Email:
Contact Name: Address: City, State, Zip: Phone: Fax: Email:	Contact Name: Address: City, State, Zip: Phone: Fax: Email:
Contact Name: Address: City, State, Zip: Phone:	Contact Name: Address: City, State, Zip: Phone:

Fax: Email:	Fax: Email:
Contact Name: Address: City, State, Zip: Phone: Fax: Email:	Contact Name: Address: City, State, Zip: Phone: Fax: Email:
Contact Name: Address: City, State, Zip: Phone: Fax: Email:	Contact Name: Address: City, State, Zip: Phone: Fax: Email:

**5) INDICATE SERVICE REGIONAL AREAS APPLICABLE TO THIS OFFER (Map on page 4):**

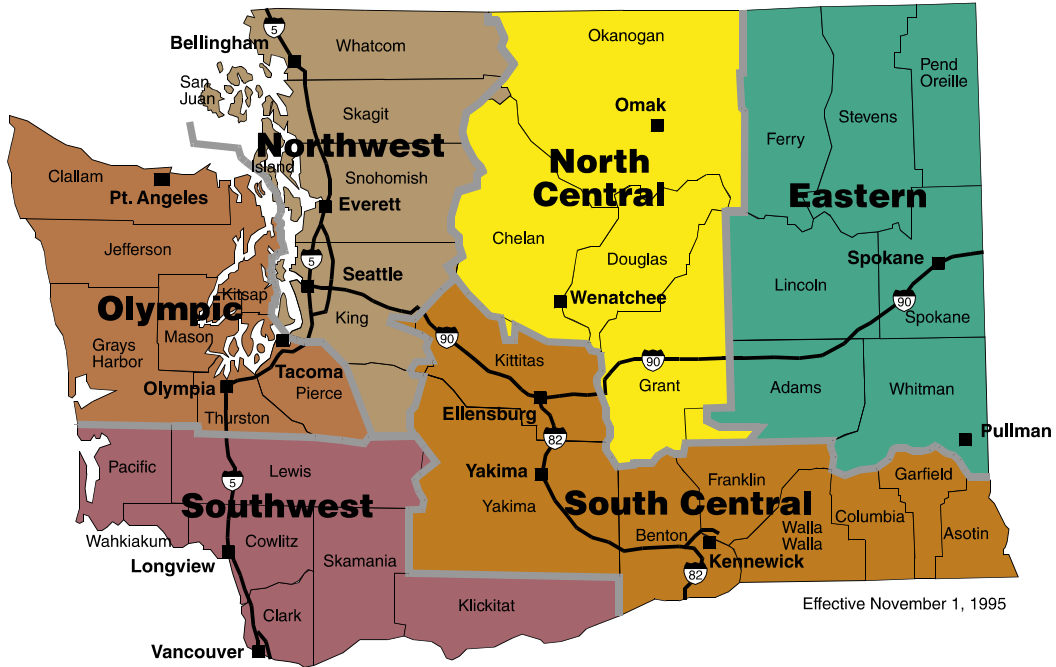
- Olympic       Northwest       North Central  
 Southwest       South Central       Eastern

**6) REFERENCES**

Provide a minimum of three commercial or government references for which bidder has delivered goods and/or services similar in scope as described in the IFB.

1. Customer: Contact: Phone: Email:	<u>WSDOT</u> <u>Vince Aguon</u> <u>253-983-7550</u> <u>aguonv@wsdot.wa.gov</u>
2. Customer: Contact: Phone: Email:	<u>Centralia Parks</u> <u>Barry Hughes</u> <u>360-330-7689</u> <u>bhughes@cityofcentralia.com</u>
3. Customer: Contact: Phone: Email:	<u>Port Of Tacoma</u> <u>Jill James</u> <u>253-383-5841</u> <u>jjames@portoftacoma.com</u>

Service Regional/Areas



## **04915 Appendix F- Fencing Materials and Related Products**

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### **Special Terms and Conditions**

#### **1. Contractor Qualifications**

The following are minimum Contractor qualifications to be considered for award of this contract:

- a) Bidder has two years of experience providing services similar in scope as described herein.
- b) Bidder has equipment and personnel to meet service time frame as described herein.
- c) Bidder employs Contractor representative(s) and technical trained personnel, with practical experience in assisting Purchasers with products as described herein.
- d) Bidder has capacity of providing routine, will call and emergency services as described herein.

#### **2. Service Requirements**

Contractor will be required to offer a variety of services to the Purchasers, to include:

- a) Contractor sales warehouse facility must be open during normal working hours. The Contractor is expected to assist contract users in making cost-effective purchases. This assistance may include: suggesting alternate methods, economical order quantities, providing technical data, and design assistance.
- b) Provide catalogs upon request at no cost (mutually agreed amount).
- c) Provide all supervision, labor, equipment, and supplies necessary to provide products/services described in this document.
- d) Review the impact of this award and take the necessary steps to ensure adequate coverage and contract compliance throughout the contract.
- e) Promote and market the use of this contract to all eligible Purchasers.
- f) Ensure that those who use this contract are authorized Purchasing Cooperative members.

#### **3. Delivery Requirements**

In order to meet the varied delivery needs of the Customers, products shall be delivered within ten (10) calendar days. Delivery times in excess of ten (10) days will be considered as non-responsive.

#### **4. Minimum Orders**

- a) There will be no minimum order requirements for this bid.
- b) No COD deliveries will be accepted.

#### **5. Emergency Orders**

Purchaser reserves the right to pick-up orders during emergency situations with little or no notice with the freight costs deducted. In case of an emergency the Contractor shall assist Purchase to best of their ability to supply the needed material. If the Contractor cannot respond, then the emergency requirement may be purchased on the open market with Purchaser following procurement guidelines.

#### **6. Branch Locations**

- a) Bidder shall provide a list of branch locations that will support this contract.

Special Terms and Conditions

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- b) Contractor shall have a branch location within the service area they bid in order to provide service, including order placement, Will-Call, defective product return, product exchange, counter service, immediate available inventory, order delivery, product identification and product assistance.
- c) Contract pricing structure must be the same for all branch locations within the service area bid.

**7. Contractor Vehicles and Equipment**

- a) Contractor shall provide all necessary vehicles, equipment and personnel for services as defined herein. There shall be no additional costs to the Purchaser for different types or sizes of delivery trucks or equipment with the exception of extraordinary situations as defined herein. All associated standard vehicle and equipment costs shall be included in the unit price and all inclusive.
- b) Exceptions to the all inclusive price are extraordinary situations are when nature of the service requires the use equipment, supplies, or Subcontractor, (e.g. barges, airlift, extra large cranes, etc.) that are outside of typical or normal delivery perimeters for industry; in these rare cases, the Contractor shall be reimbursed for actual documented and verifiable costs for providing extraordinary trucks, equipment and/or personnel, but Contractor shall obtain prior approval from Purchaser.

**8. Contractor's Representatives**

- a) Bidder shall provide names, addresses, and telephone numbers of primary and alternate contract representatives as required in bid documents. Contractor's representative, or designee, shall be available during normal working hours.
- b) Contractor's representative shall function as the primary point of contact, shall ensure supervision and coordination and shall take corrective action as necessary to meet contractual requirements.
- c) Emergency Contact: Contractor shall provide a 24/7 contact person. This contact person shall be able to response within (1) hour of being contacted by telephone.
- d) Purchaser Service Agent: Contractor(s) shall provide a person who will be responsible for resolving contract performance issues (examples might include but are not limited to order fulfillment delays, receipt of damaged goods, product returns, etc.). If the Purchaser Service Agent is unable to resolve the problem within three business days of the inquiry, then the Purchaser Service Agent is to send an electronic notification to the procurement officer that documents the problem, and includes Purchaser contact information as well as a plan for resolution. The Purchaser Service Agent will continue to provide on-going updates to the procurement officer until the issue(s) have been successful resolved.

**9. Order Placement**

Contractor shall:

- a) Receive all service requests under this contract by telephone, fax, or email.
- b) Provide order acknowledgments within one (1) business day of Purchaser's order. Order acknowledgment including field/purchase order number, ship to address, item ordered, contract pricing, delivery charge and ship date.
- c) Collect delivery information: Purchaser is to provide necessary site information when ordering that is: receiving person contact information (business phone, cell phone, fax number, and emergency/after-hours phone numbers, as necessary), driving directions, delivery address and instructions, delivery time/days, drawings or site maps (as necessary), security restrictions, and any service truck restrictions.

- d) Notify immediately the Purchaser, if a scheduled delivery time will be delayed. If Contractor cannot perform within the service requirements as identified herein, then the Purchaser may cancel the service order with no cost to the Purchaser.
- e) Provide contact person who will be responsible for resolving order issues (examples might include but are not limited to order fulfillment delays, receipt of damaged goods, product returns, etc.)

#### 10. Ordering Assistance

- a) Contractor may be called upon to assist Purchasers to determine the best service for their situation. This review shall be provided within a mutually agreed time frame at no additional charge.
- b) Contractor will provide list of materials needed for specific projects at no additional cost, if requested by Purchaser. Assistance may also take the form of a suggested "bill of materials" to meet a specific application.

#### 11. Purchasing Card and Electronic Funds Transfer

The states purchasing card VISA shall be an acceptable form of payment and shall not have a corresponding charge card fee.

- a) **Price Verification** Provide price verification to contract users upon request.
- b) Take necessary action to ensure that Purchasers will automatically receive contract pricing, whether or not they identify themselves as an Authorized Purchaser under this contract.
- c) Establish an internal audit procedure to ensure Purchasers are receiving the correct contract pricing.

#### 12. Order Authorization

- a) State agencies are responsible to submit a letter signed by appropriate responsible person setting forth names of individuals authorized to use this contract.
- b) It is the Contractor's responsibility to sell to those authorized and possessing a proper document number.
- c) No order is valid without an authorized purchase order or field order. The Purchaser will not be responsible for delivery of products without a valid purchase order.
- d) Account Set-up: New service locations may be added at any time during the term of this contract by Purchaser. Purchaser shall allow the Contractor ten (10) business days to set-up a new location account, visit the site for assessment and arrange service logistics once a purchase or field order is received from the Purchaser.

#### 13. Off Contract Purchases

- a) It is understood that the Contractor will make every effort to ensure the expeditious delivery of contract items, although:
- b) Purchaser reserves the right to purchase item(s) elsewhere if the anticipated time adversely effects project scheduling.
- c) Purchaser reserves the right to purchase item(s) elsewhere if Contractor branch location would not be cost efficient or timely to reach the branch location from the job site.

#### 14. Order Fulfillment Requirements

- a) Contractor is to prepare orders for a "will call" pick-up immediately after order is placed.
- b) In the event the Contractor is unable to complete the delivery within the contract time frame, then Contractor shall immediately notify the Purchaser and provide a revised delivery time.



Special Terms and Conditions

- c) When duplicate orders are received due to errors by Contractor, the duplicate order will be returned to the Contractor at no cost to the state, if duplicate orders are received due to errors by Purchaser, the duplicate order will be returned to the Contractor at Purchaser's cost.
- d) No substitution of products on the orders will be allowed without specific written consent from Purchaser.
- e) Product damaged as a result of Contractor negligence will either be replaced (and expedited at Contractor's expense) or if the Purchaser prefers, be noted on the receiving report and deducted from final payment.

**15. Liquidated Damages**

The state has an immediate requirement for the materials, equipment or services specified herein. Bidders are urged to give careful consideration to the state's requirements and to the manufacturer's production capabilities when establishing a delivery date(s). Liquidated damages will be assessed in the amount of actual damages incurred by the state as a result of Contractor's failure to perform herein.

**16. Returns of New/Used Fencing Materials**

Purchaser may return products under the following conditions:

- a) Contractor agrees that any products purchased through this contract within the past six (6) months may be returned for full credit and without penalty or restocking charges, provided they are in original cartons and are in re-salable condition.
- b) A copy of the purchase/field order will accompany the fully priced invoice and packing slip.
- c) Contractor will assist Purchaser in ordering the proper products, accept return of improperly ordered items(s) and reship correct item(s).
- d) Restocking Standard terms: When Purchaser returns standard items there shall be no restocking fee provided they are in original cartons and are in re-salable condition.
- e) Restocking for Non-standard items: When Purchaser returns non-standard items there may be a restocking fee, items shall be in original cartons and are in re-salable condition.
- f) Should an order include a specialty item(s), the Contractor's or manufacturer's restocking fees concerning the specialty item(s) shall be communicated and approved by Purchaser upon receipt of the purchase order.
- g) Contractor shall arrange for a Call Tag to insure freight is charged to Contractor for defective returns within ten (10) business days.
- h) Non-returnable Special Ordered Items: Are not returnable, unless Contractor agrees to take back the item.
- i) Contractor is responsible for shipping costs and arranging for pick-up of any defective returns of items within five (5) business days from notification by Purchaser.

**17. Auditing Invoicing**

Contractor shall on an annual basis perform a random audit of all invoices to ensure pricing accuracy and provide this audit report to the Office of State Procurement. Audit shall include a minimum of (5) percent of all invoices for the reporting period. There shall be no cost to the state for this requirement. An unfavorable audit may be considered a breach of the Contract and the state, at its sole discretion, may provide the Contractor an opportunity to correct the negative finding(s) or cancel the contract immediately.

**18. Material Safety Data Sheets**

Contractor must provide, at no cost, at least one copy of any applicable Manufacturer's Material Safety Data Sheet(s) (MSDS) with each shipment during the term of the contract or the location of MSDS if available on the internet.

### 19. Delivery and Freight Terms

- a) 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.
- b) All costs for packaging and or containers shall be borne by the Contractor. All products shall conform to the provisions set forth in the federal, county, state and city laws for their product, handling, processing and labeling. Packages shall be so constructed to ensure safe transportation to point of delivery.
- c) Specifications: Product shall be packaged and shipped on non-returnable pallets. Pallets shall not exceed 2,500 pounds in weight, 48 inches high and 6 feet wide.
- d) Labeling: Individual shipping cartons shall be labeled with the name of the ordering agency, order number, contract number, contractor, and where applicable, state stock numbers, date of manufacturer, batch number, storage requirements, conditions, and recommended shelf life. Bidders are encouraged to offer product packaging with recycled content.
- e) There shall be no extra charges allowed for delivery beyond the freight charge, except for extraordinary situations or unanticipated change of condition situations, any extra charges are to be pre-approved by the Purchaser in writing.
- f) Contractor shall not charge for daily travel to site or any per diem charges, these items are inclusive in the transportation charge. Per Diem is not allowed under this contract, unless otherwise noted herein.
- g) Special Road Permits/Fees or bridge restriction may affect transportation charge for a location. Any fees and permit costs necessary for transportation shall be direct pass through with no additional fees or charges by Contractor to Purchaser.

### 20. Delivery Schedule

- a) Delivery Days and Times: For State facilities, Normal business (working) days/hours shall be Monday through Friday, 8:00 AM to 4:00 PM (Pacific Time), excluding Washington State government holidays as defined in RCW 1.16.050 or unless otherwise requested and mutually agreed.
- b) Contractor is required to coordinate delivery days/hours with Purchaser prior to making deliveries.
- c) The state reserves the right to refuse shipment when delivered after normal working hours. The Contractor shall verify specific working hours of individual agencies and so instruct carrier(s) to delivery accordingly.

### 21. Mileage Charge

For service locations that exceed 35 miles within the service area (county) from the Contractor transporter's facility to the Purchaser's service location, a Mileage charge may apply. The charge for mileage shall be calculated from the above stated 35 mile radius, shortest one way to the job site. The charge per mile will be based on the Washington State Office of Financial Management, Reimbursement Rates posted at website <http://www.ofm.wa.gov/policy/10.90a.pdf> for Private Owned Vehicles (POV) Mileage Rate that was in effect on the day of service. Per Diem and mobilization charges are not allowed under this contract, unless otherwise noted in the contract. Contractor shall notify Purchaser when a mileage charge applies prior to the providing service.

## **22. Delivery Notification**

- a) Provide a delivery notification with adequate time for the Purchaser to prepare, a 24-hour notification is customary and may be required. Notification shall be made during Purchaser's business hours.
- b) Contractor is responsible for communicating immediately to the Purchaser of any delays or delivery schedule changes.
- c) Contractor is required to coordinate delivery days/hours with Purchaser prior to making deliveries.
- d) Purchaser shall immediately notify the Contractor of any delays in the schedule and coordinate a new mutually agreeable delivery schedule.
- e) Occasionally, circumstances arise beyond anyone's control that may delay delivery (weather, highway construction, concurrent site activities, administrative actions, etc.) or allow delivery slightly ahead of schedule. In these circumstances, delivery shall be by mutual agreement of both parties and there shall be no additional charges to the Purchaser.

## **23. Delivery Documentation**

- a) Purchaser to work with the Contractor to confirm a Purchaser representative is available to sign delivery tickets or otherwise accept and authorize deliveries.
- b) Liability for product delivery remains with the Contractor until properly delivered and signed for by the requesting department, unless the Purchaser approves of delivery with no signature, in these cases the Contractor shall have a written approval prior to delivery.
- c) The Bill of Lading shall be accurate, complete, and legible, and must contain the following information:
  - i. Date of delivery, initialed by driver
  - ii. Field (Purchase) Order number
  - iii. State Contract number
  - iv. Product name
  - v. Destination of delivery
  - vi. Total number of units being delivered

## **24. Certificate of Delivery**

- a) Certificate of Delivery: At the time of delivery, it is the Contractor's responsibility to have the delivery checked and inspected, shortages identified and the delivery receipt/invoice signed by a designated institution representative. Payment will not be made to the Contractor without a signed delivery receipt/invoice.
- b) Depending upon the Purchaser, the Contractor may arrange to submit an invoice after each delivery or consolidate invoices for monthly submittal. The Contractor is responsible for the correctness of each invoice.
- c) Product damaged as a result of Contractor negligence will either be replaced or be noted on the receiving report and deducted from final payment.