



**Master Contract
07815C**

Heating Ventilation and Air Conditioning (HVAC) Parts and Supplies

Between:

MIControls, Inc.

And

Washington State Department of Enterprise Services

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1 CONTRACT FORMATION

1.1 PARTIES

This Master Contract ("Contract") is entered into by and between the Washington State Department of Enterprise Services, an agency of Washington state government (hereinafter "DES"), and MIControls, Inc., licensed to conduct business in the state of Washington, (hereinafter "Contractor") for the purpose of providing Heating, Ventilation, and Air Conditioning Parts and Supplies.

1.2 RECITALS

The state of Washington, acting by and through DES issued Invitation for Bid (IFB) number 07815 dated February 17, 2016, for the purpose of establishing a Master Contract which would enable Contractor to purchase materials, equipment, parts or supplies for Heating, Ventilation, and Air Conditioning units.

DES evaluated all properly submitted Responses to the above-referenced IFB and has identified Contractor as an Apparent Successful Bidder for all six (6) geographical regions, as defined in the above-referenced solicitation.

DES has determined that entering into a Contract with Contractor will meet the state of Washington's needs and will be in its best interest.

NOW THEREFORE, DES awards to Contractor this Master Contract, the terms and conditions of which shall govern Contractor's competition for and purchasing of HVAC Parts and Supplies. This Master Contract is an optional-use Contract that neither financially binds the State nor otherwise obligates the State to purchase any products or Services hereunder. Nor does the Contract prevent the State from purchasing the same or similar products or Services from other sources, provided that, all legal acquisition requirements are satisfied.

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

1.3 PURPOSE OR SCOPE

The purpose of this Contract is to establish a statewide master Contract for the purchase of Heating, Ventilation, and Air Conditioning materials, services, equipment, parts or supplies.

1.4 CONTRACT TERM

The initial term of this Contract is from June 22, 2016 to June 30, 2018, with the option to extend for additional term(s) or portions thereof. Extensions will be exercised at the sole discretion of DES upon written mutual agreement. The total Contract term, including the initial term and all extensions, will not exceed eight (8) years unless circumstances require a special extension.

1.5 USE OF HEADINGS AND INCORPORATED DOCUMENTS

The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.

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

- a. IFB No. 07815
- b. Contractor's Response to the IFB No. 07815
- c. All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting

materials Contractor made available to DES or Purchaser and used to affect the sale of Services to Purchaser.

1.6 ORDER OF PRECEDENCE

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. Written amendments to the resulting Contract
- c. Contract No. 07815C
- d. IFB No. 07815
- e. Contractor's Response to IFB No. 07815

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.

1.7 CONTRACT ADMINISTRATION

All matters relating to the administration of this Contract by Contractor shall be handled by:

Trine Eriksen
PO Box 80686
Seattle, WA 98108
(206) 767-0140
trine@micontrols.com

1.8 PRICING

Contractor agrees to a price discount of 66% off list pricing submitted in response to Solicitation No. 07815 for the following manufacturers:

- a. Seimens
- b. Honeywell .
- c. Belimo
- d. Invensys (Schneider Electric)
- e. Johnson Controls

Pricing shall be inclusive of all administrative fees, management fees, manuals, documentation, and shipping charges specified in Section 1.9 *Shipping*.

1.9 SHIPPING

Freight terms are FOB destination, freight prepaid and included in contract pricing, unless the product requires air freight. Contractor agrees to deliver all in-stock items within 1 business day after receipt of order (ARO). Out of stock items will be delivered within manufacturer's lead time plus one day (typically 10-14 days ARO), depending on manufacturer availability.

1.10 ORDERING PROCEDURES

Orders can be placed via phone at:

Seattle Orders: (800) 877-8026
Portland Area Orders: (800) 737-8146

Via email at: seattlesales@miconcontrols.com

Purchasers should reference Contract No. 07815 on all purchase orders to ensure they receive contract pricing. All invoices will be mailed out the day following shipment of goods to the corresponding address on the purchase order. Payment terms are Net 30 Days, with a prompt payment discount of 2%, Net 10. Contractor agrees to accept the following credit cards at time of order placement: Visa, Master Card, and American Express.

1.11 PRICE ADJUSTMENTS

The percent discount referenced in Section 1.8 *Pricing* shall remain firm and fixed for 365 days from the effective date of this Contract. Contractors may offer higher discount levels than specified in the contract to meet a competitive price or in response to a volume purchase.

For Price List items within awarded categories, the manufacturer's price list/catalog may be changed during the term of the contract if the manufacturer publishes a new price list however, the discount percentage shall remain unchanged. When a price list/catalog is changed, it will remain unchanged for a period of 365 days.

Contractors shall not make contract extensions contingent on price adjustments.

1.12 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

1.13 CHANGES

DES reserves the right to modify the resulting Contract (including but not limited to adding or deleting products/services) 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.

2 STANDARD DEFINITIONS

This section contains definitions of terms commonly used in Contracts let 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.

Agency	State of Washington institutions, the offices of the elective state officers, the Supreme Court, the court of appeals, the administrative and other departments of state government, and the offices of all appointive officers of the state. "Agency" does not include the legislature but does include colleges, community colleges and universities who choose to participate in state Contract(s).
Amendment	A change to a legal document. 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.
Authorized representative	An individual designated by the Contractor to act on its behalf and with the authority to legally bind the bidder or Contractor.
Authorized signatory	An individual with the authority to legally bind t Contractor to the terms and conditions set forth in the Contract documents.
Business days	Monday through Friday, 8 a.m. to 5 p.m., Pacific Time, except for holidays observed by the State of Washington.
Calendar days	Consecutive days of the year including weekends and holidays, each of which commence at 12:00:01 a.m. and end at Midnight, Pacific Time. When "days" are not specified, Calendar Days shall prevail.
Contract	An agreement, or mutual assent, between two or more competent parties with the elements of the agreement being offer, acceptance, and consideration.
Contract administrator	The individual authorized by DES who is responsible for administration of a Contract.
Contractor	Individual, company, corporation, firm, or combination thereof that DES develops a Contract for the procurement of materials, supplies, services, and/or equipment. It shall also include any Subcontractor retained by Contractor as permitted under the terms of the Contract.

Department of Enterprise Services (DES)	An agency serving state government and the citizens of Washington.
Estimated useful life	The estimated time from the date of acquisition to the date of replacement or disposal, determined in any reasonable manner.
Inspection	An examination of delivered material, supplies, services, and/or equipment prior to Acceptance aimed at forming a judgment as to whether such delivered items are what was ordered, were properly delivered and ready for Acceptance. Inspection may include a high level visual examination or a more thorough detailed examination as is customary to the type of purchase, as set forth in the solicitation document and/or as agreed between the parties. Inspection shall be acknowledged by an authorized signature of the Purchaser.
Lead time/After Receipt Of Order (ARO)	The period of time between when the Contractor receives the order and the Purchaser receives the materials, supplies, equipment, or services order.
Lifecycle cost	The total cost of an item to the state over its Estimated Useful Life, including costs of selection, acquisition, operation, maintenance, and where applicable, disposal, as far as these costs can reasonably be determined, minus the salvage value at the end of its estimated useful life.
Contracts, Purchasing and Risk Management (CPRM)	A unit of the Contracts and Legal Services Division of DES authorized under Chapter 39.26 RCW to develop and administer Contracts for goods and services on behalf of state agencies, colleges and universities, nonprofit organizations and local governments.
Order document	A written communication, submitted by a Purchaser to the Contractor, which details the specific requirements of the Purchaser within the scope of the Contract, such as delivery date, size, color, capacity, etc. An order document may include, but is not limited to field orders, purchase orders, work order or other writings as may be designated by the parties hereto. No additional or alternate terms and conditions on such written communication shall apply unless authorized by the Contract and expressly agreed between the Purchaser and the Contractor.
Original Equipment Manufacturer (OEM)	A supply management term for the purchase of parts and material directly from the manufacturer of the equipment or from an authorized reseller. For example, Ford automotive replacement parts would be purchased from an authorized Ford reseller.
Product	Materials, supplies, services, and/or equipment provided under the terms and conditions of this Contract.

Purchaser	The authorized user of the Contract, as identified in the original solicitation.
State	The state of Washington acting by and through DES.
State Contract	<p>The written document memorializing the agreement between the successful Bidder and DES for materials, supplies, services, and/or equipment, administered by the Master Contracts and Consulting Unit on behalf of the State of Washington.</p> <p>“State Contract” does not include the following:</p> <ul style="list-style-type: none"> - Colleges and universities that choose to purchase under RCW 28B.10.029 - Purchases made in accordance with state purchasing policy; - Purchases made pursuant to authority granted or delegated under RCW 39.26 - Purchases authorized as an emergency purchase under RCW 39.26; or - Purchases made pursuant to other statutes granting the agency authority to independently conduct purchases of materials, supplies, services, or equipment.
Subcontractor	A person or business that provides an essential aspect of the Contract under the direction and responsibility of the Contractor and with the agreement of DES.
Washington’s Electronic Business Solution (WEBS)	The vendor registration and bidder notification system maintained by the Washington State Department of Enterprise Services located at: www.ga.wa.gov/webs .

3 STANDARD TERMS & CONDITIONS

3.1 Contract Modifications

DES reserves the right to modify 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

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.

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 to 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 Contract Management

Upon award of this Contract, the Contractor shall:

- a. Review the impact of the award and take the necessary steps needed to ensure that Contractual obligations will be fulfilled.
- b. Promote and market the use of this Contract to all authorized Contract Purchasers.
- c. Ensure that those who endeavor to utilize this Contract are authorized Purchasers under this Contract.
- d. At no additional charge, assist Purchasers in 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:

- Providing Purchasers with regular and timely status updates in the event of a delay in order fulfillment.
- Acting as the lead and liaison between the manufacturer and Purchaser in resolving warranty claims for Contract items purchased.

3.5 Statewide Payee Desk

Contractors must register with the Statewide Payee Desk, maintained by DES, in order to be paid for Contract sales. Washington state agencies cannot make payments to a Contractor until it is registered. Registration materials are available here:

<http://www.des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>

3.6 Management Fee

Contractor will pay a management fee of 0.74 percent to DES on all state Contract sales/purchase price for purchase orders. The purchase price is defined as total invoice price less sales tax. No taxes will be assessed against the management fee.

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. Written notifications of the management fee by DES become effective for new purchases or new change orders to existing purchases 30 calendar days after notification unless DES grants additional time.

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

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

3.7 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 at <http://gaapoly01/CUS/Login.aspx?ReturnUrl=%2fCUS%2fDefault.aspx>. 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

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

3.8 Other Required 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.

3.9 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). Contractors already registered need not re-register. It is the sole responsibility of Contractor to properly register and maintain an accurate vendor profile.

3.10 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

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. Personnel substitutions

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.

d. 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.

e. 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.

f. 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.

g. 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.

h. Best Pricing

Once a percentage discount of the manufacturer's most current price list/catalog has been established, the percent discount shall remain firm (not subject to change). Contractors may offer higher discount levels than specified in the contract to meet a competitive price or in response to a volume purchase.

For Price List items within awarded categories, the manufacturer's price list/catalog may be changed during the term of the contract if the manufacturer publishes a new price list however, the discount percentage shall remain unchanged. When a price list/catalog is changed, it will remain unchanged for a period of 365 days.

i. Site Security:

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

3.11 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 vests 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.

3.12 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:

- a. The Product may be returned at Contractor's expense and the Purchaser reimbursed for any payments.
- b. The Contract may be terminated without any liability to the state of Washington or Purchaser.

3.13 Payment

a. Advance payment prohibited:

No advance payment shall be made for the products furnished by Contractor under this Contract.

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. Statewide vendor registration numbers may be accessed here:

<http://www.des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/VL.aspx>. 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.

3.14 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

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](#) or 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. 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.

h. 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.

i. 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.

3.15 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. 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.

3.16 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

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.

3.17 General Terms and Conditions

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

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

c. Survivorship

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

d. Independent Status of Contractor

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

e. Gifts and Gratuities

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

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

seeking gifts (except as permitted by RCW 42.52.150) if the officer or employee participates in Contractual matters relating to the purchase of goods or services.

f. Immunity and Hold Harmless

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless state, agencies of state and all officials, agents and employees of the 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.

3.18 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:

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 policies 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.

3.19 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.

3.20 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.

3.21 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.

3.22 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.

3.23 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.

3.24 Disputes and Remedies

a. Problem resolution and disputes

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

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

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

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

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

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

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

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

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

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

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

b. Administrative Suspension

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

c. Force Majeure

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

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

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

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

d. Alternative Dispute Resolution Fees and Costs

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

e. Non-Exclusive Remedies

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

3.25 Limitation of Liability

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

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

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

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

a. Federal Funding

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

b. Federal Restrictions on Lobbying

Contractor certifies that under the requirements of Lobbying Disclosure Act, 2 U.S.C., Section 1601 et seq., no federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of

Congress in connection with the awarding of any federal Contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal Contract, grant, loan, or cooperative agreement.

3.26 Debarment and Suspension

Respondent certifies, by submitting this bid or proposal, that neither it nor its affiliates presently are debarred, suspended, and 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.

3.27 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 affects any other remedies available against Contractor under the Contract or by law.

If the breach remains after Contractor has been provided the opportunity to cure, 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 60 calendar days or other appropriate time period written notice beginning on the second day after mailing to the Contractor. If this Contract is so terminated, Purchasers shall be liable only for payment required under this Contract for properly authorized

services rendered, or materials, supplies and/or equipment delivered to and accepted by the Purchaser prior to the effective date of Contract termination. Neither DES nor the Purchaser shall have any other obligation whatsoever to the Contractor for such termination. This Termination for Convenience clause may be invoked by DES when it is in the best interest of the State of Washington.

e. Termination for Withdrawal of Authority

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

f. Termination for Non-Allocation of Funds

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

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

g. Termination for Conflict of Interest

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

h. Termination by Mutual Agreement

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

i. Termination Procedure

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

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

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

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

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

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

Take such action as may be necessary, or as DES and/or the Purchaser may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which DES and/or the Purchaser has or may acquire an interest.

3.28 Counterparts

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

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

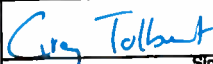
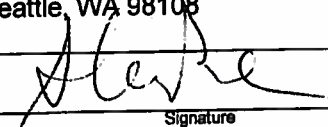
State of Washington Department of Enterprise Services 1500 Jefferson Street SE Olympia, WA 98501		MIControls, Inc. PO Box 80686 Seattle, WA 98108
Signature		Signature
Greg Tolbert <small>Print or Type Name</small>		Steve Roe <small>Print or Type Name</small>
<small>Date</small> Legal Services Manager		<small>Date</small> President
Title		Title

3.28 Counterparts

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

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

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Signature	Signature
Greg Tolbert Print or Type Name	Steve Roe Print or Type Name
C.23.16 Date	5/31/16 Date
Legal Services Manager Title	President Title