



Invitation for Bid 07914

Rainwear

The Washington State Department of Enterprise Services, Master Contracts and Consulting Unit (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.

Posting date December 29, 2014

Question-and-Complaint period . Ends five business days before original bid closing date

Pre-bid conference January 13, 2015, 10:00a.m.-12:00p.m.

..... 1500 Jefferson Building RM 2331

..... Olympia, WA 98501

Bids are due January 21, 2015, 2 p.m.

Anticipated award date..... February 3, 2015

Procurement coordinator..... Jennifer Burbage
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Responses must be emailed to DESMCC3@des.wa.gov

Subject line: 07914 Rainwear

**(NOTE: DO NOT SEND YOUR BID RESPONSE TO THE
PROCUREMENT COORDINATOR)**

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1. SUMMARY OF OPPORTUNITY

1.1 Purpose of the IFB

The purpose of this IFB is to establish a statewide master contract for Rainwear and other climatic related clothing and attachments.

The Department of Enterprise Services (DES) intends to award to multiple vendor(s) in each category. Category A-Rainwear will have three awarded vendors using three different manufactures and category B Helly Hanson Rainwear will have two awarded vendors. See Award section for expanded and controlling details.

1.2 Purchasers

The Washington State Department of Transportation is the primary user of this contract. This 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 WSPC 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 the contract is one year from award of the contract, 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 years unless circumstances require a special extension. DES reserves the right to extend with all or some of the contractors for any reason or no reason at all.

1.4 Estimated usage

Purchases over the life time of the contract could approximate \$756,988 based off previous contract #05206. Purchase potential from other purchasers is unknown. The awarded Contractor understands and accepts the risk of low sales or zero sales and shall hold harmless the state of Washington, DES, and customers/purchasers authorized to us this contract.

DES does not represent or guarantee any minimum purchase.

1.5 Delivery

For expanded details see Appendix E, Special Terms and Conditions.

2. IFB OVERVIEW

2.1 Announcement and special information

The IFB, its appendices, attachments, amendments, DES accepted portions of the Bidder's bid, 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 [Master Contract Terms and Conditions](#), which is an appendix 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, the IFB will prevail.

2.2 Complaints and Questions

General: Questions may involve questions, concerns, suggestions, etc. Complaints are actual objections to the solicitation and involve a more formal review and response process.

Complaint: The complaint period is an opportunity for the bidder to voice objections, raise concerns or suggest changes. 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. If DES receives a written communication that does not clearly and conspicuously identify the communication as a "complaint" it will be treated as

a question, concern, suggestion, etc. Bidders must use the word complaint in both the subject line and the body of the communication. Failure to do so may cause DES to misunderstand the communication as something other than a complaint. Bidders accept the risk for failing to clearly and conspicuously identify the communication as a complaint.

NOTE: See also Appendix D, Complaint, Debrief and Protest Procedures, located in the Appendices section below.

2.3 Debrief and protest (general information)

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

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 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 and 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](#).

2.4 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 provided 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.

2.5 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.

2.6 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.

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

2.7 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.

2.8 Pricing

Bid prices must include all cost components needed for the delivery of the goods and/or services 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.

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. For evaluation purposes only, any pricing submitted in portions of whole cents will be rounded up to the nearest whole cent.

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

The management fee will be 0.74 percent of contract sales. The price is defined as total invoice price less sales tax. Sales tax will be assessed against the management fee.

Example: a \$200 Will-Call sale at the local sales tax rate of 8.6%:

$$\$200 \times 1.0074 = 201.48 \times 1.086 = \$218.81$$

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. If during the contract term a contractor loses their dealer authorization DES may choose to not extend or immediately terminate the contractor.

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:
 - percent women-owned businesses (WBE);
 - percent minority-owned businesses (MBE);
 - percent small businesses (SB);
 - 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 I [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.

Prior to contract extension, the state may review the socioeconomic opportunities and the level of socioeconomic involvement under this contract. This may be one factor of consideration in deciding to extend or rebid the contract.

3. PREPARATION OF BIDS

3.1 Pre-bid meeting

MCC will host a pre-bid meeting to address IFB requirements at the time and location indicated on the cover page. While attendance is not mandatory, bidders are encouraged to attend and participate. The purpose of the pre-bid meeting is to clarify the IFB as needed and raise any issues or concerns, especially those of the vendor community. If interpretations, specifications, or other changes to the IFB are required as a result of the meeting, the Procurement Coordinator will post an amendment to WEBS.

Assistance for disabled, blind or hearing-impaired persons who wish to attend is available with prior arrangement by contacting the Procurement Coordinator identified on the cover page.

3.2 Format

All Responses must be emailed to DESMCC3@des.wa.gov *Subject line: 07914 Rainwear*. **Do not send Responses to or copy the Procurement Coordinator's inbox.** Responses may not be faxed. Improperly delivered Responses may be rejected for non-responsiveness.

DES assumes no responsibility for confirmation of receipt and cannot discuss Response contents prior to the Response Due Date and Time. All Responses and any accompanying documentation become the property of DES and will not be returned.

Response must be legible and completed in ink or with an electronic printer or other similar office equipment, and properly signed by an authorized representative of the bidder and submitted prior to the bid closing date. To ensure your submittal is received on time do not wait until the last day. All changes and/or erasures must be initialed in ink. Unsigned response 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 response may be rejected. Hard copies are not required but DES may request a copy of the most recent catalog available by manufacture. **Failure to provide this submittal may result in bid being rejected for lack of responsiveness or responsibility. This request must be met within 5 business days.**

3.3 Waiver Confidentiality, proprietary material and trade secrets

The state of Washington has a very robust public records act that is codified in statute [RCW 42.56](#). Further, DES believes that Washington's citizens are served best when public contract records are immediately available for public inspection and public dissemination. DES does not see any meaningful need for disclosure protections and safeguards for a contract of this type. Therefore, **no document** involved with state of Washington, Department of Enterprise Services (DES) contract #07914 – Rainwear will be deemed confidential, proprietary, or other similar term and may be disclosed following the ASB announcement.

As a condition of this solicitation and resulting contract, the Bidder/Awarded Contractor understands and agrees that inquires, questions, complaints, concerns and all documents that make up the #07914 bid process, submittals and contract, whether known, unknown, or developed in the future are neither confidential or proprietary and may be immediately publically inspected or publically disseminated with no notice to Bidder/Awarded Contractor.

The state of Washington/DES recognizes that many businesses routinely mark documents as confidential, proprietary or similar term. Should DES have in its possession or receive a document marked in this manner, Bidder/Awarded

Contractor understands and agrees that it is an error by Bidder/Awarded Contractor that may be ignored by state of Washington/DES/purchasers and customers and does not require any notification to Bidder/Awarded Contractor, and Bidder/Awarded Contractor grants to state of Washington/DES/customers and purchasers a waiver to any disclosure protections and notifications and shall hold the state of Washington/DES/customers and purchasers harmless.

3.4 Due date and time

Bid packages 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 DES email time stamp.

If a bid is late or received at a location other than that specified it will be rejected. In the event the official time clock is unavailable, DES will establish the official time and take reasonable steps to ensure the integrity of the bid receipt is preserved.

3.5 Bid opening

After the bid due date and time, the Bid Clerk will open and process bids protecting the confidentiality of the contents. 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 ASB announcement.

4. SUBMITTALS, EVALUATION, ANNOUNCEMENT, DEBRIEF & DISCLOSURE, AWARD, PROTEST, AND OTHER

4.1 Bid submittals checklist

The following checklist identifies the hard-copy submittals which will comprise a bid. Any bid received without a hard copy item identified in this checklist and designated as **REQUIRED** may be rejected as being non-responsive. Please identify each page of the submittals and any supplemental materials with your company name or other identifiable company mark.

- Signature (REQUIRED):** Complete as instructed and return a signed original of the [Bidder's Authorized Offer](#). Failure to provide this submittal may result in bid being rejected for lack of responsiveness.
- Price Worksheets and Specifications for all Categories in which the bidder would like to compete for an award (REQUIRED):** Complete as instructed and return a copy of the [Price Worksheet Appendix](#). Failure to complete this submittal as instructed may result in a bid being rejected for lack of responsibility and responsiveness.
- Bidder Profile (REQUIRED):** Complete as instructed and return a copy of the [Bidder Profile Appendix](#). Failure to provide this submittal may result in bid being rejected for lack of responsiveness.

- **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 responsibility and responsiveness. When in doubt, sign and return a copy of all IFB amendments.
- **References:** Failure to provide references in Appendix C, Bidder profile may result in bid being rejected for lack of responsiveness and responsibility.
- **Catalog for any manufacture being bid by bidder (REQUIRED for categories A & B):** Upon request, submit the most recent catalog available by manufacture. Failure to provide this submittal may result in bid being rejected for lack of responsiveness or responsibility. The request must be met within 5 business days.

4.2 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.

4.3 Evaluation

To aid in the evaluation process, after Response due date and time, DES may require individual Bidders to appear at a date, time and place determined by DES for the purpose of conducting discussions to determine whether both parties have a full and complete understanding of the nature and scope of contractual requirements. In no manner shall such action be construed as negotiations or an indication of DES's intention to award.

The Procurement Coordinator will only continue to evaluate bids meeting all the specifications. The State reserves the right to determine, at its sole discretion, whether a Bidder's response is sufficient to pass.

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 or non-responsible.

Pursuant to [Chapter 39.26 RCW](#), in determining Bidder responsibility, the following elements shall be given consideration:

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

4.3.1 INITIAL DETERMINATION OF RESPONSIVENESS

Responses will be reviewed initially by the Procurement Coordinator and/or authorized personnel to determine, on pass/fail basis, whether each response meets all the administrative requirements specified herein. The evaluation need not be in any particular order as long as all parts are performed. 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.

4.3.2 BIDDER PROFILE

Bidders must complete and return the Bidder Profile located in the Appendices section below.

4.3.3 REFERENCES (PASS/FAIL. IF USED)

Bidder's response should include a description of its current and past contracts using the five most recent references. This information must be complete in that the Bidder may not cherry pick good customer relationships over bad relationships.

Bidder understands, accepts and agrees that if the state learns that an awarded Bidder failed to include relevant information that is a material breach and the state may terminate immediately.

Information should include the name and contact information for the customer and customer's business, the contract number, a brief description about the scope and purpose of the contract.

The Bidder understands, agrees, and accepts that the state may contact none, some or all of the customers as a reference check. If the state learns of any negative information in which the customer would not hire the Bidder for future business that is an indicator of non-responsibility and may result in no further consideration for award.

The Bidder's Past and Current Contracts Sheet is available in the Bidder Profile Appendix C.

4.4 Technical specifications evaluation

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. Bidder's signature and bid response indicates acceptance and ability to comply with the technical specifications. The required specifications if any, are contained in Appendix B price sheets.

4.5 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 must submit pricing for all required line items; failure to do so may result in disqualification from award. Any line item without pricing will not be added to the contract later.

4.5.1 APPENDIX B-PRICE SHEETS AND SPECIFICATIONS CATEGORY A

GENERAL: Category A is only open to bidders that offer as an authorized distributor a manufacturing line other than Helly Hanson. Do not offer manufacturer Helly Hanson for Category A. The price sheet is in the form of a Microsoft Excel workbook and has two worksheets, A and B (see Appendix B in the Appendices section below). Bidders wanting to bid on Category A must use the Category A worksheet. The price sheet also serves to identify the technical specifications. Bidder will be required to identify the manufacture they will be bidding and may bid a maximum of two manufactures. If the bidder is bidding two manufactures they must provide two separate price sheets (one for each manufacturer). The bidder must populate the cells for company name, manufacturer you are bidding, identify the manufacturer's most recent catalog that was available at the time of solicitation posting on WEBS. It is the bidder's responsibility to ensure they have the most current at the time of DES solicitation posting. Upon request by DES, the Bidder shall provide to DES a copy of the most recent catalog or face disqualification for bid non-responsiveness or bidder non-responsibility.

If there is any doubt how to complete the Price Sheet make an inquiry to the Procurement Coordinator.

PRICING: Bidder will place a uniform percentage discount off catalog in the appropriate cell (G8). The discount percentage for each line item will remain fixed for the life of the contract. The uniform percentage discount off catalog value input by the bidder will auto populate the rest of the Excel price sheet. Do not alter any auto populated values. The bidder must also populate the catalog's price for all line items, e.g., A1, A2, B1, B4, D4, F2, etc. (all line items A1 through F2). All unit prices will be summed together and will be used to evaluate the bids. Failure to include brand model number, catalog pricing or the uniform discount percentage will prevent the state from making a uniform comparison among the bids and will result in disqualification for lack of responsiveness or responsibility for this category. All values input by the bidder must be a value greater than zero. DES will not award two of the same manufacture. The unit pricing for all line items will be summed and the three lowest responsive and responsible bids will be named the Apparent Successful Bidder (ASB) for this category. DES will award up to three DIFFERENT manufactures. Example: If two bidders bid the manufacturer named Acme and these two bids are the two lowest, only the lowest Acme bid will be named as one of the apparent successful bidders. DES will skip the next highest Acme bid in favor of the next lowest bid that is not Acme. The state values choice versus duplication.

SPECIFICATIONS: Bidders must meet all specifications by placing an X in all “check if as specified” cells (column C). If bidder is unwilling or unable to mark the “check as specified” box this will increase the chances that its bid will be rejected for failure to meet the specifications. Only use the alternative to specifications (column D) to note deviations from the specifications. Bidder must provide the Brand, model number and catalog price that meets the specification.

TIE BREAKER: In the event of a tie see section 4.8 tie breaker criteria.

Further, the ASB is required to offer all remaining catalog items at the uniform percentage discount rate that was identified by the bidder.

If there is any doubt how to complete the Price Sheet make an inquiry to the Procurement Coordinator.

4.5.2 APPENDIX B-PRICE SHEETS AND SPECIFICATIONS CATEGORY B

CORE ITEMS: Category B (Helly Hanson) is only open to Helly Hanson authorized distributors. The price sheet is in the form of a Microsoft Excel workbook and has two worksheets, A and B (see Appendix B in the Appendices section below). Bidders wanting to bid on the Helly Hanson category must use the category B worksheet.

If there is any doubt how to complete the Price Sheet make an inquiry to the Procurement Coordinator.

Bidders must place a dollar amount value for each line item. See Category B worksheet, cells F17 through F22, (yellow highlight). Dollar values shall be two places to the right of the decimal point. For evaluation purposes only, if the dollar value is three or more places to the right of the decimal, the state will round up (a disadvantage to the Bidder). The six line item unit prices will be summed to determine an Apparent Successful Bidder.

Just prior to the release of the solicitation, the state contacted Helly Hanson and was given the 2014-2015 pricing for the core items. The Category B worksheet displays the 2014-2015 pricing for the core items. The unit price entered by the Bidder will determine the discount percentage for that line item. The discount percentage for each line item will remain fixed for the life of the contract.

NON-CORE ITEMS: Further, the ASB is required to offer all remaining Helly Hanson catalog items as non-core items at the discount rate described below. The assumption is that the Bidder will offer unit prices that are lower than the catalog pricing. All six core unit prices will be summed and all six core catalog prices will be summed. The summed unit prices will be divided by the summed catalog prices and that percentage will represent the Helly Hanson percentage

discount off catalog for non-core items. The discount percentage for each line item will remain fixed for the life of the contract.

TIE BREAKER: In the event of a tie see section 4.8 tie breaker criteria.

4.5.3BEST AND FINAL OFFER (BAFO)

Except as a tie-breaker, the Purchasing Activity reserves the right to make an award without further discussion of the Response submitted (i.e. - There will be no best and final offer request). Therefore, the Response should be submitted on the most favorable terms that Bidder intends to offer.

4.6 Tie breaker criteria

In the event of a tie DES may use some or all parts of the information below to score bidders or other criteria. This information does not need to be included in bidders bid response at this time. DES may request this information after bid closing by contacting the bidders.

4.6.1BEST AND FINAL OFFER (BAFO)

DES may use a BAFO process as a tie-breaking opportunity.

4.6.2OPERATION PLAN: (10 POINTS):

In a two pages or less:

Bidders shall provide the following information on a separate sheet of paper indicating their operation plan for supplying the State of Washington with Rainwear:

1. Company History (brief).
2. Company Size (brief).
3. Key personal experience (brief).
4. Sales Staff (brief).
5. Capacity to handle small to large orders (detail).
6. Describe routine customer services that will be provided to all customers supported under the proposed contract. Include any services that may add more value to this acquisition (detail).
7. Describe your process of advising customers of backorders, not in stocks, substitutions and recalls (detail).

4.6.3QUALITY ASSURANCE (10 POINTS)

In a half page or less:

Supplier Selection and Quality Assurance Programs

1. Ability to meet order accuracy, e.g., right items and right quantity.
2. Ability to meet delivery schedules.

4.6.4 COST SAVINGS SUGGESTIONS (5 POINTS)

In a half page or less:

Describe any suggestions for generating cost savings for customers. This might include changes to delivery schedules, or other supply chain management assistance. (The state recognizes that bidders may possess unique capabilities that distinguish one bidder from another and that the state may benefit from this knowledge). The proposed cost savings initiatives will be screened to determine potential of implementation.

4.7 Evaluation Committee (if applicable):

Master Contracts and Consulting (MCC) may assemble and preside over an evaluation committee. The evaluation committee, if used, may be responsible for reviewing and scoring pass/fail and scored documents, equipment, presentations, etc.

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

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

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

The evaluation of the submittal may be performed in isolation or together as a group, or a combination of both. Each committee member will give a particular Submittal a pass or fail or a score. All of the committee members' decisions for that Submittal may be tabulated. Committee members may further deliberate and following deliberation decide on a unified score, their individual tabulated score sheet notwithstanding. Unless otherwise specified, whether a single MCC representative or an evaluation committee, the Bidder must achieve a fifty percent pass rate or better on pass/fail criteria or be disqualified if not otherwise stated in

the bid. Regarding scored materials the Bidder must achieve the minimum score that is stated in the solicitation (if any).

4.8 Selection of Apparent Successful Bidder (By category)

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

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 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 and responsible. This designation allows DES to perform an additional responsibility analysis and ask for additional documentation. DES may also re-examine the bid to determine whether the bid is truly as responsive and responsible 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.

4.9 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.

All Bidders responding to this Solicitation will be notified when the Purchasing Activity has determined the Successful Bidders. The date of announcement of the successful bidders will be the date of the notification from the Purchasing Activity.

4.10 Debrief and Public Disclosure, Time Sensitive Request

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

4.11 Award Criteria

DES intends to execute multiple awards as a result of this Solicitation. Awards will be awarded based on the Apparent Successful Bidders' abilities to meet all of the mandatory requirements established in [Appendix B, Price Sheets and Specifications](#) and other responsibility factors.

Bidders whose responses are determined to be non-responsive will be rejected and will be notified of the reasons for such rejection.

Contract Award will be based on the evaluation and Award criteria established herein and will be in accordance with provisions identified in [RCW 39.26.160](#) and other criteria identified in the Solicitation.

DES or any purchaser 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 response in which the reference would not engage in future business with the bidder may be an adequate reason for rejecting a Bidder as non-responsible and unable to suit the needs of the state. DES reserves the right to waive a reference check. Bidders deemed non-responsible may be rejected.

4.12 Award

Bidders will compete for these awards and not all those who submit a responsive bid will be awarded.

Contract awards shall be made to the lowest responsive and responsible bidders based on the evaluation and award criteria established herein and subject to consideration of all factors identified in Chapter 39.26 RCW.

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.

Category A: Awards may be made to the three lowest responsive and responsible bidders (must be different manufactures).

Category B: Awards may be made to the two lowest responsive and responsible bidders (Helly Hansen authorized dealers).

During the life of the contract, DES reserves the right to make additional awards from the pool of responsive and responsible non-awarded Bidders. Circumstances include but are not limited to a vacancy from an awarded contractor that is no longer on state contract for any reason.

4.13 Protest

See Complaint, debrief and protest (general information) above for details including time sensitivity.

5. CONTRACT INFORMATION

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 (accepted and awarded portions only)
- 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 Contract usage report

Total contract usage (sales) must be reported quarterly by the contractor in the [Contract Sales Reporting System](#). A login password and a required DES Vendor Number will be provided by DES.

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

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](#).

5.6 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.









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 and Specifications.....	 Price Sheet and Specs
Appendix B: Price Worksheet Category A, Section D, Attachment A - Drawing/Diagram.....	 Attachment A Category A Section D
Appendix B: Price Worksheet Category A, Section F, Attachment B Testing requirements.....	 Attachment B Category A Section F
Appendix C: Bidder Profile	 Bidder Profile.doc
Appendix D: Complaint, Debrief and Protest procedures.....	 Complaint, Debrief & Protest Procedures.d
Appendix E: Special Terms and Conditions.....	 Special Terms and Conditions
Appendix F: Procurement Reform Small Business Fact Sheets.....	 Procurement Reform Small Business Fact S

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. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)
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 for categories made in this bid and any subsequently awarded contract.

<p>Dept. Enterprise Services Use Only <i>DES reserves the right to make single or multiple awards.</i> Summary of Award: <input type="checkbox"/> Category A <input type="checkbox"/> Category B ***** <input type="checkbox"/> The Award is identified/detailed or further identified/detailed in MCC's formal Award Letter to the Apparent Successful Bidder dated _____ and is incorporated by reference.</p>

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 _____, or date of last signature, whichever is later.

APPROVED (MCC)	
Department of Enterprise Services <i>Contracts, Procurement, & Risk Management</i> 1500 Jefferson Building 1500 Jefferson Street SE Olympia, WA 98501	
Washington State Department of Enterprise Services	
Signature	Date
Bradley DeVol, Contract Administrator	
Typed or Printed Name, Title	
Manager Signature (if applicable)	Date
Farrell Presnell, Assistant Director CPRM	
Manager's Typed or Printed Name, Title	
Contact Information	
Contact: Bradley DeVol	
Title: Contract Administrator	
Phone: (360) 407-7920	
Fax: 360-586-2426	
Email: Bradley.devol@des.wa.gov	

APPROVED (BIDDER)	
Bidder's Company Name & Address	
Signature	Date
Typed or Printed Name, Title	
Contact Information	
Contact: _____	
Title: _____	
Phone: _____	
Fax: _____	
Email: _____	

MASTER CONTRACT TERMS AND CONDITIONS

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

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MASTER CONTRACT TERMS and CONDITIONS

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

1 INSTRUCTIONS TO BIDDERS

1.1 Minority and Women's Business Enterprises (MWBE)

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

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

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

1.2 Bidder's authorized representative

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

1.3 Include all cost components in pricing

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

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

1.4 Equal or alternate

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

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

1.5 Public records and exempt information

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

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

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

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

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

DES will NOT:

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

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

1.6 In-state preference/Reciprocity

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

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

1.7 Withdrawal or modification of response

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

a. Prior to response due date and time

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

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

b. After response due date and time

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

Withdrawal: If the bidder submits evidence in writing satisfactory to DES that a mistake has been made by the bidder in the calculation of its bid or proposal, DES may allow the bid or proposal to be withdrawn provided that the claim of mistake and supporting documentation is provided within three business days after the due date and time. Compliance with this section within the specified time limit shall relieve the bidder of forfeiture of its bid guarantee. If DES subsequently reissues the

solicitation, the bidder having made the mistake may not participate in that solicitation.

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

1.8 Legal notices

Any notice or demand or other communication required or permitted to be given under the contract or applicable law (except notice of malfunctioning Equipment) will be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid, certified mail, return receipt requested, via facsimile or by electronic mail, to the parties at the addresses and fax numbers, e-mail addresses provided in the *Authorized Offer and Contract Signature Page* below. For purposes of complying with any provision in the contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form. Notices will be effective upon receipt 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.

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

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

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

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

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

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

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

Master Contract Terms and Conditions

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

Subcontractor	A person or business that is, or will be, providing or performing an essential aspect of the contract under the direction and responsibility of the contractor and with the agreement of DES.
Term contract	A state contract that extends beyond a single purchase and may be available to multiple purchasers.
Vendor	A provider of materials, supplies, services, and/or equipment.
Washington's Electronic Business Solution (WEBS)	The vendor registration and bidder notification system maintained by the Washington State Department of Enterprise Services located at: www.ga.wa.gov/webs .

3 STANDARD TERMS & CONDITIONS

3.1 Contract modifications

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

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

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

3.6 Changes

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

3.7 Statewide Payee Desk

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

3.8 Management fee

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

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

The state reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced and all management fees have been paid. Failure to accurately report total net sales, to submit a timely usage report, or remit timely payment of the

management fee, may be cause for contract termination, the charging of interest or penalties, or the exercise of other remedies provided by law.

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

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

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

3.9 Contract usage report

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

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

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

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

3.10 Other required term contract reports

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

3.11 Common vendor-registration and bid-notification system

Contractor shall be registered in Washington's Electronic Business Solution (WEBS), the state's common vendor registration and bid notification system (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 governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent contractor relationship will be created by this contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under [Chapter 41.06 RCW](#), or [Title 51 RCW](#).

e. Gifts and gratuities

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

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

f. Immunity and hold harmless

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

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

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

g. Personal liability

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

3.22 Insurance

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

a. General requirements

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

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

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

b. Specific requirements

Employer's Liability (Stop Gap): The contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable and will maintain Employers Liability insurance with a limit of no less than \$1,000,000.00. 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 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 is in the best interest of the state, DES may at any time, and without cause, suspend the contract or any portion thereof for a period of not more than 30 calendar days per event by written notice from DES to the contractor's Representative. Contractor shall resume performance on the next business day following the 30th day of suspension unless an earlier resumption date is specified in the notice of suspension. If no resumption date was specified in the notice of suspension, the contractor can be demanded and required to resume performance within the 30-day suspension period by DES providing the contractor's Representative with written notice of such demand.

c. Force majeure

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

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

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

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

d. Alternative dispute resolution fees and costs

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

e. Non-exclusive remedies

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

3.29 Liquidated damages

a. Liquidated damages - General

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

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

As it would be impracticable to fix the actual damage sustained in the event of any such failure(s) to perform, purchaser and contractor agree that in the event of any such failure(s)

to perform, the amount of damage which will be sustained will be the amount set forth in the following subsections and the parties agree that contractor shall pay such amounts as liquidated damages and not as a penalty.

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

b. Limitation of liability

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

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

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

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

c. Federal funding (if applicable)

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

d. Federal restrictions on lobbying (if applicable)

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

contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

e. Federal debarment and suspension (if applicable)

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

3.30 Contract termination

a. Material breach

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

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

b. Opportunity to cure

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

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

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

c. Termination for cause

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

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

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

d. Termination for convenience

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

e. Termination for withdrawal of authority

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

f. Termination for non-allocation of funds

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

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

g. Termination for conflict of interest

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

h. Termination by mutual agreement

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

i. Termination procedure

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

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

The purchaser shall pay to the contractor the agreed upon price, if separately stated, for completed work and service(s) Accepted by the purchaser, and the amount agreed upon by the contractor and the purchaser for (i) completed materials, supplies, services rendered and/or equipment for which no separate price is stated, (ii) partially completed materials, supplies, services rendered and/or equipment, (iii) other materials, supplies, services rendered and/or equipment which are Accepted by the purchaser, and (iv) the protection and preservation of property, unless the termination is for cause, in which case DES and the purchaser shall determine the extent of the liability of the purchaser. Failure to agree

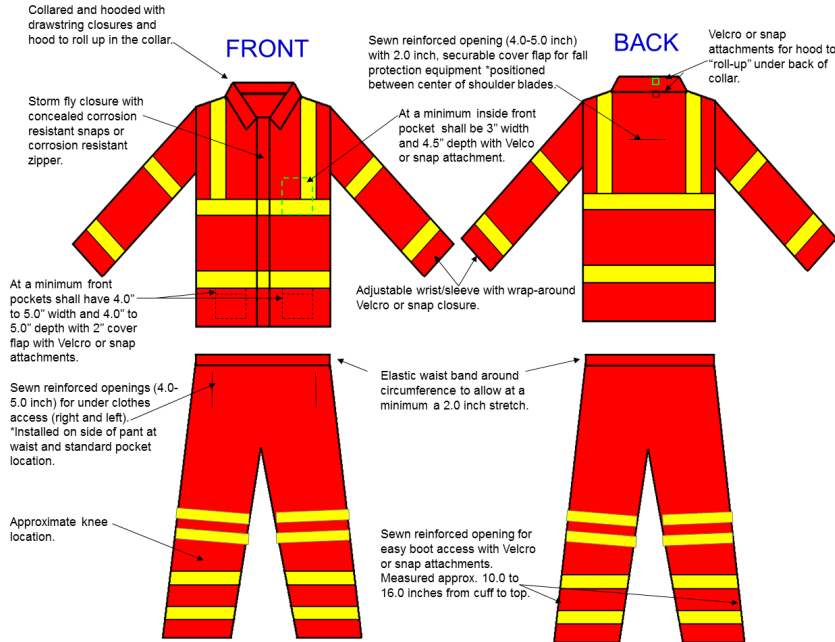
with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The purchaser may withhold from any amounts due the contractor such sum as DES and purchaser determine to be necessary to protect the purchaser against potential loss or liability.

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

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

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

Diagram A - Rainwear Specifications – Not to Scale



Notes:

These drawings are the minimum standards. Comparable or like garments will be considered by the Department.

Size requirement: S – XL, X2, X3, X4, X5

Background material shall meet the performance of ANSI/ISEA 107-2004 fluorescent orange-red. Jacket shall meet ANSI/ISEA 107-2004 performance for Class III apparel. Pant shall meet ANSI/ISEA 107-2004 performance for Class E apparel.

Background material shall be a breathable/water-resistant material meeting the ASTM E96 standard for moisture vapor transmission rate (see sections 7.5 and 7.6 of ANSI 107-2004). Combined performance retro-reflective material shall be 3M Scotchlite 6187R, fluorescent yellow-green, high gloss, 2 inch wide (see note below).

Rainwear pockets shall NOT be installed rear retroreflective material may intersect.

All seams and/or openings shall be felled, stitched and tape sealed.

All stitching shall be tape sealed.

Jacket front shall be fly closure with concealed snaps or corrosion resistant zipper.

All snaps shall be ball-socket type corrosion resistant.

All outer jacket pockets shall be equipped with a 1.0' to 2.0' flap to prevent water intrusion.

A third (3rd) party of certificate shall accompany the bid certifying finished jacket and pant meet ANSI/ISEA 107-2004 standards.

Snap = corrosion resistant ball and socket type.

Instructions for the care, cleaning and maintenance shall be included with packaging.

IMPORTANT NOTE – Bid item (category D2) would have these same requirements shown in diagram except that the 3M Silver beaded Scotchlite 8710 or 8725 banding would be installed.

Legend:

- Black – external addition
- Green – inside addition

CATEGORY A SECTION F TEST REQUIREMENTS

Xenon Test

The color after exposure shall be within the areas defined by the coordinates provided in the Standard Table 3. The light fastness of the test sample shall be determined in accordance with ISO 105-B02: 1994 Method 1.

	Results
Fluorescent Yellow	4.8
Fluorescent Orange	4.8

COLORFASTNESS TO CROCKING

The color fastness to crocking both wet and dry shall be at least a 4.0 by the Gray scale for Staining in accordance with AATCC 8-1996.

Dry

Fluorescent Yellow	5.0
Fluorescent Orange	4.5

Wet

Fluorescent Yellow	4.5
Fluorescent Orange	4.5

COLORFASTNESS TO PERSPIRATION

The color fastness to perspiration shall be at least a grade 4.0 for color change by the Gray Scale for color change in accordance with AATCC 15-1997.

Fluorescent Yellow	5.0
Fluorescent Orange	5.0

COLORFASTNESS TO LAUNDRY

Machine Laundering Domestic Test Method AATCC 61(2A)

Fluorescent Yellow	5.0
Fluorescent Orange	5.0

Machine Laundering Domestic with Bleach Test Method AATCC 61(2A)

Fluorescent Yellow	4.5
Fluorescent Orange	4.5

Machine Laundering Commercial Test Method AATCC 61(3A)

Fluorescent Yellow	4.5
Fluorescent Orange	4.5

Machine Laundering Commercial with Bleach Test Method AATCC 61(4A)

Fluorescent Yellow	4.5
Fluorescent Orange	4.5

Heat: Hot Pressing Test Method AATCC 133

Dry Pressing @ 110° C

Fluorescent Yellow	5.0
Fluorescent Orange	5.0

Dry Pressing @ 150° C

Fluorescent Yellow	5.0
Fluorescent Orange	5.0

Dry Pressing @ 200 C

Fluorescent Yellow	4.5
Fluorescent Orange	4.5

Key to AATCC Gray Scale Rating (applies to all above)

- Class 5 – Negligible or no color alteration
- Class 4 – Slight color change
- Class 3 – Noticeable color change
- Class 2 – Considerable color change
- Class 1 – Much color alteration

Dimensional Change of Background Material

The dimensional change of background material shall not exceed +/- 4% in length and +/- 2% in width.

Test Method AATCC 135-1995 (3) IIIA (iii)

Machine Wash @ 105° F Permanent Press Cycle / Tumble Dry Perm. Press Cycle

Fluorescent Yellow		
Length	0.6%	4.0% max.
Width	0.6%	2.0% max
Fluorescent Orange		
Length	1.0%	4.0% max
Width	0.4%	2.0% max

TEST METHOD AATCC 96 IIIE-A

Commercial Laundering @ 145° F Tumble Dry

Fluorescent Yellow		
Length	1.1%	4.0% max.
Width	0.7%	2.0% max
Fluorescent Orange		
Length	1.1%	4.0% max
Width	0.7%	2.0% max

DETERMINATION OF COLOR – ANSI 107-2004

The color shall be measured in accordance with the procedures defined in ASTM E1164-94 with polychromatic illumination D65 and 45/0 (0/45) geometry and 2° standard observer. The specimen shall have a black underlay with a reflectance of less than 0.04.

VizMax™ Performance Fabric

Composition: 36% Polyurethane/64% Polyester

<i>Property</i>	<i>Units</i>	<i>Typical Value</i>	<i>Method</i>
Weight	gsm	180	BS3424pt1
Width	cms	148	BS3424pt1
Tensile Strength	N/50mm	Warp 1050 Weft 850	BSENISO1421
Tear Strength	Newtons	Warp 45	BS3424pt5
Tongue		Weft 45	
Hydrostatic Head	Kpa	as rec 30 After wash >30 After Flex 30	BS3424pt26
Breathability		% 80	BS7209
Water Vapor	Pa/W Rct7m2		DIN EN 31 092

Appendix D

Complaint, Debrief and Protest Procedures

Policies for procurement protests and appeals were adopted by the Department of Enterprise Services (DES) in January 2013, by authority of Revised Code of Washington (RCW) 39.26.170.

1 COMPLAINT – PRE-SUBMITTAL

1.1 Criteria for a complaint

A formal complaint may be based only on one or more of the following grounds:

- A. The solicitation unnecessarily restricts competition;
- B. The solicitation evaluation or scoring process is unfair or flawed; or
- C. The solicitation requirements are inadequate or insufficient to prepare a response.

1.2 Initiating a complaint

A complaint must:

- A. Be submitted to and received by the procurement coordinator within five business days prior to the deadline for bid submittal; and
- B. Be in writing (see *Form and Substance, and Other* below).

A complaint should:

- A. Clearly articulate the basis of the complaint; and
- B. Include a proposed remedy.

1.3 Response

When a complaint is received, the procurement coordinator or his or her designee will consider all the facts available and respond in writing prior to the deadline for bid submittals, unless more time is needed.

DES is required to promptly post the response to a complaint on WEBS.

1.4 Response is final

The procurement coordinator's response to the complaint is final and not subject to administrative appeal, although the procurement coordinator may issue further clarification if needed. Issues raised in a complaint may not be raised again during the protest period.

2 DEBRIEF CONFERENCE (PRE-CONDITION OF PROTEST)

Following announcement of the Apparent Successful Bidder:

2.1 Purpose of a debrief conference

Any bidder who has submitted a timely bid response may request a debrief conference (see *Form and Substance, and Other* below). A debrief conference provides an opportunity for the bidder to meet with DES to discuss its bid and evaluation.

2.2 Requesting a debrief conference

The request for a debrief conference must be made in writing via email to the procurement coordinator and received within three business days after the announcement of the Apparent Successful Bidder.

Debrief conferences may be conducted either in person at the DES facility in Olympia, Wash., or by telephone, as determined by DES, and may be limited by DES to a specified period of time.

The failure of a bidder to request a debrief within the specified time and attend a debrief conference constitutes a waiver of the right to submit a protest.

3 PROTEST

Following a debrief conference:

3.1 Criteria for a protest

A protest may be based only on one or more of the following:

- A. Bias, discrimination or conflict of interest on the part of an evaluator;
- B. Error in computing evaluation scores; or
- C. Non-compliance with any procedures described in the solicitation document.

3.2 Initiating a protest

Any bidder may protest an award to the Apparent Successful Bidder. A protest must:

- A. Be submitted to and received by the DES assigned investigator (if known), otherwise the procurement coordinator, within five business days after the protesting bidder's debriefing conference (see *Form and Substance, and Other* below);
- B. Be in writing;
- C. Include a specific and complete statement of facts forming the basis of the protest; and
- D. Include a description of the relief or corrective action requested.

3.3 Protest response

After reviewing the protest and available facts, the DES-assigned investigator will issue a written response within 10 business days from receipt of the protest, unless additional time is needed,

and in such event DES should notify the protesting bidder the length of the additional time needed.

3.4 Decision is final

The protest decision is final and not subject to administrative appeal, although the DES-assigned investigator may issue further clarification if needed.

If the protesting bidder does not accept the agency protest response, the bidder may seek relief from the Superior Court. Any such action must be brought in the Superior Court of Thurston County, Wash.

4 COMMUNICATION DURING COMPLAINTS, DEBRIEFS AND PROTESTS

All communications about a solicitation that is subject to a complaint or debrief must be addressed to the procurement coordinator. All communications about a solicitation that is being protested must be coordinated through the DES-assigned investigator, if known; otherwise, to the procurement coordinator.

5 FORM AND SUBSTANCE, AND OTHER

5.1 All complaints, requests for debrief and protests must:

- A. Be in writing;
- B. Be signed by the complaining or protesting bidder or an authorized agent, unless sent by email;
- C. Be delivered within the time frame(s) outlined herein;
- D. Be sent to the appropriate individual within DES (see contact information below);
- E. Identify the solicitation by DES number;
- F. Conspicuously state "Complaint," "Debrief" or "Protest" in any subject line of any correspondence or email;
- G. Be sent to the address identified in the table below;

5.2 All complaints and protests must:

- A. State all facts and arguments on which the complaining or protesting bidder is relying as the basis for its action; and
- B. Include any relevant documentation or other supporting evidence.

Complaint, Debrief and Protest Procedures

Contracts and Legal Services Division

Department of Enterprise Services

How to contact DES:

COMPLAINT

Email

To the procurement coordinator listed on the first page of the solicitation document.

Subject line must include "Complaint."

Other

(**Name** of procurement coordinator)
Contracts and Legal Services Division
Department of Enterprise Services,
1500 Jefferson Street
P. O. Box 41411
Olympia, WA 98504-1411

DEBRIEF

Email

To the procurement coordinator listed on the face page of the solicitation document.

Subject line must include "Debrief."

PROTEST

Email

To the DES-assigned investigator (if known). If not known, send to the procurement coordinator listed on the first page of the solicitation document.

Subject line must include "Protest."

Other

(**Name** of DES-assigned investigator, if known, otherwise the procurement coordinator)
Department of Enterprise Services
1500 Jefferson Street
P. O. Box 41411
Olympia, WA 98504-1411

SPECIAL TERMS AND CONDITIONS

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

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SPECIAL TERMS and CONDITIONS

1.1 CUSTOMER SERVICES

The Contractor(s) shall provide each of the contract users with designated customer service representatives to handle questions and resolve problems that arise. Sufficient customer service representative(s) shall be available 8 to 5 PM Pacific time, Monday through Friday. All service representatives shall have online access to information to provide immediate responses to inquiries concerning the status of orders (shipped or pending), delivery information, back-order information, state-wide contract pricing, contracted product offerings/exclusions, billing questions or issues, contract compliance requirements, and general product information. Representatives shall be available by phone (via local or toll free number) or email.

Both Contract Users and the Contractor(s) will endeavor to commit to ongoing/quarterly reviews and will make consistent efforts to improve customer satisfaction.

1.2 SEWING

The awarded contractor will be required to sew on contract customer provided patches at no additional cost. Consider this when pricing your bid response. See Special Terms and Conditions.

1.3 CUSTOMIZING

Customizing e.g. additional or removal of pockets, zippers, hoods etc., must be negotiated in writing between the customer and awarded contractor. It is the State's expectation that the customer will still receive the discount off catalog pricing on the overall customized total price.

1.4 DELIVERY

Delivery of all products shall be 30 days ARO (after receipt of order) or sooner.

General provisions:

- Schedule and acknowledgement: Delivery must be made within 30 calendar days after receipt of order unless a later date is noted on the order document. The contractor must submit an acknowledgment of the order within three business days from the time of their receipt of the order.
- Delivery times: Delivery must be made during purchaser's normal work hours, per purchaser's security and access processes, or as otherwise mutually agreed in writing between the purchaser and contractor at the time of order placement. The purchaser may refuse shipment when delivered after normal working hours.
- Location and performance: All deliveries are to be made to the applicable delivery location as indicated in the order document. When applicable, the contractor must take all necessary actions to safeguard items during inclement weather. In no case may the contractor initiate performance prior to receipt of written or verbal authorization from authorized purchasers. Expenses incurred otherwise will be borne solely by the contractor.

1.5 PACKAGING

Each piece shall be individually wrapped in plastic, with a label showing the state stock number and size.

In order to avoid even the appearance of a conflict of interest, Bidders indications a conflict of interest at any level will be disqualified from further consideration.

1.6 DELIVERY LOCATIONS

Contractor will be required to ship product to any location within the state at no additional cost. Inside delivery will be as directed on the order document as required by the customer.

Contractor shall comply with parking and delivery regulations (times, locations, permits, etc.) as required by the customer.

1.7 FRIEGHT POLICY

All shipments shall be shipped F.O.B. Destination and delivered to the specified location. Contractor(s) is responsible for filing and expediting all freight claims with the carrier. The Contractor shall pay title and risk of loss or damage charges. Emergency/rush delivery requiring special shipping and handling shall be at customer's expense (with prior written approval only). Rush delivery that occurs as a result of the Contractor's error shall be free of charge. Any rush delivery that occurs as a result of the contractor's error will be free of charge. No handling surcharges will be added or discounts lost for such rush or expedited orders.

A packing label should be on each box and include the following items, visible on the outside of the box:

- Purchaser
- Address
- Department and floor
- Contact Name
- Telephone number

A packing slip should also be included with each shipment, which will include at least the following information in no particular order:

- Line item description
- Quantity ordered
- Quantity included in shipment
- Any back ordered items
- Unit Price
- Number of parcels
- Purchase Order or Purchasing Card Number
- Agency name and department
- F.O.B. (destination)

All information contained on the packing label

Unless otherwise specified, goods should be packaged in cartons meeting federal specifications.

Returns:

Within 30 days the contractor will be notified of any materials delivered in poor condition, in excess of the amount authorized by the ordering customer or not ordered by the ordering customer.

If Contractor has either not picked up or provided for the return of rejected goods after five business days of notification of rejection, customer may dispose of them as they see fit. Contractor shall credit customer for the price of the goods regardless.

Within 30 days the contractor will be notified of any materials ordered in error by customer that they wish to return may be subject to a restocking fee and specific guidelines for return. The contract shall not require Return Merchandise Authorization (RMA) as part of this contract.

1.8 ORDERING METHODS

The State of Washington requires Contractor(s) to accept orders via written purchase order or the Contractor's online ordering system.

1.9 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.

1.10 PAYMENT TERMS

Standard payment terms for the state are Net 30 days from product delivery or correct invoice receipt, whichever is later. No payments will be made for products that do not meet agreed upon pricing, quality, or other requirements.

1.11 BACKORDERS

Backorders items shall be shipped and billed against original purchase order or pcard transaction. Customers having backorders will be notified of estimated availability dates. When available, they will also be advised of comparable alternative products. An item comparable to that ordered may only be substituted with prior customer approval.

1.12 EMERGENCY ORDERS

Customers may choose to "expedite" an order. In such cases the contractor will ship as directed by the customer and may bill for any additional freight charges incurred to do so.

1.13 EXPEDITED ORDERS

Labeling: Each order shall include a packing slip, showing the name of the ordering agency, order number, contract number, and contractor. Each piece shall be individually wrapped in plastic, with a label showing the state stock number and size.

In order to avoid even the appearance of a conflict of interest, Bidders indications a conflict of interest at any level will be disqualified from further consideration.

1.14 PRODUCT AVAILABILTY

Contractors shall agree that there will be no cancellation of products specified on the contract without an equal and acceptable replacement approved by the designated State of Washington representative during the term of the agreement. All such cancellations and replacements shall be documented by a contract amendment. Contractors shall communicate manufacturer's discontinuation of any products to the contract administrator within five (5) business days of notification by manufacturer. In such instances, Contractors shall work with the contract administrator(s) to identify and implement alternative options that shall maintain or reduce costs for suggested replacements. Contractors shall offer suggested replacements of discontinued products at least 15 days prior to substitution, including replacement part number, description and proposed contract price.

1.15 QUALITY ASSURANCE GARANTEE

The contractor shall guarantee its products to be free of defects in materials and workmanship, given normal use and care, over the period of the manufacturer's warranty. The terms of this contract shall supersede any language to the contrary on purchase orders, invoices, packing slips etc. provided by the contractor, manufacturer or other sources. The contractor shall agree to repair and/or immediate replacement without charge (including freight both ways) to customers any

product or part thereof, which proves to be defective or fails to within the standard manufacturer warranty as specified.

1.16 ONLINE CATALOG AND ORDERING CAPABILITY

Contractor is required to provide a contract 07914 specific website for use by authorized customers/purchasers only. Contractor's online catalog should provide help functions, order tracking, and related contract item prompts, as well as standard item status, price, description, and photo. The contract items shall be available online at the time of Contract execution. Online ordering capability shall be available to all approved purchasers. Contractor will be responsible for making available a customer service representative/technical support person to handle online orders and mitigate any order-related or technical issues.

The contractor shall be able to block, according to ordering customer, contract products from online view in order to help customer uphold internal procurement policies and initiatives.

Only those items specified herein, or subsequently added, shall be accessible via a website developed by the contractor specifically to service this contract. In the event customers order noncontract items, they shall be via a separate order and shall not be combined on subsequent invoice.

1.17 HARD CATALOGS

If available the contractor's general catalog is to be made available at no cost upon request.

1.18 TRAINING

For contract implementation purposes, and thereafter, Contractor shall provide training as necessary, at no additional cost to the State, on all aspects of ordering, delivery, return, and customer service processes. Logistics of training shall be as mutually agreed upon by contractor and purchasing activity.

1.19 SPECIAL EDUCATION OR PROMOTIONAL DISCOUNTS

The contractor shall extend any special educational discounts to institutions of higher education or promotional sales discounts to all purchasing entities immediately when they come into effect during the term of the contract. Any notices of promotional discounts shall also provide the duration of the specific sale or discount price.

1.20 RETAIL STORE SERVICE CAPABILITIES

In the event successful contractors have instate retail store availability, they must guarantee that contracted services and prices be extended by those stores to authorized customers, including acceptance of state authorized pcard. It is the awarded contractor's responsibility to ensure that the customer is an authorized purchaser under the contract.

1.21 BILLING ACCURACY

Contractor must maintain a minimum 99% billing accuracy rate (based on transaction lines), and any errors in billing must be immediately corrected and credited in writing to the customer within two working days.

1.22 FILL RATES

Contractor shall maintain a fill rate of 98% for the contracted items. Fill rate is defined as the total number of requisition lines filled divided by the total number of requisition lines filled over a monthly period.

1.23 SPECIAL REPORTS

On a quarterly basis the Contractor shall provide to DES Contract Administrator a Microsoft Excel file with the information described below. DES reserves the right to add other information to be

included on the special report. The Excel file shall not include any merged cells. Merged cells frustrate Excel's sorting capability.

1. Date
2. Customer Name
3. Telephone number
4. Email address
5. Customer's order date
6. Delivery date
7. Item description
8. Item number
9. Size
10. Quantity
11. Delivery address
12. Item price charged to the customer
13. Item's catalog price

Procurement Reform

Small Business Fact Sheet Veteran Business Fact Sheet

Changes in state purchasing practices took effect January 1, 2013

RCW 39.26, Section 1, which states the intent of procurement reform legislation, concludes with the following sentence:

“In addition, the legislature intends that the state develop procurement policies, procedures, and materials that encourage and facilitate state agency purchase of goods and services from Washington small businesses.”

Washington small business

RCW 39.26.010:

- (21) "Small business" means an in-state business, including a sole proprietorship, corporation, partnership, or other legal entity, that:
- (a) Certifies, under penalty of perjury, that it is owned and operated independently from all other businesses and has either:
 - (i) Fifty or fewer employees; or
 - (ii) A gross revenue of less than seven million dollars annually as reported on its federal income tax return or its return filed with the department of revenue over the previous three consecutive years; or
 - (b) Is certified with the office of women and minority business enterprises under chapter 39.19 RCW.

Washington microbusiness

RCW 39.26.010:

- (17) "Microbusiness" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that:
- (a) Is owned and operated independently from all other businesses; and
 - (b) has a gross revenue of less than \$1 million annually as reported on its federal tax return or on its return filed with the department of revenue.

Washington minibusiness

RCW 39.26.010

- (18) "Minibusiness" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that:
- (a) Is owned and operated independently from all other businesses; and
 - (b) has a gross revenue of less than three million dollars, but one million dollars or more annually as reported on its federal tax return or on its return filed with the department of revenue.

Washington veteran-owned business

Veterans (defined in [RCW 41.04.007](#)) and U.S. active duty, reserve or national guard service-members are eligible for the registry. The veteran or service-member must control and own at least 51 percent of the business and the business must be legally operating in the State of Washington. (Control means the authority or ability to direct, regulate or influence day-to-day operations.) If business is a 50/50 split, contact Jennifer at 360-725-2169.

RCW 41.04.007

"Veteran" includes every person, who at the time he or she seeks the benefits of [RCW 46.18.212](#), [46.18.235](#), [72.36.030](#), [41.04.010](#), [73.04.090](#), [73.08.010](#), [73.08.070](#), [73.08.080](#), or [43.180.250](#), has received an honorable discharge or received a discharge for medical reasons with an honorable record, where applicable, and who has served in at least one of the following capacities:

- (1) As a member in any branch of the armed forces of the United States, including the national guard and armed forces reserves, and has fulfilled his or her initial military service obligation;
- (2) As a member of the women's air forces service pilots;
- (3) As a member of the armed forces reserves, national guard, or coast guard, and has been called into federal service by a presidential select reserve call-up for at least 180 cumulative days;
- (4) As a civil service crewmember with service aboard a U.S. army transport service or U.S. naval transportation service vessel in oceangoing service from December 7, 1941, through December 31, 1946;
- (5) As a member of the Philippine armed forces/scouts during the period of armed conflict from December 7, 1941, through August 15, 1945; or
- (6) A United States documented merchant mariner with service aboard an oceangoing vessel operated by the department of defense, or its agents, from both June 25, 1950, through July 27, 1953, in Korean territorial waters and from August 5, 1964, through May 7, 1975, in Vietnam territorial waters, and who received a military commendation.

Resources

- Register for free for solicitation notices at the Washington Electronic Business Solution (WEBS) www.des.wa.gov/services/ContractingPurchasing/Business/Pages/WEBSRegistration.aspx
- If you qualify as a Washington small business, identify yourself in WEBS. Call WEBS Customer Service at 360-902-7400.
- Contact the Washington State Office of Minority and Women's Business Enterprises about state and federal certification programs at Phone 866-208-1064 or www.omwbe.wa.gov
- Contact the Washington State Department of Veterans' Affairs about certification at (360) 725-2169 or www.dva.wa.gov.
- Servando Patlan, Business Diversity and Outreach Manager at the Washington State Department of Enterprise Services: (360) 407-9390 or servando.patlan@des.wa.gov



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 for categories made in this bid and any subsequently awarded contract.

<p>Dept. Enterprise Services Use Only <i>DES reserves the right to make single or multiple awards.</i> Summary of Award: <input type="checkbox"/> Category A <input checked="" type="checkbox"/> Category B</p> <p>*****</p> <p><input checked="" type="checkbox"/> The Award is identified/detailed or further identified/detailed in MCC's formal Award Letter to the Apparent Successful Bidder dated <u>2/25/2015</u> and is incorporated by reference.</p>
--

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 04/10/2015, or date of last signature, whichever is later.

APPROVED (MCC)	
Department of Enterprise Services Master Contracts and Consulting 1500 Jefferson Building 1500 Jefferson Street SE Olympia, WA 98501	
<small>Washington State Department of Enterprise Services</small>	
	<u>2/23/15</u> <small>Date</small>
<small>Signature</small>	
Jennifer Burbage, Procurement Coordinator	
<small>Typed or Printed Name, Title</small>	
	<u>2/23/15</u> <small>Date</small>
<small>Manager Signature (if applicable)</small>	
Michael Maverick, Unit Manager	
<small>Manager's Typed or Printed Name, Title</small>	
Contact Information	
Contact: Procurement Coordinator	
Title:	Procurement Coordinator
Phone:	(360) 407-9422
Fax:	360-586-2426
Email:	Jennifer.Burbage@des.wa.gov

APPROVED (BIDDER)	
Sanderson Safety Supply Company 1101 SE Third Avenue Portland, OR 97214	
<small>Bidder's Company Name & Address</small>	
	<u>Jan 20, 2015</u> <small>Date</small>
<small>Signature</small>	
Patricia Mullen, Mktg. Asst	
<small>Typed or Printed Name, Title</small>	
Contact Information	
Contact:	<u>Patricia Mullen</u>
Title:	<u>Marketing Assistant</u>
Phone:	<u>503-238-5700</u>
Fax:	<u>503-238-6443</u>
Email:	<u>PMullen@sansafe.com</u>

State of Washington Contracts, Procurement, & Risk Management Division Department of Enterprise Services P.O. Box 41408 Olympia, WA 98504-1408	CONTRACT ASSIGNMENT	
	Contract No.:	07914
Assignor Sanderson Safety Supply Company 1101 SE Third Avenue Portland, OR 97214	Effective Date:	November 1, 2015
Assignee Mallory Safety & Supply, LLC 1040 Industrial Way Longview, WA 98632		

**ASSIGNMENT, ASSUMPTION, & CONSENT AGREEMENT
FOR
CONTRACT No. 07914
RAINWEAR**

This Assignment, Assumption, and Consent Agreement ("Agreement") for Contract No. 07914 is made and entered into by and among the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency ("State"), Assignor, Sanderson Safety Supply Company, an Oregon corporation ("Assignor"), and Assignee, Mallory Safety & Supply, LLC, a Washington limited liability company ("Assignee") and is effective as of November 1, 2015.

RECITALS

- A. State and Assignor entered into that certain Contract No. 07914 for Rainwear dated effective as of April 01, 2015;
- B. Assignor desires to assign all of its rights, obligations, and liabilities under the Contract to Assignee;
- C. Assignee desires to accept and assume all of the rights, obligations, and liabilities of Assignor under the Contract; and
- D. State desires to consent to such assignment, acceptance, and assumption.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as set forth below:

1. **ASSIGNMENT OF CONTRACT.** Assignor hereby conveys and assigns to Assignee, its successors and assigns, all of its rights, title, and interests in, to and under the Contract. A copy of the Contract,

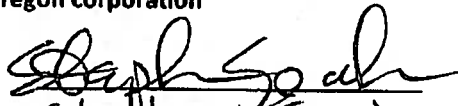
with all modifications and amendments thereto, if any, is attached hereto and made a part hereof.

2. **ASSUMPTION OF CONTRACT.** Assignee hereby undertakes, accepts, and assumes the assignment of the Contract and assumes all duties and obligations of the Assignor under the Contract and covenants to perform and discharge the same as the Assignee of the Assignor.
3. **CONSENT TO ASSIGNMENT & ASSUMPTION.** State hereby consents to the foregoing assignment and assumption. Notwithstanding the foregoing, the parties hereto agree that State shall be entitled to pursue claims accruing or arising incident to the Contract on or before the Effective Date of this Agreement, and all its rights and remedies related to such claims, for (a) payments of indemnity now or hereafter due under the Contract from Assignor, and/or (b) insurance payments or proceeds.
4. **BINDING EFFECT.** All provisions, covenants, and agreements herein shall be binding upon and inure to the benefit of, and be enforceable by or against, the parties hereto and their respective successors and assigns.
5. **THIRD-PARTY BENEFICIARY.** This Agreement is solely for the benefit of the parties hereto and their respective successors and assigns, and no other person has any right, benefit, priority, or interest under or because of the existence of this Agreement.
6. **INTEGRATED AGREEMENT; MODIFICATION.** This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior negotiations and representations. This Agreement may not be modified except in writing signed by the parties.
7. **AUTHORITY.** Each party to this Agreement, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Agreement and that its execution, delivery, and performance of this Agreement has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
8. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Agreement at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Agreement.

EXECUTED AND EFFECTIVE as of the day and date first above written.

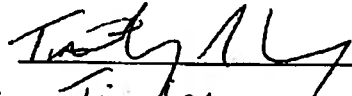
ASSIGNOR

**SANDERSON SAFETY SUPPLY COMPANY,
an Oregon corporation**


By: 
Name: Stephen Spahr
Title: President
Date: 4-1-16

ASSIGNEE

**MALLORY SAFETY & SUPPLY, LLC,
a Washington limited liability company**

By: 
Name: Tim Kay
Title: President
Date: 4/1/2016

**STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES**

By: 
Name: Greg Tolbert
Title: Legal Services Manager
Date: 4-4-2016

