

**State of Washington
Department of Enterprise Services
1500 Jefferson St SE
Olympia, Washington 98501**



Contract No. 04015

**Gases: Medical, Specialty, and Industrial
For
Purchases of Materials, Supplies, Services, and Equipment**

**Under the Authority of
[Chapter 39.26 RCW](#)**

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1. CONTRACT FORMATION

1.1 PARTIES

This Contract #04015 Gases: Medical, Specialty, and Industrial is entered into by and between the State of Washington, acting by and through the Department of Enterprise Services (DES) an agency of Washington State government located at 1500 Jefferson St SE, Olympia, WA 98501, and Airgas USA LLC, an LLC licensed to conduct business in the State of Washington ("Contractor"), for the purpose of providing Gases: Medical, Specialty, and Industrial as described herein. This is a replacement Contract for Contracts #04209-Gases, Specialty and Industrial, which expires on April 30, 2016 and #07309-Oxygen Unit Portable-Rental, which also expires on April 30, 2016.

1.2 ESTIMATED USAGE

Based on past and/or projected usage, it is estimated that purchases over the initial term of the Contract may approximate \$1,400,000.00. This estimate was provided solely for the purpose of assisting Bidders in preparing their Response. Orders will be placed only on an as needed basis.

The State of Washington does not represent or guarantee any minimum purchase.

1.3 CONTRACT TERM

The initial term of this contract is one (1) year from date of award with the option to extend for additional term(s) or portions thereof. Extension for each additional term shall be offered at the sole discretion of DES and are subject to written mutual agreement. The total contract term, including the initial term and all subsequent extensions, shall not exceed eight (8) years unless an emergency exists and/or special circumstances require a partial term extension. The state reserves the right to extend with all or some of the Contractors.

1.4 CONTRACT SCOPE

The purpose of this Contract is to establish a statewide master contract for the as needed purchase or rental of Specialty and Industrial gases used for welding, medical, and other needs requiring the use of gases in cylinder, bottled, and bulk. Also for the as needed purchase of monthly rental and refill of portable oxygen units which include tanks, regulators, storage cases, masks and tubing. (This contract does NOT include propane gases.)

The Department of Enterprise Services (DES) intends to award to multiple vendor(s) in each category in six regions, up to a maximum of three (3) awards per region.

CATEGORY A: The as needed purchase of Gases: Medical, Specialty, and Industrial used for welding, medical, and other needs requiring the use of gases in cylinder, bottled, and bulk.

CATEGORY B: The as needed purchase of monthly rental and refill of portable oxygen units which include tanks, regulators, storage cases, masks and tubing. The units will be installed primarily on Washington State Ferries' vessels or kept at terminals for replacement on the vessels although other Purchasers may have need of them as well.

GENERAL INFORMATION

- The Contractor shall supply bulk gas for cylinders which are currently owned by various State facilities at the same price submitted for bulk gas for cylinder rentals.
- The Contractor should supply regulators and any additional gas handling equipment that may be required for use with cylinders.
- All products must meet regulatory guidelines and any amendments therein, as promulgated under, but not limited to: FDA 21 CRF, NEOSH, OSHA Respiratory Standards 29, CFR 1910.134, UL, NEMA, NFPA, DOT, EPA, ASTM, CGA and JCAHO.
- Hydrostatic Testing - Contractor will test all cylinders in accordance with applicable laws as required by the USDOT. Hydrostatic testing emblems must be validated by the Contractor and the customer notified of violations before they are repaired or refilled. No testing charges will be permitted to be passed onto the customer on Contractor-owned cylinder.

CYLINDER LABELING AND IDENTIFICATION

- A label meeting the requirements of the United States Department of Transportation shall be affixed to each cylinder. Each cylinder label must legibly list contents, grade, size, the content of each cylinder, including but not be limited to each component, concentration and size designation of each cylinder.
- All labels shall have a date indicating the content's expiration date and/or the date the gas would be expected to have deteriorated to the point that the contents contained therein are outside the required standards set forth in the IFB. The expiration date must be at a minimum twelve (12) months from the date of delivery to the Purchaser. Most gases do not have a shelf life or an expiration date. Where applicable this will be provided.
- Medical cylinders must be labeled in accordance with the USP requirements. Labels must display accepted technical terminology, batch and control numbers, etc.
- A medical cylinder that is delivered defective or cosmetically unsuitable for use within a facility shall be rejected by the Purchaser and immediately replaced by the Contractor at no additional cost to the State.
- Labels must be designed of a quality that they will not fall off during the period of delivery time and the time they are within the State's custody.
- All rental cylinders shall be affixed with a label identifying Contractors' name/logo and address to insure the correct cylinders are returned to the appropriate Contractor.
- A cylinder delivered without a proper identifying label shall be rejected by the Purchaser.

CYLINDER REQUIREMENTS

- All cylinders shall have a valve protection cap properly installed when shipped and delivered. The caps must remain in place during transportation and unloading, and secured in place until the cylinder has the regulator attached. There are some exceptions to this on small cylinders and propane cylinders that do not accept cylinder caps.

- Rental cylinders shall be maintained per industry standards.
- Cylinder valves are to be of high quality assuring not only proper gas releasing, but also that pressure pop-off devices do not release under normal operation conditions and that valves fit tightly when attached to regulators.
- All cylinders shall be manufactured in accordance with ICC, USDOT and the CGA. All cylinders shall be complete with all fittings, valves and caps, in good working order and free of dirt, debris and rust.
- A cylinder that leaks, is bulged, has defective valves or safety devices, bears evidence of physical abuse, fire or heat damage, or detrimental rusting or corrosion, must not be used unless it is properly repaired and requalified as prescribed in the regulations set forth by the USDOT.
- All cylinders shall contain a positive type safety disc to meet the requirements of the USDOT.
- All cylinders used to deliver gases must be compatible/non-reactive with the gases enclosed. The Contractor shall warrant that no gases will be delivered in any cylinder made from materials that will react or in any way degrade the content of gases within the cylinders. Should a Contractor deliver any cylinders made from substances that react with or degrade the content of gas, the entire order shall be replaced by the Contractor at no additional charge to the State.

TRAINING

Contractor shall provide Purchasers in-house training at no cost to the customer, as follows:

- Description: Proper care and handling of cylinders. At the option of the Contractor, a video may be sent in place of a face to face instruction.
- Time: Video or face to face instruction must be provided within 30 days after request of the Purchaser.
- Location: Purchasers' locations/facilities. (Video equipment will be provided by the Purchaser).

MEDICAL GASES

All medical gases referenced in this IFB shall be medical grade gases and must be manufactured at a registered Food and Drug Administration facility. All medical gases must meet USP, NFPA and CGA regulations.

- All medical gases shall be tested in accordance with FDA requirements.
- The purity of medical gases must equal or exceed USP specifications.
- All medical gas cylinders shall be properly purged of gases and impurities prior to filling.
- Tested for purity (99.5% pure).
- All medical gas cylinders shall be color-coded in accordance with Compressed Gas Association standards stated in Pamphlet C-9, Standard Color Market of Compressed Gases Cylinder Intended for Medical Use in the United States. A label shall be affixed to each cylinder stating the type of gas and the degree of purity of the gas or gases contained in the cylinder.

SPECIALTY GASES

Specialty gases as referenced in this IFB shall be defined as audit gases, high purity gases, general purpose gases and miscellaneous gases.

- All audit gas specifications and requirements must meet 40 CFR Part 86.114 and California BAR97 for content, purity and blend tolerance, precision and accuracy.
- Audit Gases must meet an analytical accuracy of 1% (one-percent) and a blend tolerance of 2% (two-percent).

INDUSTRIAL GASES

The purity of industrial gases referenced in this IFB shall meet the CGA specifications. The gases shall be industrial grade, unless otherwise noted.

CONCENTRATION AND PURITY

- Minimum specifications and requirements shall meet 40 CFR part 86.114 & California Bar97 for content, purity, blend tolerance, precision and accuracy. Gases must meet an analytical accuracy of 1% (one percent) and a blend tolerance of 2% (two percent). Gas verification and cross-check tests and analysis shall be conducted to verify the contents, precision and accuracy. In the event of a dispute over the results of a test conducted by the Purchaser, the findings of the State shall prevail. The Contractor shall replace the gases and/or cylinder at no additional charge to the State.
- Each subsequent shipment of gas shall meet the precision and accuracy and blend tolerance listed herein, unless specifically changed in writing by the Purchaser.
- Traceability – all of the audit gases shall be traceable to the National Institute of Standards and Technology +/-1% (one percent) gases shall have a 2% (two percent) blend tolerance.
- Contractors supplying BAR97 audit gases shall, upon request by the Purchaser, supply proof it is a certified BAR97 certified blender/supplier within five (5) days of request.

CERTIFICATE OF ANALYSIS

- For all high purity, ultra-high purity, specialty gases as well as gas mixtures referenced in this IFB, the Contractor shall provide, at no additional cost to the State, a Certificate of Analysis and/or batch analysis for each delivery made under the contract resulting from award of this IFB. Any delivery without a Certificate of Analysis may be deemed unacceptable and non-compliant and therefore rejected and returned to the Contractor at the Contractor's expense by the Purchaser.
- Testing of gas shall be conducted in such a manner as to produce a complete detailed listing of all components of the cylinder. It shall not be a simple testing of expected contaminants from which a level of purity is determined by subtraction.
- The Contractor shall provide proof of testing methodology for approval within five (5) days of request by the Purchaser.

CONTRACTOR REQUIREMENTS

- Upon request by the Purchaser, the Contractor shall provide training on the proper usage of cylinders at no additional cost to the State.
- The Contractor must provide a customer service representative to the using agencies during normal business hours to assist with ordering, answering questions and resolving any problems that may arise such as malfunctioning cylinders, selection of equipment, etc.
- The Contractor shall be responsible to unload the products and allow the Purchaser to inspect for damage, fitness, proper labeling, verify accurate item delivered and to verify the cylinder is completely filled with the proper gas. As long as all defects are readily apparent and all labels are true and correct, then title to products and risk of loss or damage to products or cylinders shall pass to the State upon delivery. In the event a defect is not readily apparent, but discovered later, then title and risk of loss of damage shall be considered to remain with the Contractor.
- The Contractor shall complete any portion of an unfulfilled order within three (3) days unless the Purchaser agrees to an extension.
- The Contractor shall, upon request by the Purchaser, develop a method of tagging each cylinder for all facilities which have multiple laboratories, in order to insure that cylinders are delivered to the correct laboratory.
- The Contractor shall be responsible for filling State-owned cylinders at the same cost as the rental cylinders.
- The Contractor shall be responsible for all material, maintenance and upkeep on rental cylinders at no additional cost to the State.

SUBSTITUTIONS

- The Contractor shall deliver only the items/products ordered and shall not substitute any item without prior written approval by the designated agency representative.
- Alternate items delivered without prior written approval shall be rejected and returned to the Contractor at the Contractor's expense.
- In the event the product specified can no longer be provided for reasons beyond the Contractor's control (i.e. – product discontinuance); the Contractor shall provide an alternate product request to the designated agency representative for review and approval.
- The substituted product shall meet and/or exceed all terms, conditions, and specifications applicable to the original specified product. An alternate product sample may be required by the Purchaser prior to acceptance.

QUALITY CONTROL

- In the event problems are suspected, the Contractor shall have available a technical representative within forty-eight (48) hours of notification.
- The Contractor shall have a viable quality control program in place that ensures all containers and products are maintained and supplied properly. The program shall be consistent with industry standards.

- Quality control records shall be made available to the State upon request.
- Any damages due to non-compliant gases i.e., contamination from improper gas formulations, mislabeled or defective cylinders shall be the responsibility of the Contractor. If supplied gases are the suspected cause of any damages to the equipment located at the using agency/facility, the State reserves the right to request an analysis by an independent laboratory. Should the analysis reveal the gas was non-compliant; the Contractor shall be responsible for the cost of the analysis, in addition to any other damages that may occur.

CYLINDER EXCHANGE/RETURN

- Empty cylinders shall be picked up by the Contractor within two (2) weeks of written notification by the Purchaser. Acceptable written notification shall be in the form of facsimile or email.
- The Contractor shall submit to the designated agency representative a copy of the manifest or invoice listing the number of cylinders scheduled to be picked up. This manifest or invoice shall be signed and dated by the authorized State employee confirming the amount of cylinders picked up by the Contractor.
- The State shall not be responsible for any additional rental fees if the Contractor fails to pick up all empty cylinders within two (2) weeks of notification.
- The Contractor shall, upon request by the Purchaser, pick-up empty cylinders only from authorized personnel. A list of authorized personnel shall be established by the Purchaser after contract award.
- The State will pay the Contractor for the loss of or damage to, any cylinder resulting from a lack of ordinary care while in the custody of the State; however, this shall not include damage due to normal use, such as handling and transportation of the containers. The price the State will pay the Contractor for such loss or damage will be based on the current catalog/price list of the cylinder at the time the cylinder is damaged.

1.5 CONTRACT SCOPE AND MODIFICATIONS

The DES reserves the right to modify this Contract by mutual agreement between the DES and the Contractor, so long as such modification is substantially within the scope of the original Contract. Such modifications will be evidenced by issuance of a written authorized amendment describing the agreed upon change including any terms and conditions required to support such change.

1.6 ENTIRE AGREEMENT

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

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

1.7 ORDER OF PRECEDENCE, INCORPORATED DOCUMENTS, CONFLICT AND CONFORMITY

Incorporated documents and order of precedence

The documents listed below are, by this reference, incorporated into a contract resulting from the IFB as though fully set forth herein. No other statements or representations, written or oral, are a part of the contract.

- a. The IFB #04015
- b. The awarded vendor's bid, dated November 5, 2015
- 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.

1.8 PURCHASERS

General Use

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.

While use of the Contract is optional for political subdivisions and nonprofit corporations authorized by the MCUA, these entities' use of the Contracts can significantly increase the purchase volume. DES accepts no responsibility for orders or payment by MCUA. A list of MCUA members can be found at <https://fortress.wa.gov/ga/apps/ContractSearch/MCUAListing.aspx>

Purchases by Nonprofit Corporations

Legislation allows nonprofit corporations to participate in State Contracts for purchases administered by DES. By mutual agreement with DES, the Contractor may sell goods or services at contract pricing awarded under this IFB and resulting contract to self-certified nonprofit corporations. Such organizations purchasing under the State Contract shall do so only to the extent they retain eligibility and comply with other contract and statutory

provisions. The Contractor may make reasonable inquiry of credit worthiness prior to accepting orders or delivering goods or services on contract. The State accepts no responsibility for payments by nonprofit corporations. Their use of the contracts may significantly increase the purchase volume. Their orders are subject to the same contract terms, conditions and pricing as state agencies.

1.9 GENERAL PROVISIONS

a. Governing law and venue

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

b. Severability

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

c. Survivorship

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

d. Independent status of Contractor

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

e. Gifts and gratuities

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

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

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

f. Immunity and hold harmless

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

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

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

g. Personal liability

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

2. CONTRACT ADMINISTRATION

2.1 DES CONTRACT ADMINISTRATOR

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

2.2 ADMINISTRATION OF CONTRACT

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

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

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 any term of the Contract lower prices

and rates become effective for like quantities of Products under similar terms and conditions, through reduction in list prices, promotional discounts, or other circumstances, Purchasers must be given immediate benefit of such lower prices and rates.

2.3 CONTRACTOR SUPERVISION AND COORDINATION

Contractor shall:

1. Competently and efficiently, supervise and coordinate the implementation and completion of all Contract requirements specified herein;
2. Identify the Contractor's Representative, who will be the principal point of contact for the DES Contract Administrator concerning Contractor's performance under this Contract.
3. Immediately notify the Contract Administrator in writing of any change of the designated Contractor's Representative assigned to this Contract; and
4. Violation of any provision of this paragraph may be considered a material breach establishing grounds for Contract termination.
5. Be bound by all written communications given to or received from the Contractor's Representative.

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

2.4 CONTRACT MANAGEMENT

Upon award of this contract, the Contractor shall:

1. Review the impact of the award and take the necessary steps needed to ensure that contractual obligations will be fulfilled.
2. Promote and market the use of this contract to all authorized contract Purchasers.
3. Ensure that those who endeavor to utilize this contract are authorized Purchasers under this Contract.
4. At no additional charge, assist Purchasers in the following manner to make the most cost effective, value based, purchases including, but not limited to:
 - a) Visiting the Purchaser site and providing Purchaser with materials/supplies/equipment recommendations.
 - b) Providing Purchasers with a detailed list of contract items including current contract pricing and part numbers.
5. The Contractor shall designate a customer service representative who will be responsible for addressing Purchaser issues including, but not limited to:
 - a) Logging requests for service, ensuring repairs are completed in a timely manner, dispatching service technicians, and processing warranty claim documentation.
 - b) Providing Purchasers with regular and timely status updates in the event of an order or repair fulfillment delay.
 - c) Acting as the lead and liaison between the manufacturer and Purchaser in resolving warranty claims for contract items purchased.

2.5 MANAGEMENT FEE

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

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

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

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

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

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

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

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

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

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

Remit management fee to:

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

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

2.6 SALES & SUBCONTRACTOR REPORTS

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

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

The report shall identify:

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

Report due dates:

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

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

2.7 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.

2.8 WASHINGTON’S ELECTRONIC BUSINESS SOLUTION (WEBS)

Contractor shall be registered in the Contractor registration system, Washington’s Electronic Business Solution (WEBS) <https://fortress.wa.gov/ga/webscust/>, maintained by the Washington State Department of Enterprise Services. Contractors already registered need not re-register. It is the sole responsibility of Contractor to properly register with WEBS and maintain an accurate Contractor profile in WEBS.

3. PRICING

3.1 PRICE PROTECTION

Contractor agrees all the Prices, terms, warranties, and benefits provided in this Contract are comparable to or better than the terms presently being offered by Contractor to any

other governmental entity purchasing the same quantity under similar terms. If during the term of this Contract Contractor shall enter into contracts with any other governmental entity providing greater benefits or more favorable terms than those provided by this Contract, Contractor shall be obligated to provide the same to Purchaser for subsequent purchases.

3.2 NO ADDITIONAL CHARGES

Unless otherwise specified in the Solicitation, no additional charges by the Contractor will be allowed including, but not limited to: handling charges such as packing, wrapping, bags, containers, reels; or the processing fees associated with the use of credit cards. Notwithstanding the foregoing, in the event that market conditions, laws, regulations or other unforeseen factors dictate, at the Contract Administrators sole discretion, additional charges may be allowed.

3.3 PRICE ADJUSTMENTS

- Firm and fixed period: Pricing will remain firm and fixed for (one year) from date of award of the contract.
- Price protection: The contract prices are the maximum prices the Contractor may charge.
- If lower pricing for similar quantities becomes effective for the Contractor, Purchasers must be given immediate benefit of such lower pricing. The Contractor may also offer volume and promotional discounts.
- Contractor agrees all the prices, terms, warranties, and benefits provided in this contract are comparable to or better than the terms presently being offered by the Contractor to any other governmental entity purchasing similar quantities under similar terms. If, during the term of this contract, the Contractor enters into contracts with other governmental entities providing greater benefits or more favorable terms than those provided by this contract, the Contractor is obligated to provide the same to Purchasers for subsequent purchases. DES will be notified of changes in contract pricing.
- Price increases: At least sixty (60) calendar days before the end of the initial term of this Contract, the Contractor may propose price increases by written notice to the Contract Administrator. Price increases are to be on a pass-through basis only and must not produce a higher profit margin for the Contractor than that established by original contract pricing. Requests must include supporting documentation such as price increases at the manufacturer's level and/or other documentation of cost increases, such as the Producer Price Index, and/or the result of increases at the manufacturer's level, incurred after contract commencement date. Price adjustments may be taken into consideration by the DES's Contract Administrator when determining whether to extend this Contract.
- Consideration of price increases will be at the sole discretion of the Contract Administrator. If a price increase is approved in part or in full, the resulting new contract pricing will be implemented through a contract amendment. Prices must be held for 365 days following the effective date.
- Contract extensions and price adjustments: Contractors may not make contract extensions contingent on price adjustments.

4. CONTRACT INFORMATION

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.

4.1 AUTHORITY TO BIND

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

4.2 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.

4.3 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.

4.4 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.

4.5 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.

4.6 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.

4.7 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.

4.8 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 Contractor 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.

4.9 MATERIAL REQUIREMENTS

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

4.10 DEALER AUTHORIZATION

The Contractor, if other than the manufacturer, may be requested to provide a current, dated, and signed authorization from the manufacturer that the Contractor 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 Contract cancellation.

4.11 STAFF QUALIFICATIONS

Delivery staff must carry a CDL Classification and Hazardous Materials license certification compliant with Washington Department of Transportation.

4.12 USE OF SUBCONTRACTORS

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

Prior to performance, Contractor shall identify all subcontractors who will perform services in fulfillment of contract requirements, including their name, the nature of services to be performed, address, telephone, email, 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 the 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.

Specific restrictions apply to contracting with current or former state employees pursuant to [Chapter 42.52 RCW](#).

4.13 SUBCONTRACTS AND ASSIGNMENT

Contractor shall not Subcontract, assign, or otherwise transfer its obligations under this Contract without the prior written consent of the Contract Administrator. Contractor shall provide a minimum of thirty (30) calendar days advance notification of intent to Subcontract, assign, or otherwise transfer its obligations under this Contract. Violation of this condition may be considered a material breach establishing grounds for Contract termination. The Contractor shall be responsible to ensure that all requirements of the Contract shall flow down to any and all Subcontractors. In no event shall the existence of a Subcontract operate to release or reduce the liability of Contractor to the state for any breach in the performance of the Contractor's duties.

4.14 CONTRACTOR AUTHORITY AND INFRINGEMENT

Contractor is authorized to sell under this Contract, only those materials, supplies, services and/or equipment as stated herein and allowed for by the provisions of this Contract. Contractor shall not represent to any Purchasers that they have the contract authority to sell any other materials, supplies, services and/or equipment. Further, Contractor may not intentionally infringe on other established State Contracts.

4.15 QUALITY ASSURANCE

a. Right of inspection

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

b. Contractor commitments, warranties and representations

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

c. Warranties

Contractor warrants that all materials, supplies, services and/or equipment provided under this Contract shall be fit for the purpose(s) for which intended, for

merchantability, and shall conform to the requirements and specifications herein. Acceptance of any materials, supplies, service and/or equipment, and inspection incidental thereto, by the Purchaser shall not alter or affect the obligations of the Contractor or the rights of the Purchaser.

d. Cost of remedy

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

4.16 LEGAL NOTICES

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except notice of malfunctioning Equipment) shall 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 this section. For purposes of complying with any provision in this 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.

| | |
|-------------------------------|--|
| To Contractor at: | To DES at: |
| Airgas USA LLC | State of Washington, Department of Enterprise Services |
| Attn: Greg Weber | Attn: Leslie Edwards |
| 3737 Worsham Ave | PO Box 41408 |
| Long Beach, CA 90808 | Olympia, WA 98504-1408 |
| Phone: 562-497-1991 | Phone: 360-407-8416 |
| Fax: | Fax: 360-407-9174 |
| E-mail: greg.weber@airgas.com | E-mail: leslie.edwards@des.wa.gov |

Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Equipment or Services provided pursuant to this Contract is served upon Contractor or DES, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and 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.

4.17 MATERIALS AND WORKMANSHIP

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

applicable federal, state, and local codes, regulations and requirements for such equipment, specifications contained herein, and the normal uses for which intended. Materials, supplies and equipment shall be manufactured in accordance with the best commercial practices and standards for this type of materials, supplies, and equipment.

4.18 MERCURY CONTENT AND PREFERENCE

Contractor shall provide mercury-free products when available. Should mercury-free products not exist, Contractors shall provide products with the lowest mercury content available. 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. If the product does not contain mercury or a mercury compound, Contractor shall submit a written statement to that effect. 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 said requirements within ten (10) calendar days from the date of request, and to terminate this Contract as a material breach for noncompliance with any requirement of this paragraph.

5. DELIVERY REQUIREMENTS

5.1 ORDER FULFILLMENT REQUIREMENTS

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

1. For purposes of price verification and auditing, upon receipt of a purchase order the Contractor shall send the Purchaser an order confirmation notification that identifies the manufacturer's surcharges.
2. Upon the request of the Purchaser, the Contractor shall supply Purchaser with manufacturer's list pricing or other documentation needed to verify Contract pricing compliance.
3. Product damaged prior to acceptance will either be replaced or repaired in an expedited manner at Contractor's expense. Alternatively, at the Purchaser's option, any possible damage to the product can be noted on the receiving report and the cost deducted from final payment.
4. Schedule and acknowledgement: Delivery must be made within 3 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 24 hours from the time of their receipt of the order. In the event the Contractor is unable to comply with this time frame, the Contractor shall contact the Purchaser immediately and obtain written approval to extend the delivery time. It shall be the responsibility of the Contractor to be aware of the delivery days and receiving hours for all agencies and facilities. The State shall not be responsible for any additional charges should the Contractor fail to observe specific delivery days and receiving hours. This time frame may not be reasonable in some locations. Emergency deliveries may have an additional delivery charge.

5. Delivery staff must carry a CDL Classification and Hazardous Materials license certification compliant with Washington Department of Transportation.
6. Delivery times: Delivery must be made during normal work hours of the Agency requesting the goods as well as 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.
7. Location and performance: All deliveries are to be made to the applicable delivery location as indicated in the order document. The Contractor shall, at the request of the Purchaser deliver cylinders and/or dewars directly to respective floors and/or departments. 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.
8. The Contractor shall, upon delivery, present to the assigned receiving agent documentation (i.e. picking ticket or invoice etc.) to be signed and dated by the receiver confirming the number of cylinders, size, type of gas received and any delivery issues i.e. damage, etc.

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

5.2 STANDARD OF QUALITY/CONSISTENCY OVER TERM OF CONTRACT

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

1. The product may be returned at Contractor's expense;
2. The contract may be terminated without any liability to the State of Washington or Purchaser.

5.3 SHIPPING AND RISK OF LOSS

Contractor shall ship all Products purchased pursuant to this Contract, freight prepaid and included, FOB Purchaser's destination (buyer pays no shipping charges). The method of shipment shall be consistent with the nature of the Products and hazards of transportation. Regardless of FOB point, Contractor agrees to bear all risks of loss, damage, or destruction of the Products ordered hereunder that occurs prior to Acceptance, except loss or damage attributable to Purchaser's fault or negligence; and such loss, damage, or destruction shall not release Contractor from any obligation hereunder. After Acceptance, the risk of loss or damage shall be borne by Purchaser, except loss or damage attributable to Contractor's fault or negligence.

5.4 DELIVERY

Delivery must be made during Purchaser's normal work hours. Delivery will be within a maximum of seven (7) business days after the receipt of the written order by the Contractor. The Contractor must submit an acknowledgment of the order within 24 hours from the time of their receipt of the order. It is recommended that the Purchaser provide the Contractor with an estimated annual usage schedule. Such schedule is not an obligation on the part of the Purchaser to Purchase, but rather to assist the Contractor in

inventory control. Delivery charges that cover the delivery to Purchaser's loading dock must be included in the price of the gas.

Inside delivery shall also be available, at customer's request, at bid price (See Price Sheets). Inside delivery is defined as the person(s) delivering the goods shall deliver the items to exact location requested whether it is on the first or the tenth floor, etc. Any orders requiring this service shall be clearly documented to so indicate. At time of delivery and at the request of the Purchaser, the Contractor will provide an industry standard written analysis of the gas(es) being delivered.

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

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

5.5 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.

5.6 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 ready for Acceptance. Such inspection shall not be construed as final acceptance, or as acceptance of the materials, supplies or equipment, if the materials, supplies or equipment does not conform to contractual requirements. If there are any apparent defects in the materials, supplies, or equipment at the time of delivery, the Purchaser will promptly notify the Contractor. Without limiting any other rights, the Purchaser may require the Contractor to: (1) repair or replace, at Contractor's expense, any or all of the damaged goods; (2) refund the price of any or all of the damaged goods; or (3) accept the return of any or all of the damaged goods.

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.

5.7 TREATMENT OF ASSETS

1. Title to all property furnished by DES and/or Purchaser shall remain in DES and/or Purchaser, as appropriate. Title to all property furnished by the Contractor, the cost for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Purchaser upon delivery of such property by the Contractor and Acceptance by the Purchaser. Title to other property, the cost of which is reimbursable to the Contractor under this Contract, shall pass to and vest in the Purchaser upon (i) issuance for use of such property in the performance of this Contract, or (ii) commencement of use of such property in the performance of this Contract, or (iii) reimbursement of the cost thereof by the Purchaser in whole or in part, whichever first occurs.
2. 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.
3. 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.
4. 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.
5. 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.
6. All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

5.8 LABELING

Individual shipping cartons shall be labeled with the name of the ordering agency, order number, contract number, Contractor, state stock numbers, and where applicable, date of manufacture, batch number, storage requirements, conditions, and recommended shelf life. Contractors are encouraged to offer product packaging with recycled content.

5.9 HAZARDOUS MATERIALS

“Right to know” legislation requires the Department of Labor and Industries to establish a program to make employers and employees more aware of hazardous substances in their work environment. Implementing [Chapter 296-839 WAC](#) requires that 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:

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

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.

6. TAXES, FEES AND LICENSES

6.1 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.

6.2 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](#).

6.3 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.

6.4 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.

6.5 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.

6.6 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](#).

6.7 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](#).

6.8 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.

6.9 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.

6.10 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.

6.11 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.

7. 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.

7.1 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.

7.2 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 |

7.3 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.

7.4 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.

7.5 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.

7.6 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](#) .

7.7 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.

7.8 LIMIT ADJUSTMENTS

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

7.9 INDUSTRIAL INSURANCE COVERAGE

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

pay premiums or penalties on behalf of its employees as may be required by law, 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.

8. INFORMATION AND COMMUNICATIONS

8.1 ADVERTISING

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

8.2 RETENTION OF RECORDS

The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and the provision of materials, supplies, services and/or equipment described herein, including, but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract.

Contractor shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review, or audit by 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.

8.3 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.

8.4 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.

8.5 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.

8.6 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.

9. DISPUTES AND REMEDIES

9.1 PROBLEM RESOLUTION AND DISPUTES

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

In the event a bona fide dispute concerning a question of fact arises between 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.

9.2 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.

9.3 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.

9.4 ALTERNATIVE DISPUTE RESOLUTION FEES AND COSTS

In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both

parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

9.5 NON-EXCLUSIVE REMEDIES

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

10. CONTRACT TERMINATION

10.1 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.

10.2 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.

10.3 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.

10.4 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.

10.5 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.

10.6 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.

10.7 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.

10.8 TERMINATION BY MUTUAL AGREEMENT

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

10.9 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.

11. LIQUIDATED DAMAGES

11.1 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.

11.2 LIMITATION OF LIABILITY

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

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

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

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

11.3 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.

11.4 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.

12. PAYMENT

12.1 ADVANCE PAYMENT PROHIBITED

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

12.2 STATEWIDE PAYEE DESK

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

12.3 IDENTIFICATION

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

12.4 PAYMENT, INVOICING AND DISCOUNTS

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

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

Each invoice shall be identified by the associated Contract Number; the Contractor's Statewide Vendor registration number assigned by Washington State Office of Financial Management (OFM), the applicable Purchaser's order number, and shall be in U.S. dollars. Invoices shall be prominently annotated by the Contractor with all applicable prompt payment and/or volume discount(s) and shipping charges unless otherwise specified in the Solicitation. Hard copy credit memos are to be issued when the state has been overcharged.

Invoices for payment will accurately reflect all discounts due the Purchaser. Invoices will not be processed for payment, nor will the period of prompt payment discount commence, until receipt of a properly completed invoice denominated in U.S. dollars and until all invoiced items are received and satisfactory performance of Contractor has been

accepted by the Purchaser. If an adjustment in payment is necessary due to damage or dispute, any prompt payment discount period shall commence on the date final approval for payment is authorized.

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

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

12.5 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 the DES or the Purchaser requests, a formal release of same shall be delivered to the respective requestor.

12.6 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.

12.7 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.

12.8 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.

12.9 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.

12.10 AUTHORITY TO BIND

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

The state of Washington, acting by and through Department of Enterprise Services issued an Invitation for Bid (IFB) for the purpose of purchasing gases, Specialty and Industrial in accordance with its authority under [Chapter 39.26 RCW](#).

Airgas USA LLC submitted a timely Response to the Department of Enterprise Services IFB.

The Department of Enterprise Services (DES) evaluated all properly submitted Responses to the above-referenced IFB and has identified Airgas USA LLC as the apparently successful Contractor.

DES has determined that entering into a Contract with Airgas USA LLC will meet Purchaser's needs and will be in Purchaser's best interest.

NOW THEREFORE, DES awards to Airgas USA LLC this Contract, the terms and conditions of which shall govern Contractor's furnishing to Purchasers those goods and services described in the IFB. This Contract is not for personal use.

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12.11 COUNTERPARTS

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

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 this 1st day of February, 2016

This is a Partial/Total award for Gases: Medical, Specialty, and Industrial

| | |
|--|---|
| Approved | Approved |
| State of Washington Department of Enterprise Services | Airgas USA LLC |
|  Signature |  Signature |
| Farrell Presnell 01/05/2016 Print or Type Name Date | Jason L. Kirby 1-4-2016 Print or Type Name Date |
| Assistant Director | AVP WA |
| Title | Title |
| Phone: 360-407-8820 | Phone: 206-852-8269 |
| Email: farrel.presnell@des.wa.gov | Email: Jason.Kirby@Airgas.com |