



King County

Finance and Business Operations Division  
Procurement and Contract Services Section  
Department of Executive Services

CNK-ES-0340  
3rd Floor  
401 5th Avenue  
Seattle, WA 98104

206-263-9400  
206-296-7676 Fax  
TTY Relay: 771  
[www.kingcounty.gov](http://www.kingcounty.gov)

VENDOR:

TEUFEL NURSERY, INC  
24202 FRAGER RD S  
KENT, WA 98032

SHIP TO

KC DEPARTMENT OF EXEC SERVICES  
PROCUREMENT-GOODS & SERVICES  
401 5TH AVE, CNK-ES0340  
SEATTLE, WA 98104  
United States

BILL TO

KC DEPT OF EXECUTIVE SERVICES  
ACCOUNTS PAYABLE, 3RD FLOOR  
401 5TH AVE, CNK-ES0320  
SEATTLE, WA 98104  
United States

Purchase Order

PURCHASE ORDER NO.	REVISION	PAGE
517547	0	1
THIS PURCHASE ORDER NUMBER MUST APPEAR ON ALL INVOICES, PACKING LISTS, CARTONS AND CORRESPONDENCES RELATED TO THIS ORDER.		
CREATION DATE	BUYER	
25-JUL-11	R Keolker	
DATE OF REVISION	BUYER	

CUSTOMER ACCT #	VENDOR NO.	PAYMENT TERMS	FREIGHT TERMS	F.O.B.	SHIP VIA
	7364	Net30days	paid	Destination	UPS

CONFIRM TO / TELEPHONE	REQUESTOR / DELIVER TO
JEFF TIMBERMAN (503) 577-9805	

LINE	PART NUMBER / DESCRIPTION	DELIVERY DATE	QUANTITY	UNIT	UNIT PRICE	EXTENSION	T
	FURNISH LANDSCAPING TREES AND PLANTS AS REQUESTED BY VARIOUS AUTHORIZED KING COUNTY DEPARTMENTS, DIVISIONS AND AGENCIES, IN ACCORDANCE WITH CITY OF SEATTLE CONTRACT NUMBER 2520, INCORPORATED BY REFERENCE AS IF FULLY SET FORTH HEREIN.  ESTIMATED ANNUAL CONTRACT VALUE \$20,000.00  Purchase Agreement Effective From: 25-JAN-11 To: 24-FEB-14						
		Amount Agreed:					

SEE REVERSE SIDE FOR ADDITIONAL TERMS AND CONDITIONS. THIS ORDER IS SUBJECT TO ALL THE TERMS AND CONDITIONS ON THE FRONT AND BACK HEREOF.

Required invoice information: Ship to Address, Mailstop, Requestor's Name, Purchase Order Number, Contract Number (if applicable), Line Item Number, description and Unit Price as stated on the purchase order. Missing information may result in payment delays.

ACCEPTANCE:

This purchase order expressly limits acceptance to the terms and conditions stated herein.

TOTAL

*R Keolker*  
Authorized signature

## **PURCHASE ORDER GENERAL TERMS AND CONDITIONS**

**Compliance:** By acceptance of this order, the vendor warrants full compliance with all applicable local, state or federal laws and regulations including specific statutory requirements of Federal Agencies. Upon request, the purchasing agent will provide applicable contract terms and conditions.

**Acceptance/Changes:** All goods or materials purchased hereunder are subject to approval by King County. No substitutions or changes of any nature under this purchase order will be accepted unless approved in writing by King County.

**Inspections:** By acceptance of this order, vendor grants the right to Buyer to make periodic visits to the vendor's plant or their subcontractor's for inspection of materials or to determine actual progress of manufacture.

**Change Orders:** Change orders modifying the terms and conditions herein will be without effect unless issued and authorized in writing by King County.

**Cancellation:** The County may cancel any purchase order or any part thereof by written notice at any time, without penalty, if the vendor fails to comply with the terms, specifications, delivery/completion date or to perform the work with diligence.

**Invoices:** Invoices must reference the purchase order number.

All vendors licensed to do business in Washington State must bill King County for applicable tax. Indicate discount terms to the County for prompt payment. Discount period to be extended if the invoice is returned for correction or clarification.

**Shipping Instructions:** All shipments must contain a packing slip. Unless otherwise specified, all goods are to be shipped prepaid, FOB Destination. Where shipping addresses indicate room numbers, the Vendor shall make delivery to that location at no additional charge, including, but not limited to delivery, packing and or crating.

**Warranty:** The Vendor warrants that all products delivered under this purchase order shall be free from defects in material and workmanship, and shall be fit for the intended purpose. This warrantee is in addition to any standard warranty or guarantee given by vendor to the County. All products determined by King County to be defective shall be replaced within 15 days of notice by King County.

All costs of replacement, including shipping charges shall be borne by the Vendor. Vendor warrants that the merchandise is free and clear of all liens and encumbrances and that vendor has a good and marketable title to same. Vendor warrants that the equipment, materials or service on this order do not infringe any patent, registered trademark or copyright and agrees to hold King County harmless in the event of any infringement or claim thereof.

**Certification Regarding Debarment, Suspension and Other Responsibility Matters:** By providing goods or services under this purchase order, the Contractor agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any Contract that may arise from this Contract. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**Order of Precedence:** When this purchase order is issued subsequent to the results of a request for bid or proposal, the terms and conditions contained in the solicitation or resulting contract shall control.



# City Purchasing

## Current Contract Information

General Information 206-684-0444

### ALERTS

**This contract is not intended for anything that is more properly classified as Public Works.  
 This contract is limited to only those items expressly provided for in this contract.  
 Do not use for federally funded purchases without a specific review for your grant funding requirements.**

<b>Contract #</b>	0000002520		
<b>Contract Title:</b>	Landscaping- Trees & Plants (Result of RFP 2439R)		
<b>Detailed Description:</b>	Trees, plants, shrubs, groundcover, native plants (less bare root trees)		
<b>City Buyer:</b>	Sara Schutt	<b>Phone:</b>	206-684-0456
		<b>E-Mail:</b>	Sara.schutt@seattle.gov
<b>Current Term:</b>	2/25/09	<b>through:</b>	2/24/14
<b>Future Extension Options:</b>	One two (2) year extension		
<b>For use by:</b>	City Departments		
<b>Order Limit:</b>	There is no dollar limit per order on this contract.		
<b>Contract Type:</b>	Blanket contract pool # 2439 Tadpole Haven Native Plants # 2520 Teufel Nursery Inc # 2518 Pacific Plants # 2519 Urban Forest Nursery Inc. # 2517 JB Instant Lawn Inc.		
<b>Freight Terms:</b>	FOB Destination, PP & Allowed for orders minimum orders of \$1000> For Orders <\$1000 minimum delivery charge of \$75.00		
<b>Delivery ARO:</b>	N/A		
<b>Payment Terms:</b>	2% Net 10 Days		
<b>Vendor Name:</b>	Teufel Nursery Inc.		
<b>Vendor ID#</b>	00000292516		
<b>WMBE Status:</b>	N/A		
<b>Address:</b>	100 SW Miller Road Portland, OR 97225		
<b>Contact:</b>	Jeff Timberman		
<b>Phone:</b>	503-646-1111 x 209		
<b>E-mail:</b>	jefft@teufel.com	<b>Fax:</b>	503-672-1112

 0000002520_cc.pdf	 0000002520_p.pdf	 0000002520_RFP.doc c
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<b>Contract History:</b>	Contract Start date	2/25/09

	<b>VENDOR EMERGENCY CONTACT INFORMATION</b>	
<b>Emergency Contact Name</b>	Jeff Timberman	
<b>Emergency Phone- CELL</b>	503-577-9805	
<b>Emergency Phone - HARD LINE</b>	503-680-1111	
<b>Emergency E-Mail address</b>		

Some Contractors have provided an alternative or out-of-state location that can be contacted for products or services during an emergency in the Seattle region that impairs the ability of the local Vendor to respond. If so, the information has been given below:

<b>Alternative Location Address</b>	
<b>Alternative Location Business Phone</b>	
<b>Alternative Location Emergency Phone</b>	
<b>Emergency E-mail Address</b>	
<b>Out of State Location Address</b>	
<b>Out of State Location Phone – Business Hours</b>	
<b>Out of State Emergency Hours</b>	
<b>Out of State E-Mail Address</b>	

**NOTES:**



**BLANKET CONTRACT**

The City of Seattle  
**PURCHASING SERVICES**  
700 5<sup>th</sup> Avenue, Suite #4112  
PO Box 94687  
Seattle, WA 98124-4687

Blanket Contract # 0000002520		Date 2/19/09	Change Order N/A
Payment Terms 2% Net 10	Freight Terms For minimum orders of \$1000 Prepaid & Allowed: FOB: Destination For Orders less than the minimum the delivery charge is \$75.00		
Buyer: Sharon Rothwell	FAX: 206-233-5155	Phone: 206-684-8310	

Vendor #: 0000292516  
Teufel Nursery Inc.  
Teufel Landscape a Division of Teufel Nursery Inc.  
100 SW Miller Road  
Portland, OR 97225  
Contact: Jeff Timberman  
[jefft@teufel.com](mailto:jefft@teufel.com)  
Phone #: 503-646-1111  
Fax #: 503-672-5022

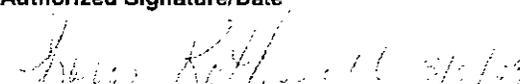
<b>Ship To:</b>  CITY DEPARTMENTS
<b>Bill To:</b>  SEE BELOW

Teufel Nursery Inc. is awarded a contract for providing tree and plants (less bare root trees) to the City of Seattle, as a result of RFP 2439R conducted by the City. See attachments #1 - #3 for specifications, pricing and terms and conditions. The term of the Contract is five (5) years with one (1) two year extension for a maximum contract life ending 2/24/16.

Original contract term: 2/25/09 - 2/24/14

City departments may place orders by telephone or by fax. The Vendor shall require the ordering City employee to state his or her name, department/unit name, low org number, telephone number and ship to address. Invoices shall be mailed in duplicate to the City of Seattle, Accounts Payable, per attached list. Each invoice shall indicate Contract #0000002520.

The City does not guarantee utilization of this contract. This contract is subject to cancellation by either party upon thirty (30) days advanced written notice. The City may award contracts to other vendors for similar products or services. Actual utilization will be based on availability, proximity of vendor facilities, frequency of deliveries, or any other factor deemed important to the City.

<p>Authorized Signature/Date</p> 
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**City of Seattle  
Work Specifications for  
Trees & Plants (less bare root trees)**

**I. Contract objectives**

- Establish a pool of vendors/growers who can supply high quality plant material that meet or exceed current standards as outlined in the American Standard for Nursery Stock (ANSI Z60.1 and/or provide plant brokerage services to secure high quality plant material.
- Establish a contract that can provide immediate response (taking seasonal limitations into consideration) to City orders from any City department;
- To obtain healthy trees, shrubs, perennials, annuals, groundcovers, and miscellaneous plants in support of the City's needs.
- Obtain plant broker services to acquire various types of trees, shrubs, perennials, annuals, groundcovers, and miscellaneous plants (excluding fertilizers and pesticides).
- A current member of a professional industry-related association.
- Minimum of 3 years brokerage experience or 5 years growing experience.

**II. Required Scope of Services**

Provide items stated in paragraph I. above and any other services of the firm as requested by the City of Seattle.

**III. General Requirements**

**A. Standards**

1. Products shall be free of weeds, pests, diseases, injury, and defects.
2. Pruning wounds shall exhibit vigorous callus on all edges.
3. Quality and size shall conform to current issue of "American Standard for Nursery Stock" (ANSI Z60.1) published by the American Association of Nurserymen.
4. Plant names shall conform to "Standardized Plant Names" (2<sup>nd</sup> Edition, 1942), American Joint Committee on Horticultural Nomenclature.

5. All plants and planting material shall meet or exceed the specifications of Federal, State, County, and local laws requiring inspection for plant disease and insect control.
6. Balled and burlapped plants shall show signs of vigorous root growth and shall be provided with a firm root ball per AAN Standards. They shall be wrapped firmly with untreated burlap and secured for shipment.
7. Containerized –grown stock shall be grown a minimum of six months in the finished container, and a maximum of 18 months. Root-bound plants are not acceptable.
8. Contractor shall respond to City emergency projects as quickly and responsively as possible

**B. Delivery, Storage, and Handling**

1. Provide delivery of products, to include the dropping off of plants and, if required, moving of the products from the delivery vehicle to the work site. Deliver products all days of the week, excluding Sundays.
2. Plant delivery shall be specific to each order. Exact time, date, and location of each delivery shall be coordinated with ordering department personnel.
3. All plants shall be provided cover in shipment.
4. When shipped by open truck, pack to provide protection against climate and breakage; tie to prevent whipping; cover tops to minimize drying.
5. Plants shall be dug, loaded, and transported to prevent damage to bark, branches, and root system. Rootballs should be handled in a manner that prevents cracking. No pruning prior to delivery unless previously approved by the City departmental ordering person. No bending or binding of trees or shrubs in such a manner as to damage bark, break branches, or destroy natural shape.
6. Delivery plants with legible identification labels.
  - a. Label trees, shrubs, and flats of ground covers.
  - b. State correct plant name and size.

- c. Use durable waterproof labels with water-resistant ink that will remain legible for at least 60 days.
7. City personnel shall be available at the delivery site at requested time of delivery to inspect products.
8. Contractor shall take care when delivering products to the work site not to Interfere with City operations. Any conflict shall be promptly referred to the City's departmental project manager for resolution.

**C. Replacement of Products**

1. Contractor shall provide replacement products if the products delivered do not meet the requirements of the contract specifications and the individual order.
2. **The City of Seattle** will not be responsible for securing or storing rejected material. Replacement stock or substitutions shall be provided not later than 10 days from the original order date, unless prior arrangements have been made.
3. If replacement products cannot be provided, Contractor shall provide a City-approved substitute with 10 days of the originally requested delivery or accept a deduction for that product equal to that quoted by the Contractor.

**MINIMUM QUALIFICATIONS AND OFFER SHEET**  
Page 1 of 1

City of Seattle  
RFP- 2439R  
TITLE: Trees & Plants

Note to bidders: This is an electronic form if you click your cursor on the box an "X" will appear. Where the gray box appears \_\_\_\_\_, this is a text box. Simply type in your response and the form will automatically adjust its spacing.

Minimum Qualifications: Describe below how your company meets the minimum qualifications.

- 1 Does your company have a minimum of 3 years of brokerage experience or 5 years growing experience?

Yes  No Briefly describe your experience. We are a fourth generation family owned nursery actively in the nursery business in the Pacific Northwest since 1890. 118 years. We grow and broker in excess of \$7 million of plants annually.

2. What professional industry-related association such as International Society of Arboriculture, National Arborist Association, American Nursery and Landscape Association, Washington State Nursery and Landscape Association are you a member of and how long you have been a member?

Oregon Association of Nurserymen since inception.

American Nursery and Landscape Association since inception.

Washington Association of Landscape Professionals since inception.

Idaho Nursery and Landscape Association, since inception.

Washington State Nursery and Landscape Association- 15 years.

International Society of Arborists- 15 years.

Irrigation Association - 15 years.

Western Washington Golf Course Association- 15 years.

Professional Landscape Network-1986.

**Products & Services**

1. Describe the range of products and/or services your company has to offer the City. Leffel Nursery grows, Brokers, and contract grows nursery stock. We also do Landscape Construction, installation and maintenance. We also offer a full line of tools and supplies used by the landscape contractor.

2. Do your products meet the American Standard for Nursery Stock (ANSI) Z60.1?  
 Yes  No

3. Describe the largest project for which you have provided plant material.  
Olympic Sculpture Park we provided and installed the plant material, turf, irrigation and hardscapes.

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

REF: 2439R

4. Are your products certified pest and disease free?  Yes  No

### Customer Service

1. What are your operating hours? 7:30-4:30 Monday-Friday

2. Describe how customer orders are received, processed and delivered?

We use a Windows based Nursery database that tracks orders, purchase orders, and shipments.

1) The order is entered - An order is received from the customer. The order is entered into our inventory management system and this triggers the plant material to be reserved for the customer. Plant material that is not available in our current inventory goes to our purchasing department to be procured.

2) The order is pulled - A plant list is generated and given to the yard crew, they pull the order to the loading dock and line it up in preparation for shipment.

3) The salesman checks quality and tagging and approves loading.

4) The order is loaded onto our truck or the customers truck and when final counts are confirmed the invoice is processed.

We also encourage will call. Customers are welcome to come to our nursery and select plants that they need. A salesman accompanies the customer to assist with their selections and with loading.

Yes - Partial deliveries are possible

No - only whole orders will be delivered

List any qualifications or limitations regarding orders and deliveries (e.g. minimum quantities, if applicable) Free delivery Everett to Tacoma for orders of \$1000 or more.

3. Describe how customer complaints are resolved.

We take customer complaints very seriously. It is my policy to have same day resolution on customer complaints whenever possible. In some cases where a site visit is involved it takes a few days longer. My name is Jeff Timberman and I am the Nursery Division Manager. I like to handle customer complaints personally whenever possible. It is seldom that I get a customer complaint and I do not remember any that were not dealt with amicably.

4. Describe how you deal with plant quality issues.

We want our customers to be happy with our product. If we make a delivery and the customer deems some or all of the material to be unacceptable, the material may be returned on the same truck. If the project foreman is not on site when the product is delivered, we would ask to be notified of any reflections within 48 hours. We will always offer full refund for plant material that is unacceptable except in situations where the plants have been subjected to exceptional neglect, such as lack of water.

5. Describe how invoicing is done and tracked.

Our inventory is recorded in a Windows based nursery management system.

1) An order is entered into our computer system identifying botanical name, quantity, and size.

2) The system will allocate plants from our existing inventory to the order, or reflect a shortage.

3) In the instance of a shortage, the salesman will locate the plant material on of our farms or from a pre-approved vendor. The salesman will issue a Purchase Order from the same data base. The computer will track the purchase and allocate it to the order.

Company Name: Timberman Nursery

Page 2 of 6

- 4) Our dispatch department is notified when and where the material needs to be picked up and a truck is dispatched to the vendor.
- 5) The product is either delivered to our dock for staging or delivered directly to the customers jobsite with the appropriate packing list.
- 6) Our computer system tracks everything that we buy, who we buy it from, when we picked it up, who we sold it to and when it was invoiced for a period of 10 years.

6. Describe how customer deliveries are set up and delivered  
Teufel Nursery operates a fleet of Semi trucks and trailers. Our deliveries are scheduled with our disptach departments in Oregon or Washington. The salesman notifies the Dispatcher of the delivery with address and date of the delivery. The dispatcher arranges the loading of the material from one of our twenty docks. The dispatcher schedules which driver delivers the order to the customer. The driver arrives at the jobsite and assists with allocating the product to be unloaded by the customer.

• Delivery capabilities (check all applicable boxes)

- Delivery only
- Delivery/off-load
- Delivery availability (days of week) Monday-Friday, weekends if pre-arranged.

• Off-load capabilities (check all applicable boxes)

- None
- Easy-lift tailgate
- Crane
- Bobcat

7. Do you have customer pick up available?  Yes  No If available, please describe the process, hours/day of operation. Monday -Friday 7:30-4:30, Weekends by appointment.

• On Site Storage facilities available - (for optional pick-up, by city, of partial orders) (time limitations, if applicable)

- None
- Refrigeration
- Open holding area
- Covered holding area

Additional comments or other plant related provided by your company.

We have a 70 acre site one mile east of I-5 in Kent, Washington. We have rock-ed nursery beds as well as shade and poly covered structures to hold material as necessary. We ask that brokered material be shipped within 30 days of our receipt of the product. We are also contract grow plants and trees.

Past Experience & References

1. Does your company hold any other government contracts for providing plant material?  
 Yes  No

2. If yes, identify the agency, the nature of contract, length of contract and dollar value of the contract.

Agency	Nature of Contract	Length of Contract	\$ Value of Contract
King County/Brightwater Treatment Plant	Contract Grow	November 2009-April 2011	\$685,000
King County/Brightwater Treatment Plant	Brokered Trees	November 2009-April 2011	\$155,000

Provide three (3) references outside City of Seattle employees below.

Company / Agency	Contact name	Phone #
1. <u>Murase &amp; Assoc.</u> <u>206-322-4937</u>	<u>Mark Tilbe</u>	
2. <u>Charles Anderson Assoc/Olympic Sculpture Park</u> <u>Charles Anderson</u>	<u>251-642-0000</u>	
3. <u>King County/Brightwater</u> <u>206-263-9470</u>	<u>Michael Popiwny</u>	

Below are the Market Basket Scenarios which we will use only to evaluate pricing. It is MANDATORY that you provide a Unit Price. If there is an error between Unit Price (price per each) and extended price, the City will correct the extended price. You will see delivery locations for each scenario; this is provided so you can provide pricing to our location. Please check the appropriate box below if you are a broker or a direct purchase vendor. For every box checked please submit one Market Basket Spreadsheet for evaluation. Proposers may submit market basket spreadsheets for one or both scenarios. (Spreadsheets located on page # 17 section 3 of the RFP)

**SCENARIO 1: Trees**

Bidders may choose to bid on one or both  Broker Services,  Direct Purchase of Wholesale plants

The Seattle Department of Transportation (SDOT) would like to purchase plant materials identified in the scenario 1 spreadsheet for delivery to:

Seattle Department of Transportation  
West Seattle yard  
9200 8<sup>th</sup> Ave SW  
Seattle, WA

**SCENARIO 2: Plants, Ornamental Ground Cover, Perennials, Shrubs**

Bidders may choose to bid on one or both  Broker Services,  Direct Purchase of Wholesale plants

The Seattle Parks Department needs the scenario #2 plant material delivered to:

Magnuson Park  
Seattle Conservation Corps

RFP-2439R  
7400 Sand Point Way NE  
Seattle, WA

Bidders are to note items below.

1. Do not mark, write-in or add any exceptions to the specifications, schedule, terms or conditions. Do not attach alternative boilerplate. Any such exceptions can invalidate your Offer and the Buyer can reject your Bid.
2. Price Changes in future contract years shall be in accordance with the specifications. Whole sale and mark-up discount rates will not change through the life of the contract. Other price changes are restricted to the specifications stated in the solicitation and the contract.

Bidders are to complete the section below as applicable

1. Prompt Payment Discount: 2% 10 days. Note: Prompt payment discount period equal to (or greater than) 10 calendar days will receive consideration and bid pricing will be reduced for evaluation by the amount of that discount

2. Bidder Agrees To Deliver FOB Destination; Freight: Prepaid and included with a minimum order of \$1000. For orders not meeting minimum requirements, we will charge \$75.00 delivery fee. It is further understood that discount pricing will be in effect for all orders regardless of dollar value picked up at supplier's place of business.

The percentage rates that you identify in items 3 & 4 must match the rates quoted in the Market Basket scenario spreadsheets.

3. Indicate applicable mark up rate for Plant Broker

Broker mark up 55%

4. Check applicable discount to be offered to the City for direct purchase.

- Retail Price List            % discount
- Jobber/ Wholesale Prices       % discount

5. Specify if the Business is located within the Seattle City Limits: Businesses located and licensed within the Seattle City limits are eligible for Seattle tax consideration for purposes of calculation of low bid. This shall be equivalent to a reduction of the cost for purposes of bid evaluation only, of .025.

Yes             No

6. Interlocal Agreement: The City of Seattle has entered into Interlocal Agreement with other governmental agencies pursuant to RCW 39.34, in lieu of those agencies conducting a separate competitive bid. Does Vendor agree to provide this product or service to such agencies?

Yes             No

Full Legal Name of Company \_\_\_\_\_

Signed by: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

City of Seattle  
CONTRACT

Terms and Conditions

1. **Entire Agreement.** This Contract including all attachments, amendments and subsequently issued change notices, comprises the entire agreement between the City of Seattle (Seattle) and the Contractor. The City's Purchase Order, the Vendor Offer including all attachments, the Addendum to the Bid, the ITB specifications, the ITB instructions and ITB Attachments, are explicitly included in this Contract. Where there are conflicts between these documents, the controlling document will be in that same sequence, with the first taking priority over the last listed.
  2. **Term:** Any term specified in the solicitation or specification shall prevail. Should this be a one-time purchase, the Contract shall commence on the date the City's Buyer signs the same and shall expire sixty (60) days after delivery and acceptance of last item. If a Blanket Contract award, this contract shall be for the term specified in the solicitation, and if not specified shall be five years, with one two-year extension allowed at the option of the City. Such extensions shall be automatic, and shall go into effect without written confirmation, unless the City provides advance notice of the intention to not renew. The Vendor may provide also provide a notice to not extend, but must provide such notice at least 45 days prior to the otherwise automatic renewal date.
  3. **Schedule:** Unless the City's Buyer issues a written change, Contractor shall deliver the items or render the services by the "Last Item Due Date" stated on the Contract signature page. At the City's option, Contractor's failure to timely deliver or to perform may require expedited shipping at Contractor's expense, or may be cause for termination of the Contract and the return of all or part of the items at Contractor's expense. If Contractor anticipates difficulty in meeting the schedule, the Contractor shall promptly notify the City's Buyer of such difficulty and the length of the anticipated delay.
  4. **Scope of Work:** Contractor shall provide the products and/or services specified within this Contract.
  5. **Adjustments:** The City's Buyer at any time may make reasonable changes in the place of delivery, installation or inspection; the method of shipment or packing; labeling and identification; extension of contract duration, and ancillary matters that Contractor may accommodate without substantial additional expense to the City.
  6. **Changes and Expansion Authority:** No modification of this Contract shall be effective unless in writing and signed by an authorized representative of the City. The only person authorized to make amendments on behalf of the City is the Buyer from the City Purchasing Office of the Department of Executive Administration, City of Seattle (also referred to as the City RFP Coordinator) designated for this contract except as otherwise authorized herein or by the City Purchasing Services Division. The City Buyer shall issue change notices to Contractor, and such notices shall take effect under the signature of the City unless written objection of the notice is received by the Contractor upon Contractor receipt of the change notice.
- Federal Amendments: Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy, per OMB Circular A-102 Common Rule, Section 36.
7. **Expansion:** This contract may be expanded as mutually agreed, if such expansion is approved by the City Buyer. Expansions must be issued in writing from the City Buyer in a formal notice. The Buyer will ensure the expansion meets the following criteria collectively: (a) it could not be separately bid, (b) the change is for a reasonable purpose, (c) the change was not reasonably known to either the City or vendors at time of bid or else was mentioned as a possibility in the bid (such as a change in environmental regulation or other law); (d) the change is not significant enough to be reasonably regarded as an independent body of work; (e) the change could not have attracted a different field of competition; and (f) the change does not vary the essential identity or main purpose of the contract. The Buyer shall make this determination, and may make exceptions for immaterial changes, emergency or sole source conditions, or for other situations as required in the opinion of the Buyer. Note that certain changes are not considered an expansion of scope, including an increase in quantities ordered, the exercise of options and alternates in the bid, or ordering of work originally identified within the originating solicitation. If such changes are approved, changes are conducted as a written order issued by the City Purchasing Buyer in writing to the Vendor.
  8. **Payment:** Seattle agrees to compensate as specified herein or attached, in consideration of acceptable Contractor performance. Payment shall only be made for services performed and/or product delivered, after receipt, review and authorization by the City.



Such payment shall be paid according to early payment discount terms, or if no early payment discount is offered, thirty (30) days after the City's receipt and acceptance of the goods or completion and acceptance of the services. Payment periods will be computed from either the date of delivery an acceptance of all goods ordered, the acceptance by the City of completion of all services, or the date of receipt of a correct invoice, whichever date is later. This section is not intended to restrict partial payments that are specified in the contract. All dollars referenced in this Contract and attachments are US Dollars.

9. **Invoices:** Invoices must show a breakdown of services or products provided and price for each. Invoices must specify the Name and Phone Number of the City employee that placed the order.
10. **Overages/Underages:** Shipments shall match the purchase order, any unauthorized advance or excess shipments are returnable at Contractors expense. The City is not obligated to return overages and will not pay for overages.
11. **Taxes, Fees and Licenses.**

**Fees and Licenses:** Contractor shall pay for and maintain in a current status, any license fees, assessments, permit charges, etc., which are necessary for contract performance. It is the Contractor's sole responsibility to monitor and determine any changes or the enactment of any subsequent requirements for said fees, assessments, or charges and to immediately comply with said changes during the entire term of this Contract. Contractor must pay all custom duties, brokerage or import fees where applicable as part of the contract price. Contractor shall take all necessary actions to ensure that materials or equipment purchased are expedited through customs.

**Taxes:** Where required by state statute, ordinance or regulation, Contractor shall pay for and maintain in current status all taxes that are necessary for contract performance. Unless otherwise indicated, Seattle agrees to pay State of Washington sales or use taxes on all applicable consumer services and materials purchased. No charge by the Contractor shall be made for federal excise taxes and Seattle agrees to furnish Contractor with an exemption certificate where appropriate.

**Withholding payment for taxes/business license fees due the City of Seattle:** If specified by Seattle Municipal Code the Director of the Department of Executive Administration may withhold payment due a City contractor pending satisfactory resolution of unpaid taxes and fees due the City.

Supplier is to calculate and enter the appropriate Washington State and local sales tax on the invoice. Tax is to be computed on new items after deduction of any trade-in, in accordance with WAC 458-20-247.

12. **Pricing:** Pricing reflects the following agreements. These are in addition to annual Prevailing Wage adjustments if required. The Buyer may exempt these requirements for extraordinary conditions that could not have been known by either party at the time of bid or other circumstances beyond the control of both parties, as determined in the opinion of the Buyer.

Requests for Rate Increases must be delivered to the City Purchasing Buyer in accordance to the rules below. No other employee may accept a rate increase request on behalf of the City. Any invoice that is sent to the City with pricing above that specified by the City in writing within this Contract or specified within an official written change issued by City Purchasing to this contract, shall be invalid. Payment of an erroneous invoice does not constitute acceptance of the erroneous pricing, and the City would seek reimbursement of the overpayment or would withhold such overpayment from future invoices.

- A. **Discount from Manufacturer List Pricing:** For all contract items that are priced as a discount below Manufacturer List prices, there shall be no changes to the discount rate throughout the life of the contract. As manufacturer list prices change, the net price to the City will automatically change in the same percentage as the discount rate to the City.
- B. **One-time Purchase Order Prices:** If the Bid is for a one-time purchase, pricing shall be firm and fixed for that purchase, and shall not be subject to requests for price increases by the Vendor.
- C. **Hourly rates or Service Pricing:** For multi-year contracts that provide services. Original pricing shall be fixed and firm for the first two years of the contract. Rate increases are at the discretion of the Buyer; and must also be:
  1. The direct result of increases to wage rates that do not exceed the CPI Index or other appropriate service rate index agreed upon between the Buyer and the Vendor.



2. Incurred after contract commencement date.
3. Not produce a higher profit margin than that on the original contract.
4. Clearly identify the service titles and the hours of service performed if specified within the contract.
5. Be filed with Buyer (RFP Coordinator) a minimum of 90 calendar days before the effective date of proposed increase.
6. Be accompanied by detailed documentation acceptable to the Buyer (RFP Coordinator) sufficient to warrant the increase.
7. The United States published indices such as the Producer Price Index or other government data may be referenced to help substantiate the Vendor's documentation. A link to the PPI Commodity Data is available at <http://data.bls.gov/PDQ/outside.jsp?survey=wp>.
8. The Adjustment (if any) shall remain firm and fixed for at least 365 days after the effective date of the adjustment.
9. Should not deviate from the original contract pricing scheme/methodology

D. **Fixed Product Pricing:** For product and supply contracts that provide on-going, multiple year supply. Original pricing shall be fixed and firm for the first two years of the contract. Price requests are at the discretion of the Buyer; and must also be:

1. The direct result of increases at the manufacturer's level (or if Vendor is a supplier of a raw material delivered directly to the City such as cement or soil, the increase must be verified at the supplier level).
2. Incurred after contract commencement date.
3. Not produce a higher profit margin than that on the original contract.
4. Clearly identify the items impacted by the increase.
5. Be filed with Buyer (RFP Coordinator) a minimum of 90 calendar days before the effective date of proposed increase.
6. Be accompanied by detailed documentation acceptable to the Buyer (RFP Coordinator) sufficient to warrant the increase.
7. The United States published indices such as the Producer Price Index or other government data may be referenced to help substantiate the Vendor's documentation. A link to the PPI Commodity Data is available at <http://data.bls.gov/PDQ/outside.jsp?survey=wp>.
8. The Adjustment (if any) shall remain firm and fixed for at least 365 days after the effective date of the adjustment.
9. Should not deviate from the original contract pricing scheme/methodology.

13. **Cost Reductions:** Any cost reductions to the Vendor, such as rebates or "specials", shall be reflected in a reduction of the contract price effective immediately. Seattle will not be bound by prices contained in an invoice that are higher than those in the contract. Unless the higher price has been accepted by the City and the contract amended, the invoice may be rejected and returned to the Vendor for corrections.

14. **Invoicing:** The Vendor is required to provide a method for tracking the cost of the item to the City, with the City discount calculation displayed so that pricing discounts can be easily tracked and verified by the City with each invoice. Each invoice to the City shall specify the "Manufacturers Current List Price," the discount rate that the City receives, and the final net cost to the City.

15. **Catalogue and Manufacturer List Pricing:** Upon City request, the Vendor shall provide access to the "Manufacturer's Current Price List" in electronic and/or paper format. Such requests may be for current catalogue pricing or for past catalogue that are within the term of the contract.

16. **Delivery of Products and Services - Idling Prohibited:** Vehicles and/or diesel fuel trucks shall not idle at the time and location of the delivery to the City for more than five minutes. The City requires vendors to utilize practices that reduce fuel consumption and emission discharge, including turning off trucks and vehicles during delivery of products to the City. Exceptions to this requirement include when a vehicle is making deliveries and associated power is necessary; when the engine is used to provide power in another device, and if required for proper warm-up and cool-down of the engine. Specific examples include "bucket" trucks that allow a worker to reach wires on telephone poles or tree branches for trimming; and vehicles with a lift on the back of a truck to move products in and out of the truck. The City of Seattle has a commitment to reduction of unnecessary fuel emissions. The City intends to improve air quality by reducing unnecessary air pollution from idling vehicles. Limiting car and truck idling supports cleaner air, healthier work environments, the efficient use of city resources, the public's enjoyment of City properties and programs, conservation



of natural resources, and good stewardship practices.

17. **Travel and Direct Charges:** If the specifications and scope of work for this purchase have specifically identified travel and/or direct costs that the City intends to reimburse, then the following requirements shall apply. All such expenses must be pre-approved in writing by the Project Manager. If the specifications and scope of work do not clearly identify such costs for compensation, than no compensation will be given.

- City will reimburse the Contractor at actual cost for expenditures that are pre-approved by the City in writing and are necessary and directly applicable to the work required by this Contract provided that similar direct project costs related to the contracts of other clients are consistently accounted for in a like manner. Such direct project costs may not be charged as part of overhead expenses. Direct charges may include, but are not limited to the following items: travel, printing, long distance telephone, supplies, computer charges, and fees of subconsultants or subcontractors.
- The billing for direct expenses specifically identifiable with this project shall be an itemized listing of the charges supported by copies of the original bills, invoices, expense accounts, subconsultant/subcontractor paid invoices, and other supporting documents used by the Contractor to generate invoice(s) to the City. The original supporting documents shall be available to the City for inspection upon request. All charges must be necessary for the services provided under this Contract.
- The City will reimburse the actual cost for travel expenses incurred as evidenced by copies of receipts supporting such travel expenses, and in accordance with the City of Seattle Travel Policy, details of which can be provided upon request.
- **Airfare:** Airfare will be reimbursed at the actual cost of the airline ticket. The City will reimburse for Economy or Coach Fare only. Receipts detailing each airfare are required.
- **Meals:** Meals will be reimbursed at the Federal Per Diem daily rate for the city in which the work is performed and do not require receipts or additional documentation. The City will not reimburse for alcohol at any time.
- **Lodging:** Lodging will be reimbursed at actual cost incurred up to a maximum of the published Runzheimer Cost Index for the city in which the work was performed. Receipts detailing each day / night lodging are required. The City will reimburse at the single occupancy rate. As an alternative, lodging billed at the published Federal Per Diem daily rate for the city in which the work is performed does not require receipts or additional documentation. In this case, the invoice needs to state that "the lodging is being billed at the Federal Per Diem daily rate."
- **Vehicle mileage:** Vehicle mileage will be reimbursed at the Federal Internal Revenue Service Standard Business Mileage Rate in affect at the time the mileage expense is incurred (currently that rate is 48.5 cents per mile.)
- **Rental Car:** Rental car expenses will be reimbursed at the actual cost of the rental. Rental car receipts are required for all rental car expenses (the City will only pay for the rental of "Compact" vehicles unless three or more persons are sharing one vehicle in which case a "Mid-sized" vehicle rental is acceptable).
- **Miscellaneous Travel** (e.g. parking, gas, taxi, shuttle, tolls, ferry fees, etc.): Miscellaneous travel expenses will be reimbursed at the actual cost incurred. Receipts are required for each expense of \$10.00 or more.
- **Miscellaneous other business expenses** (e.g. printing, photo development, binding): Other miscellaneous business expenses will be reimbursed at the actual cost incurred. Receipts are required for all miscellaneous expenses that are billed.
- **Subcontractor:** Subcontractor expenses will be reimbursed at the actual cost incurred. Copies of all subcontractor invoices that are rebilled to the City are required.

18. **Delivery:** Except when instructed otherwise, Delivery must be made during normal work hours and within timeframes proposed by Contractor herein and as accepted by Seattle. Failure to comply may subject Contractor to non-delivery assessment charges and/or damages as appropriate. Seattle reserves the right to refuse shipment when delivered before or after normal working hours. Contractor shall verify specific working hours of offices and so instruct carrier(s) to deliver accordingly. The acceptance by Seattle



of late performance without objection or reservation shall not waive the right of Seattle to claim damages for such breach, nor preclude Seattle from pursuing any other remedy provided herein, including termination, nor 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 in accordance with Interstate Commerce Commission rules or as indicated in Purchase Order. When applicable, Contractor shall take necessary actions to safeguard items during inclement weather.

19. **Identification:** All invoices, packing slips, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written documents affecting this contract shall be identified by the applicable purchase order number. Packing lists shall be enclosed with each shipment, indicating the contents therein.
20. **Charges for handling:** No charges will be allowed for handling that includes but is not limited to packing, wrapping, bags, containers, or reels, unless otherwise stated herein.
21. **Contract Notices:** Contract notices shall be delivered to the Buyer at the addresses specified in the solicitation.
22. **Representations:** Contractor represents and warrants that it has the requisite training, skill and experience necessary to provide Work and is appropriately accredited and licensed by all applicable agencies and governmental entities.
23. **Warranties:** Contractor warrants that all materials, equipment, and/or services provided under this Contract shall be fit for the purpose(s) for which intended, for merchantability, are properly package, proper instructions and warnings are supplied, that all goods comply with applicable safety and health standards, that an MSDS Sheet is supplied as required by law, and that products or services conform to the requirements and specifications herein. Acceptance of any service and inspection incidental thereto by Seattle shall not alter or affect the obligations of the Contractor or the rights of Seattle.
24. **Independent Contractor:** It is the intention and understanding of the Parties that Contractor shall be an independent contractor and that Seattle shall be neither liable for nor obligated to pay sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax that may arise as an incident of employment. The Contractor shall pay all income and other taxes as due. Industrial or other insurance that is purchased for the benefit of the Contractor shall not be deemed to convert this Contract to an employment contract. It is recognized that Contractor may or will be performing work during the term for other parties and that Seattle is not the exclusive user of the services that Contractor provides.
25. **Inspection:** Work shall be subject, at all times, to inspection by and with approval of Seattle, but the making (or failure or delay in making) such inspection or approval shall not relieve Contractor of responsibility for performance of the Work in accordance with this Contract, notwithstanding Seattle's knowledge of defective or noncomplying performance, its substantiality or the ease of its discovery. Contractor shall provide sufficient, safe, and proper facilities and equipment for such inspection and free access to such facilities.
26. **Title, Risk of Loss, Freight, Overages or Underages:** Title of goods received under this contract shall remain with the Contractor until they are delivered to the address specified, at which time title passes to Seattle. Regardless of FOB point, Contractor agrees to bear all risks of loss, injury, or destruction of goods and materials ordered herein which occur prior to delivery and acceptance. Such loss, injury, or destruction shall not release Contractor from any obligations under. Prices include freight prepaid and allowed. Contractor assumes the risk of every increase, and receives the benefit of every decrease, in delivery rates and charges. Shipments shall correspond with the Contract; any unauthorized advance or excess shipment is returnable at Contractor's expense.
27. **Performance:** Acceptance by Seattle of unsatisfactory performance with or without objection or reservation shall not waive the right to claim damage for breach, or terminate the contract, nor constitute a waiver of requirements for satisfactory performance of any obligation remaining to be performed by Contractor.
28. **Affirmative Efforts:**
  - **Employment Actions:** Contractor shall not discriminate against any employee or applicant for employment because of race, religion, creed, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational



qualification. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, age, color, sex, national origin, marital status, political ideology, ancestry, sexual orientation, gender identity, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to employment, upgrading, promotion, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training.

- In accordance with Seattle Municipal Code Chapter 20.42, Contractor shall actively solicit the employment and subcontracting of women and minority group members when necessary and commercially useful for purposes of fulfilling the scope of work required for this Contract. Contractors shall actively solicit subcontracting bids from subcontractors as needed to perform the work of this contract, from qualified, available and capable women and minority businesses. Contractors shall consider the grant of subcontracts to women and minority bidders on the basis of substantially equal proposes in the light most favorable to women and minority businesses. At the request of Seattle, Contractor shall promptly furnish evidence of the Contractor's compliance with these requirements.
- If upon investigation, the Director of Executive Administration finds probable cause to believe that the Contractor has failed to comply with the requirements of this Section, the Contractor shall notified in writing. The Director of Executive Administration shall give Contractor an opportunity to be heard, after ten calendar days' notice. If, after the Contractor's opportunity to be heard, the Director of Executive Administration still finds probable cause, s/he may suspend the Contract and/or withhold any funds due or to become due to the Contractor, pending compliance by the Contractor with the requirements of this Section.
- Any violation of the mandatory requirements of this Section, or a violation of Seattle Municipal Code Chapter 14.04 (Fair Employment Practices), Chapter 14.10 (Fair Contracting Practices), Chapter 20.45 (City Contracts - Non-Discrimination in Benefits), or other local, state, or federal non-discrimination laws, shall be a material of contract for which the Contractor may be subject to damages and sanctions provided for by the Vendor Contract and by applicable law. In the event the Contractor is in violation of this Section shall be subject to debarment from City contracting activities in accordance with Seattle Municipal Code Section 20.70 (Debarment).

29. **Equal Employment Opportunity:** All Contractors must comply with federal Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.:

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

31. **Equal Benefits.**

- **Compliance with SMC Ch. 20.45:** The Contractor shall comply with the requirements of SMC Ch. 20.45 and Equal Benefits Program Rules implementing such requirements, under which the Contractor is obligated to provide the same or equivalent benefits ("equal benefits") to its employees with domestic partners as the Contractor provides to its employees with spouses. At Seattle's request, the Contractor shall provide complete information and verification of the Contractor's compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract. (For further information about SMC Ch. 20.45 and the Equal Benefits Program Rules call (206) 684-0430 or review information at [http://cityofseattle.net/contract/equalbenefits/.](http://cityofseattle.net/contract/equalbenefits/))
- **Remedies for Violations of SMC Ch. 20.45:** Any violation of this section shall be a material breach of Contract for which the City may:
  - a. Require the Contractor to pay actual damages for each day that the Contractor is in violation of SMC Ch. 20.45 during the term of the Contract; or
  - b. Terminate the Contract; or
  - c. Disqualify the Contractor from bidding on or being awarded a City contract for a period of up to five (5) years; or
  - d. Inpose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated there under.



32. **Publicity:** No news release, advertisement, promotional material, tour, or demonstration related to the City's purchase or use of the Contractor's product or any work performed pursuant to this Contract shall be produced, distributed or take place without the prior, specific written approval of the City's Project Director or his/her designee.

33. **Proprietary and Confidential Information:**  
Contractor's Understanding and Obligations:

1. Contractor understands that any records (including but not limited to bid or proposal submittals, the Agreement, and any other contract materials) it submits to the City, or that are used by the City even if the Contractor possesses the records, are public records under Washington State law, RCW Chapter 42.56. Public records must be promptly disclosed upon request unless a statute exempts them from disclosure. The Contractor also understands that even if part of a record is exempt from disclosure, the rest of that record generally must be disclosed.
2. Contractor must separate and clearly mark as "proprietary" all records related to this Agreement or the performance of this Agreement that the Contractor believes are exempt from disclosure. The Contractor is familiar with potentially-applicable public-disclosure exemptions and the limits of those exemptions, and will mark as "proprietary" only information that the Contractor believes legitimately fits within an exemption and will state the statutory exception upon which it is relying.
3. If Seattle notifies the Contractor under Paragraph B 2 of a public disclosure request, and the Contractor believes records are exempt from disclosure, it is the Contractor's responsibility to make determination and pursue a lawsuit under RCW 42.56 to enjoin disclosure. The Contractor must obtain the injunction and serve it on the City before the close of business on the tenth business day after the City sent notification to the Contractor. It is the Contractor's discretionary decision whether to file the lawsuit.
4. If the Contractor does not timely obtain and serve an injunction, the Contractor is deemed to have authorized releasing the record.
5. Notwithstanding the above, the Contractor must not take any action that would affect (a) the City's ability to use goods and services provided under this Agreement or (b) the Contractor's obligations under this Agreement.
6. The Contractor will fully cooperate with the City in identifying and assembling records in case of any public disclosure request.

City's Obligations

1. The City will disclose those parts of records the Contractor has marked as "proprietary" information only to authorized persons unless:
  - (a) the City receives a public disclosure request, in which case steps 2 and 3 below will be exercised before release of the information or
  - (b) The Contractor has given the City express advance written permission to disclose the records. "Authorized persons" means those City officers, employees, contractors and consultants for whom the proprietary information is necessary to perform their duties or obligations to the City.The term "proprietary information" does not include ideas, concepts, know-how or techniques related to any information that, at the time of disclosure, is in the public domain, unless the entry of that information into the public domain is a result of a breach of this Contract.
2. If the City receives a public disclosure request for records that the Contractor has marked as "proprietary" information, the City may promptly notify the Contractor of the request. The City may postpone disclosing these records for ten business days after it has sent notification to the Contractor, in order to allow the Contractor to file a lawsuit under RCW 42.56 to enjoin disclosure. It is the Contractor's discretionary decision whether to file the lawsuit.
3. If the City has notified the Contractor of a public disclosure request, and the Contractor has not obtained an injunction and served the City with that injunction by the close of business on the tenth business day after the City sent notice, the City will then disclose the record.



4. The City has no other obligations concerning records the Contractor has marked as "proprietary information" under this Agreement. The City has no obligation to claim any exemption from disclosure. The City is not obligated or liable to the Contractor for any records that the City releases in compliance with this Section or in compliance with the order of a court of competent jurisdiction.

34. **Indemnification:** To the extent permitted by law, the Contractor shall protect, defend, indemnify and hold the City harmless from and against all claims, demands, damages, costs, actions and causes of actions, liabilities, fines, penalties, judgments, expenses and attorney fees, resulting from the injury or death of any person or the damage to or destruction of property, or the infringement of any patent, copyright, trademark or trade secret, arising out of the work performed or goods provided under this Contract, or the Contractor's violation of any law, ordinance or regulation, contract provision or term, or condition of regulatory authorization or permit, except for damages resulting from the sole negligence of the City. As to the City of Seattle, the Contractor waives any immunity it may have under RCW Title 51 or any other Worker's Compensation statute. The parties acknowledge that this waiver has been negotiated by them, and that the contract price reflects this negotiation.

35. **Insurance:** Unless specified otherwise, the following is in effect. Contractor shall maintain at its own expense at all times during the term of this Contract the following insurance with limits of liability consistent with those generally carried by similarly situated enterprise:

1. **MINIMUM COVERAGES AND LIMITS OF LIABILITY.** Vendor shall at all times during the term of this Agreement maintain continuously, at its own expense, minimum insurance coverage's and limits of liability as specified below:

A. **Commercial General Liability (CGL) insurance, including:**

- Premises/Operations
- Products/Completed Operations
- Personal/Advertising Injury
- Contractual
- Independent Contractors
- Stop Gap/Employers Liability

With minimum limits of liability of \$1,000,000 each occurrence combined single limit bodily injury and property damage ("CSL"), except:

- \$1,000,000 Personal/Advertising Injury
- \$1,000,000 each accident/disease/employee Stop Gap/Employer's Liability

B. **Automobile Liability insurance, including coverage for owned, non-owned, leased or hired vehicles with a minimum limit of liability of \$1,000,000 CSL.**

C. **Worker's Compensation for industrial injury to Vendor's employees in accordance with the provisions of Title 51 of the Revised Code of Washington.**

2. **CITY AS ADDITIONAL INSURED.** The City of Seattle shall be included as an additional insured under CGL and Automobile Liability insurance for primary and non-contributory limits of liability.

3. **NO LIMITATION OF LIABILITY.** The limits of liability specified herein in subparagraph 1.A. are minimum limits of liability only and shall not be deemed to limit the liability of Vendor or any Vendor insurer except as respects the stated limit of liability of each policy. Where required to be an additional insured, the City of Seattle shall be so for the full limits of liability maintained by Vendor, whether such limits are primary, excess, contingent or otherwise.

4. **MINIMUM SECURITY REQUIREMENT.** All insurers must be rated A- VII or higher in the current A.M. Best's Key Rating Guide and licensed to do business in the State of Washington unless coverage is issued as surplus lines by a Washington Surplus lines broker.

5. **SELF-INSURANCE.** Any self-insured retention not fronted by an insurer must be disclosed. Any defense costs or claim payments falling within a self-insured retention shall be the responsibility of Vendor.



6. **EVIDENCE OF COVERAGE.** Prior to performance of any scope of work under paragraph 5, Vendor shall provide certification of insurance acceptable to the City evidencing the minimum coverage's and limits of liability and other requirements specified herein. Such certification must include a copy of the policy provision documenting that the City of Seattle is an additional insured for commercial general liability insurance on a primary and non-contributory basis. Certification should be issued to The City of Seattle, Risk Management Division, Seattle, WA and shall be delivered in electronic form either as an email attachment to riskmanagement@seattle.gov or faxed to (206) 470-1270.

36. **Audit:** Upon request, Contractor shall permit Seattle, and any other governmental agency involved in the funding of the Work ("Agency"), to inspect and audit all pertinent books and records of Contractor, any subcontractor, or any other person or entity that performed work in connection with or related to the Work, at any and all times deemed necessary by Seattle or Agency, including up to six years after the final payment or release of withheld amounts has been made under this Contract. Such inspection and audit shall occur in King County, Washington or other such reasonable location as Seattle or Agency selects. The Contractor shall supply Seattle with, or shall permit Seattle to make, a copy of any books and records and any portion thereof. The Contractor shall ensure that such inspection, audit and copying right of Seattle and Agency is a condition of any subcontract, agreement or other arrangement under which any other person or entity is permitted to perform work under this Contract.

The City, the Federal grant agency if any, the Comptroller General of the United States, or any of their duly authorized representatives shall be provided access to any books, documents, papers and records of the subcontractor or any subcontract which are directly pertinent to this specific contract for the purpose of making audit, examination, excerpts and transcriptions. FAR clause 52.215-2 incorporated by reference. The complete clause may be viewed at <http://www.whitehouse.gov/omb/circulars/a110/>. The OMB A-110 provisions in effect at the time of this order govern. FAR clauses may be viewed at <http://www.arnet.gov/far/>

37. **Contractual Relationship:** The relationship of Contractor to Seattle by reason of this Contract shall be that of an independent contractor. This Contract does not authorize Contractor to act as the agent or legal representative of Seattle for any purpose whatsoever. Contractor is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of Seattle or to bind Seattle in any manner or thing whatsoever.

38. **Supervision and Coordination:** Contractor shall:

- Competently and efficiently, supervise and direct the implementation and completion of all contract requirements specified herein.
- Designate in its bid or proposal to Seattle, a representative(s) with the authority to legally commit Contractor's firm. All communications given or received from the Contractor's representative shall be binding on the Contractor.
- Promote and offer to Purchasers only those materials, equipment and/or services as stated herein and allowed for by contractual requirements. Violation of this condition will be grounds for contract termination.

39. **Compliance with Law:**

- **General Requirement:** The Contractor, at its sole cost and expense, shall perform and comply with all applicable laws of the United States and the State of Washington; the Charter, Municipal Code, and ordinances of The City of Seattle; and rules, regulations, orders, and directives of their respective administrative agencies and officers.
- **Licenses and Similar Authorizations:** The Contractor, at no expense to the City, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all related requirements.
- **Taxes:** The Contractor shall pay, before delinquency, all taxes, import duties, levies, and assessments arising from its activities and undertakings under this Contract; taxes levied on its property, equipment and improvements; and taxes on the Contractor's interest in this Contract.

40. **Americans with Disabilities Act:** The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Contract. In particular, if the Contractor is providing services, programs, or activities to City employees or members of the public as part of this Contract, the Contractor shall not deny participation or the



benefits of such services, programs, or activities to people with disabilities on the basis of such disability. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Contract.

41. **OSHA/WISHA:** Contractor agrees to comply with conditions of the Federal Occupational Safety and Health Acts of 1970 (OSHA), as may be amended, and, if it has a workplace within the State of Washington, the Washington Industrial Safety and Health Act of 1973 (WISHA), as may be amended, and the standards and regulations issued thereunder and certifies that all items furnished and purchased under this order will conform to and comply with said standards and regulations. Contractor further agrees to indemnify and hold harmless purchaser from all damages assessed against purchaser as a result of Contractor's failure to comply with the acts and standards thereunder and for the failure of the items furnished under this order to so comply.
42. **Contract Work Hours and Safety Standards:** For all contracts that employ mechanics or laborers, the Contractor and all subs shall comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provide that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
43. **Beck Notice:** Notification of Employee Rights Concerning Payment of Union Dues or Fees (Executive Order 13201) shall apply to all contracts above \$100,000.
44. **Clean Air Act and Federal Water Pollution Control Act:** All Contractors and subcontractors shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the City immediately and to the Regional Office of the Environmental Protection Agency (EPA).
45. **Energy Efficiency:**  
All contractors and subcontractors must comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
46. **Assignment and Subcontracting:** Contractor shall not assign or subcontract any of its obligations under this Contract without Seattle's written consent, which may be granted or withheld in Seattle's sole discretion. Any subcontract made by Contractor shall incorporate by reference all the terms of this Contract except for Equal Benefit provisions. Contractor shall ensure that all subcontractors comply with the obligations and requirements of the subcontract, except for Equal Benefit provisions. Seattle's consent to any assignment or subcontract shall not release the Contractor from liability under this Contract, or from any obligation to be performed under this Contract, whether occurring before or after such consent, assignment, or subcontract.
40. **Federal Debarment for Primes and all Subcontractors:** By signing this agreement, the Contractor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Contractor shall immediately notify the City of any suspension or debarment or other action that excludes the Contractor and any subcontractor level from participation in Federal contracting. Prior to performance of any work by the Contractor or any subcontractor under this contract, Contractor shall verify all subcontractors that are intended and/or used by the Contractor for performance of City work are in good standing and are not debarred, suspended or otherwise ineligible by the Federal Government. Contractor shall include this same provision in any subcontractor or lower contract agreements. Debarment shall be verified at <https://www.epls.gov/eplis/search.do>. The Contractor shall keep documentation of such verification within the Contractor records.
47. **Involvement of Former City Employees:** Contractor shall promptly notify Seattle in writing of any person who is expected to perform any of the Work and who, during the twelve (12) months immediately prior to the expected commencement date of such work or subcontract, was a City officer or employee. Contractor shall ensure that no Work or matter related to the Work is performed by any person (employee, subcontractor, or otherwise) who was a City officer or employee within the past twelve (12) months; and as such was officially involved in, participated in, or acted upon any matter related to the Work, or is otherwise prohibited from such



performance by SMC 4.16.075.

48. **Copeland Anti-Kickback Act:** All contractors and subcontractors for construction or repair shall comply with the Copeland "Anti-Kickback" Action (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR, part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subcontractor is prohibited from inducing, by any means, any person employed in the construction, completion or repair of public work, to give up any part of the compensation to which s/he is otherwise entitled. The Contractor shall immediately notify the City of any suspected or reported violations.
49. **Byrd Anti-Lobbying Amendment:** Contractors executing contracts with the City shall sign the Vendor Questionnaire, providing certification of compliance to the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 13652. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the City.
50. **No Conflict of Interest:** Contractor confirms that Contractor does not have a business interest or a close family relationship with any City officer or employee who was, is, or will be involved in the Contractor selection, negotiation, drafting, signing, administration, or evaluating the Contractor's performance.
51. **No Gifts or Gratuities:** Contractor shall not directly or indirectly offer gifts and resources to any person employed by the City that is intended, or may be reasonably intended, to benefit the Vendor by way of award, administration, or in any other way to influence purchasing decisions of the City. This includes but is not limited to, City Purchasing office employees and City employees that do business with, order, purchase or are part of decision-making for business, contract or purchase decisions. The Vendor shall not offer meals, gifts, gratuities, loans, trips, favors, bonuses, donations, special discounts, work, or anything of economic value to any such City employees. This does not prohibit distribution of promotional items that are less than \$25 when provided as part of routine business activity such as trade shows. Any violation of this provision may result in termination of this Contract. Nothing in this Contract prohibits donations to campaigns for election to City office, so long as the donation is disclosed as required by the election campaign disclosure laws of the City and of the State.
52. **Intellectual Property Rights:**
- Patents:** Contractor hereby assigns to Seattle all rights in any invention, improvement, or discovery, together with all related information, including but not limited to, designs, specifications, data, patent rights and findings developed in connection with the performance of Contract or any subcontract hereunder. Notwithstanding the above, the Contractor does not convey to Seattle, nor does Seattle obtain, any right to any document or material utilized by Contractor that was created or produced separate from this Contract or was preexisting material (not already owned by Seattle), provided that the Contractor has clearly identified in writing such material as preexisting prior to commencement of the Work. To the extent that preexisting materials are incorporated into the Work, the Contractor grants Seattle an irrevocable, non-exclusive, fully paid, royalty-free right and/or license to use, execute, reproduce, display, and transfer the preexisting material, but only as an inseparable part of the Work.
- Copyrights:** For materials and documents prepared by Contractor in connection with the Work, Contractor shall retain the copyright (including the right of reuse) whether or not the Work is completed. Contractor grants to Seattle a non-exclusive, irrevocable, unlimited, royalty-free license to use every document and all other materials prepared by the Contractor for Seattle under this Contract. If requested by Seattle, a copy of all drawing, prints, plans, field notes, reports, documents, files, input materials, output materials, the media upon which they are located (including cards, tapes, discs and other storage facilities), software programs or packages (including source code or codes, object codes, upgrades, revisions, modifications, and any related materials) and/or any other related documents or materials which are developed solely for, and paid for by, Seattle in connection with the performance of the Work, shall be promptly delivered to Seattle.

Seattle may make and retain copies of such documents for its information and reference in connection with their use on the project. The Contractor does not represent or warrant that such documents are suitable for reuse by Seattle, or others, on extensions of the project, or on any other project. Contractor represents and warrants that it has all necessary legal authority to make the assignments



and grant the licenses required by this Section.

53. **No personal liability:** No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this Contract, whether expressed or implied, nor for any statement or representation made herein or in any connection with this Contract.
54. **Binding Effect:** The provisions, covenants and conditions in this Contract apply to bind the parties, their legal heirs, representatives, successors, and assigns.
55. **Waiver:** No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance by Seattle of any performance by the Contractor after the time the same shall have become due nor payment to the Contractor for any portion of the Work shall constitute a waiver by Seattle of the breach or default of any covenant, term or condition unless otherwise this is expressly agreed to by Seattle, in writing. The City's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or the City's waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type.
56. **Anti-Trust:** Seattle maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore the Contractor hereby assigns to Seattle any and all claims for such overcharges except overcharges which result from antitrust violations commencing after the price is established under this contract and which are not passed on to Seattle under an escalation clause.
57. **Applicable Law:** This Contract shall be construed under the laws of the State of Washington. The venue for any action relating to this Contract shall be in the Superior Court for King County, State of Washington.
58. **Remedies Cumulative:** Remedies under this Contract are cumulative; the use of one remedy shall not be taken to exclude or waive the right to use another.
59. **Captions:** The titles of sections, or subsections, are for convenience only and do not define or limit the contents.
60. **Severability:** Any invalidity, in whole or in part, of any provision of this Contract shall not affect the validity of any other of its provisions.
61. **Disputes:** Any dispute or misunderstanding that may arise under this Contract concerning Contractor's performance shall first be resolved, if mutually agreed to be appropriate, through negotiations between the Contractor's Project Manager and Seattle's Project Manager, or if mutually agreed, referred to the City's named representative and the Contractor's senior executive(s). Either party may decline or discontinue such discussions and may then pursue other means to resolve such disputes, or may by mutual agreement pursue other dispute alternatives such as alternate dispute resolution processes. Nothing in this dispute process shall in any way mitigate the rights, if any, of either party to terminate the contract in accordance with the termination provisions herein.

Notwithstanding above, if Seattle believes in good faith that some portion of Work has not been completed satisfactorily, Seattle may require Contractor to correct such work prior to Seattle payment. In such even, Seattle must clearly and reasonably provide to Contractor an explanation of the concern and the remedy that Seattle expects. Seattle may withhold from any payment that is otherwise due, an amount that Seattle in good faith finds to be under dispute, or if the Contractor does not provide a sufficient remedy, Seattle may retain the amount equal to the cost to Seattle for otherwise correcting or remedying the work not properly completed.

**62. Termination:**

**For Cause:** Seattle may terminate this Contract if the Contractor is in material breach of any terms of this Contract, and such breach has not been corrected to Seattle's reasonable satisfaction in a timely manner.

**For City's Convenience:** Seattle may terminate this Contract in whole or in part, without cause and for any reason including Seattle's convenience, upon written notice to the Contractor.



**Nonappropriation of Funds:** Seattle may terminate this Contract at any time without notice due to nonappropriation of funds, whether such funds are local, state or federal grants, and no such notice shall be required notwithstanding any notice requirements that may be agreed upon for other causes of termination.

**Acts of Insolvency:** Seattle may terminate this Contract by written notice to Contractor if the Contractor becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or is wound up or liquidated, voluntarily or otherwise.

**Termination for Gifts or Gratuities:** Seattle may terminate this Contract by written notice to Contractor if Seattle finds that any gratuity in the form of entertainment, a gift, or otherwise, was offered to or given by the Contractor or any agent therefor to any City official, officer or employee, as defined above.

**Notice:** Seattle is not required to provide advance notice of termination. Notwithstanding, the Buyer may issue a termination notice with an effective date later than the termination notice itself. In such case, the Contractor shall continue to provide products and services as required by the Buyer until the effective date provided in the termination notice.

**Actions upon Termination:** In the event of termination not the fault of the Contractor, the Contractor shall be paid for the services properly performed prior to termination, together with any reimbursable expenses then due, but in no event shall such compensation exceed the maximum compensation to be paid under the Contract. The Contractor agrees that this payment shall fully and adequately compensate the Contractor and all subcontractors for all profits, costs, expenses, losses, liabilities, damages, taxes, and charges of any kind whatsoever (whether foreseen or unforeseen) attributable to the termination of this Contract. Upon termination for any reason, the Contractor shall provide Seattle with the most current design documents, contract documents, writings and other product it has completed to the date of termination, along with copies of all project-related correspondence and similar items. Seattle shall have the same rights to use these materials as if termination had not occurred.

**63. Force Majeure – Suspension and Termination:** This section applies in the event that either party is unable to perform the obligations of this contract because of a Force Majeure event as defined herein, to the extent that the Contract obligations must be suspended in full. A Force Majeure event is an event that prohibits performance and is beyond the control of the party. Such events may include natural or man-made disasters, or an action or decree of a superior governmental body, which prevents performance.

Force Majeure under this Section shall only apply in the event that performance is rendered not possible by either party or its agents. Should it be possible to provide partial performance that is acceptable to the City under Section #2 (Emergencies or Disasters), Section #2 below shall instead be in force.

Should either party suffer from a Force Majeure event and is unable to provide performance, such party shall give notice to the remaining party as soon as practical and shall do everything possible to resume performance.

Upon receipt of such notice, the party shall be excused from such performance as is affected by the Force Majeure Event for the period of such Event. If such Event affects the delivery date or warranty provisions of this Agreement, such date or warranty period shall automatically be extended for a period equal to the duration of such Event.

**64. Major Emergencies or Disasters:** The City may undergo an emergency or disaster that may require the Contractor to either increase or decrease quantities from normal deliveries, or that may disrupt the Contractor's ability to provide normal performance. Such events may include, but are not limited to, a storm, high wind, earthquake, flood, hazardous material release, and transportation mishap, loss of any utility service, fire, terrorist activity or any combination of the above. In such events, the following shall apply.

- (a) The City shall notify the Contractor that the City is experiencing an emergency or disaster, and will request emergency and priority services from the Contractor.
- (b) The City may request that the Contractor provide either increased or decreased quantities from traditional orders, or may request Contractor provide additional products or services.
- (c) Upon such notice by the City, the Contractor shall make reasonable efforts to provide the City the materials in the quantities requested and within the schedule specified by the City, adhering to the conditions in this Section.



- (d) The City of Seattle shall be the customer of first priority for the Contractor, except where preceded by State or Federal government mandates. The Contractor shall provide its best and priority efforts to provide the requested goods and/or services to the City of Seattle in as complete and timely manner as possible. Such efforts by the Contractor are not to be diminished as a result of Contractor providing service to other customers, except as mandated by State or Federal governments.
- (c) If the Contractor is unable to respond in the time and/or quantities requested by the City, the Contractor shall promptly assist the City to the extent practicable, to gain access to alternative materials and/or services. This may include:
  - a. Coordinating with other distributors or subsidiaries beyond those in the local region to fulfill order requests;
  - b. Offering the City substitutions provided the Contractor obtains prior approval from the City for such substitution.

The Contractor shall charge the City the price determined in this Contract for the goods and services provided, and if no price has been determined, it shall charge the City a price that is normally charged for such goods and/or services (such as listed prices for items in stock). However, in the event that the City's request results in the Contractor incurring unavoidable additional costs and causes the Contractor to increase prices in order to obtain a fair rate of return, the Contractor shall charge the City a price not to exceed the cost/profit formula found in this Contract.

65. **Interlocal Cooperation Act:** RCW 39.34 allows cooperative purchasing between public agencies, and other political subdivisions. SMC 20.60.100 also allows non profits to use these agreements. Such agencies that file an Intergovernmental Cooperative Purchasing Agreement with the City of Seattle may purchase from Contracts established by the City. Unless Vendor declines on the Offer submitted by the Seller to the City, the Vendor agrees to sell additional items at the bid prices, terms and conditions, to other eligible governmental agencies that have such agreements with the City. The City of Seattle accepts no responsibility for the payment of the purchase price by other governmental agencies. Should the Vendor require additional pricing for such purchases, the Vendor is to name such additional pricing upon Offer to the City.
66. **Selling to City Vendors:** Unless rejected by the Vendor in the Offer submitted to the City, the Contract will default to permitting City contractors to accept orders from City Vendors who are working on City projects, and sell the Vendors your products at the City contract price. The City may recommend your City contract as a source, to other winning City contractors for certain products.
67. **City Debarment:** In accordance with SMC Ch. 20.70, the Director of Executive Administration or designee may debar a Vendor from entering into a Contract with the City or from acting as a subcontractor on any Contract with the City for up to five years after determining that any of the following reasons exist:
- 1) Contractor has received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City Contracts.
  - 2) Contractor failed to comply with City ordinances or Contract terms, including but not limited to, ordinance or Contract terms relating to small business utilization, discrimination, prevailing wage requirements, equal benefits, or apprentice utilization.
  - 3) Contractor abandoned, surrendered, or failed to complete or to perform work on or in connection with a City Contract.
  - 4) Contractor failed to comply with Contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards.
  - 5) Contractor submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a Contract.
  - 6) Contractor colluded with another contractor to restrain competition.
  - 7) Contractor committed fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Contract for the City or any other government entity.
  - 8) Contractor failed to cooperate in a City debarment investigation.
  - 9) Contractor failed to comply with SMC 14.04, SMC Ch. 14.10, SMC Ch. 20.42, or SMC Ch. 20.45, or other local, State, or federal non-discrimination laws.



The Director may issue an Order of Debarment after adhering to the procedures specified in SMC 20.70.050. The rights and remedies of the City under these provisions are in addition to any other rights and remedies provided by law or under the Contract.

68. **Recycled Product Requirements:** To promote and encourage environmentally sustainable practices for companies doing business with the City, the City requires that vendors under City contract use environmentally preferable products in production of City work products.

**Green Seal Products:** Contractor shall use Green Seal, Eco-Logo or other certified cleaning products if approved by the City, in performance of all cleaning and janitorial work to protect the health, safety, wellness and environmentally sustainable practices that the City requires of companies doing business with the City. Cleaning products, floor care products and other products used in the performance of work that carry a Green Seal certification are required. The Bidder shall identify the products that the Bidder intends to use at the City facilities and shall list them on the Offer Form, with a notation to confirm the Green Seal product certification. The Green Seal website is: <http://www.greenseal.org/findaproduct/index.cfm>. The City has contracts with various vendors who will supply the winning Bidder with Green Seal certified products for use in performance of City contract work, at City contract pricing. For the list of vendors, contact the City Buyer.

**Paper and Paper Product Requirements:** The City requires use of 100% PCF (post consumer recycled content, chlorine-free) Grays Harbor paper, to comply with the City Executive Order and to encourage environmentally preferable practices for City business. Such paper is available at City contract prices from Keeney's Office Supplies at 425-285-0541.

The City also requires Binders that are fully 100% recycled stock. "Rebinders" are a product that fit this requirement and are available at City contract prices from Keeney's Office Supplies at 425-285-0541. Please do not use binders or plastic folders, unless essential.

Contractors shall duplex materials prepared for Seattle under this Contract, whether materials are printed or copied, except when impracticable due to the nature of the product. This is executed under the Mayor's Executive Order, issued February 13, 2005.

69. **Workers Right to Know:** "Right to Know" legislation required the Department of Labor and Industries to establish a program to make employers and employees more aware of the hazardous substances in their work environment. WAC 296-62-054 requires among other things that all manufacturers/distributors of hazardous substances, including any of the items listed on this ITB, RFP or contract bid and subsequent award, must include with each delivery completed Material Safety Data Sheets (MSDS) for each hazardous material. Additionally, each container of hazardous material must be appropriately labeled with: the identity of the hazardous material, appropriate hazardous warnings, and the Name and Address of the chemical manufacturer, improper, or other responsible party. Labor and Industries may levy appropriate fines against employers for noncompliance and agencies may withhold payment pending receipt of a legible copy of the MSDS. 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

70. **Prevailing Wage Requirements:**

- a. If applicable, this contract is subject to prevailing wages, as required by RCW 39.12 (Prevailing Wages on Public Works) and RCW 49.28 (Hours of Labor) as amended or supplemented.
- b. Contractor and any subcontractors shall be responsible for compliance with all provisions herein.
- c. **Filing Your Intent:** The awarded Contractor and all subcontractors shall file an Intent to Pay Prevailing Wage Form concurrent with the execution of the contract.
  - You will need a Contract Number and a Start Date. The Buyer will tell you your Contract Number; the start date is the your contract is signed.
  - The Contractor and their subcontractor(s) shall then promptly submit the Intent to the Department of Labor & Industries for approval.
  - This must be done online at the L&I website:  
<http://www.lni.wa.gov/TradesLicensing/PrevWage/IntentAffidavits/File/default.asp> .
  - If the Contractor is unable to file on-line, a paper copy of the approved Intent shall instead be promptly provided to the Buyer.
- d. Contractor and any subcontractor shall not pay any laborer, worker or mechanic less than the prevailing hourly wage rates that



were in effect at the time of bid opening for the worker classifications that are provided for under Prevailing Wages as issued by the State of Washington for the County in which the work shall be performed.

- e. Vocationally handicapped workers, i.e. those individuals whose earning capacity is impaired by physical or mental deficiency or injury, may be employed at wages lower than the established prevailing wage. The Fair Labor Standards Act requires that wages based on individual productivity be paid to handicapped workers employed under certificates issued by the Secretary of Labor. These certificates are acceptable to the Department of Labor and Industries. Sheltered workshops for the handicapped may submit a request to the Department of Labor and Industries for a special certificate, which would, if approved, entitle them to pay their employees at wages, lower than the established prevailing wage.
- f. In certain situations, an Intent to Pay Prevailing wages shall be filed with the Department of Labor & Industries and with the Buyer, but the Vendor may indicate an exception on the Intent Form which exempts the requirement to pay at least prevailing wages rates for the following:
  - Sole owners and their spouse.
  - Any partner who owns at least 30% of a partnership.
  - The president, vice-president, and treasurer of a corporation if each one owns at least 30% of the corporation.
  - Workers regularly employed on monthly or per diem salary by state or any political subdivision created by its laws.
- g. Prevailing Wage rates in effect at the time of bid opening are attached. These wages remain in effect for the duration of this contract, except for annual adjustments required by this agreement for multi-year contracts (where contract is longer than one year) and building service maintenance contracts (janitorial, waxers, shampooers, and window cleaners).
- h. It is the sole responsibility of the Contractor to assign the appropriate classification and associate wage rates to all laborers, workers or mechanics that perform any work under this contract, in conformance with the scope of work descriptions of the Industrial Statistician of the Washington State Department of Labor and Industries.
- i. With each invoice, Contractor will attach or write a statement that wages paid were compliant to applicable Prevailing Wage rates.
- j. Upon contract completion, Contractor and each subcontractor shall then file the Affidavit of Wages Paid (form L700-007-000) approved by the Industrial Statistician of Washington State L&I. This may be performed on-line if the Contractor has initiated the original Intent to Pay Prevailing Wage process on line. The receipt of the approved affidavit is required before Seattle can pay the final invoice.
- k. For jobs above \$10,000, Contractor is required to post for employees' inspection, the Intent form including the list of the labor classifications and wages used on the project. This may be posted in the nearest local office, for road construction, sewer line, pipeline, transmission line, street or alley improvement projects as long as the employer provides a copy of the Intent form to the employee upon request.
- l. In the event any dispute arises as to what the prevailing wages are for this Contract, and the dispute cannot be solved by the parties involved, the matter shall be referred to the Director of the Department of Labor and Industries of the State of Washington. In such case, the Director's decision shall be final, conclusive and binding on all parties. If the dispute involves a federal prevailing wage rate, the matter shall be referred to the U.S. Secretary of Labor for a decision. In such case, the Secretary's decision shall be final, conclusive and binding on all parties.

**Prevailing Wage rate changes for Service Contracts greater than one year in duration:**

- a. This provision only applies to service contracts that continue beyond a single year in duration, including building service maintenance contracts (janitorial service contractors and work performed by janitors, waxers, shampooers, and window cleaners) and to multi-year service contracts.
- b. Contractor and any subcontractor must pay at least the prevailing wage rates that were in effect at time of bid throughout the duration of the contract.



- c. Each contract anniversary thereafter, Contractor and any subcontractors shall review the Prevailing Wage Rates that are in effect upon the date of the contract anniversary. The Contractor shall increase wages paid if required to meet no less than the current wage rates in effect at the time of the contract anniversary.
- d. Any price or rate increases made as a result of a change in the prevailing wages will be compensated by the City on a pass through basis if the Contractor requests a price increase in accordance with the price increase request requirements provided in this agreement. The Contractor must follow the contract instructions for pricing increases, notifying the Buyer at least 45 days prior to the contract anniversary date of any resulting price increase and documenting the increase.

