

ADDITIONAL TERMS & CONDITIONS

Delivery requirements

Contractor must ensure that delivery of goods will be made as required in the contract terms, the Purchase Order, or as otherwise mutually agreed in writing between the WSP and Contractor.

The following apply to all deliveries:

The Contractor must deliver the goods during WSP's normal work hours and within contract time frames or as otherwise mutually agreed in writing between the purchaser and contractor at the time of order placement. The Contractor must verify specific working hours of the WSP and instruct carrier(s) to deliver accordingly. The WSP may refuse shipment when delivered after normal working hours. Failure to comply with agreed upon delivery times may subject Contractor to liquidated damages or other damages. The acceptance of late delivery does not constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Contractor.

The Contractor must make all deliveries to the applicable delivery location as indicated in the contract or Purchase Order. The Contractor is responsible for verifying delivery conditions or requirements with the WSP before the delivery. When applicable, the Contractor must take all necessary actions to safeguard items during inclement weather. All packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written materials associated with this contract shall be identified by the contract identifier and the applicable purchaser's order number. Packing lists shall be enclosed with each shipment and clearly identify all contents and any backorders. The Contractor must not initiate performance prior to receipt of written or verbal authorization from authorized purchasers. Expenses incurred otherwise will be borne solely by the Contractor.

Receipt of goods:

Inspection and rejection: The WSP's inspection of all materials, supplies, and equipment upon delivery is for the purpose of forming a judgment as to whether such delivered items are what was ordered, were properly delivered, and are ready for Acceptance. If applicable, the WSP or state reserves the right to independently test, at Contractor's expense, any product of questionable freshness, quality, or origin delivered against this contract. Such inspection shall not be construed as final acceptance, or as acceptance of the materials, supplies or equipment, if the materials, supplies or equipment does not conform to contractual requirements. If there are any apparent defects in the materials, supplies, or equipment at the time of delivery, the WSP will promptly notify the Contractor. At the WSP's option and without limiting any other rights, the WSP may require the Contractor to:

- (i) repair or replace, at contractor's expense, any or all of the damaged goods;
- (ii) refund the price of any or all of the damaged goods;
- (iii) accept the return of any or all of the damaged goods; or
- (iv) at the WSP's option, any possible damage to the product may be noted on the receiving report and the cost deducted from final payment.

Acceptance: Acceptance shall be as specified in the contract or Purchase Order. In the

event that there is a formal Acceptance Testing period required in the solicitation document then acceptance is formalized in writing. If there is no Acceptance Testing period required, Acceptance occurs when the products are delivered and inspected.

Shipping and risk of loss:

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

Installation

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

Title to product (if applicable):

Upon Delivery or Acceptance, whichever is applicable, contractor shall convey to purchaser good title to the Goods free and clear of all liens, pledges, mortgages, encumbrances, or other security interests. The MSO (titing document) will be provided to the purchaser upon receipt of payment in full.

Taxes on invoice

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

Contractor Commitments, Warranties and Representations

Any written commitment by Contractor within the scope of this contract shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of this contract. For purposes of this section, a commitment by Contractor includes:

- (i) prices, discounts, and options committed to remain in force over a specified period of time; and
- (ii) any warranty or representation made by contractor in its bid or contained in any contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its bid or used to effect the sale to WSP.

Warranties

Contractor warrants that all materials, supplies, services or equipment provided under this contract shall conform to the requirements and specifications herein. Acceptance of any materials, supplies, service, or equipment, and inspection incidental thereto, by the WSP shall not alter or affect the obligations of the Contractor or the rights of the WSP.

Date Warranty

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

Cost of remedy

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

Proprietary or confidential information

To the extent consistent with [Chapter 42.56 RCW](#), the Public Records Act, WSP shall maintain the confidentiality of Contractor's information marked confidential or proprietary. If a request is made to view Contractor's proprietary information, WSP will notify Contractor of the request and of the date that the records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, WSP will release the requested information on the date specified. The WSP's sole responsibility shall be limited to maintaining the above data in a secure area and to notify Contractor of any request(s) for disclosure for so long as WSP retains Contractor's information in WSP records. Failure to so label such materials or failure to timely respond after notice of request for public disclosure has been given shall be deemed a waiver by Contractor of any claim that such materials are exempt from disclosure.

Insurance

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

General requirements

Contractor shall, at its own expense, obtain and keep in force insurance as follows until completion of the contract. Upon request, Contractor shall furnish evidence in the form of a certificate of insurance satisfactory to the State of Washington that insurance, in the following kinds and minimum amounts, has been secured. Failure to provide proof of insurance, as required, will result in contract cancellation. Contractor shall include all Subcontractors as insureds under all required insurance policies, or shall furnish separate Certificates of Insurance and endorsements for each Subcontractor. Subcontractor(s) must comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit contractor's liability or responsibility. All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the state.

Specific requirements

Employers Liability (Stop Gap): The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable and will maintain Employers Liability insurance with a limit of no less than \$1,000,000.00. The State of Washington will not be held responsible in any way for claims filed by the Contractor or its employees for services performed under the terms of this contract.

Commercial General Liability Insurance: The Contractor shall at all times during the term of this contract, carry and maintain commercial general liability insurance and if necessary, commercial umbrella insurance for bodily injury and property damage arising out of services provided under this contract. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns, or servants. The insurance shall also cover bodily injury, including disease, illness, and death, and property damage arising out of the Contractor's premises or operations, independent contractors, products or completed operations, personal injury and advertising injury, and contractual liability (including the tort liability of another assumed in a business contract), and contain separation of insured's (cross liability) conditions.

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

The limits of liability insurance shall not be less than as follows:

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

Surplus Lines

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

Cancellation for non-payment of premium:

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

Identification:

Policy(ies) and certificates of insurance shall include the affected contract reference number.

Insurance carrier rating

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

Excess coverage

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

Limit adjustments

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

Limitation of liability

The parties agree that neither Contractor, nor WSP shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this contract. This section does not modify any sections regarding liquidated damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled Termination for Default and Retention of Records are not consequential, incidental, indirect, or special damages as that term is used in this section. The parties are not liable for damages arising from causes beyond their reasonable control and without their fault or negligence. Such causes may include, but are not restricted to, acts of the public enemy, acts of a governmental body other than the WSP acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of the Contractor, WSP, or their respective subcontractors. If delays are caused by a subcontractor without its fault or negligence, Contractor shall not be liable for damages for such delays, unless the services to be performed were obtainable on comparable terms from other sources in sufficient time to permit contractor to meet its required performance schedule. Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

Federal funding (if applicable)

In the event that a federally funded acquisition results from this procurement, the Contractor

may be required to provide additional information (free of charge) at the request of WSP. Further, the Contractor may be subject to those federal requirements specific to the commodity.

Federal restrictions on lobbying (if applicable)

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

Federal debarment and suspension (if applicable)

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