



## APPENDIX A

### Weapon Mounted Night Vision Device WSP IFB AW235472

This booklet contains Standard Terms and Conditions, Definitions, and Instructions to Bidders.

Competitive procurement documents including Invitations for Bids (IFB), Request for Quotation (RFQ), Request for Proposal (RFP), and Request for Qualification and Quotation (RFQQ) will include sections of this booklet by reference. This means the referenced sections apply to the procurement and to contracts resulting from the procurement process. You do not have to attach copies of the applicable sections with the IFB, RFQ, RFP or RFQQ you submit.

Each section will indicate its revised date. The competitive procurement document will indicate the revised date of the applicable sections. It is your responsibility to read and understand the latest revisions.

Do not dispose of this document until it is revised. Sections will be revised separately since it contains standards; you may refer to the referenced sections for every bid or proposal you submit.

## STANDARD DEFINITIONS

This section contains definitions of some of the terms commonly used in our competitive procurements. Additional definitions in WAC-200-300-015

### 1. ALTERNATE

Goods or services that deviate with respect to features, performance, or use from the goods or services specified in the procurement document.

### 2. BID

A written offer to perform a contract to provide goods or services to the State in response to an IFB.

### 3. BIDDER

A supplier who submits a bid to the State of Washington.

### 4. CONTRACT

An agreement, or mutual assent, between two or more competent parties with the elements of the agreement being offer, acceptance, and consideration.

### 5. CONTRACTOR

An individual, company, corporation, firm, or combination thereof with whom the State of Washington develops a contract for the procurement of goods or services.

### 6. CONTRACTOR'S REPRESENTATIVE

An individual designated by the bidder or Contractor to act on its behalf and with the authority to legally bind the bidder or Contractor concerning the terms and conditions set forth in bid and contract documents.

A. Designation: Bidder shall provide name, address, and phone number of contractor(s) representative as required in bid documents.

B. Responsibility: Contractor's representative shall function as the primary point of contact, shall ensure supervision and coordination and shall take corrective action as necessary to meet contractual requirements.

C. Availability: Contractor's representative, or designee, shall be available at all times during normal working hours throughout the term of the contract.

### 7. CONVENIENCE CONTRACT

A contract is established strictly to facilitate ordering without conducting repetitive solicitations. Purchasers have the option to purchase elsewhere.

### 8. EQUAL

Goods or services that meet or exceed the quality, performance, and use of the brand, model, or specifications in the procurement document.

### 9. FREE ON BOARD (FOB) DESTINATION

State accepts legal title of goods at point of delivery. Contractor determines mode of freight and accepts responsibility for payment of freight charges. Contractor accepts responsibility for processing of freight claims.

### 10. LEAD TIME

The period of time between when the contractor receives the order and the agency receives the goods.

## **11. MANDATORY CONTRACT**

A contract which state agencies, excluding colleges and universities, must use for the purchase of goods or services specified in the contract; colleges and universities who choose to purchase under RCW 28B.10.029 are not required to use this contract. They may use this contract at their convenience. State agencies do not have to use the contract if: Purchases are made under RCW 39.26.125 per Policy# DES-125-03. DES has authorized agencies to purchase goods or services on state contract from non-contract suppliers, Per Section 3, Paragraph 39. The minimum order quantity specified in the contract exceeds the agency's needs. The contractor cannot deliver required goods or services in time to meet agency needs.

## **12. NONPROFIT CORPORATIONS**

An organization meeting all of the following qualifications:  
Registration with the Secretary of State in the State of Washington as a Nonprofit Corporation;  
Has Federal Tax Status as a 501(C) 3 Nonprofit Corporation;  
Is receiving a portion of its funding directly from public agencies, either Federal, State of Washington, or Political Subdivisions of the State of Washington.

## **13. POLITICAL SUBDIVISION**

Any unit of local government within the states of Washington and/or Oregon that receives state funds; e.g. cities, counties, school districts, special purpose districts, local service districts, is a member of the states' purchasing co-op, and is authorized to purchase from state contracts by inter local agreements. For the state of Oregon, the term "political subdivision" includes nonprofit corporations and Institutions of higher education (e.g. Colleges and Universities, Community and Technical Colleges).

## **14. PURCHASER**

Unless otherwise restricted by the Invitation for bid, includes all members of the State of Washington State Purchasing Cooperative (WSPC) and/or State of Oregon Cooperative Purchasing Program (DASCPP/ORCPP) including where applicable: State agencies, Political subdivisions of Washington or Oregon states, Qualified Non-profit Corporations, Institutions of higher education (e.g. College and Universities, Community and Technical Colleges) who choose not to purchase independently.

## **15. RECOVERED MATERIAL CONTENT PRODUCTS**

Post Consumer Waste is: Paper, paperboard, and fibrous wastes from buildings such as retail stores, office buildings, (and) homes, after the wastes have passed through their end-usage, as a consumer item, including: used corrugated boxes, old newspapers, old magazines, mixed waste paper, tabulating cards, and used cordage; and All paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste; and; All other items containing plastics, yard waste, metals, glass, rubber, oil, or any other material that is suitable as feed stock in product manufacture, and;  
Secondary Waste: including manufacturing and other wastes such as: Dry paper and paperboard waste generated after completion of the paper-making process, that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; Finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others; Wastes generated by the conversion of goods made from fibrous material, that is, waste rope from cordage manufacture, textile mill waste, and cuttings; and Fibers recovered from wastewater that otherwise would enter the waste stream.

## **16. STATE AGENCY**

State Institutions, colleges, community colleges, technical colleges, college districts, and universities, the offices of the elective state officers, the supreme court, the court of appeals, the administrative and other departments of state government, and the offices of all appointive officers of the state.

## **17. STATE PROCUREMENT OFFICER (SPO)**

An individual designated by the State of Washington, Department of Enterprise Service, Washington State Patrol Procurement to act on behalf of the state to develop and administer contracts within the limits established by law.

## **18. SUPPLIER**

A business that provides or furnishes goods, materials, or services.

## **19. SUBCONTRACTOR**

A person or business that is providing or performing an essential aspect of the contract under the direction of the contractor.

## **20. TURN KEY**

The provision of a complete product or service that is ready for immediate use.

## **STANDARD INSTRUCTIONS TO BIDDERS**

This section contains instructions regarding the preparation and submission of bids, proposals, or quotations.

## **21. BIDDER'S RESPONSIBILITIES**

- Read and understand the IFB, RFQ, RFP, RFQQ and all attachments.
- Seek clarifications if necessary.
- Become familiar with, and abide by, applicable federal laws, state and local statutes, regulations, and ordinances.
- Visit delivery and service locations as required. Become familiar with and verify any environmental factors that may impact current or future pricing.

### **FEDERAL DEBARMENT AND SUSPENSION {IF APPLICABLE}**

Vendor certifies they are not Debarred, Suspended, Proposed for Debarment, Declared ineligible, or voluntarily excluded from participating in any contract by any federal Department or Agency.

For more details in addition [RCW Chapter 200-305 WAC](#)

## **22. QUESTIONS & INQUIRIES**

All questions related to the IFB, RFQ, RFP, or RFQQ shall be directed to the Procurement Coordinator. Inquiries shall be in writing and shall reference the appropriate section and paragraph number. Questions received less than ten (10) calendar days prior to bid opening may not be considered. Only questions answered by written amendment are binding. Oral interpretations have no legal effect.

## **23. LETTER OF SUBMITTAL REQUIREMENTS**

The Letter of Submittal must be signed and dated by a person authorized to legally bind the Bidder to a contractual relationship, e.g., the President or Executive Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship. Along with introductory remarks, the letter of submittal is to include by attachment the following information about the Bidder and any proposed subcontractors.

- Explanation on how Vendor meets the minimum qualifications.
- List of attachments.
- Identify any State employees or former State employees employed or on the Bidders governing board as of the date of the proposal. Include their position and responsibilities within the Vendor's organization. If following a review of this information, it is determined by WSP that a conflict of interest exists, the Bidder may be disqualified from further consideration for the award of a contract.

## 24. PREPARATION OF BID

**Due Date and Time:** Bids must be received on or before the specified date and time. Late bids will be returned unopened or rejected. **Format:** Bids shall be submitted on the forms provided in the IFB, RFQ, RFP, or RFQQ, which may be copied. Incomplete bids will be rejected with consideration of alternate action available per WAC Chapter 200 through 300.

**Prices:** Bidders shall extend unit pricing as required. In the event of an error in the extension of prices, the unit price shall prevail. Bid prices shall include all associated costs and remain firm for ninety calendar days after bid opening date. Bid prices shall not include sales tax.

**Identification:** Bids submitted via email

When submitting a Bid by email, the Procurement Coordinator prefers the same file format(s) as the format(s) used to create the submittals (i.e. MS Word, Excel) unless written information is included as a part of the submittal, such as a signature. For submittals with written information or copies of other documents such as licenses, submit as a PDF. All submittals must reference bid number in subject line.

Bid(s) can also be submitted by mail to the addressed as shown below:

### **Bidders Return Address**

**Bid Number:**  
**WSP IFB AW235472**

### **Washington State Patrol, Supply Section**

**ATTN: Andrew Westerfield**  
**IFB: WSP IFB AW235472**

**Physical address:**  
**8543 Armstrong Rd SW**  
**Tumwater, WA 98512-7630**

**Mailing Address:**  
**PO Box 42625**  
**Olympia WA 98504-2625**

## 25. WITHDRAWAL OR MODIFICATION OF BID

**Prior to submittal:** Bid changes or modifications shall be initialed in ink by a contractor's representative.

**After submittal:** At any time prior to the date and time set for opening, the bidder may, upon written request, modify or withdraw the bid. **After bid opening:** No bid shall be altered or amended. The Director or designee may allow a bid to be withdrawn if the bidder demonstrates that they miscalculated bid prices. A low bidder, who claims error and fails to enter into a contract with the state, shall be prohibited from bidding on the same commodity or service if the requirement is subsequently rebid by the state. Negligence in preparing a bid does not give a bidder the right to withdraw their bid after opening.

## 26. BID OPENING

Only the name of the bidder and the time of receipt are read aloud at the time of the bid opening. The reading does not determine award of the contract. All bids submitted become the property of the State and is a matter of public record.

## 27. AWARD

Upon award, notification will be sent to all participating bidders. Bid results will not be given over the phone. Additional information may be obtained by:

Download the Current Contract Information document (CCI) from DES website or (see note below) or;  
Requesting a copy of the bid tabulation or; Reviewing the purchase/contract file after award.

## 28. CONTRACT FORMATION

Your bid response to the IFB, RFQ, RFP, or RFQQ, is an offer to contract with the state. A bid response becomes a contract when officially accepted in writing by the state.

## **29. INTERNET BIDDERS**

If you received a copy of this bid through the Internet, please note that the system is designed to keep track of businesses that have received a specific document. Therefore, it is also the bidder's responsibility to check the Internet page for amendment, or modifications prior to submitting a bid or proposal. The state accepts no liability and will provide no accommodation to bidders who fail to check for amendment and submit inadequate or incorrect responses. Bidders should be sure to check the Amendment last issued field or contact the Procurement Coordinator to ensure they have the most recent information.

## **30. AFFIRMATIVE EFFORTS TO INCREASE MWBE'S PARTICIPATION BY**

- A. Mandatory Efforts Bidders/Proposers shall provide MWBE's that express interest with adequate and timely information about plans, specifications, and requirements of the Contract.
- B. Voluntary Efforts Bidders/Proposers/Contractors are encouraged to:

Break down total requirements into smaller tasks or quantities, where economically feasible, in order to permit maximum participation by MWBE's, Veteran owned and other small businesses.

Establish delivery schedules, where the requirements of this contract permit, that encourage participation by MWBE's, Veteran owned and other small businesses.

Reduce bonding requirements where practicable.

Utilize the services of available minority community organizations, minority contractor groups, local minority assistance offices and organizations that provide assistance in the recruitment and placement of MWBE's, Veteran owned and other small businesses.

Advertise for subcontractors or suppliers in a manner reasonably designed to provide MWBE's capable of performing the work with timely notice of such opportunities. All advertisements should include a provision encouraging participation by MWBE firms. Advertising may be done through general advertisements or by soliciting bids/proposals directly from MWBE's.

The actions described in this section should supplement efforts to provide information to all qualified firms, and nothing in this section is intended to prevent or discourage the Bidders/Proposers/Contractors from inviting bids or proposals for participation from non-MWBE firms as well as MWBE firms.

### **STANDARD TERMS AND CONDITIONS (T'S & C'S)**

The terms and conditions in this section apply to all invitations to bid and requests for proposals and requests for quotations except as noted.

## **31. ENTIRE AGREEMENT**

This document, including all amendment and subsequently issued change notices, comprises the entire agreement between the State Of Washington and the Contractor and shall be governed by the laws of the State Of Washington incorporated herein by reference. The venue for legal action shall be the Superior Court for the State Of Washington, County of Thurston. The state reserves the right to reject bids that propose alternate or additional terms and conditions.

## **32. CONFLICT AND SEVERABILITY**

**Conflict:** In the event of conflict between contract documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this contract to afford the state maximum benefits.

**Severability:** Any provision of this document found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the document.

### **33. ANTITRUST**

The state maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, the Contractor hereby assigns to the state 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 the state under an escalation clause.

### **34. NONDISCRIMINATION**

A. Employment: Acceptance of this contract binds the Contractor to the Terms and Conditions of Section 601, Title VI, Civil Rights Act of 1964, as may be amended: In that "No person in the United States shall, on the grounds of race, color, national origin, sex, or age, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance." In addition, "No otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Unless exempted by Presidential Executive Order #11246, as may be amended or replaced and applicable regulations there under, Contractor shall not discriminate against any employee or applicant for employment.

B. Contracting: Contractors, Bidders, and Proposers shall not create barriers to open and fair opportunities for all businesses including MWBE's to participate in all State contracts and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate on the basis of race, color, creed, religion, sex, age, nationality, marital status, or the presence of any mental, or physical disability in an otherwise qualified disabled person.

### **35. WORKERS RIGHT TO KNOW**

Recently passed "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 IFB, RFQ, 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 Name and address of the chemical manufacturer, importer, 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. It should be noted that OSHA Form 20 is not acceptable in lieu of this requirement unless it is modified to include appropriate information relative to "carcinogenic ingredients" and "routes of entry" of the product(s) in question.

### **36. GIFTS AND GRATUITIES**

In accordance with RCW 42.52.150 and 160 and 170, it is unlawful for any person to directly or indirectly offer, give or accept gifts, gratuities, loans, trips, favors, special discounts, services, or anything of economic value in conjunction with state business practices to another to refrain from submitting a proposal. Further RCW 42.52.180 and the Ethics in Public Service Law, Chapter 42.52 RCW prohibits state officers or employees from receiving, accepting, taking or seeking gifts (except as permitted by RCW 42.52.150) if the officer or employee participates in contractual matters relating to the purchase of goods or services.

### **37. RIGHTS AND REMEDIES**

In the event of any claim for default or breach of contract, no provision in this document or in the bidder's offer shall be construed, expressly or by implication, as a waiver by the state of any existing or future right and/or remedy available by law. Failure of the state to insist upon the strict performance of any term or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract or by law, or the acceptance of (or payment for) materials, equipment or services, shall not release the Contractor from any responsibilities or obligations imposed by this contract or by law, and shall not be deemed a waiver of any right of the state to insist upon the strict performance of the contract.

**38. INSTATE PREFERENCE-RECIPROCITY (THIS PARAGRAPH DOES NOT APPLY TO REQUEST'S FOR QUOTATION'S)**

Pursuant to WAC 200-300-075 the Department of Enterprise Services has established a schedule of penalties applicable against firms submitting bids from states which grant a preference to their own in-state businesses.

The appropriate percentage penalty will be added to each bid bearing the address from a state with in-state preferences rather than subtracting a like amount from Washington State bidders.

This action will be used only for bid analysis and award. In no instances shall the increase be paid to a supplier whose bid is accepted.

**39. ANY BIDDER MAY FILE A COMPLAINT REGARDING THIS IFB BASED ON THE FOLLOWING:**

- The solicitation unnecessarily restricts competition;
- The evaluation/scoring process is unfair or flawed; or
- The requirements are inadequate or insufficient so that a response is difficult to prepare.

If no complaint is filed, a Bidder cannot later file a protest based on any of the above complaint criteria.

Any complaint to the IFB must be in writing and submitted to the IFB Coordinator no less than five (5) business days prior to the date when the IFB Responses are due.

**40. DEBRIEFING OF UNSUCCESSFUL PROPOSERS**

Upon request, a debriefing conference will be scheduled with an unsuccessful vendor who has submitted a proposal. The request for a debriefing conference must be received by the Procurement Coordinator within three (3) business days after the Notification of Unsuccessful Vendor letter is faxed/e-mailed to the vendor. The debriefing may be held within three (3) business days of the request. Discussion will be limited to a critique of the requesting vendor's proposal. Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

**41. PROTESTS**

This procedure is available to vendors who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the vendor is allowed five (5) business days to file a protest of the acquisition with the WSP Property Management Commander at the address below:

**Washington State Patrol, Supply Section**

**ATTN: Purchasing Coordinator, Andrew Westerfield**

**Mailing Address:**

**Street Address:**

**P.O. Box 42625**

**8543 Armstrong Rd SW**

**Olympia, WA 98504-2625**

**Tumwater, Washington 98512**

**Phone: (360) 704-5451**

Vendors protesting this procurement shall follow the procedures described below. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Contractors under this procurement.

All protests must be in writing and signed by the protesting party. The protest must state the grounds for the protest with specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included. All protests shall be addressed to the WSP Property Management Commander. Only protests stipulating an issue of fact concerning the following subjects shall be considered:



- A matter of bias, discrimination or conflict of interest on the part of the evaluator;
- Errors in computing the score;
- Non-compliance with procedures described in the procurement document or WSP policy.

Protests not based on procedural matters will not be considered. Protests will be rejected as without merit if they address issues such as:

- 1) An evaluator's professional judgment on the quality of a proposal, or
- 2) WSP's assessment of its own and/or other agencies needs or requirements.

Upon receipt of a protest, a protest review will be held by WSP. The Chief of WSP or an employee delegated by the Chief of WSP who was not involved in the procurement will consider the record and all available facts and issue a decision within five business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay. In the event a protest may affect the interest of another vendor which submitted a proposal, such vendor will be given an opportunity to submit its views and any relevant information on the protest to the WSP Property Management Commander.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold WSP's action; or
  - Find only technical or harmless errors in WSP's acquisition process and determine the WSP to be in substantial compliance and reject the protest; or
- Find merit in the protest and provide options to WSP, including correcting errors and reevaluating all proposals; reissuing the solicitation document; or making other findings and determining other courses of action as appropriate.

#### **42. SAVE HARMLESS**

To the fullest extent permitted by law, Contractor shall indemnify, defend, and save harmless the state, agencies of the state, and all officers and employees of the state, from and against any and all claims for injuries or death, including claims by Contractor's employees, or for damages arising out of, resulting from, or incident to Contractor's performance or failure to perform the contract, or for patent, trademark, copyright, or franchise infringement arising from the purchase, installation, or use of goods and services ordered. Contractor's obligation to indemnify, defend and save harmless shall not be eliminated or reduced by any alleged concurrent negligence of the state or its agencies, employees, and officers. Contractor waives its immunity under Title 51 RCW to the extent required to indemnify, defend, and save harmless the state and its agencies, officers, or employees.

#### **43. PERSONAL LIABILITY**

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

#### **44. 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 to the state, 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.

#### **45. ADVERTISING**

Contractor shall not advertise or publish information concerning this contract in any form or media without prior written consent from the SPO.

#### **46. SUBCONTRACTS/ASSIGNMENT**

Contractor shall not subcontract or assign its obligations under this contract without the prior written consent of the SPO. The Contractor shall be responsible to ensure that all requirements of the contract shall flow down to any and all subcontractors.

#### **47. TAXES, FEES AND LICENSES**

- A. Taxes: Where required by state statute or regulation, contractor shall pay for and maintain a current status and all taxes that are necessary for contract performance. Unless otherwise indicated, the purchaser agrees to pay State of Washington sales or use taxes on all applicable consumer services and materials purchased. No charge by contractor shall be made for federal excise taxes and the purchaser agrees to furnish contractor with an exemption certificate where appropriate. Sales tax shall not be included in bid pricing submitted.
- B. Collection of Retail Tax: In state suppliers: In general, in state suppliers engaged in retail sales activities within Washington State are required to collect and remit sales tax to Department of Revenue.
- C. Out-of-state suppliers: In general, out-of-state suppliers must collect and remit "use tax" to Department of Revenue if the activity carried on by the seller in Washington State is significantly associated with supplier's ability to establish or maintain a market for its products in Washington State. Examples of such activity include where the supplier either directly or by an agent or other representative:
- D. Maintains an in-state office, distribution house, sales house, warehouse, service enterprise, or any other in-state place of business; or
- E. Maintains an in-state inventory or stock of goods for sale; or
- F. Regularly solicits orders from customers located within state via sales representatives entering the state; or
- G. Sends other staff into the state (e.g. product safety engineers, etc.) to interact with customers in an attempt to establish or maintain market(s); or
- H. Other factors identified in WAC chapter 458-20.
- I. Out-of-state suppliers meeting one of the above criteria must register and establish an account with the Department of Revenue (DOR). Refer to WAC 458-20-193 (7 through 9) or call Department of Revenue at (800) 647-7706. When out-of-state suppliers are not required to collect and remit "use tax", the agency is responsible for paying this tax, if applicable, directly to DOR.
- J. Fees/Licenses: Prior to bid opening the 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 regulations for said fees, assessments, or charges and to immediately comply with said changes or regulations during the entire term of this contract.
- K. Customs/Brokerage Fees: To be considered responsive, bid must include ALL customs duties, brokerage or import fees where applicable. Contractor shall take all-necessary actions to ensure that materials or equipment purchased are expedited through customs. Failure to do so may subject contractor to liquidated damages as identified in this document and/or to other administrative actions considered appropriate.
- L. 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.
- M. Orders for tangible personal property which become a component part of ferry vessels of the State of Washington or local government units in the State of Washington are exempt from use tax under RCW 82.12.0279.

#### **48. WARRANTIES**

- A. Product: 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, and shall conform to the requirements and specifications herein. Acceptance of any service and inspection incidental thereto by the state shall not alter or affect the obligations of the Contractor or the rights of the state.
- B. Price: Contractor warrants that prices of materials, equipment, and services set forth herein do not exceed those charged by the Contractor to any other customer purchasing the same goods or services under similar conditions and in like or similar quantities.
- C. Date Compliance: Contractor warrants fault free performance in the processing of date and date related data including, but not limited to calculation, comparing, and sequencing by all Equipment and Software provided pursuant to this Contract, individually and in combination, when used in accordance with the product documentation provided by the

Contractor. Fault free performance shall include the manipulation of this data when dates are in the 20th or 21st centuries and shall be transparent to the user.

#### **49. LIENS, CLAIMS AND ENCUMBRANCES**

All materials, equipment, or services shall be free of all liens, claims, or encumbrances of any kind and if the state requests, a formal release of same shall be delivered to the state.

#### **50. DELIVERY**

A. Time: delivery must be made during normal work hours and within time frames proposed by Bidder herein and subsequently accepted by the state. Failure to comply may subject Contractor to non-delivery assessment charges and/or liquidated damages as appropriate. The state reserves the right to refuse shipment when delivered after normal working hours. Contractor shall verify specific working hours of individual agencies and so instruct carrier(s) to deliver accordingly. The acceptance by the purchaser of late performance with or without objection or reservation by the purchaser shall not waive the right to claim damage for such breach, nor preclude the purchaser 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.

B. Terms: Unless otherwise specified, all goods are to be shipped FOB Destination freight prepaid and included. Where specific authorization is granted to ship goods FOB shipping point, Contractor agrees to prepay all shipping charges, route as instructed or if instructions are not provided, route by cheapest common carrier. Each invoice for shipping charges shall contain the original or a copy of the freight bill indicating that the payment for shipping has been made. The purchaser reserves the right to refuse COD shipments.

C. Location: 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.

D. Unauthorized: In no case shall Contractor initiate performance prior to receipt of written or verbal authorization from authorized purchasers. Expenses incurred otherwise shall be borne solely by the Contractor.

#### **51. INSPECTION AND REJECTION**

The Purchaser's inspection of all materials and equipment upon delivery is for the sole purpose of identification. Such inspection shall not be construed as final acceptance, or as acceptance of the materials or equipment, if materials or equipment does not conform to contractual requirements. If there are any apparent defects in the materials or equipment at the time of delivery, the Purchaser will promptly notify the Contractor thereof. Without limiting any other rights, the Purchaser and/or the state at its option, may require the Contractor to:

Repair or replace, at Contractor's expense, any or all of the damaged goods, or

Refund the price of any or all of the damaged goods, or

Accept the return of any or all of the damaged goods.

#### **52. TITLE AND RISK OF LOSS**

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 obligation hereunder.

#### **53. PERFORMANCE**

Acceptance by the purchaser 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.

#### **54. IDENTIFICATION**

All invoices, packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written documents affecting this contract shall be identified by the applicable purchase order or field order number. Packing lists shall be enclosed with each shipment, indicating the contents therein.

#### **55. 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.

## **56. INVOICING**

Contractor shall provide an original and two (2) copies of invoices. Each invoice shall be submitted as required by the contract and shall reference the contract and field order or purchase order number. Invoices shall be properly annotated with applicable prompt payment discount(s).

## **57. PAYMENT**

Payment will be made by the state agency or political subdivision indicated on ordering document. Any bid that requires payment in less than thirty (30) calendar days need not be considered. Qualifying prompt payment discount will be considered in determining the apparent lowest responsible and responsive bid. Invoices will not be processed for payment nor will the period of cash discount commence until receipt of a properly completed invoice and until all invoiced items are received and satisfactory performance of Contractor has been attained. If an adjustment in payment is necessary due to damage or dispute, the cash discount period shall commence on the date final approval for payment is authorized. Under "Chapter 39.76 RCW," if purchaser fails to make timely payment(s), Contractor may invoice for 1% per month on the amount overdue or a minimum of \$1.00. Payment will not be considered late if a check or warrant is mailed within the time specified. If no terms are specified, net 30 days will automatically apply. Payment(s) made in accordance with contract terms shall fully compensate the Contractor for all risk, loss, damages or expense of whatever nature and acceptance of payment shall constitute a waiver of all claims submitted by Contractor. <http://www.des.wa.gov/SiteCollectionDocuments/HRPayroll/SACS/vendorPayeeReg.pdf>

Payment for materials or equipment received or for services rendered shall be made by warrant issued from the Washington State Treasury and redeemable in U.S. dollars. Unless otherwise indicated, the state's sole responsibility shall be to issue this warrant. Any bank or transaction fees or similar costs associated with currency exchange procedures shall be fully assumed by the contractor.

Payment term discounts effective for less than a 30-day period unless otherwise identified in bid/quote, will not be considered in the award of this bid.

Bidders are encouraged to offer a discount for prompt payment of invoice, which will be utilized in determining lowest responsive/responsible bidder. To be considered in the state's evaluation, period of entitlement must be 30 calendar days or greater. If bidder indicates no discount, the state will evaluate as net 30 days.

Please indicate your discount proposal on the offer page of this document. If awarded by the state, period of entitlement begins only after:

- Receipt of a properly completed invoice
- Receipt of all supplies, equipment or services ordered
- Satisfactory completion of all contractual requirements

## **58. QUALITY STANDARDS**

Product or service specifications herein are intended solely to clearly describe type and quality and not to be restrictive. Trade reference specifications describe the type product thus far found to best meet agency functional requirements and provide the most economical use life under agency use situations. So as not to misrepresent the requirements herein, brands other than those specified will therefore be considered on the basis of whether at least equal in quality/performance. Failure to submit with bid complete documentation sufficient to establish products bid as at least equal may be grounds for rejection. By submitting bid, bidder expressly warrants product bid as at least equal in quality and performance. The state's acceptance of a product bid as an "equal" is conditioned on the state's inspection and testing after receipt. If, in the sole judgment of the state, the item is determined not to be an equal, the bid may be rejected or the product returned at bidder's expense and/or the contract canceled without any liability whatsoever to the state. Any bid containing a brand that is not of equal quality, performance or use specified must be represented as an "alternate" and not as an "equal"; failure to do so shall be sufficient reason to consider the bid non-responsive.

## **59. DETERMINATION OF RESPONSIBILITY**

During bid evaluation, the state reserves the right to make reasonable inquiry to determine the responsibility of any bidder. Requests may include, but not be limited to, financial statements, credit ratings, references, record of past performance, on-site inspection of bidder's, or bidder's subcontractor's facilities. Failure to respond to said request(s) will be sufficient reason to consider the bid non-responsive.

During the contract term, should the contractor be determined to be in violation of federal, state, or local laws or regulations, the state reserves the right to modify its initial determination of responsibility at the time of award and to take other action as determined appropriate, including but not limited to termination of the contract.

## **60. AWARD FACTOR**

A. Criteria: State contracts shall be awarded to the lowest responsible and responsive bidder subject to the preferences provided by law. Award criteria shall include all factors identified in RCW 39.26.160 and the contractual requirements provided herein. No MWBE preference will be included in the evaluation of bids/proposals, no minimum level of MWBE participation shall be required as a condition for receiving an award and bids/proposals will not be rejected or considered non-responsive on that basis.

B. Rights Reserved subject to the provisions of RCW 39.26.160, the state reserves the right to:

C. Waive any informality.

D. Reject any or all bids, or portions thereof. WAC 200-300-080 allows the state to "accept any portion of the items bid" unless the bidder stipulates all or nothing on the bid.

E. Reissue an IFB, RFQ, RFP, or RFQQ, or negotiate under provisions outlined therein.

F. Award on an all or none consolidated basis taking into consideration reduction in administrative costs as well as unit bid prices.

## **61. VENDOR REGISTRATION**

Prior to award of a contract, any unregistered bidder may be required to complete a Supplier Registration Packet for placement on the state's supplier list. <http://www.des.wa.gov/services/ContractingPurchasing/Business/Pages/WEBSRegistration.aspx>

## **62. CHANGES**

No alteration in any of the terms, conditions, or contractual requirements herein shall be effective without the written consent of the Procurement Coordinator as evidenced by issuance by the state of a contract change notice.

## **63. ADDITIONS OR DELETIONS**

The state reserves the right to add or delete items, agencies, or locations, as determined to be in the best interest of the state. Added items, agencies or locations will be related to those on contract and additions or deletions will not represent a significant increase or decrease in size or scope of the contract. Such additions or deletions will be by mutual agreement, will be at prices consistent with the original bid price margins, and will be evidenced by issuance of a written contract change notice from the Procurement Coordinator.

## **64. CONTRACT SUSPENSION**

The state may at any time and without cause, suspend the contract or any portion thereof, for a period of not more than thirty (30) calendar days, by written notice to the Contractor. Contractor shall resume performance within fifteen (15) calendar days of written notice from the state.

## **65. BREACH, DEFAULT, TERMINATION**

A. Breach: A breach of a term or condition of the contract shall mean any one or more of the following events: (1) Contractor fails to perform the services by the date required or by a later date as may be agreed to in a written amendment to the contract signed by the state; (2) Contractor breaches any warranty or fails to perform or comply with any term or agreement in the contract; (3) Contractor makes any general assignment for the benefit of creditors; (4) in the state's sole opinion, Contractor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder; (5) Contractor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or

relief from creditors and/or debtors; (6) any receiver, trustee, or similar official is appointed for Contractor or any of the Contractor's property; (7) Contractor is determined to be in violation of federal, state, or local laws or regulations and that such determination, in the state's sole opinion renders the Contractor unable to perform any aspect of the contract.

B. Default: A Contractor may be declared in default for failing to perform a contractual requirement or for a material breach of any term or condition.

C. Termination for Convenience: The state may terminate this contract, in whole or in part, at any time and for any reason by giving thirty (30) calendar days written termination notice to Contractor. Termination charges shall not apply unless they are subsequently agreed upon by both parties. Where termination charges are applicable, both parties agree to negotiate in good faith and to limit the extent of negotiations to valid documented expenses incurred by Contractor prior to date of termination. Should the parties not agree to a satisfactory settlement, the matter may be subjected to mediation and/or legal proceedings.

D. Termination for Breach and/or Default: Except in the case of delay or failure resulting from circumstances beyond the control and without the fault or negligence of the Contractor or of the Contractor's suppliers or subcontractors, the state shall be entitled, by written notice, to cancel and/or terminate this contract in its entirety or in part for breach and/or for default of any of the terms herein and to have all other rights against Contractor by reason of the Contractor's breach as provided by law.

E. Termination by Mutual Agreement: The state or the Contractor may terminate this contract in whole or in part, at any time, by mutual agreement with thirty (30) calendar days written notice from one party to the other.

F. Sanctions: Any violations of the mandatory provisions of this contract shall be a material breach of contract for which the contractor may be subject to a requirement of specific performance, or damages and sanctions provided by contract, or by applicable laws.

## **66. OPPORTUNITY TO CURE DEFAULT**

A. Events: In the event that Contractor fails to perform a contractual requirement or materially breaches any term or condition, the state may issue a written notice of default and provide a period of time in which Contractor shall have the opportunity to cure. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages. The state is not required to allow the Contractor to cure defects if the opportunity for cure is not feasible as determined solely by the state. The state may terminate the contract for nonperformance, breach, or default without allowing the opportunity to cure by the Contractor.

B. Remedies: If the nonperformance, breach or default remains after Contractor has been provided the opportunity to cure, the state may do one or more of the following:

C. Exercise any remedy provided by law.

D. Terminate this contract and any related contracts or portions thereof.

E. Impose liquidated damages.

F. Suspend Contractor from receiving future Invitations for Bid.

## **67. LEGAL FEES**

The Contractor covenants and agrees that in the event suit is instituted by the purchaser for any nonperformance, breach or default on the part of the Contractor, and the Contractor is adjudged by a court of competent jurisdiction, he shall pay to the purchaser all costs, expenses expended or incurred by the purchaser in connection therewith, and reasonable attorney's fees.

## **68. FORCE MAJEURE**

A. Definition: Except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences.

B. Notification: If either party is delayed by force majeure, said party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall be provided. The time of completion shall

be extended by contract modification for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this contract.

C. Rights Reserved: The state reserves the right to cancel the contract and/or purchase materials, equipment, or services from the best available source during the time of force majeure, and Contractor shall have no recourse against the state.

## **69. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE)**

In accordance with the legislative findings and policies set forth in Chapter 39.19 RCW, the State of Washington encourages participation in all its contracts by MWBE firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this solicitation/invitation or as a subcontractor to a Bidder/Proposer. However, unless required by federal statutes, regulations, grants, or contract terms referenced in the contract documents, no preference will be included in the evaluation of bids/proposals, no minimum level of MWBE participation shall be required as condition for receiving an award, and bids/proposals will not be rejected or considered non-responsive on that basis. Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the contract documents will apply. Bidders may contact OMWBE to obtain information on certified firms for potential subcontracting arrangements.

## **70. ESTABLISHED BUSINESS**

To be considered responsive, contractor must, prior to commencing performance, or prior to that time if required by law or regulation (reference WAC Chapter 18.27), be an established business firm with all required licenses, bonding, facilities, equipment and trained personnel necessary to perform the work as specified in the bid solicitation. All bidders must have Federal Tax Identifier Number as required by IRS regulations and Uniform Business Identifier Number required by Department of Revenue (800) 647-7706. Questions regarding specific licenses should be directed to Department of Licensing at (360) 664-1400.

The state reserves the right to require proof of said requirements including business references within ten (10) calendar days from the date of request.

## **71. LOWEST COST PURCHASE AUTHORITY (THIS PARAGRAPH APPLIES ONLY TO MANDATORY USE TERM CONTRACTS)**

This contract is subject to RCW 39.26.080 & RCW 39.26.090: which authorizes state agencies to purchase materials, supplies, services, and equipment of equal quantity and quality to those on state contract from non-contract suppliers, provided that an agency subsequently notifies the Department of Enterprise Services (DES)

State Procurement Officer (SPO) that the pricing is less costly for such goods or services than the price from the state contractor.

If the non-contract supplier's pricing is less, the state contractor shall be given the opportunity by the state agency to at least meet the non-contractor's price. If the state contractor cannot meet the price, then the state agency shall purchase the item(s) from the non-contract supplier, document the transactions on the appropriate form developed by DES and forwarded to the SPO administering the state contract.

If a lower price can be identified on a repeated basis, the state reserves the right to renegotiate the pricing structure of this agreement. In the event such negotiations fail, the state reserves the right to delete such item(s) from the contract.

## **72. PROPRIETARY INFORMATION**

Supplier should clearly identify any material that constitutes valuable formulae, designs, drawings, and research data claimed to be exempt from public disclosure, along with a statement of the basis for such claim of exemption. Pricing and entire bid packages are not considered proprietary. The agency will give notice to the supplier of any request for disclosure of such information received within 5 (five) years from the date of submission. Failure to so label such materials or to timely respond after notice of request for public disclosure has been given shall be deemed a waiver by the submitting supplier of any claim that such materials are, in fact, so exempt.

## **73. OSHA AND WISHA REQUIREMENTS**

OSHA and WISHA requirements: Supplier agrees to comply with conditions of the Federal Occupational Safety and Health Act of 1970 (OSHA) and, if manufactured or stored in the State of Washington, the Washington Industrial Safety

and Health Act of 1973 (WISHA) Chapter 19.28 RCW and WAC 296-24 and the standards and regulations issued there under and certifies that all items furnished and purchased under this order will conform to and comply with said standards and regulations. Supplier further agrees to indemnify and hold harmless purchaser from all damages assessed against purchaser as a result of supplier's failure to comply with the acts and standards there under, and for the failure of the items furnished under this order to so comply.

#### **74. TRAINING**

You may be required to call on the end-users to acquaint them with your product or service, provide necessary training, or discuss the compatibility of your equipment with existing equipment.

#### **75. DEFAULT CHARGES**

Default charge is defined as the cost to procure locally, or on the open market, the replacement of any rejected or undelivered contract item. Supplier is responsible for any price increase over bid price.

#### **76. INSURANCE**

General Requirements: Contractor shall, at their own expense, obtain and keep in force insurance as follows until completion of the contract. Within fifteen (15) calendar days of receipt of notice of award, the Contractor shall furnish evidence in the form of a Certificate of Insurance satisfactory to the state 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 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 will not be held responsible in any way for claims filed by the Contractor or their employees for services performed under the terms of this contract.

Commercial General Liability Insurance: The Contractor shall at all times during the term of this contract, carry and maintain commercial general liability insurance and if necessary, commercial umbrella insurance for bodily injury and property damage arising out of services provided under this contract. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns, or servants.

The insurance shall also cover bodily injury, including disease, illness, and death and property damage arising out of the Contractor's premises/operations, independent contractors, products/completed operations, personal injury and

advertising injury, and contractual liability (including the tort liability of another assumed in a business contract), and contain separation of insured (cross liability) conditions.

Contractor waives all rights against the State 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)	\$2,000,0000
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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

Business Auto Policy (BAP): In the event that services delivered pursuant to this contract involve the use of vehicles, or the transportation of clients, automobile liability insurance shall be required. The coverage provided shall protect against claims for bodily injury, including illness, disease and death; and property damage caused by an occurrence arising out of or in consequence of the performance of this service by the Contractor, subcontractor, or anyone employed by either.

Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a combined single limit not less than \$1,000,000 per occurrence. The business auto liability shall include Hired and Non-Owned coverage.

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

Additional Provisions: Above insurance policies shall include the following provisions:

Additional Insured: The State of Washington and all authorized contract users shall be named as an additional insured on all general liability, umbrella, excess, and property insurance policies. All policies shall be primary over any other valid and collectable insurance.

Notice of policy(ies) cancellation/non-renewal: For insurers subject to RCW 48.18 (Admitted and regulated by the Washington State Insurance Commissioner) a written notice shall be given to the State forty-five (45) calendar days prior to cancellation or any material change to the policy(ies) as it relates to this contract.

For insurers subject to RCW 48.15 (Surplus Lines) a written notice shall be given to the State twenty (20) calendar days prior to cancellation or any material change to the policy (ies) as it relates to this contract.

If cancellation on any policy is due to non-payment of premium, the State shall be given a written notice ten (10) calendar days prior to cancellation.

Identification: Policy(ies) and Certificates of Insurance must reference the state's bid/contract 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 RCW 48.15 and WAC 284-15.

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.