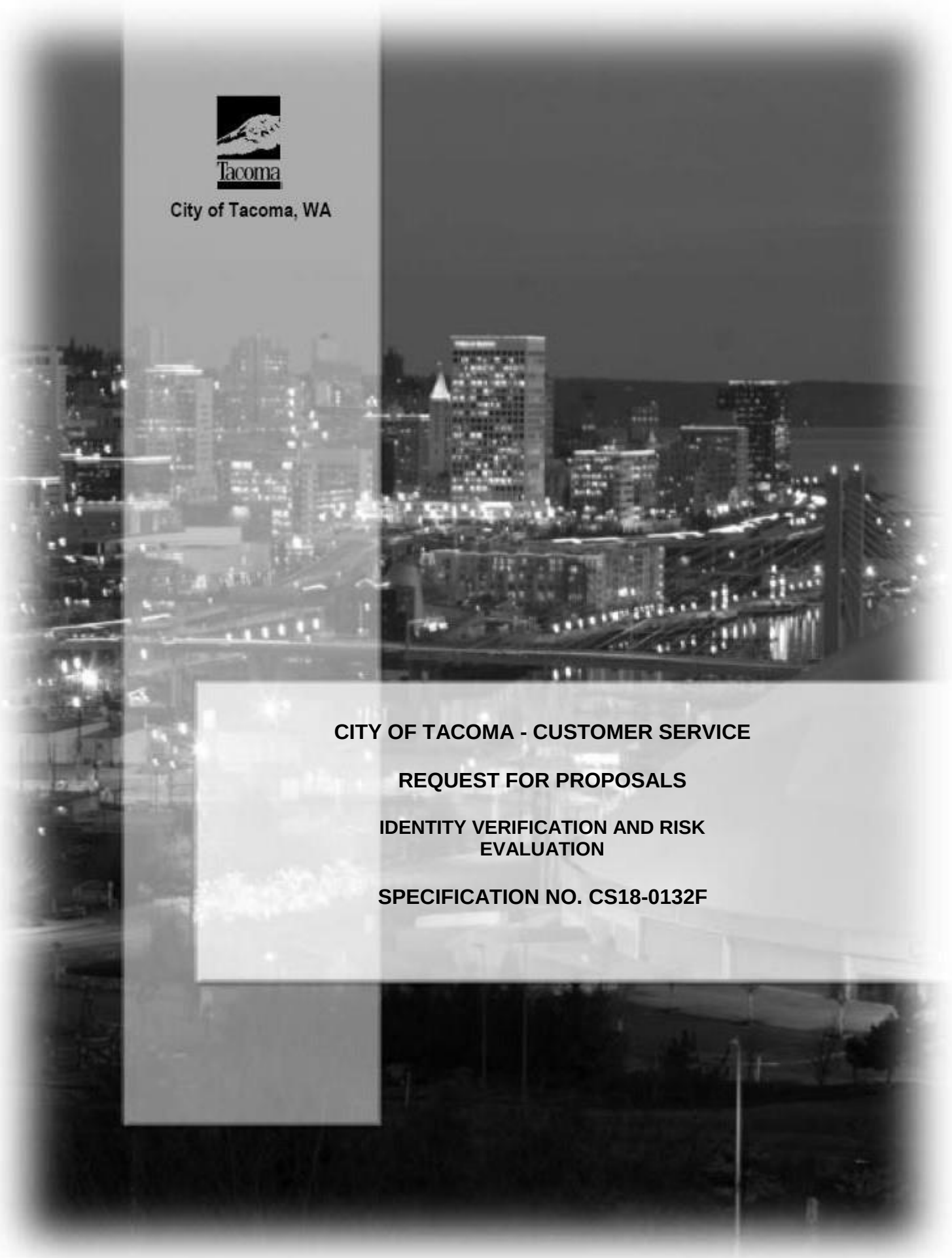

City of Tacoma, WA

# CITY OF TACOMA - CUSTOMER SERVICE

## REQUEST FOR PROPOSALS

### IDENTITY VERIFICATION AND RISK EVALUATION

### SPECIFICATION NO. CS18-0132F

**City of Tacoma**
**TPU Customer Services**

# REQUEST FOR PROPOSALS CS18-0132F
# Identity Verification and Risk Evaluation

**Submittal Deadline: 11:00 a.m., Pacific Time, Tuesday, October 2, 2018**

**Submittal Delivery:** Sealed submittals will be received as follows:

| **By Carrier:** | **In Person:** |
|---|---|
| City of Tacoma Procurement & Payables Division<br>Tacoma Public Utilities<br>3628 S 35th Street<br>Tacoma, WA 98409 | City of Tacoma Procurement & Payables Division<br>Tacoma Public Utilities Lobby Security Desk<br>Administration Building North – Main Floor<br>3628 S 35th Street<br>Tacoma, WA 98409<br><br>**Note: This is a change in location for in-person deliveries.** |
| **By Mail:**<br>City of Tacoma Procurement & Payables Division<br>Tacoma Public Utilities<br>PO Box 11007<br>Tacoma, WA 98411-0007 | |

**Submittal Opening:** Sealed submittals in response to a RFP will be opened by a Purchasing representative and read aloud during a public bid opening held in Conference Room M-1, located on the main floor in the same building. Submittals in response to an RFP or RFQ are recorded as received but are not typically opened and read aloud. After 1:00 p.m. the day of bid opening, the names of vendors submitting proposals are posted to the website for public viewing.

**Solicitation Documents:** An electronic copy of the complete solicitation documents may be viewed and obtained by accessing the City of Tacoma Purchasing website at www.TacomaPurchasing.org.

- Register for the Bid Holders List to receive notices of addenda, questions and answers and related updates.
- Click here to see a list of vendors registered for this solicitation.

**Pre-Proposal Meeting:** A pre-proposal meeting not be held.

**Project Scope Summary:** TPU is seeking a firm to provide services that include consumer credit reports and identity verification using the customer's Social Security Number, Driver's License, or other federal or state issued identification. The scope of work includes providing a risk model to help determine the need for a security deposit, identity confirmation, and fraud detection.

**Estimate:** $90,000.

**Paid Leave and Minimum Wage:** Effective February 1, 2016, the City of Tacoma requires all employers to provide paid leave and minimum wages, as set forth in Title 18 of the Tacoma Municipal Code. For more information visit www.cityoftacoma.org/employmentstandards.

**The following is applicable to Federal Aid Projects:** The City of Tacoma in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, part 21, nondiscrimination in federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR, part 26, will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award.

**Additional Information**: Requests for information regarding the specifications may be obtained by contacting Alex Clark Senior Buyer by email to aclark3@cityoftacoma.org.

**Protest Policy:** City of Tacoma protest policy, located at www.tacomapurchasing.org, specifies procedures for protests submitted prior to and after submittal deadline.

**Meeting sites are accessible to persons with disabilities. Reasonable accommodations for persons with disabilities can be arranged with 48 hours advance notice by calling 253-502-8468.**

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**SUBMITTAL CHECK LIST**

A. This checklist identifies items to be included with your submittal. Any submittal received without these required items may be deemed non-responsive and may not be considered for award.

B. ***Please do not include this specification document with your submittal. Doing so may render your submittal non-responsive.***

C. Sealed submittals must be received by the City of Tacoma Purchasing Division by the date and time specified in the Request for Proposals page at the front of this Specification or subsequent addenda. See also Section 3.04 Submittal Package Requirements.

D. Respondents are encouraged to use recycled/recyclable products and both sides of paper for printed and photocopied materials, wherever possible.

| | **The following items, in this order, make up your submittal package:**<br>***Other than the forms listed below, please do not include other pages or content from this RFP document.*** | ☑ |
|---|---|---|
| 1 | Title Page (Section 3.02 A) | |
| 2 | Table of Contents (Section 3.02 B) | |
| 3 | Index of confidential information, if applicable (Section 3.03) | |
| 4 | City of Tacoma Forms (Section 3.02 C / Appendix A) – No substitutions or alterations – Do not alter these forms or add them to letterhead paper or present cover letters or blank pages ahead of them.<br>a. Signature Page (this form is intended to serve as the first page of your submittal after the Title Page and Table of Contents)<br>b. Prime Contractor's Pre-Work Form<br>c. Price Proposal Form<br>d. Technical Response Form / Response and Work Breakdown Form / Requirements and Technical Specifications / Requirements Response Form<br>e. Respondent Contact Information Form<br>f. Record of Prior Contracts | |
| 5 | Balance of information in Section 3.02 – Content to be Submitted (items D – xx) | |

**Provide the following in a sealed envelope or package labeled with the specification number, specification title, and Respondent name and address as indicated in Section 3.04:**

- **Paper Copies**
  - ❖ **One original copy** of your complete submittal, arranged as indicated in

Sections 3.01 and 3.02.

- ❖ **Five copies** of the complete original submittal.

- **Electronic copies** (USB drive, labeled with company name):
  - ❖ **One electronic copy** of the complete submittal in either Word or PDF format, arranged as indicated in Sections 3.01 and 3.02. Provide the electronic copy as a **single file** rather than multiple individual documents.
  - ❖ **One electronic copy of the completed Requirements Breakdown Response Form** in Excel format.
  - ❖ **One electronic copy of the completed Price Proposal Form** in Excel format.
  - ❖ **One electronic copy of the completed Response and Work Breakdown Form** in Word format.
  - ❖ **There should be FOUR documents on the USB drive**

**Clearly identify paper documents as original and copies.**

**After award approval, the following will be required:**

| | |
|---|---|
| 1 | Contract (Appendix B) – Contract example incorporating terms and conditions contained herein |
| 2 | Certificate of Insurance and applicable endorsements (Appendix B) |
| 3 | City of Tacoma business license, if applicable (Appendix C – See item 1.05 B. of the Standard Terms and Conditions) |
| 4 | Verification of Washington business license (Appendix C – See item 1.05 A. of the Standard Terms and Conditions) |

**REQUEST FOR PROPOSALS CS18-0132F**
**Identity Verification and Risk Evaluation**

## SECTION 1 – PROJECT OVERVIEW / CALENDAR / INQUIRIES

### 1.01 PROJECT OVERVIEW AND PURPOSE

A. The City of Tacoma (City) / Tacoma Public Utilities (TPU), Customer Services department is soliciting proposals to establish one or more contracts with qualified vendors to fulfill the City's needs for identity verification and credit risk evaluation services.

B. The preference is to award a single contract. However, the City reserves the right to split the award, reduce the award, or make no award, if it is in the City's best interest.

C. Submittals must comply with these specifications. Failure to comply with all provisions of the RFP may result in disqualification.

D. This solicitation may be found at www.tacomapurchasing.org: Navigate to *Contracting Opportunities* / *Services or Supplies or Public Works and Improvements Solicitations*, scroll to this RFP and click the word *Specification*.

### 1.02 CALENDAR OF RFP EVENTS

The anticipated schedule of events concerning this RFP, which are tentative and may be altered at the city's sole discretion, is as follows:

| | |
|---|---|
| Proposal Questions Due: | September 14, 2018 |
| Questions and answers posted on or about: | September 21, 2018 |
| Submittal Deadline: | October 2, 2018 |
| Submittals Evaluated: | October 8, 2018 |
| Interviews/presentations, if conducted: | October 8, 2018 |
| Award Recommendation: | October 12, 2018 |

### 1.03 PRE-SUBMITTAL CONFERENCE / QUESTIONS AND REQUESTS FOR CLARIFICATION

A. A pre-submittal conference will not be held; however, questions and requests for clarification of these Specifications may be submitted in writing by **3:00 p.m., Pacific Time, September 14, 2018**, to Alex Clark, Purchasing Division, via email to aclark3@cityoftacoma.org. Questions received after this date and time may not be answered.

1. Please indicate the RFP specification number and title in the email subject line.

2. Present your questions in MS Word format or directly in the body of the email message. Where applicable, cross reference the specific section of the RFP. Please avoid using tables to format the questions.

   a. The questions will be copied into a Word template; please keep the formatting simple (e.g., Arial 11, flush left) by avoiding multiple fonts, multiple formats, and the use of tables, styles, headers, footers, etc.

3. Questions will not be accepted by telephone or fax.

4. Questions marked confidential will not be answered.

5. Questions will be held until the deadline and answered collectively.

6. Individual answers will not be provided directly to Respondents.

7. The City reserves the discretion to group similar questions to provide a single answer or not to respond when the requested information is confidential.

8. The City will not be responsible for unsuccessful submittal of questions.

B. Written answers to questions will be posted with the Specification on or about **September 21, 2018,** on the Purchasing website at www.TacomaPurchasing.org: Navigate to *Contracting Opportunities* / *Services or Supplies or Public Works and Improvements Solicitations*, and scroll to this RFP. A notice will not be posted with the Specification if no questions are received.

C. To receive notice of the posted answers, you must register as a "bid holder" for this solicitation. Notices will not be sent if no questions are received.

D. The answers are not typically considered an addendum. (See Section 1.09)

## 1.04 ACCEPTANCE AND RESPONSIVENESS

A. Respondents agree to provide a minimum of 90 days from the submittal deadline for acceptance by the City.

B. Submittals will be reviewed by the City to determine compliance with the requirements and instructions specified in this RFP. Respondent is specifically notified that failure to comply with any part of this RFP may result in rejection of the submittal as non-responsive. The City reserves the right, in its sole discretion, to waive irregularities deemed to be immaterial.

## 1.05 CONTRACT TERM

A. The Contract will be for a three-year period with the option to renew the Contract for an additional three year term.

B. Contract extensions shall be automatic, and shall go into effect without written confirmation, unless the City provides advance notice of the intention to not renew.

C. This Contract shall remain open to additional purchases (interlocal, tag-on, and piggyback) by this or other agencies for a period of three years from date of award/acceptance with periodic cost adjustments based on actual manufacturer's price increases.

## 1.06 PRICING

A. Prices shall remain firm for the first 36-month period of the Contract unless an exception is stated in the proposal. If Contractor wishes to revise any prices prior to the renewal of the Contract, Contractor must advise the City in writing of the requested revisions no less than 30 days before the end of the current Contract term.

B. Submitted prices must include all labor and expenses, including travel, and any tools or costs required to service the account and complete this project.

C. Submitted prices shall include costs of servicing the account, all contractual requirements during Contract period such as transportation, travel, permits, labor, insurance costs, wages, materials, tools, components, equipment, and appurtenances necessary to complete the work, which shall conform to the best practice known to the trade in design, quality, material and workmanship and be subject to these Specifications in full.

D. Surcharges of any type will not be paid.

E. The City reserves the right to negotiate all costs/prices submitted.

F. The City may award to other than the highest ranked Respondent if the price offered by the Respondent is more than the budget available for this project.

G. Contractor shall extend the same services at City prices to participating public agencies in accordance with the Interlocal Agreement.

## 1.07 BUDGET

A. The amount budgeted for this project is $30,000 annually.

## 1.08 RESPONDENTS ORIGINATING OUTSIDE THE UNITED STATES

A. Respondents providing submittals from outside the legal jurisdiction of the United States of America will be subject to Tacoma's City Attorney's Office (CAO) opinion as to the viability of possible litigation pursuant to a contract resulting from this Specification. If it is the opinion of the CAO that any possible litigation would be beyond reasonable cost and/or enforcement, the submittal may be excluded from evaluation.

## 1.09 REVISIONS TO RFP – ADDENDA

A. In the event it becomes necessary to revise any part of this RFP, addenda will be issued to registered bid holders/planholders and posted on the Purchasing website at www.TacomaPurchasing.org: Navigate to *Contracting Opportunities* / *Services or Supplies or Public Works and Improvements Solicitations*, and scroll to this RFP. Failure to acknowledge addenda may result in a submittal being deemed non-responsive.

B. Answers in response to RFP inquiries (see Section 1.03 above) are not typically provided as an addendum.

## 1.10 CITY CONTACT INFORMATION

A. All communications concerning this solicitation shall be directed via email to the Purchasing contact:
   Alex Clark / aclark3@cityoftacoma.org

B. Any Respondent seeking to obtain information, clarification, or interpretations from any external firm or agency, or City official or City employee other than the Purchasing contact or other Purchasing staff member, is advised that such material is used at the Respondent's own risk. The City will not be bound by any such information, clarification, or interpretation.

C. Contact by a Respondent regarding this solicitation with a City employee other than the Purchasing contact or an individual approved in writing by a Purchasing staff member, or contact with a firm hired by the City to provide consulting services regarding this RFP, may be grounds for rejection of the Respondent's submittal.

D. NOTE: City employees and persons or firms representing the City will not contact you or seek to advise you on matters pertaining to this RFP, your submittal, or the City's expectations regarding the proposed work other than as stated in the Request for Proposals documents.

## SECTION 2 – PROJECT SCOPE / TECHNICAL PROVISIONS

### 2.01 BACKGROUND

TPU is responsible for establishing and maintaining utility accounts for approximately 200,000 customers. TPU strives to provide a high quality, low stress customer experience to our customers during their application for services. This process involves two separate but essential processes:

a) New applicants for service must have their identification verified at the time they apply for service, whether in person or over the phone. TPU utilizes an applicant's Social Security Numbers (SSN) as a unique identifier. Verification of SSN is required. In the event that the applicant is unable or unwilling to provide a SSN, a customer may provide a driver's license or passport in person in lieu of SSN.

b) Once an applicant's identity has been verified TPU must determine the risk that an applicant will not pay their account in full to determine if a deposit should be assessed to that applicant. However, TPU does not wish to adversely impact a new customers' credit score or rating by requesting a full credit report so historically this has been accomplished by using a deposit risk model.

New customers are asked to provide a social security number or other government issued form of identification. This information, along with their name, is entered into our SAP ECC 6.04 customer information system. TPU Customer Service staff then verifies a customers' identity prior to establishing services by directly accessing a 3rd party firm's secure website. This site provides for both identity verification and information to assist in the decision regarding the need for a utility deposit.

Separately, TPU maintains a customer portal specifically for property managers in our service territory. A real time interface sends that information to a third party to run against their identity verification and risk model and returns information with sub-second response.

Between both services TPU Customer Services averages between 3000 – 4000 requests each month.

### 2.02 TECHNICAL REQUIREMENTS

The selected firm's proposed deliverables must include:

- A utility risk model to be used by TPU to help determine the need for a security deposit.
- A fully operational and secure website or portal for inquiry for identity verification, fraud detection, and determination of security deposit; not affecting the individuals credit score.
- Secure administrative access and user profiles for all TPU staff authorized to use the secure website or portal for identity verification, fraud detection and security deposit determination, adding or deleting users, API interface connections and any other uses.
- Standard activity summary and agent reports.
- Secure administrative access and user profiles for TPU staff authorized to view and/or run activity reports.

- Standard alerts and messages during deposit risk and identity verification and provide a list of these alerts with meanings to TPU for staff reference.
- Training for all staff or train the trainer sessions on the use of the website or portal and any other processes and procedures needed, including training of IT staff on software or hardware needed.

- A minimum of five (5) written training guides or materials. Onsite training shall be provided to staff or staff trainers. Electronic version of all materials must also be provided.
- A Service Level Agreement (SLA) and regular reports on performance against the SLA.
- A failure prevention plan with back up services detailed.
- An application programming interface (API) that supports bi-directional communication with our host SAP ECC 6.04 and TPU's Property Manager Portal. The selected firm shall begin joint development of the interface or data files immediately, complete all development, testing, and have ready for production.

## 2.03 DESIRED FIRM QUALIFICATIONS

TPU is seeking responses from companies with expertise providing similar services to other large utilities and/or municipalities. Firms may partner to provide all required services, however, there must be one firm identified as the lead firm in the submittal, awarded contract and escalation process.

Firms are expected to have significant experience providing services while safeguarding client records, including during transmission of data. For additional information about desired firm qualifications please see sections 3.02.B and 3.02.F.

## 2.04 SCOPE OF WORK

The scope of work includes providing a risk model to help determine the need for a security deposit, identity confirmation, and fraud detection. TPU is seeking a firm to provide services that include consumer credit reports and identity verification using the customer's Social Security Number, Driver's License, or other federal or state issued identification.

The firm must accept standard information as part of the inquiry including but not limited to: the applicant's full name, social security number, driver's license (optional), and passport (optional).

The firm must provide standard information as part of the response to an inquiry including but not limited to: the applicants full name, current or last known address, age, date of birth, employer, issue date of social security number, and alias or other names (if available) that have been associated with an identity. Additionally, this search should provide a warning messages if any fraud or misuse was detected.

TPU expects to have a secure interface with our host system SAP ECC 6.04 and proposer's database, which will be utilized in the sending and receiving of data during our move-in process, the response back to SAP would validate identity, and address the potential need for a security deposit. TPU also expects access through a secure website.

When appropriate, TPU may also request a paper copy of a full credit report.

The services in this contract will include but not be limited to, the following services:

- Provide a streamline, secure website/portal that utilizes an applicant's SSN and name for identity verification, fraud detection and to evaluate a customer risks to charge or waive deposits.
    - TPU should be provided a response to every inquiry with either an affirmative or negative result. This result should also include standard information including, but not limited to: the applicant's full name, current or last known address, date of birth, issue date of SSN and alias (other names) if applicable.
    - TPU should be provided specific messaging regarding identity validation and requirement of a security deposit based on specified thresholds. TPU should be provided specific warning messages if potential fraud elements are found.
    - This inquiry should not affect the customer's credit score at any credit reporting agency.
    - Access to the site should be password protected. Administrative activities to add or delete users should be described in the firm's proposal.
    - (Optional) It is desired that verification can be consistently and reliably done with a Washington State driver's license and/or U.S. Passport.
- Provide an application programming interface (API) that will communicate with our host system SAP ECC 6.04 and TPU's Property Manager Portal for identity verification and the determination of a security deposit when service is established.
- Provide standardized reporting on transaction activities at a summary level.
- Provide standardized reporting on transaction activities at a user level.
- Provide security of roles and authorization of users of the secure website or portal.
- Provide data safeguards of TPU applicant and customer records, including during transmission of data in the inquiry process.
- Provide documentation outlining the Service Level Agreement (SLA) metrics, including response time for inquiries and responses.
- Provide training for all staff or train the trainer sessions on the use of the website or portal, all reports, and any other processes and procedures needed, including training of IT staff on software or hardware needed.
- Firms may partner to provide all required services, however, there must be one firm identified as the lead firm in the submittal, awarded contract and escalation process.

RFP and signed contract contain a provision for collecting interest on late payments (city can charge interest).

RFP and signed contract contain a provision that prevents money owed to the city to be discharged by bankruptcy/debt restructuring proceedings.

## 2.05 DELIVERABLES / ACCEPTANCE CRITERIA

The selected firm is expected to have all deliverables in place and operational within 60 business days of contract award. The selected firm's deliverable must include:

- A deposit risk model to be used by TPU to help determine the need for a security deposit.
- A fully operational and secure website or portal for inquiry for identity verification, fraud detection, and determination of security deposit; not affecting the individuals credit score.
- Secure administrative access and user profiles for all TPU staff authorized to use the secure website or portal for identity verification, fraud detection and security deposit determination, adding or deleting users, API interface connections and any other uses.
- Standard activity summary and agent reports.
- Secure administrative access and user profiles for TPU staff authorized to view and/or run activity reports.
- Standard alerts and messages during deposit risk and identity verification and provide a list of these alerts with meanings to TPU for staff reference.
- Training for all staff or train the trainer sessions on the use of the website or portal and any other processes and procedures needed, including training of IT staff on software or hardware needed.
- A minimum of five (5) written training guides or materials. Onsite training shall be provided to staff or staff trainers. Electronic version of all materials must also be provided.
- A Service Level Agreement (SLA) and regular reports on performance against the SLA.
- A failure prevention plan with back up services detailed.
- An application programming interface (API) that supports bi-directional communication with our host SAP ECC 6.04 and TPU's Property Manager Portal. The selected firm shall begin joint development of the interface or data files immediately, complete all development, testing, and have ready for production.

## 2.06 INSURANCE

A. City of Tacoma standard insurance requirements apply. (See Appendix B.)

B. Failure by City to identify a deficiency in the insurance documentation provided by Contractor or failure of City to demand verification of coverage or compliance by Contractor with these insurance requirements shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

## 2.07 CONFIDENTIALITY AGREEMENT

(Note: Confidentiality is covered in section 17 of professional services contract as well as section 2.27 in the services T&Cs.) A separate confidentiality agreement, beyond the professional services contract, is not needed in most cases. However, a confidentiality agreement may also be desired at the time of the RFP if, e.g., vendors are being given access to confidential information for the purpose of putting together their submittals (and would be in addition to the PSC). If that is the case, attach a confidentiality agreement to the RFP and include it on the submittal checklist (e.g. Signed Confidentiality Agreement found at Appendix ____). If there is a need for very specific set of instructions on confidentiality beyond the duty that is contained in the T&Cs and in Section 17 of the professional services contract, then the client should identify that as an issue on the trigger sheet when we are putting together the contract, or, if they have the language ready at the time of the RFP we could customize the sample contract to include the specific language.

## SECTION 3 – SUBMITTAL FORMAT, CONTENT, EVALUATION, AWARD

### 3.01 FORMAT AND PRESENTATION

A. Submittals should be clear, succinct, and **not exceed 20 double-sided pages** (40 pages total), excluding Title Page and required City of Tacoma forms.

   1. Pages beyond this limit, including appendices, attachments, brochures, etc., may not be reviewed or evaluated. Use of appendices and attachments will count toward the page limit.

B. The inclusion of standard company brochures or similar marketing materials is discouraged, will not be evaluated, and may not be used in lieu of providing responses to Section 3.02 Content to be Submitted immediately below.

C. A full and complete response to each of the "content to be submitted" items (Section 3.02) is expected in a single location; do not use hyperlinks to other documents or cross reference to another section of your submittal document in lieu of a full response.

D. Required format:

   - Page size: 8.5" x 11" (no pages larger or smaller than this size)
   - Margins: 0.75" or greater
   - Font and size: Arial 10 (or equivalent) or larger
   - Numbered pages: Please number all pages in your submittal documents

E. For purposes of review and in the interest of the City's sustainable business practices, Respondents are encouraged to **print/copy on both sides of a single sheet of paper** wherever possible. The City encourages the use of materials (e.g., paper, dividers, binders, brochures, etc.) that contain post-consumer recycled content and are readily recyclable.

F. The City prefers the use of recyclable 3-ring binders to allow reviewers to remove specific pages/sections. Please do not use gum or spiral bindings. The use of materials that cannot be easily recycled such as PVC (vinyl) binders, spiral bindings, glossy paper, and plastic or glossy covers or dividers is also discouraged.

G. Color is acceptable, but content should not be lost by black-and-white printing or copying.

### 3.02 CONTENT TO BE SUBMITTED

Provide complete and detailed responses to all items using the numbering format presented below. Organization of the submittal should follow the sequence of contents below so that essential information can be located easily during evaluation.

Submittals that are incomplete or conditioned in any way, contain alternatives or items not called for in this RFP, or are not in conformity with law, may be rejected. The City will not accept any submittal containing a substantial deviation from the requirements outlined in this RFP.

**A. Letter of Introduction**

A one page introductory letter that must include the following information:

A.1 Brief introduction of the firm (and any partner firms) submitting the proposal.

A.2 Confirm the availability of the firm and sufficient resources to ensure the services are available within 60 business days of contract award.

A.3 Brief overview of the customer verification and fraud prevention process provided in this proposal

A.4 Brief overview of the utility risk model(s) provided in this proposal.

**B. Company Overview & References:**

A summary of the firms (and any partner firms) qualifications, which must include:

B.1 An executive summary of your firm's experience with projects of similar scope and type.

B.2 An executive summary of your firm's experience with securely handling sensitive customer data of this nature (SSN, name, driver's license, etc.) Include in this summary any significant breaches of customer data in the last three (3) years and steps taken to mitigate the impact to effected customers.

B.3 Identify the dedicated account executive or single point of contact for TPU and secondary or back up representative.

B.4 Provide a minimum of three (3) recent utility contracts including reference name of the utility, description of service, contact name and phone number.

**C. Proposed Approach**

Provide your proposal for meeting the Deliverables in section 2.05 above, to include at a minimum:

C.1 An overview of all services provided. Include screen sample(s) or other materials to demonstrate ease of use of the website/portal. Specify if the verification tool works only by name and SSN (required) or if it can also consistently validate customers by Washington State driver's license and/or US Passport (optional).

C.2 A description and sample(s) of inquiry response(s) and/or fraud prevention warning(s) to demonstrate available content and simplicity of the tool's response to inquiries.

C.3 An overview of the utility risk model proposed, including a summary of how utility risk is determined within the tool.

C.4 The approach and similar experience to ensure API interface to SAP ECC 6.04 and TPU's Property Manager Portal is available within 60 business days of contract award.

C.5 Key individuals committed for implementation, including project management. If personnel/resources for implementation are required from TPU, please include a good faith estimate on the TPU resource requirement.

C.6 Sample reports to include standard activity reports and agent reports. Specify if reports are provided electronically via a file, accessed on the website, or provided on paper.

C.7 The training approach for approximately 75 agents, 15 supervisors/analysists and 8 system administrators, which is to include at a minimum five (5) written training guides with electronic versions and onsite training to staff or staff trainers.

**D. Service Level Agreement / Technical Capabilities**

Provide a proposed Service Level Agreement (SLA) which should include at a minimum:

D.1 Performance metrics including response time expectation for requests via the website/portal and API interface.

D.2 Defines roles and responsibilities for troubleshooting by TPU for all parties.

D.3 Level of support provided for each service, including the escalation process and the proposed unplanned outage reporting procedure.

D.4 A planned maintenance schedule and communication procedure for planned website/portal or API changes, stating the number of days each party needs to notify prior to any changes.

D.5 Provide in the proposal information on how each service provided to TPU will be supported by your firm, including but not limited to the below information:

i. Must be responsible for any work subcontracted to another firm for work within the scope of this RFP.

ii. Must provide proposed approach for implementation with minimal impact to the contact center.

iii. Must provide confirmation that the approach proposed will not affect the customer's credit score at any credit reporting agency.

iv. Identify all hardware and software requirements for TPU's clients

v. Able to establish appropriate security levels with profiles and passwords for end users and managers.

vi. Able to provide a test environment for any initial development efforts and during any changes on TPU or firms side during the life of the contract

**E. Fees and Charges / Value**

E-1 See Appendix A Price Proposal Sheet

**F. Small Business Enterprise (SBE) / Minority and Women's Business Enterprises (MWBE)**

F-1. Indicate whether your firm is a certified City of Tacoma Small Business Enterprise.

F-2. Indicate whether your firm will be partnering with, or subcontracting to, a certified City of Tacoma Small Business Enterprise. If yes, provide the full legal name of the SBE.

F-3 Indicate whether your firm is a minority/woman owned firm certified with the Washington State Office of Minority and Women's Business Enterprises.

F-4 Indicate whether your firm will be partnering with, or subcontracting to, a minority/woman owned firm certified with the Washington State Office of Minority and Women's Business Enterprises. If yes, provide the full legal name of the MWBE.

## 3.03 CONFIDENTIAL OR PROPRIETARY INFORMATION

A. Information that is confidential or proprietary must be clearly marked on each affected page.

B. Further, an index must be provided indicating the affected page number(s) and location(s) of all such identified material. Information not included in said index will not be reviewed for confidentiality or as proprietary before release.The Standard Terms and Conditions. (Appendix C):

C. Marking the entire submittal as "confidential" or "proprietary" or "trade secret" is not acceptable and is grounds to reject such submittal.

## 3.04 SUBMITTAL PACKAGE REQUIREMENTS

A. Submittals must be sealed in an envelope or package labeled with the specification number, specification title, and Respondent name and address, and received by the City of Tacoma Purchasing Division by the date and time specified in the Request for Proposals page or subsequent addenda.

## 3.05 EVALUATION CRITERIA

A. A Selection Advisory Committee (SAC) will review and evaluate submittals. After the evaluation, the SAC may conduct interviews of, or request presentations/demonstrations by, selected Respondents before final selection is made.

B. The SAC may use references to clarify and verify information in submittals and interviews, if conducted, which may affect the rating. The City reserves the right to contact references other than those included in the submittal.

C. The SAC may select one or more Respondents to provide the required services.

D. The City may award to other than the highest ranked submittal or Respondent if the price submitted is more than generally accepted industry standards or the budget available for this project. Also, note that the inclusion of fees and charges as an evaluation factor or a request for hourly rates does not require the City to select the Respondent submitting the lowest cost.

E. The City reserves the right to visit facilities of selected Respondents.
The City reserves the right inspect the facilities or project sites of selected Respondents where work under this Contract will be performed.

F. Respondents may be asked to provide their most recent audited financial statements demonstrating the Respondent's financial ability to meet the requirements of any Contract that may result from this RFP.

G. An incomplete response or no response may result in a score of zero for that criterion.

H. A serious deficiency in any one criterion, including excessive cost or costs over the budgeted amount, may be grounds for rejection.

I. The final selection will be that submittal or Respondent which, after review and potential on-site visits, interviews/presentations/demonstrations, reference checks, and best and final offers (BAFO), if requested, in the sole judgment of the City, best meets the requirements set forth in this RFP.

J. Core Functionality and Desired Functionality will be scored together, as a whole, rather than as separate sections.

K. Submittals will be evaluated on the following criteria:

| | **Criteria** | **Points** |
|---|---|---|
| **1** | **Letter of Introduction & Submittal Quality, Organization, Completeness (3.02 A)**<br>a) Presentation of information is logical and clear<br>b) Completeness of proposal content<br>c) Adherence to format and layout requirements<br>d) Compliance with Specifications | 5 |
| **2** | **Company Overview, Experience & References (3.02 B)** | 30 |

| | | |
|---|---|---|
| **3** | **Proposed Methodology and Approach (3.02 C)** | 30 |
| **4** | **Service Level Agreement / Technical Capabilities (3.02 D)** | 15 |
| **5** | **Fees and Charges / Value (3.02 E)** | 15 |
| **6** | **Respondent firm is a qualified Small Business Enterprise (SBE) / Minority and Women's Business Enterprises (MWBE) (3.02 F)** | 5 |

## 3.06 INTERVIEWS / ORAL PRESENTATIONS / DEMONSTRATIONS

A. An invitation to interview, present, or provide a demonstration, either in person at a City facility or by conference call or video conference (Skype, Facetime, or similar application), may be extended to selected or short-listed Respondents based on Selection Advisory Committee review of the written submittals.

B. If held, it is anticipated that interviews/presentations/demonstrations would comprise an entire day / not be longer than two hours. Instructions will be provided to selected Respondents.

C. The SAC reserves the right to adjust scoring based on additional information and/or clarifications obtained during, or resulting from, interviews, presentations, demonstrations, or references. The SAC may determine scoring criteria for the interviews following evaluation of written submittals, including the option to rank (1, 2, 3, etc.) rather than score.

D. The City reserves all rights to begin contract negotiations without conducting interviews, presentations, or demonstrations.

E. Respondents must be available to demonstrate and present within three business days' notice.

## 3.07 AWARD

A. After a Respondent(s) is selected by the SAC and prior to award, all Respondents will be notified in writing by the Purchasing Division.

B. Once a finalist (or finalists) has been selected by the Selection Advisory Committee< and approved by the director of utilities and/or city manager, or designee>, contract negotiations will begin. If a Contract is successfully negotiated, it will, if required, be submitted for final approval by the Public Utility Board and/or City Council. If an agreement cannot be reached, negotiations will be terminated and negotiations will be conducted with the next highest scored Respondent and so on, until an agreement is reached, or until the City exercises its right to cancel the solicitation.

## APPENDIX A

Signature Page

Prime Contractor's Pre-Work Form

Price Proposal Form

# SIGNATURE PAGE

## CITY OF TACOMA
## DEPARTMENT / DIVISION

All submittals must be in ink or typewritten and must be executed by a duly authorized officer or representative of the bidding/proposing entity. If the bidder/proposer is a subsidiary or doing business on behalf of another entity, so state, and provide the firm name under which business is hereby transacted.

Submittals will be received and time stamped only at the City of Tacoma Procurement & Payables Division, located in the Tacoma Public Utilities Administration Building North, 4th Floor, at 3628 South 35th Street, Tacoma, WA 98409. **See the Request for Select page near the beginning of the specification for additional details.**

**REQUEST FOR SELECT SPECIFICATION NO. xxxx**
**insert specification title**

The undersigned bidder/proposer hereby agrees to execute the proposed contract and furnish all materials, labor, tools, equipment and all other facilities and services in accordance with these specifications.

The bidder/proposer agrees, by submitting a bid/proposal under these specifications, that in the event any litigation should arise concerning the submission of bids/proposals or the award of contract under this specification, Request for Bids, Request for Proposals or Request for Qualifications, the venue of such action or litigation shall be in the Superior Court of the State of Washington, in and for the County of Pierce.

## Non-Collusion Declaration

*The undersigned bidder/proposer hereby certifies under penalty of perjury that this bid/proposal is genuine and not a sham or collusive bid/proposal, or made in the interests or on behalf of any person or entity not herein named; and that said bidder/proposer has not directly or indirectly induced or solicited any contractor or supplier on the above work to put in a sham bid/proposal or any person or entity to refrain from submitting a bid/proposal; and that said bidder/proposer has not, in any manner, sought by collusion to secure to itself an advantage over any other contractor(s) or person(s).*

_____
Bidder/Proposer's Registered Name

_____
Address

_____
City, State, Zip

_____
E-Mail Address

_____
E.I.No. / Federal Social Security Number Used on Quarterly Federal Tax Return, U.S. Treasury Dept. Form 941

_____
Signature of Person Authorized to Enter into Contracts for Bidder/Proposer — Date

_____
Printed Name and Title

_____
(Area Code) Telephone Number / Fax Number

_____
State Business License Number
in WA, also known as UBI (Unified Business Identifier) Number

_____
State Contractor's License Number
(See Ch. 18.27, R.C.W.)

Addendum acknowledgement #1_____ #2_____ #3_____ #4_____ #5_____

***THIS PAGE MUST BE SIGNED AND RETURNED WITH SUBMITTAL.***

City of Tacoma
Community & Economic Development
Office of Small Business Enterprise
747 Market Street, Room 808
Tacoma, WA 98402
253-594-7933 or 253-591-5224

# PRIME CONTRACTOR'S PRE-WORK FORM

**Company Name** _____ **Telephone** _____

**Address/City/State/Zip Code** _____

**Specification Number** _____ **Specification Title** _____

| JOB CATEGORIES SPECIFY | TOTAL EMPLOYEES | | TOTAL MINORITY EMPLOYEES | | BLACK | | ASIAN or PACIFIC ISLANDER | | AMERICAN INDIAN or ALASKAN NATIVE | | HISPANIC | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | M | F | M | F | M | F | M | F | M | F | M | F |
| Officer / Managers | | | | | | | | | | | | |
| Supervisors | | | | | | | | | | | | |
| Project Managers | | | | | | | | | | | | |
| Office / Clerical | | | | | | | | | | | | |
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| Apprentices | | | | | | | | | | | | |
| Trainees | | | | | | | | | | | | |
| TOTALS | | | | | | | | | | | | |

## CONTRACTOR'S PROJECTED WORK FORCE - THIS PROJECT

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Superintendent | | | | | | | | | | | | |
| Foreman | | | | | | | | | | | | |
| Operators | | | | | | | | | | | | |
| Laborers | | | | | | | | | | | | |
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| Apprentice | | | | | | | | | | | | |
| Trainee | | | | | | | | | | | | |
| TOTALS | | | | | | | | | | | | |

**Type or Print Name of Responsible Officer / Title** _____ **Signature of Responsible Officer** _____ **Date** _____

## INSTRUCTIONS FOR COMPLETING
## PRIME CONTRACTOR'S PRE-WORK FORM

***This form only applies to employees who will be working on this specific project.***

1. "Heading" the company name and address should reflect the prime contractor actually doing business with the City of Tacoma. If this address is different from that of the Equal Employment Opportunity Officer that administers the EEO programs of the company, the Equal Employment Opportunity Officer's address should be noted in the "Comments" section at the bottom of the form. "Telephone" should contain the area code, telephone number and extension (if any) for the Equal Employment Officer or the responsible official.

2. "Job Categories" at the extreme left hand column of the form specifying "Job Categories" lists "Officials & Managers." You are to list in addition to Officials & Managers any appropriate job titles such as Sales Workers, Office/Clerical, Professionals, Technical, etc., as they apply to your own company and only as pertains to this specific project.

3. The "M" and "F" headings at the top of each column refer to "Male" and "Female."

4. The "Total Employees" column should list the total number of male employees under "M" and the total female number of female employees under "F" for each job category listed. They should be listed in a similar manner in the "Total" category at the bottom of the form. The "Total Employees" column should include all those employees listed under "Non-Minority" and "Total Minorities." "Non-Minority" should include all employees not listed in the minority columns.

5. "Total Minorities" should include all employees listed under the "Black," "Asian or Pacific Islander" (A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.), "American Indian or Alaskan Native," and "Hispanic" columns. These columns should include only employees who are members of that particular minority group. Designation and definitions of ethnic/national origin status follow the instructions and definitions of the Federal EEO-1 Form of the U. S. Equal Employment Opportunity Commission.

6. "Totals" this line should reflect the total of all lines in each of the above columns.

7. The signature of your company's designated responsible official or similar official responsible for equal employment opportunity must appear in the designated space at the bottom of the form. Please PRINT OR TYPE the person's name on the top line across from the signature. This is required since some signatures are difficult to read.

8. "Comments" this section is to be used as needed for explanations to under utilization rate or lack of turnover, proposed expansion or reduction of staff or any other pertinent information you believe will help clarify or explain the data presented on the form. If you need additional space, please explain on a separate sheet of paper.

9. If you need assistance or have questions regarding the completion of this form, please call the SBE Office at 253-594-7933 or 253-591-5224.

**Price Proposal Form:**

## IDENTITY VERIFICATION SERVICES

The Respondent shall provide standard rates for Identity Verification, hits and partials, no charge for searches without results for services provided during standard operating hours (Monday through Friday, 8am to 5pm Pacific Standard Time) and non- standard operating hours.

| Description of Services | Minimum Transaction Count | Maximum Transaction Count | Rate / Transaction |
|---|---|---|---|
| Identity Verification | 2,001 | 5,000 | |
| Identity Verification | 5,001 | 10,000 | |
| Identity Verification | 10,001 | 25,000 | |

## CREDIT RISK MODEL SERVICES

The Respondent shall provide standard rates for Credit Risk Model, hits, no charge for searches for services provided during standard operating hours (Monday through Friday, 8am to 5pm Pacific Standard Time) and non- standard operating hours.

| Description of Services | Minimum Transaction Count | Maximum Transaction Count | Rate / Transaction |
|---|---|---|---|
| Credit Risk Model | 2,001 | 5,000 | |
| Credit Risk Model | 5,001 | 10,000 | |
| Credit Risk Model | 10,001 | 25,000 | |

## IDENTITY VERIFICATION AND CREDIT RISK

The respondent shall provide a cost for bundled Identity Verification, and Credit Risk model services, indicating the % discount when both Identity and Credit Risk models are requested on same transaction.

| Description of Services | Minimum Transaction Count | Maximum Transaction Count | Rate / Transaction |
|---|---|---|---|
| Identity Verification with Credit Risk | 2,001 | 5,000 | |
| Identity Verification with Credit Risk | 5,001 | 10,000 | |
| Identity Verification with Credit Risk | 10,001 | 25,000 | |

ADDITIONAL

Define and provide any costs for any expedited services offered by respondent:

_____
_____
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Define and provide any costs for any additional services offered by respondent:

_____
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_____

## APPENDIX B

Sample Contract

Standard Certificate of Insurance and Endorsement Requirements

# PERSONAL SERVICES CONTRACT

**THIS CONTRACT**, made and entered into effective this_____day of_____, 20_____("Effective Date"), by and between the **CITY OF TACOMA**, a municipal corporation of the State of Washington (hereinafter referred to as the "CITY"), and Insert Name of Contractor, a Insert Business Entity Status, e.g., sole proprietorship, limited liability company, Washington state corporation, etc., (hereinafter referred to as "CONTRACTOR");

In consideration of the mutual promises and obligations hereinafter set forth, the Parties hereto agree as follows:

## 1. Scope of Services/Work

**A.** The CONTRACTOR agrees to diligently and completely perform the services and/or deliverables described in Exhibit(s)_____attached hereto and incorporated herein.

## 2. Term

**A.** All services shall be satisfactorily completed on or before_____and this Contract shall expire on said date unless mutually extended in writing by the Parties.

**B.** Neither party shall be considered to be in default in the performance of this Contract to the extent such performance is prevented or delayed by any cause which is beyond the reasonable control of the affected party and, in such event, the time for performance shall be extended for a period equal to any time lost as a result thereof.

SAMPLE

## 3. Compensation and Payment

**A.** The CITY shall compensate the CONTRACTOR for the services and deliverables performed under this Contract as follows:

***Check ONLY one:***

☐ On the basis of Time and Materials according to the rates and charges set forth in Exhibit .

☐ In accordance with Exhibit .

☐ At the rate of $ per hour.

**B.** The total price to be paid by CITY for CONTRACTOR'S full and complete performance of the Scope of Work hereunder shall not exceed $ without the written consent of the CITY. Said price shall be the total compensation for CONTRACTOR'S performance hereunder including, but not limited to, all work, deliverables, materials, supplies, equipment, subcontractor's fees, and all reimbursable travel and miscellaneous or incidental expenses to be incurred by CONTRACTOR.

**C.** The CONTRACTOR shall submit monthly invoices, in a format comparable to the invoice attached hereto and identified as Exhibit_____, for services completed and/or deliverables furnished during the previous month. Upon CITY'S request, CONTRACTOR

shall submit necessary and appropriate documentation, as determined by the CITY, for all invoiced services and deliverables.

**D.** Payment shall be made through the CITY'S ordinary payment process, and shall be considered timely if made within 30 days of receipt of a properly completed invoice.

**E.** The CITY may withhold payment to the CONTRACTOR for any services or deliverables not performed as required hereunder until such time as the CONTRACTOR modifies such services or deliverables to the satisfaction of the CITY.

**F.** All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced.

**G.** In the event the CONTRACTOR incurs cost in excess of the sum authorized for service under this Contract, the CONTRACTOR shall pay such excess from its own funds, and the CITY shall not be required to pay any part of such excess, and the CONTRACTOR shall have no claim against the CITY on account thereof.

**4. Independent Contractor Status**

**A.** The services and deliverables shall be furnished by the CONTRACTOR as an independent Contractor, and nothing herein contained shall be construed to create a relationship of employer/employee or master/servant. No payroll or employment taxes of any kind shall be withheld or paid by the CITY with respect to payments to CONTRACTOR. The payroll or employment taxes that are the subject of this paragraph include, but are not limited to, FICA, FUTA, federal income tax, state personal income tax, state disability insurance tax and state unemployment insurance tax. By reason of CONTRACTOR's status as an independent Contractor hereunder, no workers' compensation insurance has been or will be obtained by the CITY on account of CONTRACTOR. CONTRACTOR may be required to provide the CITY proof of payment of these said taxes and benefits. If the CITY is assessed or deemed liable in any manner for those charges or taxes, the CONTRACTOR agrees to hold the CITY harmless from those costs, including attorney's fees.

SAMPLE

**B.** The CONTRACTOR shall provide at its sole expense all materials, office space, and other necessities to perform its duties under this Contract, unless otherwise specified in writing herein.

**5. Standard of Performance Warranty**

The CONTRACTOR warrants that all services performed pursuant to this Contract shall be generally suitable for the use to which CITY intends to use said services and deliverables as expressed in the Scope of Services/Work (Exhibit (s)_____. Additional warranties, if any, for incidental product deliverables hereunder are set forth in Exhibit____<<or in Section 1.A.(2) above>>.

**6. Contract Administration and Right to Audit**

**A.** The Insert Dept/Division/Engineer/City Contact for the CITY shall have primary responsibility for contract administration and approval of services to be performed by the CONTRACTOR, and shall coordinate all communications between the CONTRACTOR and the CITY.

**B.** The CONTRACTOR shall, at such times and in such form as the CITY may reasonably require, furnish the CITY with periodic status reports pertaining to the services undertaken pursuant to this Contract.

**C.** CONTRACTOR shall establish and maintain records with respect to all matters related to the performance of this Contract. Except as otherwise authorized or required by CITY the CONTRACTOR shall retain such records for a period of six (6) years after receipt of the final payment under this Contract or termination of this Contract.

**D.** Upon CITY's request, the Contractor shall make available to CITY all accounts, records, and documents related to the Scope of Work for CITY's inspection, auditing, or evaluation during normal business hours as reasonably needed by CITY to assess performance, compliance, and/or quality assurance under this Contract or in satisfaction of CITY's public disclosure obligations as applicable.

## 7. Notices

Except for routine operational communications, which may be delivered personally or transmitted by electronic mail or facsimile, all notices required hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or mailed first-class mail, postage prepaid, to the parties at the following addresses:

| CITY | CONTRACTOR |
|---|---|
| Name and Address | Name and Address |
| Phone | Phone |
| Facsimile | Facsimile |
| E-mail | E-mail |

SAMPLE

## 8. Termination and Suspension

**A.** The CITY may terminate this Contract at any time, with or without cause, by giving ten (10) business days written notice to CONTRACTOR. In the event of termination, all finished and unfinished work prepared by the CONTRACTOR pursuant to this Contract shall be provided to the CITY. In the event CITY terminates this Contract due to the CITY's own reasons and without cause due to the CONTRACTOR's actions or omissions, the CITY shall pay the CONTRACTOR the amount due for actual work and services necessarily performed under this Contract up to the effective date of termination, not to exceed the total compensation set forth herein.

**B.** The CITY may suspend this Contract, at its sole discretion, upon seven (7) business days written notice to the CONTRACTOR. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to the CONTRACTOR'S reasonable expenses and shall be subject to verification. The CONTRACTOR shall resume performance of services under this Contract without delay when the suspension period ends.

**C.** Termination or suspension of this Contract by CITY shall not constitute a waiver of any claims or remaining rights the CITY may have against CONTRACTOR relative to performance hereunder.

**9. Taxes, Licenses and Permits**

**A.** The CONTRACTOR acknowledges that it is responsible for the payment of all charges and taxes applicable to the services performed under this Contract, and the CONTRACTOR agrees to comply with all applicable laws regarding the reporting of income, maintenance of records, and all other requirements and obligations imposed pursuant to applicable law. If the CITY is assessed, made liable, or responsible in any manner for such charges or taxes, the CONTRACTOR agrees to hold the CITY harmless from such costs, including attorney's fees.

**B.** In the event the CONTRACTOR fails to pay any taxes, assessments, penalties, or fees imposed by any governmental body, including a court of law, then the CONTRACTOR authorizes the CITY to deduct and withhold or pay over to the appropriate governmental body those unpaid amounts upon demand by the governmental body. It is agreed that this provision shall apply to taxes and fees imposed by City ordinance. Any such payments shall be deducted from the CONTRACTOR's total compensation.

**C.** The CONTRACTOR, at its expense, shall obtain and keep in force any and all necessary licenses and permits. The CONTRACTOR shall obtain a business license as required by Tacoma Municipal Code Subtitle 6B.20 and shall pay business and occupation taxes as required by Tacoma Municipal Code Subtitle 6A.30.

**10. Indemnification**

SAMPLE

**A.** The CONTRACTOR shall indemnify, defend and hold harmless the CITY, its officials, officers, agents, employees, and volunteers from any and all claims, demands, damages, lawsuits, liabilities, losses, liens, expenses and costs arising out of the subject matter of this Contract; provided that this provision shall not apply to the extent that damage or injury results from the fault of the CITY, or its officers, agents, or employees. The term "fault" as used herein shall have the same meaning as set forth in RCW 4.22.015, as that statute may hereafter be amended.

**B.** The CONTRACTOR specifically assumes potential liability for actions brought by the CONTRACTOR'S own employees against the CITY and, solely for the purpose of this indemnification and defense, the CONTRACTOR specifically waives any immunity under the state industrial insurance law, Title 51 RCW. THE CONTRACTOR RECOGNIZES THAT THIS WAIVER WAS THE SUBJECT OF MUTUAL NEGOTIATION.

**C.** This indemnification shall extend to and include attorneys' fees and the cost of establishing the right of indemnification hereunder in favor of the CITY. This indemnification shall survive the termination of this Contract.

**11. Insurance**

During the course and performance of the services herein specified and for the entire term of the Contract, CONTRACTOR will maintain the insurance coverage in the amounts and in the manner specified in the City of Tacoma Insurance Requirements as is applicable to the services and deliverables provided under this Contract. The City of Tacoma Insurance Requirements document is fully incorporated herein by reference. CONTRACTOR shall not begin work under the Contract until the required insurance has been obtained and approved by

CITY. Proof of insurance shall be provided by CONTRACTOR as is specified in the City of Tacoma Insurance Requirements.

**12. Nondiscrimination**

The CONTRACTOR agrees to take all steps necessary to comply with all federal, state, and City laws and policies regarding non-discrimination and equal employment opportunities. The CONTRACTOR shall not discriminate in any employment action because of race, religion, creed, color, national origin or ancestry, sex, gender identity, sexual orientation, age, marital status, familial status, veteran or military status, the presence of any sensory, mental or physical disability or the use of a trained dog guide or service animal by a disabled person. In the event of non-compliance by the CONTRACTOR with any of the non-discrimination provisions of this Contract, the CITY shall be deemed to have cause to terminate this Contract, in whole or in part.

**13. Conflict of Interest**

No officer, employee or agent of the CITY, nor any member of the immediate family of any such officer, employee or agent as defined by City ordinance, shall have any personal financial interest, direct or indirect, in this Contract, either in fact or in appearance. The CONTRACTOR shall comply with all federal, state, and City conflict of interest laws, statutes and regulations. The CONTRACTOR represents that the CONTRACTOR presently has no interest and shall not acquire any interest, direct or indirect, in the program to which this Contract pertains which would conflict in any manner or degree with the performance of the CONTRACTOR'S services and obligations hereunder. The CONTRACTOR further covenants that, in performance of this Contract, no person having any such interest shall be employed. The CONTRACTOR also agrees that its violation of the CITY'S Code of Ethics contained in Chapter 1.46 of the Tacoma Municipal Code shall constitute a breach of this Contract subjecting the Contract to termination.

SAMPLE

**14. Public Disclosure**

**A.** This Contract and documents provided to the CITY by CONTRACTOR hereunder are deemed public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW (Public Records Act). Thus, the CITY may be required, upon request, to disclose this Contract and documents related to it unless an exemption under the Public Records Act or other laws applies. In the event CITY receives a request for such disclosure, determines in its legal judgment that no applicable exemption to disclosure applies, and CONTRACTOR has complied with the requirements of sub-section B herein, CITY agrees to provide CONTRACTOR ten (10) days written notice of impending release. Should legal action thereafter be initiated by CONTRACTOR to enjoin or otherwise prevent such release, all expense of any such litigation shall be borne by CONTRACTOR, including any damages, attorneys fees or costs awarded by reason of having opposed disclosure. CITY shall not be liable for any release where notice was provided and CONTRACTOR took no action to oppose the release of information. Notice of any proposed release of information pursuant to Chapter 42.56 RCW, shall be provided to CONTRACTOR according to the "Notices" provision herein.

**B.** If CONTRACTOR provides the CITY with records that CONTRACTOR considers confidential or proprietary, CONTRACTOR must mark all applicable pages of said record(s) as "Confidential" or "Proprietary." If CONTRACTOR fails to so mark record(s), then (1) the

CITY, upon request, may release said record(s) without the need to satisfy the requirements of subsection A above; and (2) the CONTRACTOR expressly waives its right to allege any kind of civil action or claim against the CITY pertaining to the release of said record(s).

**15. Dispute Resolution**

In the event of a dispute pertaining to this Contract, the parties agree to attempt to negotiate in good faith an acceptable resolution. If a resolution cannot be negotiated, then the parties agree to submit the dispute to voluntary non-binding mediation before pursuing other remedies. This provision does not limit the CITY'S right to terminate authorized by this Contract.

**16. Miscellaneous Provisions**

**A.** Governing Law and Venue. Washington law shall govern the interpretation of this Contract. Pierce County shall be the venue of any mediation, arbitration or litigation arising out of this Contract.

**B.** Assignment. The CONTRACTOR shall not assign, subcontract, delegate, or transfer any obligation, interest or claim to or under this Contract or for any of the compensation due hereunder without the prior written consent of the CITY.

**C.** No Third Party Beneficiaries. This Contract shall be for the sole benefit of the parties hereto, and nothing contained herein shall create a contractual relationship with, or create a cause of action in favor of, a third party against either party hereto.

SAMPLE

**D.** Waiver. A waiver or failure by either party to enforce any provision of this Contract shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision of this Contract.

**E.** Severability and Survival. If any term, condition or provision of this Contract is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of this Contract, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of this Contract, shall survive termination of this Contract.

**F.** Entire Agreement . This Contract and the attached Exhibits, as modified herein, contain the entire agreement between the parties as to the services to be rendered hereunder. All previous and contemporaneous agreements, representations or promises and conditions relating to the subject matter of this Contract are superseded hereby. The Parties hereto mutually acknowledge, understand and agree that the terms and conditions set forth herein shall control and prevail over any conflicting terms and conditions stated in any attachments hereto.

**G.** Modification. No modification or amendment of this Agreement shall be effective unless set forth in writing and signed by the Parties.

**H.** Authority to enter into this Contract. The undersigned Contractor representative, by his/her signature below, represents and warrants that he/she is duly authorized to execute this legally binding Contract for and on behalf of Contractor.

**IN WITNESS WHEREOF** the parties hereto have accepted and executed this Contract as of the Effective Date first written above.

**CITY OF TACOMA**

_____
Printed Name/Title Division Head or Representative

_____
Printed Name/Title of additional department/division representative, if applicable

_____
Director of Finance

Approved as to Form:

_____
Deputy City Attorney

Attest:

_____
City Clerk

**INSERT NAME OF CONTRACTOR**

_____

Printed Name: _____

Title: _____

Address:

_____

_____

_____
City/State/Zip

Tax ID: _____

SAMPLE

**EXHIBIT "A"**

**SCOPE OF WORK**

SAMPLE

SAP Contract No._____

**EXHIBIT "B"**

**INVOICE**

**This form is intended to illustrate the information the City of Tacoma needs to process Contract payments. The City of Tacoma prefers that CONTRACTOR use its own standard business invoice forms so long as they include the following information. CONTRACTORS who do not have a standard business invoice form may use this form as their invoice. Your cooperation in providing the information we are requesting will ensure prompt processing of your payments.**

**I HEREBY REQUEST PAYMENT FOR THE FOLLOWING ITEMIZED SERVICES AND/OR PRODUCT DELIVERABLES:**

Services (Describe):

Deliverables (Describe):

**AS PER CONTRACT No.:_____ AMOUNT DUE: _____**

**I HEREBY CERTIFY THAT THIS BILL IS CORRECT AND JUST AND THAT PAYMENT FOR THE SERVICES AND/OR DELIVERABLES IDENTIFIED HAS NOT BEEN RECEIVED.**

SAMPLE

**BY: _____ DATE SIGNED:**

**SIGNATURE:**

**TITLE:**

**ORGANIZATION NAME: _____**

**FEDERAL TAX ID No. or SS No.: _____**

**TELEPHONE NUMBER: _____**

**PLEASE REMIT PAYMENT TO:** (Name and Address of Contractor)

**I Attest and Certify that all Services and/or Deliverables identified in this Invoice have been performed and/or supplied.**

_____
**Contract Administrator Signature**

City Dept/Division:

Contact Name:

Phone: 253-

Fax: 253-

# CITY OF TACOMA INSURANCE REQUIREMENTS

The Contractor (Contractor) shall obtain and maintain the minimum insurance set forth below. By requiring such minimum insurance, the City of Tacoma (City) shall not be deemed or construed to have assessed the risk that may be applicable to Contractor under this Contract. Contractor shall assess its own risks and, if it deems appropriate and /or prudent, maintain greater limits and/or broader coverage.

## 1. GENERAL REQUIREMENTS

The following General Requirements apply to Contractor and to Subcontractor(s) of every tier performing services or activities pursuant to the terms of this Contract. Contractor acknowledges and agrees to the following insurance requirements applicable to Contractor and Contractor's Subcontractor(s):

1.1. City reserves the right to approve or reject the insurance provided based upon the insurer, terms and coverage, the Certificate of Insurance, and/or endorsements.

1.2. The insurance must be written by companies licensed in the State of Washington pursuant to RCW 48 with an (A-) VII or higher in the A.M. Best's Key Rating Guide www.ambest.com.

1.3. Contractor shall keep this insurance in force during the entire term of the Contract and for thirty (30) calendar days after completion of all work required by the Contract, unless otherwise provided herein.

1.4. Policies of Insurance, *such as Commercial General Liability or Commercial Auto Liability or Marine General Liability or Aircraft General liability or Excess Liability,* required under this Contract that name City as Additional Insured shall:

1.4.1. Be considered primary and non-contributory for all claims.
1.4.2. Contain a "Severability of Insureds", "Separation of Interest", or "Cross Liability" provision and a "Waiver of Subrogation" clause in favor of City.

1.5. A Waiver of Subrogation in favor of City for General Liability and Automobile Liability.

1.6. Insurance limits shown below may be written with an excess policy that follows the form of an underlying primary liability policy or an excess policy providing the required limit.

1.7. Insurance policy(ies) shall be written on an "occurrence" form, except for Professional Liability/Errors and Omissions, Pollution Liability, and Cyber/Privacy and Security.

1.8. If coverage is approved and purchased on a "Claims-Made" basis, Contractor warrants continuation of coverage, either through policy renewals or by the purchase of an extended reporting period endorsement as set forth below.

1.9. Contractor shall provide City notice of any cancellation or non-renewal of this required insurance within 30 calendar days.

1.10. Contractor shall not begin work under the Contract until the required insurance has been obtained and approved by City.

1.11. Contractor shall not allow any insurance to be cancelled or lapse during any term of this Contract, otherwise it shall constitute a material breach of the Contract, upon which City may, after giving five (5) business day notice to Contractor to correct the breach, immediately

terminate the Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith; with any sums so expended to be repaid to City by Contractor upon demand, or at the sole discretion of City, offset against funds due Contractor from City.

1.12. Contractor shall be responsible for all premiums, deductibles and self-insured retentions. All deductibles and self-insured retained limits shall be shown on the Certificates of Insurance. Any deductible or self-insured retained limits in excess of Ten Thousand Dollars ($10,000) must be approved by City Risk Management Division.

1.13. Insurance coverages specified in this Contract are not intended and will not be interpreted to limit the responsibility or liability of Contractor or Subcontractor(s).

1.14. City reserves the right to review insurance requirements during any term of the Contract and to require that Contractor make reasonable adjustments when the scope of services has been expanded.

1.15. All costs for insurance shall be incidental to and included in the unit or lump sum prices of the Contract and no additional payment will be made by City to Contractor.

1.16. City, including its officers, elected officials, employees, agents, and authorized volunteers, and any other entities, as required by the Contract, shall be named as additional insured(s) by endorsement for all liability insurance policies set forth below. No specific person or department should be identified as the additional insured.

1.17. Contractor shall deliver a Certificate of Insurance for each policy of insurance meeting the requirements set forth herein when Contractor delivers the signed Contract for the work to City. Contractor shall deliver copies of any applicable Additional Insured, Waiver of Subrogation, and primary and non-contributory endorsements. Contract or Permit number and the City Department must be shown on the Certificate of Insurance.

1.18. Failure by City to identify a deficiency in the insurance documentation provided by Contractor or failure of City to demand verification of coverage or compliance by Contractor with these insurance requirements shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

## 2. SUBCONTRACTORS

It is Contractor's responsibility to ensure that each subcontractor obtain and maintain adequate liability insurance coverage. Contractor shall provide evidence of such insurance upon City's request.

## 3. REQUIRED INSURANCE AND LIMITS

The insurance policies shall provide the minimum coverages and limits set forth below. Providing coverage in these stated minimum limits shall not be construed to relieve Contractor from liability in excess of such limits.

3.1. Commercial General Liability (CGL) Insurance

The CGL insurance policy must provide limits not less than One Million Dollars ($1,000,000) each occurrence and Two Million Dollars ($2,000,000) annual aggregate.

The CGL policy shall be written on an Insurance Services Office (ISO) form CG 00 01 (04-13) or its equivalent. Products and Completed Operations shall be maintained for a period of one year following final acceptance of the work. The CGL policy shall be endorsed to include:

3.1.1 A per project aggregate policy limit.
3.1.2 Contractual Liability-Railroad using ISO form CG 24 17 (10-01) or equivalent if Contractor is performing work within fifty (50) feet of a City railroad right of way.
3.1.3 City as additional insured using ISO form endorsements CG 20 10 (04-13) and CG 20 37 (04-13) or equivalent for ongoing and completed operations, or using ISO form endorsement CG 20 26 (04-13) or equivalent for Facility Use Agreements. Neither additional insured provisions within an insurance policy form, nor blanket additional insured endorsements will be accepted in lieu of the endorsements specified herein.

3.2 Workers' Compensation

3.2.1 Contractor shall comply with Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington, as well as any other similar coverage required for this work by applicable federal laws of other states.

3.3 Employers' Liability (EL) (Stop-Gap) Insurance
Contractor shall maintain EL coverage with limits not less than One Million Dollars ($1,000,000) each employee, One Million Dollars ($1,000,000) each accident, and One Million Dollars ($1,000,000) policy limit.

3.4 Professional Liability Insurance (PLI) or Errors and Omissions (E&O)
Contractor and/or its subcontractor shall maintain PLI or E&O covering acts, errors and omissions arising out of the professional services under this contract. Such policy must provide minimum limits of One Million Dollars ($1,000,000) per claim and Two Million Dollars ($2,000,000) aggregate. If the policy limit includes the payment of claims or defense costs, from the policy limit, the per claim limit shall be Two Million Dollars ($2,000,000). If the scope of such design-related professional services includes work related to pollution conditions, the PLI policy shall include Pollution Liability coverage. If provided on a "claims-made" basis, such coverage shall be maintained by policy renewals or an extended reporting period endorsement for not less than three years following the end of the Contract.

3.5

3.6 Cyber/Privacy and Security (CP&S) Insurance
Contractor shall maintain CP&S insurance with coverage of not less than One Million Dollars ($1,000,000) per claim and Two Million Dollars ($2,000,000) general aggregate that includes, but is not limited to, coverage for first party costs and third-party claims. Coverage shall include loss resulting from data security/privacy breach, unauthorized access, denial of service attacks, introduction of virus and malicious code, network security failure, dissemination or destruction of electronic data, business interruptions, privacy law violation, and disclosure of non-public, personal and confidential information, and failure to disclose breaches as required law or contract. Coverage shall include notifications and other expenses incurred in remedying a privacy breach as well as costs to investigate and restore data. Coverage shall also include communications liability (e.g., infringement of copyrights, title, slogan, trademark, trade name, trade dress, service mark, or service name in the policy holders covered material).

3.7 Other Insurance
Other insurance may be deemed appropriate to cover risks and exposures related to the scope of work or changes to the scope of work required by City. The costs of such necessary and appropriate insurance coverage shall be borne by Contractor.

**4. <u>CONTRACTOR</u>**

As used herein, "Contractor" shall be the Supplier(s) entering a Contract with City, whether designated as a Supplier, Contractor, Vendor, Proposer, Bidder, Respondent, Seller, Merchant, Service Provider, or otherwise.

# APPENDIX C

Standard Terms and Conditions

Small Business Enterprise (SBE) Program

**CITY OF TACOMA**
**STANDARD TERMS AND CONDITIONS**
**GOVERNS BOTH GOODS AND SERVICES AS APPLICABLE**

In the event of an award by the City, these Terms and Conditions stated herein, Additional Contract Documents if issued, Solicitation if issued, Purchase Orders if issued by City, and Supplier's Submittal, if provided, shall constitute the Contract between City and Supplier for the acquisition of goods, including materials, supplies, and equipment or for the provision of services and deliverables.

Said documents represent the entire Contract between the parties and supersede any prior oral statements, discussions, or understandings between the parties, and/or subsequent Supplier invoices. No modification of the Contract shall be effective unless mutually agreed in writing.

The specific terms and conditions of any Solicitation (Specification, Request for Bids, Request for Proposals, Requests for Qualifications, Requests for Quotations, Request for Information, bid documents, request to enter into negotiations, or other form of solicitation issued by City, including any general, special, or technical provisions associated with such Solicitations) are incorporated herein by reference and supersede these Terms and Conditions where there is conflict or inconsistency.

In the event Additional Contract Documents are negotiated and agreed to in writing between Supplier and City, the specific terms of such Additional Contract Documents are incorporated herein by reference and supersede all other terms and conditions where there is conflict or inconsistency.

These Terms and Conditions, Additional Contract Documents if issued, Solicitation if issued, City purchase order if issued, are controlling over Supplier's Submittal if a Submittal is provided. Submittals if provided are incorporated herein by reference.

**1.01 SUPPLIER / CONTRACTOR**

As used herein, "Supplier" or "Contractor" shall be the Supplier(s) entering a Contract with City, whether designated as a Supplier, Contractor, Vendor, Proposer, Bidder, Respondent, Seller, Merchant, Service Provider, or otherwise.

**1.02 SUBMITTAL**

Submittal means Bids, Proposals, Quotes, Qualifications or other information, content, records or documents submitted in response to a City Solicitation.

**1.03 FORMS OF SUBMITTAL**

Unless stated otherwise, all submittals must be in SAP Ariba and submitted exactly as specified or directed, and all required forms must be used.

**1.04 COSTS TO PREPARE SUBMITTAL**

The City is not liable for any costs incurred by Supplier for the preparation of materials or a Submittal provided in response to a solicitation, conducting presentations to the City, or any other activities related to responding to the City's Solicitation.

**1.05 LICENSES/PERMITS**

A. Suppliers must have a Washington state business license at the time of Submittal and throughout the term of the Contract. Failure to include a Washington state business license may be grounds for rejection of the Submittal. Information regarding Washington state business licenses may be obtained at http://bls.dor.wa.gov.

B. Upon award, it is the responsibility of the Supplier to register with the City of Tacoma's Tax and License Division, 733 South Market Street, Room 21, Tacoma, WA 98402-3768, 253-591-5252, https://www.cityoftacoma.org/government/city_departments/finance/tax_and_license/. Supplier shall obtain a business license as is required by Tacoma Municipal Code Subtitle 6C.20.

C. During the term of the Contract, Supplier, at its expense, shall obtain and keep in force any and all necessary licenses and permits.

## 1.06 PUBLIC DISCLOSURE: PROPRIETARY OR CONFIDENTIAL INFORMATION

A. Supplier Submittals, all documents and records comprising the Contract, and all other documents and records provided to the City by Supplier are deemed public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW (Public Records Act). Thus, City may be required, upon request, to disclose the Contract and documents or records related to it unless an exemption under the Public Records Act or other laws applies. In the event CITY receives a request for such disclosure, determines in its legal judgment that no applicable exemption to disclosure applies, and Supplier has complied with the requirements to mark records considered confidential or proprietary as such requirements are stated below, City agrees to provide Supplier 10 days written notice of impending release. Should legal action thereafter be initiated by Supplier to enjoin or otherwise prevent such release, all expense of any such litigation shall be borne by Supplier, including any damages, attorneys' fees or costs awarded by reason of having opposed disclosure. City shall not be liable for any release where notice was provided and Supplier took no action to oppose the release of information.

B. If Supplier provides City with records or information that Supplier considers confidential or proprietary, Supplier must mark all applicable pages or sections of said record(s) as "Confidential" or "Proprietary." Further, in the case of records or information submitted in response to a Request for Proposals, an index must be provided indicating the affected pages or sections and locations of all such material identified Confidential or Proprietary. Information not included in the required index will not be reviewed for confidentiality or as proprietary before release. If Supplier fails to so mark or index Submittals and related records, then the City, upon request, may release said record(s) without the need to satisfy the requirements of subsection A above; and Supplier expressly waives its right to allege any kind of civil action or claim against the City pertaining to the release of said record(s).

C. Submission of materials in response to City's Solicitation shall constitute assent by Supplier to the foregoing procedure and Supplier shall have no claim against the City on account of actions taken pursuant to such procedure.

## 1.07 SUSTAINABILITY

A. The City has interest in measures used by its contractors to ensure sustainable operations with minimal adverse impact on the environment. The City seeks to do business with vendors that value community and environmental stewardship that help us meet our sustainable purchasing goals.

B. The City encourages the use of environmentally preferable products or services that help to minimize the environmental and human health impacts of City operations. Suppliers are encouraged to incorporate environmentally preferable products or services into Submittals wherever possible. "Environmentally preferable" means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

C. Environmental Standards. The City seeks to ensure that all purchases comply with current environmental standards and product specifications. Where appropriate, third party independent certifiers such as Green Seal and USEPA Standards shall be a minimum specification for products to the City, unless specified otherwise herein.

D. The City encourages the use of sustainability practices and desires any awarded Suppliers to assist in efforts to address such factors when feasible for:

1. Pollutant releases
2. Toxicity of materials used
3. Waste generation
4. Greenhouse gas emissions, including transportation of materials and services
5. Recycle content
6. Energy consumption
7. Depletion of natural resources
8. Potential impact on human health and the environment

## 1.08 ALTERATIONS NOT ALLOWED

Except as otherwise specifically provided in a Solicitation, Submittals that are incomplete or conditioned in any way, contain erasures, alternatives or items not called for, or not in conformity with law, may be rejected as being non-responsive. Any attempt to condition a Submittal by inserting exceptions to the Solicitation or any conditions, qualifications or additions that vary its terms may result in rejection of the Submittal. The City may reject any submittal containing a material deviation from the Solicitation.

## 1.09 CORRECTION OF AMBIGUITIES AND OBVIOUS ERRORS

A. The City reserves the right to correct obvious errors in Supplier's Submittal. In this regard, if the unit price does not compute to the extended total price, the unit price shall govern.

B. Supplier shall notify the City of Tacoma Procurement and Payables Division in writing of any ambiguity, conflict, discrepancy, omission or other error in a Solicitation no later than five business days prior to the submittal deadline.

   1. For solicitations conducted in SAP Ariba, Supplier shall notify the City of Tacoma Procurement and Payables Division on the message board of the event.

   2. For all other solicitations, Supplier shall notify the contract person listed in the Solicitation.

C. The City will make necessary modifications by addendum.

D. Supplier is responsible for identifying ambiguities, conflicts, discrepancies, omissions or other errors in the Solicitation prior to providing its Submittal or the ambiguity, conflict, discrepancy, omission, or other error is waived. Any Submittal that includes assumed clarifications and/or corrections without the required authentication of the same is subject to rejection.

## 1.10 WARRANTIES/GUARANTEE

A. Suppliers warrant that all items, including services, as applicable:

   1. Are merchantable.

   2. Comply with the City's latest drawings and specifications.

   3. Are fit for the City's intended use.

   4. Will be performed according to the skill and care required by customarily accepted good practices and procedures followed by service providers rendering the same or similar type of service.

   5. Are new and unused unless otherwise stated.

   6. Comply with all applicable safety and health standards established for such products by the Occupational Safety and Health Administration (OSHA), Washington Industrial Safety and Health Act (WISHA) and/or Consumer Products Safety Act (CPSA), and all other applicable state and federal laws or agency regulations.

   7. Are properly packaged and contain appropriate instructions or warnings, including applicable MSDS sheets.

## 1.11 PATENTS, TRADEMARKS AND COPYRIGHTS

Suppliers warrant that equipment and/or materials furnished, including software, do not infringe on any patent, trademark or copyright, and agree to indemnify, defend and hold harmless, the City in the event of any infringement or claim thereof.

## 1.12 DELIVERY OF SUBMITTALS TO THE CITY’S PROCUREMENT AND PAYABLES DIVISION

A. Submittal packages must be received by the City’s Procurement and Payables Division in SAP Ariba (unless another form of delivery is stated), prior to the scheduled time and date stated in the Solicitation.

B. Supplier is solely responsible for timely delivery of its Submittal.

C. Submittals received after the time stated in the solicitation will not be accepted.

D. For purposes of determining whether a Submittal has been timely received in SAP Ariba, the City's Procurement and Payables Division will rely on the submittal clock in SAP Ariba.

## 1.13 SUBMITTAL IS NON-COLLUSIVE

Supplier acknowledges that by its delivery of a Submittal to the City in response to a Solicitation, it represents that the prices in such Submittal are neither directly nor indirectly the result of any formal or informal agreement with another Supplier.

## 1.14 PARTNERSHIPS

The City will allow firms to partner in order to respond to a Solicitation. Multiple suppliers may team under a Prime Supplier's Submittal in order to provide responses to all sections in a single submission; however, each Supplier's participation must be clearly delineated by section. The Prime Supplier will be considered the responding vendor and the responsible party at contract award. All contract negotiations will be conducted only with the Prime Supplier. All contract payments will be made only to the Prime Supplier. Any agreements between the Prime Supplier and other companies will not be a part of the Contract between the City and the Prime Supplier. The City reserves the right to select more than one Prime Supplier.

## 1.15 WITHDRAWAL OF SUBMITTALS

A. Prior to Submittal Deadline. Submittals may be withdrawn (including in SAP Ariba) prior to the scheduled submittal deadline.

B. After Submittal Deadline. No Submittal can be withdrawn after having been opened before the actual award of the contract, unless the award is delayed more than 90 calendar days beyond the date of opening. If a delay of more than 90 calendar days does occur, Supplier must submit written notice to the City purchasing manager that Supplier is withdrawing its submittal.

## 1.16 ACCEPTANCE OF SUBMITTALS

A. If the solicitation announcement so states, submittals, unless previously withdrawn, will be read aloud, irrespective of any irregularities or informalities in such submittal, at the time and place specified in the solicitation announcement.

B. All submittals must remain open for acceptance by the City for a period of at least 90 calendar days from the submittal deadline.

## 1.17 RIGHT TO REJECT

A. The City of Tacoma reserves the right to reject any and all submittals, waive minor deviations or informalities, supplement, amend, reduce or otherwise modify the scope of work or cancel the solicitation, and if necessary, call for new submittals.

## 1.18 RESERVED RIGHTS

A. By providing a submittal in response to a City solicitation, Supplier acknowledges and consents to the below City rights and conditions. With regard to this procurement process, the City reserves, holds without limitation, and may exercise, at its sole discretion, the following rights and conditions:

1. To terminate the procurement process or decide not to award a contract as a result thereof by written notice to the Suppliers for any reason whatsoever with or without substitution of another solicitation.

2. To waive any defect, technicality, or any other minor informality or irregularity in any submittal, or any other response from Suppliers.

3. To issue addenda for any purpose including:

   a. To make minor or major changes or alterations to the evaluation, selection and/or performance schedule(s) for any events associated with a procurement.

   b. To supplement, amend, reduce, cancel, or otherwise modify a Solicitation, including but not limited to modifications to the description of services and/or products contained in the solicitation, by omitting services/products and/or including services/products.

4. To request clarifications, additional information, and/or revised Submittals from one or more Suppliers.

5. To conduct investigations with respect to the qualifications and experience of Supplier(s), including inspection of facilities and to request additional evidence to support any such information.

6. To eliminate any Supplier that submits an incomplete or inadequate response, or is non-responsive to the requirements of a Solicitation, or is otherwise deemed to be unqualified during any stage of the procurement process.
7. To select and interview a single finalist or multiple finalists to further the City's evaluation of Submittals provided in response to a Solicitation. The City may, in its sole and exclusive discretion as to what is in the City's best interest, elect not to conduct interviews of any or all Suppliers in connection with a solicitation process.
8. Except in the case of Requests for Bids, to negotiate any rate/fee offered by a Supplier. The City shall have the sole right to make the final rate/fee offer during contract negotiations. If the selected Supplier does not accept the City's final offer, the City may, in its sole discretion discontinue contract negotiations and commence negotiations with another Supplier, except as otherwise provided in Chapter 39.80, RCW.
9. To select and enter into a Contract with one or more Suppliers whose Submittal best satisfies the interests of the City and is most responsive, in the sole judgment of the City, to the requirements of a Solicitation.
10. To award by line item or group of line items.
11. To not award one or more items.
12. To issue additional or subsequent solicitations.
13. To seek partnerships between one or more Suppliers.
14. Request additional related products and services from the selected Supplier(s) as necessary throughout the term of the Contract.
15. Negotiate costs or fees in the event of new legislation or regulatory changes, or issuance of related compliance guidance, technology enhancements, and innovative solutions.
16. In the event the City receives questions concerning a Solicitation from one or more Suppliers prior to the deadline for response, the City reserves the right to provide such questions, and the City's responses, if any, to all Suppliers.
17. If an award is made and, prior to entering into a contract, subsequent information indicates that such award is not in the best interest of the City, the City may rescind the award without prior notice to Supplier and either award to another Supplier or reject all submittals or cancel this solicitation.
18. To cancel award of a contract at any time before execution of the Contract by both parties if cancellation is deemed to be in the City's best interest. In providing a submittal, Suppliers agree that the City is not liable for any costs or damages for the cancellation of an award. Supplier assumes the sole risk and responsibility for all expenses connected with the preparation of its submittal.
19. To add additional City departments or divisions to the Contract or develop a separate Contract with the Supplier subject to all terms, conditions and pricing of the original Contract
20. To take any other action affecting a Solicitation or a procurement process that is determined to be in the City's best interests.

### 1.19 SUBMITTAL CLARIFICATION

Suppliers may be asked to clarify their Submittal. This action shall not be construed as negotiations or any indication of intentions to award. If called upon, Supplier must respond to such requests within two business days or the timeframe set forth by the City in its request for clarification. Supplier's failure to respond to such a request may result in rejection of its Submittal.

### 1.20 EVALUATION OF SUBMITTALS

A. The City of Tacoma reserves the right to award to the lowest and best responsible Supplier(s) delivering a Submittal in compliance with the Solicitation, provided such Submittals are reasonable and are in the best interest of the City to accept. The City may use a number of criteria for determining award, including evaluation factors set forth in Municipal Code Section 1.06.262. Suppliers who are inexperienced or who fail to properly perform other contracts may have their submittal rejected for such cause.

1. Evaluation Factors. In addition to the factors set forth in Municipal Code Section 1.06.262, the following may be used by the City in determining the lowest and best responsible Submittal:

    a. Compliance with a Solicitation and with applicable City requirements, including by not limited to, the City's Ethics Code and its Small Business Enterprise and Local Employment and Apprenticeship programs.
    b. Submittal prices, listed separately if requested, as well as a lump sum total (if the unit price does not compute to the extended total price, the unit price shall govern).
    c. The total cost to the City, including all applicable taxes, may be the basis for contract award.
    d. Time of delivery and/or completion of performance (delivery date(s) offered).
    e. Warranty terms.
    f. Quality of performance of previous contracts or services, including safety requirements and past compliance with the City's Ethics Code.
    g. Previous and existing compliance with laws and ordinances relating to contracts or services.
    h. Sufficiency of financial resources.
    i. Quality, availability, and adaptability of the supplies or services to the particular use required.
    j. Ability to provide future maintenance and service on a timely basis.
    k. Location of nearest factory authorized warranty repair facility or parts dealership.
    l. Ability, capacity, experience, stability, reputation, integrity, character, judgment, technical qualifications, and skill to perform the contract or provide the services required.

2. Cash Discount. Payment discount periods of 20 calendar days or more, if offered in the submittal, will be considered in determining the apparent lowest responsible submittal. Discounts will be analyzed in context of their overall cumulative effect.

3. All other elements or factors, whether or not specifically provided for in a Solicitation, which would affect the final cost to, and the benefits to be derived by, the City, may be considered in determining the award of a Contract. The final award decision will be based on the best interests of the City.

**1.21 CONTRACT OBLIGATION**

A. The Submittal contents of the successful Supplier will become contractual obligations if a Contract ensues.

B. In the event the City of Tacoma determines to award a Contract, the selected Supplier(s) may be requested to execute Additional Contract Documents.

C. Supplier shall register with the City of Tacoma on the SAP Ariba Network and be enabled for transactions upon request by the City.

D. Suppliers may propose amendments to City's Contract documents or to these Terms and Conditions, but the City retains the right to accept or reject proposed amendments.

E. No costs chargeable for work under the proposed Contract may be incurred before mutual acceptance and execution as directed.

**1.22 AWARD**

The City reserves the right to award Contracts for any or all items to one or more Suppliers in the best interests of the City.

**1.23 SUPPLIER'S REFUSAL TO ENTER INTO CONTRACT**

Any Supplier who refuses to enter into a Contract after it has been awarded to the Supplier will be in breach of the agreement to enter the Contract, and Supplier's certified or cashier's check or bid bond, if any, shall be forfeited.

**1.24 LEGAL HOLIDAYS**

A. The City of Tacoma observes the following holidays, which shall apply to performance of all contracts:

| | |
|---|---|
| New Year's Day | January 1 |
| Martin Luther King's Birthday | 3rd Monday in January |
| Washington's Birthday | 3rd Monday in February |
| Memorial Day | Last Monday in May |
| Independence Day | July 4 |
| Labor Day | 1st Monday in September |

| | |
|---|---|
| Veteran's Day | November 11 |
| Thanksgiving Day | 4th Thursday of November |
| Day after Thanksgiving | 4th Friday of November |
| Christmas Day | December 25 |

B. When any of these holidays occur on Saturday or Sunday, the preceding Friday or the following Monday, respectively, is a legal holiday for the City of Tacoma.

**1.25 CONTRACT TERM**

All services shall be satisfactorily completed and all deliverables provided by the termination date stated, and the Contract shall expire on said date unless mutually extended in writing by the parties.

**1.26 EXTENSION OF CONTRACT**

Contracts shall be subject to extension at City's sole discretion.

**1.27 TERMINATION AND SUSPENSION**

A. Supplies. The City reserves the right to terminate a Contract at any time upon prior written notice to Supplier. Upon the effective date of termination specified in such notice, and payment by the City, all conforming supplies, materials, or equipment previously furnished hereunder shall become its property.

B. Services. The City may terminate a Contract at any time, with or without cause, by giving 10 business days written notice to Supplier. In the event of termination, all finished and unfinished work prepared by Supplier pursuant to the Contract shall be provided to the City. In the event City terminates the Contract due to the City's own reasons and without cause due to Supplier's actions or omissions, the City shall pay Supplier the amount due for actual work and services necessarily performed under the Contract up to the effective date of termination, not to exceed the total compensation set forth in the Contract.

C. Suspension. For either services or supplies, the City may suspend a Contract, at its sole discretion, upon three business days' written notice to Supplier. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to Supplier's actual expenses and shall be subject to verification. Supplier shall resume performance of services under the Contract without delay when the suspension period ends.

D. Termination or suspension of a Contract by City shall not constitute a waiver of any claims or remaining rights the City may have against Supplier relative to performance under a Contract.

**1.28 DEFAULT/BREACH**

In the event of material default or breach by Supplier on any of the conditions of a Contract, Supplier agrees that the City may, at its election, procure the goods or services from other sources, and may deduct from the unpaid balance due Supplier, or collect against the bond or security (if any), or may invoice and recover from Supplier all costs paid in excess of the price(s) set forth in the Contract.

A. Supplies. The City at any time by written change order or other form of written contract amendment may make reasonable changes in the place of delivery, installation, or inspection, the method of shipment or packing, identification and ancillary matters that Supplier may accommodate without substantial additional expense.

B. Services. The City shall have the right to make changes within the general scope of services and/or deliverables upon execution in writing of a change order or other written form of contract amendment. If the changes will result in additional work effort by Supplier the City agrees to reasonably compensate Supplier for such additional effort up to the maximum amount specified in the Contract or as otherwise provided by Tacoma Municipal Code. Any new services accepted by the City may be added to the Contract and/or substituted for discontinued services. New services shall meet or exceed all requirements of original award.

C. Expansion Clause. A Contract may be further expanded in writing to include other related services or products normally offered by Supplier, as long as the price of such additional services or products have a profit margin equal to or less than that in place at the time of original submittal. Such additions and prices will be established in writing. New items not meeting these criteria will not be added to the Contract. Supplier profit margins are not to increase as a result any such expansion.

**1.29 SCOPE OF SERVICES**

Supplier agrees to diligently and completely perform the services required by a Contract.

## 1.30 SERVICES DO NOT INCLUDE PUBLIC WORK

Unless otherwise stated, the services and/or work contracted for herein exclude public work and improvements as defined in RCW 39.04, as that statute may hereafter be amended.

## 1.31 PREVAILING WAGES

A. If federal, state, local, or any applicable law requires Supplier to pay prevailing wages in connection with a Contract, and Supplier is so notified by the City, then Supplier shall pay applicable prevailing wages.

B. If applicable, a Schedule of Prevailing Wage Rates for the locality or localities where the Contract will be performed is attached and made of part of the Contract by this reference. If prevailing wages do apply to the Contract, Supplier and its subcontractors shall:

1. Be bound by the provisions of Chapter 39.12 RCW, as amended, relating to prevailing wages and usual fringe benefits,

2. Ensure that no worker, laborer or mechanic employed in the performance of any part of the Contract shall be paid less than the prevailing rate of wage specified on that Schedule, and

3. Immediately upon award of the Contract, contact the Department of Labor and Industries, Prevailing Wages section, Olympia, Washington, to obtain full information, forms and procedures relating to these matters. Per such procedures, a Statement of Intent to Pay Prevailing Wages must be submitted by Contractor and its subcontractors to the City, in the manner requested by the City, prior to any payment by the City hereunder, and an Affidavit of Wages Paid must be received or verified by the City prior to final Contract payment.

## 1.32 CONTRACT PRICING

A. Submitted prices shall include costs of submittal preparation, servicing of the account, all contractual requirements during contract period such as transportation, permits, insurance costs, bonds, labor, wages, materials, tools, components, equipment, and appurtenances necessary to complete the work, which shall conform to the best practice known to the trade in design, quality, material, and workmanship.

B. Surcharges of any type will not be paid.

C. If applicable, related additional products and corresponding services of benefit to the City not specifically required in a solicitation, but which Supplier offers to provide, may be included with the submittal. Supplier may request to add new products if the City approves them and Supplier can demonstrate the pricing is from the same pricing structure/profit margin.

D. Unless specifically stated otherwise, only firm prices will be accepted and all prices shall remain firm during the term of a Contract.

E. Price increases may at City's discretion be passed along during a contract period if the increase is mandated by statute.

F. By submitting prices, Supplier warrants prices equal to or better than the equivalent prices, terms, and benefits offered by Supplier to any other government unit or commercial customer.

G. Should Supplier, during the term of a Contract, enter into any other contract, agreement or arrangement that provides lower prices, more favorable terms or greater benefits to any other government unit or commercial customer, the Contract with the City shall thereupon be deemed amended to provide the same price or prices, terms and benefits to the City. This provision applies to comparable products and purchase volumes by the City that are not less than the purchase volumes of the government unit or commercial customer that has received the lower prices, greater benefits, or more favorable terms.

H. If at any time during the term of the Contract, Supplier reduces prices to other buyers purchasing approximately the same quantities stated on the Contract, Supplier will immediately notify the City purchasing manager of such fact, and the price(s) for future orders under the Contract shall be reduced accordingly.

I. The City is entitled to any promotional pricing during the Contract period.

J. Price decreases shall be immediately passed on to the City.

K. The City reserves the right to increase or decrease the quantities of any item awarded pursuant to the Contract and pay according to the unit prices quoted in the submittal with no adjustments for anticipated profit.

## 1.33 APPROVED EQUALS WHEN ALTERNATES ARE ALLOWED

A. Unless an item is indicated as "no substitute," special brands, when named, are intended to describe the standard of quality, performance, or use desired. Equal items will be considered by the City, provided that Supplier specifies the brand and model, and provides all descriptive literature, independent test results, specification sheets, schematic drawings, photographs, product samples, local servicing, parts availability, etc., to enable the City to evaluate the proposed equal. Performance testing in the field may be required.

B. The decision of the City as to what items are equal shall be final and conclusive. If the City elects to purchase a brand represented by Supplier to be an "equal," the City's acceptance of the item is conditioned on the City's inspection and testing after receipt. If, in the sole judgment of the City, the item is determined not to be an equal, the item shall be returned at Supplier's expense.

C. When a brand name or level of quality is not stated in Supplier's submittal, it is understood Supplier's submittal shall exactly confirm with those required in the Contract. If more than one brand name is stated in a Solicitation, Supplier(s) must indicate the brand and model/part number to be supplied.

## 1.34 RISK OF LOSS, SHIPPING AND DELIVERY

A. Shipping. Prices must be quoted FOB destination (the place of destination as defined in RCW 62A.2-319, as that statute may hereafter be amended), with freight prepaid and allowed (shipping costs included in unit prices), and risk of loss remaining with Supplier until delivery is tendered.

B. Delivery. Delivery will be to the designated addresses set forth in a Solicitation or as otherwise stated in the Contract. Deliveries shall be between 9:00 a.m. and 3:30 p.m., Monday through Friday only, except Legal Holidays. Failure to make timely delivery shall be cause for termination of the contract or order and return of all or part of the items at Supplier’s expense except in the case of force majeure.

## 1.35 DELIVERY OF PRODUCTS AND PROVISION OF SERVICES – IDLING PROHIBITED

A. The City of Tacoma has a commitment to reduction of unnecessary fuel emissions and improving 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.

B. Vehicles and/or diesel fuel trucks shall not idle at the time and location of the delivery to the City of Tacoma for more than three minutes. The City requires contractors 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 associated power is necessary to make a delivery or provide the service, when the engine is used to provide power to another device, and when a running engine is required for proper warm-up and cool-down of the engine.

## 1.36 PACKING SLIPS AND INVOICES

A. Each invoice shall show City of Tacoma purchase order number, release number if applicable, quantity, unit of measure, item description, unit price and extended price for each line if applicable, services and deliverables provided if applicable. Line totals shall be summed to give a grand total to which sales tax shall be added, if applicable.

1. For transactions conducted in SAP Ariba, invoices shall be submitted through Ariba.
2. For invoices paid by ACH or by check, unless stated otherwise, invoices shall be electronically submitted by email with corresponding PO number listed in the subject line to accountspayable@cityoftacoma.org.
3. For invoices paid by credit card, invoices shall also display the last name of the cardholder and last four digits (only) of the card number (e.g., Jones/6311). Unless stated otherwise, invoices shall be electronically submitted by email with corresponding PO number listed in the subject line to (do not combine different POs into one invoice or charge) to pcardadmin@cityoftacoma.org.

B. Any terms, provisions or language in Supplier’s invoice(s) that conflict with the terms of the Contract are superseded and shall not apply to the Contract unless expressly accepted in writing by the City.

C. Packing slips and shipping notices shall be sent to the specific City Division or Department receiving the item(s) at the address stated in City’s Solicitation or as otherwise stated in the Contract and include complete description of items, contents of items if crated or cased, quantity, shipping point, carrier, bill of lading number and City of Tacoma purchase order.

D. Supplier shall package orders, preferably in environmental friendly packaging such as reduced packaging and recyclable packing materials.

## 1.37 COOPERATIVE PURCHASING

The Washington State Interlocal Cooperation Act RCW 39.34 provides that other governmental agencies may purchase goods and services based on the Contract with the City in accordance with the terms and prices of the Contract if all parties are agreeable. Each public agency shall formulate a separate contract with Supplier, incorporating the terms and conditions of the Contract with the City of Tacoma. The City shall incur no liability in connection with such contracts or purchases by other public agencies thereunder. It will be Supplier's responsibility to inform such public agencies of the Contract with the City. Supplier shall invoice such public agencies as separate entities.

## 1.38 TAXES

A. Unless otherwise stated, applicable federal, state, City, and local taxes shall be included in the submittal and in contract as indicated below. As used herein, the term "taxes" shall include any and all taxes, assessments, fees, charges, interest, penalties, and/or fines imposed by applicable laws and regulations in connection with the procurement of goods and/or services hereunder.

1. Federal Excise Tax. The City of Tacoma is exempt from federal excise tax. The City will furnish a Federal Excise Tax Exemption certificate, if required. If Supplier fails to include any applicable tax in its submittal, then Supplier shall be solely responsible for the payment of said tax.

2. State and Local Sales Tax. The City of Tacoma is subject to Washington state sales tax. It is Supplier's obligation to state the correct sales tax percentage and include the applicable Washington state, city and local sales tax as a separate line item(s) in the submittal.

3. City of Tacoma Business and Occupation Tax. It is Supplier's obligation to include City of Tacoma Business and Occupation tax in the unit and/or lump sum prices submitted; it shall not be shown separately on the submittal. Per Sub-Title 6A of the City of Tacoma Municipal Code, transactions with the City of Tacoma may be subject to the City's Business and Occupation Tax.

B. Any or All Other Taxes. Any or all other taxes are the responsibility of Supplier unless otherwise required by law. Except for state sales tax, Supplier acknowledges that it is responsible for the payment of all taxes applicable to the Contract and Supplier agrees to comply with all applicable laws regarding the reporting of income, maintenance of records, and all other requirements and obligations imposed pursuant to applicable law.

C. If the City is assessed, made liable, or responsible in any manner for taxes contrary to the provisions of the Contract, Supplier agrees to hold the City harmless from such costs, including attorney's fees. In the event Supplier fails to pay any taxes, assessments, penalties, or fees imposed by any governmental body, including a court of law, other than those taxes the City is required to pay, then Supplier authorizes the City to deduct and withhold or pay over to the appropriate governmental body those unpaid amounts upon demand by the governmental body. It is agreed that this provision shall apply to taxes and fees imposed by City ordinance. Any such payments shall be deducted from Supplier's total compensation.

## 1.39 COMPENSATION

A. The City shall compensate Supplier in accordance with the Contract. Said compensation shall be the total compensation for Supplier's performance hereunder including, but not limited to, all work, services, deliverables, materials, supplies, equipment, subcontractor's fees and all reimbursable travel and miscellaneous or incidental expenses to be incurred by Supplier. Unless stated otherwise the total stated compensation may not be changed without a written change order or other form of contract amendment.

B. Payment(s) made in accordance with the Contract shall fully compensate Supplier for all risk, loss, damages or expense of whatever nature, and acceptance of payment shall constitute a waiver of all claims submitted by Supplier.

## 1.40 PAYMENT TERMS

A. Payment shall be made through the City's ordinary payment process, and shall be considered timely if made within 30 days of receipt of a properly completed invoice. All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced. The City may withhold payment to Supplier for any services or deliverables not performed as required hereunder until such time as Supplier modifies such services or deliverables to the satisfaction of the City.

B. Invoices will not be processed for payment, nor will the period of cash discount commence, until all invoiced items are received and satisfactory performance of the Contract has been attained. Upon CITY'S request, Supplier shall submit necessary and appropriate documentation, as determined by the CITY, for all invoiced services and deliverables. 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.

**1.41 PAYMENT METHOD – CREDIT CARD ACCEPTANCE – EFT/ACH ACCEPTANCE**

A. Payment methods include:

1. Credit card. Tacoma's VISA procurement card program is supported by standard bank credit suppliers and requires that merchants abide by the VISA merchant operating rules.

   a. Suppliers must be PCI-DSS compliant (secure credit card data management) and federal FACTA (sensitive card data display) compliant.
   b. Suppliers must be set up by their card processing equipment provider (merchant acquirer) as a minimum of a Level II merchant with the ability to pass along tax, shipping and merchant references information.

2. Electronic Funds Transfer (EFT) by Automated Clearing House (ACH).

3. Check or other cash equivalent.

B. The City's preferred method of payment is by Visa credit card (aka procurement card). Suppliers may be required to have the capability of accepting the City's authorized procurement card as a method of payment**. The City of Tacoma will not accept price changes or pay additional fees when the procurement card is used.**

C. The City, in its sole discretion, will determine the method of payment for goods and/or services as part of the Contract.

**1.42 NOTICES**

Unless otherwise specified, except for routine operational communications, which may be delivered personally or transmitted by electronic mail, all notices required by the Contract shall be in writing and shall be deemed to have been duly given if delivered personally or mailed first-class mail, postage prepaid, to Supplier's registered agent and to the applicable City department representative.

**1.43 INDEPENDENT CONTRACTOR STATUS**

A. Supplier is considered an independent contractor who shall at all times perform his/her duties and responsibilities and carry out all services as an independent contractor and shall never represent or construe his/her status to be that of an agent or employee of the City, nor shall Supplier be eligible for any employee benefits. No payroll or employment taxes or contributions of any kind shall be withheld or paid by the City with respect to payments to Supplier. Supplier shall be solely responsible for all said payroll or employment taxes and/or contributions including, but not limited to, FICA, FUTA, federal income tax, state personal income tax, state disability insurance tax and state unemployment insurance tax. If the City is assessed, made liable or responsible in any manner for such taxes or contributions, Supplier agrees to indemnify and hold the City harmless from all costs incurred, including attorney fees.

B. Unless otherwise specified in writing, Supplier shall provide at its sole expense all materials, working space, and other necessities and instruments to perform its duties under the Contract. Supplier, at its sole expense, shall obtain and keep in force any and all applicable licenses, permits and tax certificates necessary to perform the Contract.

**1.44 NONDISCRIMINATION**

Supplier agrees to take all steps necessary to comply with all federal, state, and City laws and policies regarding non-discrimination and equal employment opportunities. Supplier shall not discriminate in any employment action because of race, religion, color, national origin or ancestry, sex, gender identity, sexual orientation, age, marital status, familial status, or the presence of any sensory, mental, or physical handicap. In the event of non-compliance by Supplier with any of the non-discrimination provisions of the Contract, the City shall be deemed to have cause to terminate the Contract, in whole or in part.

## 1.45 FEDERAL, STATE, AND MUNICIPAL LAWS AND REGULATIONS

Supplier shall comply with all federal, state, municipal, and/or local laws and regulations in the performance of all terms and conditions of the Contract. Supplier shall be solely responsible for all violations of the law from any cause in connection with its performance of work under the Contract.

## 1.46 REPORTS, RIGHT TO AUDIT, PERSONNEL

A. Reports. Supplier shall, at such times and in such form as the City may reasonably require, furnish the City with periodic status reports pertaining to the services undertaken or goods provided pursuant to the Contract.

B. Right to Audit. Upon City's request, Supplier shall make available to City all accounts, records and documents related to the scope of work for City's inspection, auditing, or evaluation during normal business hours as reasonably needed by City to assess performance, compliance and/or quality assurance under the Contract or in satisfaction of City's public disclosure obligations as applicable.

C. Personnel. If before, during, or after the execution of a Contract, Supplier has represented or represents to the City that certain personnel would or will be responsible for performing services pursuant to the Contract, then Supplier is obligated to ensure that said personnel perform said Contract services to the maximum extent permitted by law. Substantial organizational or personnel changes within Supplier's firm are expected to be communicated to City immediately. Failure to do so could result in termination of the Contract. This provision shall only be waived by written authorization by the City, and on a case-by-case basis.

## 1.47 INSURANCE

During the course and performance of a Contract, Supplier will provide proof and maintain the insurance coverage in the amounts and in the manner specified in the City of Tacoma Insurance Requirements as is applicable to the services, products, and deliverables provided under the Contract. The City of Tacoma Insurance Requirements document, if issued, is fully incorporated into the Contract by reference.

## 1.48 INDEMNIFICATION – HOLD HARMLESS

A. Supplier agrees to indemnify, defend, and hold harmless the City of Tacoma, its officers, agents and employees, from and against any and all liability which may accrue to or be sustained by the City of Tacoma for any claim, suit or legal action made or brought against the City for the death of or injury to persons (including Supplier's or subcontractor's employees), or damage to property involving Supplier or subcontractor(s) and their employees or agents, or for any other cause arising out of and in connection with or incident to the performance of the Contract, except for injuries or damages caused by the sole negligence of the City. In this regard, Supplier recognizes it is waiving immunity under Industrial Insurance Law, Title 51 RCW. This indemnification includes attorney's fees and the cost of establishing the right to indemnification hereunder in favor of the City of Tacoma. By Supplier's acceptance of this order, he/she agrees that this subsection has been mutually negotiated.

B. These indemnifications shall survive the termination of a Contract.

## 1.49 CONFLICT OF INTEREST

No officer, employee, or agent of the City, nor any member of the immediate family of any such officer, employee or agent as defined by City ordinance, shall have any personal financial interest, direct or indirect, in a Contract, either in fact or in appearance. Supplier shall comply with all federal, state, and City conflict of interest laws, statutes, and regulations. Supplier represents that Supplier presently has no interest and shall not acquire any interest, direct or indirect, in the program to which the Contract pertains that would conflict in any manner or degree with the performance of Supplier's services and obligations hereunder. Supplier further covenants that, in performance of a Contract, no person having any such interest shall be employed. Supplier also agrees that its violation of the City's Code of Ethics contained in Chapter 1.46 of the Tacoma Municipal Code shall constitute a breach of Contract subjecting the Contract to termination.

## 1.50 CITY OWNERSHIP OF WORK/RIGHTS IN DATA/PUBLICATIONS

A. To the extent that Supplier creates any work subject to the protections of the Copyright Act (Title 17 U.S.C.) in its performance of a Contract, Supplier agrees to the following: The work has been specially ordered and commissioned by the City. Supplier agrees that the work is a "work made for hire" for copyright purposes, with all copyrights in the work owned by City. To the extent that the work does not qualify as a work made for hire under applicable law, and to the extent that the work includes material subject to copyright, Supplier hereby assigns to City, its successors and assigns, all right, title and interest in and to the work, including but not limited to, all copyrights, patent, trade secret and other

proprietary rights, and all rights, title and interest in and to any inventions and designs embodied in the work or developed during the course of Supplier's creation of the work.

B. Supplier shall be solely responsible for obtaining releases and/or licenses for the reproduction, distribution, creation of derivative works, performance, display, or other use of copyrighted materials. Should Supplier fail to obtain said releases and/or licenses, Supplier shall indemnify, defend, and hold harmless the City for any claim resulting there from.

**1.51 DUTY OF CONFIDENTIALITY**

Supplier acknowledges that unauthorized disclosure of information or documentation concerning the Scope of Work hereunder may cause substantial economic loss or harm to the City. Except for disclosure of information and documents to Supplier's employees, agents, or subcontractors who have a substantial need to know such information in connection with Supplier's performance of obligations under the Contract, Supplier shall not without prior written authorization by the City allow the release, dissemination, distribution, sharing, or other publication or disclosure of information or documentation obtained, discovered, shared or produced pursuant to a Contract.

**1.52 DISPUTE RESOLUTION**

In the event of a dispute pertaining to ta Contract, the parties agree to attempt to negotiate in good faith an acceptable resolution. If a resolution cannot be negotiated, then the parties agree to submit the dispute to voluntary non-binding mediation before pursuing other remedies. This provision does not limit the City's right to terminate.

**1.53 GOVERNING LAW AND VENUE**

Washington law shall govern the interpretation of the Contract. The state or federal courts located in Pierce County Washington shall be the sole venue of any mediation, arbitration, or litigation arising out of the Contract.

**1.54 ASSIGNMENT**

Supplier shall not assign, subcontract, delegate or transfer any obligation, interest or claim to or under the Contract without the prior written consent of the City.

**1.55 WAIVER**

A waiver or failure by either party to enforce any provision of the contract shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision of the Contract.

**1.56 SEVERABILITY AND SURVIVAL**

If any term, condition or provision herein or incorporated by reference is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of the Contract, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of the Contract, shall survive termination of the Contract.

**1.57 NO CITY LIABILITY**

Neither the City, its officials, staff, agents, employees, representatives, or consultants will be liable for any claims or damages resulting from any aspect of this procurement process.

**1.58 SIGNATURES**

A signed copy of Submittals, Contract documents, including but not limited to contract amendments, contract exhibits, task orders, statements of work and other such Contract related documents, delivered by email or other means of electronic transmission including by using a third party service, which service is provided primarily for the electronic execution of electronic records, shall be deemed to have the same legal effect as delivery of an original signed copy.

# Chapter 1.07

## SMALL BUSINESS ENTERPRISE

Sections:

1.07.010 Policy and purpose.
1.07.020 Definitions.
1.07.030 Discrimination prohibited.
1.07.040 Program administration.
1.07.050 Certification.
1.07.060 Program requirements.
1.07.070 Evaluation of submittals.
1.07.080 Contract compliance.
1.07.090 Program monitoring.
1.07.100 Enforcement.
1.07.110 Remedies.
1.07.120 Unlawful acts.
1.07.130 Severability.
1.07.140 Sunset and review of program.

### 1.07.010 Policy and purpose.

It is the policy of the City of Tacoma that citizens be afforded an opportunity for full participation in our free enterprise system and that historically underutilized business enterprises shall have an equitable opportunity to participate in the performance of City contracts. The City finds that in its contracting for supplies, services and public works there has been historical underutilization of small businesses located in certain geographically and economically disfavored locations and that this underutilization has had a deleterious impact on the economic well-being of the City. The purpose of this chapter is to remedy the effects of such underutilization through use of reasonably achievable goals to increase opportunities for historically underutilized businesses to participate in City contracts. It is the goal of this chapter to facilitate a substantial procurement, education, and mentorship program designed to promote equitable participation by historically underutilized businesses in the provision of supplies, services, and public works to the City. It is not the purpose of this chapter to provide any person or entity with any right, privilege, or claim, not shared by the public, generally, and this chapter shall not be construed to do so. This chapter is adopted in accordance with Chapter 35.22 RCW and RCW 49.60.400.

(Ord. 27867 Ex. A; passed Dec. 15, 2009)

### 1.07.020 Definitions.

Terms used in this chapter shall have the following meanings unless defined elsewhere in the Tacoma Municipal Code ("TMC"), or unless the context in which they are used clearly indicates a different meaning.

A. "Affidavit of Small Business Enterprise Certification" means the fully completed, signed, and notarized affidavit that must be submitted with an application for SBE certification. Representations and certifications made by the applicant in this Affidavit are made under penalty of perjury and will be used and relied upon by City to verify SBE eligibility and compliance with SBE certification and documentation requirements.

B. "Base Bid" means a Bid for Public Works to be performed or Supplies or Services to be furnished under a City Contract, including additives, alternates, deductives, excluding force accounts, and taxes collected separately pursuant to Washington Administrative Code ("WAC") 458-20-171.

C. "Bid" means an offer submitted by a Respondent to furnish Supplies, Services, and/or Public Works in conformity with the Specifications and any other written terms and conditions included in a City request for such offer.

D. "Bidder" means an entity or individual who submits a Bid, Proposal or Quote. See also "Respondent."

E. "City" means all Departments, Divisions and agencies of the City of Tacoma.

F. "Contract" means any type of legally binding agreement regardless of form or title that governs the terms and conditions for procurement of Public Works and Improvements and/or Non-Public Works and Improvements Supplies and Services. Contracts include the terms and conditions found in Specifications, Bidder or Respondent Submittals, and purchase orders issued by the City. A "Contract" as used in this chapter shall include an agreement between the City and a non-profit entity to perform construction-related services for Public Works. A "Contract" does not include: (1) awards made by the City with federal/state grant or City general funds monies to a non-profit entity where the City offers assistance, guidance, or supervision on a project or program, and the recipient of the grant awards uses the grant moneys to provide services to the

community; (2) sales transactions where the City sells its personal or real property; (3) a loan transaction where the City is acting as a debtor or a creditor; (4) lease, franchise; (5) agreements to use City real property (such as Licenses, Permits and Easements) and, (6) banking and other financial or investment services.

G. "Contractor" means any Person that presents a Submittal to the City, enters into a Contract with the City, and/or performs all or any part of a Contract awarded by the City, for the provision of Public Works, or Non-Public Works and Improvements, Supplies or Services.

H. "Evaluated Bid" means a Bid that factors each Respondent's Base Bid including any alternates, deductive and additives selected by the City that will result in a weighed reduction based on that Respondent's percentage of SBE participation, as defined by formula set forth in this chapter or in the SBE Regulations adopted pursuant to this chapter.

I. "Goals" means the annual level of participation by SBEs in City Contracts as established in this chapter, the SBE Regulations, or as necessary to comply with applicable federal and state nondiscrimination laws and regulations. Goals for individual Contracts may be adjusted as provided for in this chapter and shall not be construed as a minimum for any particular Contract or for any particular geographical area.

J. "SBE Certified Business" (or "SBEs") means a business that meets the criteria set forth in Section 1.07.050 of this chapter and has been certified as meeting that criteria by the Community and Economic Development Department-SBE Program Coordinator.

K. "SBE Program Coordinator" means the individual appointed, from time to time, by the City's Community and Economic Development Director to administer the SBE Regulations.

L. "SBE Regulations" shall mean the written regulations and procedures adopted pursuant to this chapter for procurement of Supplies, Services and Public Works.

M. "Lowest and Best Responsible Bidder" means the Bidder submitting the lowest Bid received that is within the range of acceptable bids, that also has the ability to timely perform the Contract bid upon considering such factors as financial resources, skills, quality of materials, past work record, and ability to comply with state, federal, and local requirements, including those set forth in the SBE Regulations.

N. "Non-Public Works and Improvements" means all competitively solicited procurement of Supplies and/or Services by the City not solicited as Public Works.

O. "Person" means individuals, companies, corporations, partnerships, associations, cooperatives, any other legally recognized business entity, legal representative, trustee, or receivers.

P. "Proposal" means a written offer to furnish Supplies or Services in response to a Request for Proposals. This term may be further defined in the Purchasing Policy Manual and/or in competitive solicitations issued by the City.

Q. "Public Works (or "Public Works and Improvements)" means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the City, or that is by law a lien or charge on any property therein. This term includes all Supplies, materials, tools, and equipment to be furnished in accordance with the Contract for such work, construction, alteration, repair, or improvement.

R. "Quote" means a competitively solicited written offer to furnish Supplies or Services by a method of procurement that is less formalized than a Bid or a Proposal. This term may be further defined in the Purchasing Policy Manual.

S. "Respondent" means any entity or Person, other than a City employee, that provides a Submittal in response to a request for Bids, Request for Proposals, Request for Qualifications, request for quotes or other request for information, as such terms are defined in Section 1.06.251 TMC. This term includes any such entity or Person whether designated as a supplier, seller, vendor, proposer, Bidder, Contractor, consultant, merchant, or service provider that; (1) assumes a contractual responsibility to the City for provision of Supplies, Services, and/or Public Works; (2) is recognized by its industry as a provider of such Supplies, Services, and/or Public works; (3) has facilities similar to those commonly used by Persons engaged in the same or similar business; and/or (4) distributes, delivers, sells, or services a product or performs a Commercially Useful Function.

T. "Services" means non-Public Works and Improvements services and includes professional services, personal services, and purchased services, as such terms are defined in Section 1.06.251 TMC and/or the City's Purchasing Policy Manual.

U. "Submittal" means Bids, Proposals, Quotes, qualifications or other information submitted in response to requests for Bids, Requests for Proposals, Requests for Qualifications, requests for Quotations, or other City requests for information, as such terms are defined in Section 1.06.251 TMC.

V. "Supplies" means materials, Supplies, and other products that are procured by the City through a competitive process for either Public Works procurement or Non-Public Works and Improvements procurement unless an approved waiver has been granted by the appropriate authority.

(Ord. 28274 Ex. A; passed Dec. 16, 2014: Ord. 28141 Ex. A; passed Mar. 26, 2013: Ord. 27867 Ex. A; passed Dec. 15, 2009)

### 1.07.030 Discrimination prohibited.

A. No person that is engaged in the construction of public works for the City, engaged in the furnishing of laborers or craftspeople for public works of the City, or is engaged for compensation in the provision of non-public works and improvements supplies and/or services to the City, shall discriminate against any other person on the basis of race, religion, color, national origin or ancestry, sex, gender identity, sexual orientation, age, marital status, familial status, or the presence of any sensory, mental or physical disability in employment. Such discrimination includes the unfair treatment or denial of normal privileges to a person as manifested in employment upgrades, demotions, transfers, layoffs, termination, rates of pay, recruitment of employees, or advertisement for employment.

B. The violation of the terms of RCW 49.60 or Chapter 1.29 TMC by any person that is engaged in the construction of public works for the City, is engaged in the furnishing of laborers or craftspeople for public works of the City, or is engaged for compensation in the provision of non-public works and improvements supplies and/or services shall result in the rebuttable presumption that the terms of this chapter have also been violated. Such violation may result in termination of any City contract the violator may have with the City and/or the violator's ineligibility for further City Contracts.

(Ord. 27867 Ex. A; passed Dec. 15, 2009)

### 1.07.040 Program administration.

A. The Community and Economic Development Director, or his or her designated SBE Program Coordinator, shall be responsible for administering this chapter and obtaining compliance with respect to contracts entered into by the City and/or its contractors. It shall be the duty of the Director to pursue the objectives of this chapter by conference, conciliation, persuasion, investigation, or enforcement action, as may be necessary under the circumstances. The Director is authorized to implement an administrative and compliance program to meet these responsibilities and objectives.

B. The Director is hereby authorized to adopt and to amend administrative rules and regulations known as the SBE Regulations to properly implement and administer the provisions of this chapter. The SBE Regulations shall be in conformance with City of Tacoma policies and state and federal laws and be designed to encourage achievement of the SBE goals set forth herein. The SBE Regulations shall become effective following public notice and an opportunity to comment by the public.

C. The SBE Regulations adopted pursuant to this section are for the administrative and procedural guidance of the officers and employees of the City and are further expressions of the public policy of the City. The SBE Regulations, when adopted, shall not confer an independent cause of action or claim for relief cognizable in the courts of the state of Washington or the United States of America to any third parties, and such provisions shall not be used as the basis for a lawsuit in any court of competent jurisdiction challenging the award of any contract by the City.

(Ord. 28141 Ex. A; passed Mar. 26, 2013: Ord. 28110 Ex. B; passed Dec. 4, 2012: Ord. 27867 Ex. A; passed Dec. 15, 2009)

### 1.07.050 Certification.

A. The SBE Program Coordinator shall approve a person as a SBE Certified Business if all of the following criteria are satisfied:

1. Each person with an ownership interest in the company has a personal net worth of less than $1,320,000 excluding one personal residence and the net worth of the business;

2. The company's total gross receipts for any consecutive three year period within the last six years is not more than $36,500,000 for public works companies and not more than $15,000,000 for non-public works and improvements companies;

3. The owner(s) of the company executes an Affidavit of Small Business Enterprise Certification and files it with the City which states that all information submitted on the SBE application is accurate, that the business has sought or intends to do business with the City and/or within the Pierce County area and has experienced or expects to experience difficulty competing for such business due to financial limitations that impair its ability to compete against larger firms; and

4. The company can demonstrate that it also meets at least one of the following additional requirements:

a. The company's business offices, or the personal residence of the owner, is located within a City of Tacoma designated Renewal Community/Community Empowerment Zone, prior to designation as a SBE, or

b. The company's business offices, or the personal residence of the owner, is located within the City of Tacoma for at least six months prior to designation as a SBE; or

c. The company's business offices are located in a federally designated HUBZONE in Pierce County or any adjacent county for at least 12 months prior to designation as a SBE; or

d. The company's business offices are located in a federally designated HUBZONE in a County wherein the work will be performed, or an adjacent county, for at least 12 months prior to designation as a SBE.

B. Application Process. The SBE Program Coordinator shall make the initial determination regarding certification or recertification. Each SBE applicant shall provide the following documents; as such documents are more fully described in the SBE Regulations, to the SBE Program Coordinator:

1. A completed Statement of Personal Net Worth form;

2. A completed, signed, and notarized Affidavit of Small Business Enterprise Certification that affirms compliance with the certification and documentation requirements of this section;

3. List of equipment and vehicles used by the SBE;

4. Description of company structure and owners;

5. Such additional information as the SBE Program Coordinator or designee may require.

When another governmental entity has an equivalent SBE classification process the City may enter into an interlocal cooperative agreement for mutual recognition of certifications.

C. Recertification. A SBE qualified business shall demonstrate annually to the satisfaction of the SBE Program Coordinator that the following SBE qualifications are still in effect for such business:

1. That the company still meets all of the criteria set forth in subsection 1.07.050.A. TMC, and

2. That the company has maintained all applicable and necessary licenses in the intervening period, and

3. That the company demonstrates that the owner and/or designated employees have completed the minimum annual continuing business education training requirements set forth in the SBE Regulations.

D. Appeals. The applicant may appeal any certification determination by the SBE Program Coordinator under this chapter to the Director. The appeal must be made in writing and must set forth the specific reasons for the appeal. The Director shall make a decision on the appeal request within a reasonable time, which decision shall be final unless further appeal is made to the Hearing Examiner. In that event, the Hearing Examiner Rules of Procedure for Hearings, Chapter 1.23 TMC, shall be applicable to that appeal proceeding.

(Ord. 28274 Ex. A; passed Dec. 16, 2014: Ord. 28147 Ex. A; passed May 7, 2013: Ord. 28141 Ex. A; passed Mar. 26, 2013: Ord. 28110 Ex. B; passed Dec. 4, 2012: Ord. 27867 Ex. A; passed Dec. 15, 2009)

### 1.07.060 Program requirements.

A. Establishment of Annual SBE Goals. The SBE Regulations adopted pursuant to this chapter shall state reasonably achievable cumulative annual goals for utilization of SBEs in the provision of supplies, services, and public works procured by the City. Cumulative annual goals for the participation of SBEs in City contracts shall be based on the number of qualified SBEs operating within Pierce County or in a county that is adjacent to Pierce County or in a HUBZone in a county where the supplies, services and/or public works will be delivered or performed. The dollar value of all contracts awarded by the City to SBEs in the procurement of supplies, services, and public works shall be counted toward the accomplishment of the applicable SBE goal. The initial cumulative annual SBE goal for all public works, non-public works and improvements supplies and services procured by the City of Tacoma is 22 percent.

B. Revision of Annual SBE Goals. SBE utilization goals for supplies, services, and public works shall be reviewed annually to determine the total level of SBE participation reasonably attainable. If no certified SBEs are available to provide supplies, services, and/or public works, the dollar value of such supplies, services, or public works shall be exempt from the calculation of the cumulative annual goals set forth in the SBE Regulations. Proposed reduction of the cumulative annual SBE goals shall be in accordance with the SBE Regulations.

C. Application of SBE Goals to Contracts. The SBE Program Coordinator shall consult with City departments/divisions to establish the SBE goal for competitively solicited contracts of $25,000 and above, in accordance with this chapter and the SBE Regulations. No SBE goal will be established if no certified SBEs are available to provide supplies, services and/or public works.

D. Waivers. City departments/divisions or the SBE Program Coordinator may request to waive one or more of the requirements of this chapter as they apply to a particular contract or contracts. Waivers may be granted in any one or more of the following circumstances:

1. Emergency: The supplies, services and/or public works must be provided with such immediacy that neither the City nor the contractor can comply with the requirements herein. Such emergency and waiver must be documented by the department/division awarding the contract.

2. Not Practicable: Compliance with the requirements of this chapter would impose an unwarranted economic burden or risk to the City after consideration of existing budgetary approvals.

3. Sole source: The supplies, services, and/or public works are available from only one source, and subcontracting possibilities do not reasonably exist as determined by the finance purchasing manager.

4. Government purchasing. The City is a party to or included in a federal, state or inter-local government purchasing agreement as approved by the finance purchasing manager.

5. Lack of SBEs: An insufficient number of qualified SBE contractors exist to create SBE utilization opportunities.

6. Best interests of the City: Waiver of SBE goals is in the best interests of the City due to unforeseen circumstances, provided that said circumstances are set forth in writing by the requestor.

E. Review of Waivers. A waiver determination by the finance purchasing manager may be reviewed by the Board of Contracts and Awards (C&A Board). The C&A Board may also review a request to reduce or waive the SBE utilization goals based on Not Practicable or Best Interests of the City circumstances. The C&A Board shall determine whether compliance with such goals would impose unwarranted economic burden on, or risk to, the City of Tacoma as compared with the degree to which the purposes and policies of this chapter would be furthered by requiring compliance. If the determination of the C&A Board does not resolve the matter, a final determination shall be made by the City Council or Public Utility Board, as the case may be.

(Ord. 28141 Ex. A; passed Mar. 26, 2013: Ord. 27867 Ex. A; passed Dec. 15, 2009)

### 1.07.070 Evaluation of submittals.

A. All submittals for a supplies, services, or public works and improvements contract valued at $25,000 or more shall be evaluated for attainment of the SBE goal established for that contract in accordance with this chapter and the SBE Regulations.

B. The determination of SBE usage and the calculation of SBE goal attainment per this section shall include the following considerations:

1. General. The dollar value of the contract awarded by the City to a SBE in the procurement of supplies, services, or public works shall be counted toward achievement of the SBE goal.

2. Supplies. A public works and improvements contractor may receive credit toward attainment of the SBE goal for expenditures for supplies obtained from a SBE; provided such SBE assumes the actual and contractual responsibility for delivering the supplies with its resources. The contractor may also receive credit toward attainment of the SBE goal for the amount of the commission paid to a SBE resulting from a supplies contract with the City; provided the SBE performs a commercially useful function in the process.

3. Services and Public Works subcontracts. Any bid by a certified SBE or a bidder that utilizes a certified SBE shall receive credit toward SBE goal attainment based on the percentage of SBE usage demonstrated in the bid. A contractor that utilizes a SBE-certified subcontractor to provide services or public works shall receive a credit toward the contractor's attainment of the SBE goal based on the value of the subcontract with that SBE.

4. Brokers, Fronts, or Similar Pass-Through Arrangements. SBEs acting as brokers, fronts, or similar pass-through arrangements (as such terms are defined in the SBE Regulations) shall not count toward SBE goal attainment unless the activity reflects normal industry practices and the broker performs a commercially useful function.

C. Evaluation of competitively solicited submittals for public works and improvements and for services when a SBE utilization goal has been established for the contract to be awarded shall be as follows:

1. When contract award is based on price. The lowest priced bid submitted by a responsive and responsible bidder will be reviewed to determine if it meets the SBE goal. Such low bid shall be determined to meet the SBE goal if the bidder is a certified SBE.

a. If the low bidder meets the SBE goal, the bid shall be presumed the lowest and best responsible bid for contract award.

b. If the lowest priced bid does not meet the SBE goal, but the bid of any other responsive and responsible bidder does, and such other bid(s) is or are priced within five percent of the lowest bid, then the following formula shall be applied to each such other bid:

$$\text{(Base Bid)} - \left[ \frac{\text{SBE Usage Percentages}}{\text{SBE Goal Percentages}} \text{ X (.05 X Low Base Bid)} \right] = \text{Evaluated Bid}$$

c. The lowest evaluated bid after applying said evaluation formula shall be presumed the lowest and best responsible bid for contract award.

d. In no event shall a bidder's evaluated bid price be adjusted more than 5 percent from its base bid price for purposes of contract award.

2. When contract award is based on qualifications or other performance criteria in addition to price. Solicitations shall utilize a scoring system that promotes participation by certified SBEs. Submittals by respondents determined to be qualified may be further evaluated based on price using the formula applicable to price based contract awards above. The SBE Regulations may establish further requirements and procedures for final selection and contract award, including:

a. Evaluation of solicitations for Architectural and Engineering (A&E) services;

b. Evaluation and selection of submittals in response to requests for proposals; and

c. Selection of contractors from pre-qualified roster(s).

D. Evaluation of competitively solicited submittals for supplies when no SBE utilization goal has been established for the contract to be awarded shall encourage SBE participation as follows:

1. A submittal from a responsive certified SBE that is priced within five percent of the otherwise lowest responsive bid shall be recommended for award. Otherwise, the lowest responsive bidder shall be recommended for contract award.

E. The SBE Regulations may establish further SBE goal evaluation requirements and procedures for award of contracts between $5,000 and $25,000.00 and for non-competitively solicited contracts. City departments/divisions shall use due diligence to encourage and obtain SBE participation for supplies, services, and public works contracts under $5,000.

(Ord. 28141 Ex. A; passed Mar. 26, 2013: Ord. 27867 Ex. A; passed Dec. 15, 2009)

## 1.07.080 Contract compliance.

A. The contractor awarded a contract based on SBE participation shall, during the term of the contract, comply with the SBE goal established in said contract. To ensure compliance with this requirement following contract award, the following provisions apply:

1. Any substitutions for or failure to utilize SBEs projected to be used must be approved in advance by the SBE Program Coordinator. Substitution of one SBE with another shall be allowed where there has been a refusal to execute necessary agreements by the original SBE, a default on agreements previously made or other reasonable excuse; provided that the substitution does not increase the dollar amount of the bid.

2. Where it is shown that no other SBE is available as a substitute and that failure to secure participation by the SBE identified in the solicitation is not the fault of the respondent, substitution with a non-SBE shall be allowed; provided, that, the substitution does not increase the dollar amount of the bid.

3. If the SBE Program Coordinator determines that the contractor has not reasonably and actively pursued the use of replacement SBE(s), such contractor shall be deemed to be in non-compliance.

B. Record Keeping. All contracts shall require contractors to maintain relevant records and information necessary to document compliance with this chapter and the contractor's utilization of SBEs, and shall include the right of the City to inspect such records.

(Ord. 28141 Ex. A; passed Mar. 26, 2013: Ord. 27867 Ex. A; passed Dec. 15, 2009)

## 1.07.090 Program monitoring.

A. The SBE Program Coordinator shall monitor compliance with all provisions of this chapter and the SBE Regulations. The SBE Program Coordinator shall establish procedures to collect data and monitor the effect of the provisions of this chapter to assure, insofar as is practical, that the remedies set forth herein do not disproportionately favor one or more racial, gender, ethnic, or other protected groups, and that the remedies do not remain in effect beyond the point that they are required to

eliminate the effects of under utilization in City contracting. The SBE Program Coordinator shall have the authority to obtain from City departments/divisions, respondents, and contractors such relevant records, documents, and other information as is reasonably necessary to determine compliance.

B. The SBE Program Coordinator shall submit an annual report to the Community and Economic Development Director, Director of Utilities, and the City Manager detailing performance of the program. The report shall document SBE utilization levels, waivers, proposed modifications to the program, and such other matters as may be specified in the SBE Regulations.

(Ord. 28141 Ex. A; passed Mar. 26, 2013: Ord. 28110 Ex. B; passed Dec. 4, 2012: Ord. 27867 Ex. A; passed Dec. 15, 2009)

### 1.07.100 Enforcement.

The Director, or his or her designee, may investigate the employment practices of contractors to determine whether or not the requirements of this chapter have been violated. Such investigation shall be conducted in accordance with the procedures established in the SBE Regulations.

(Ord. 28141 Ex. A; passed Mar. 26, 2013: Ord. 28110 Ex. B; passed Dec. 4, 2012: Ord. 27867 Ex. A; passed Dec. 15, 2009)

### 1.07.110 Remedies.

A. Upon receipt of a determination of contractor violation by the SBE Program Coordinator, the City Manager or Director of Utilities, as appropriate, may take the following actions, singly or together, as appropriate:

1. Forfeit the contractor's bid bond and/or performance bond;

2. Publish notice of the contractor's noncompliance;

3. Cancel, terminate, or suspend the contractor's contract, or portion thereof;

4. Withhold funds due contractor until compliance is achieved; and/or

5. Recommend appropriate action including, but not limited to, disqualification of eligibility for future contract awards by the City (debarment) per Section 1.06.279 TMC;

B. Prior to exercise of any of the foregoing remedies, the City shall provide written notice to the contractor specifying the violation and the City's intent to exercise such remedy or remedies. The notice shall provide that each specified remedy becomes effective within ten business days of receipt unless the contractor appeals said action to the Hearing Examiner pursuant to Chapter 1.23 TMC.

C. When non-compliance with this chapter or the SBE Regulations has occurred, the SBE Program Coordinator and the department/division responsible for enforcement of the contract may allow continuation of the contract upon the contractor's development of a plan for compliance acceptable to the Director.

(Ord. 28141 Ex. A; passed Mar. 26, 2013: Ord. 28110 Ex. B; passed Dec. 4, 2012: Ord. 27867 Ex. A; passed Dec. 15, 2009)

### 1.07.120 Unlawful acts.

It shall be unlawful for any Person to willfully prevent or attempt to prevent, by intimidation, threats, coercion, or otherwise, any Person from complying with the provisions of this chapter.

(Ord. 27867 Ex. A; passed Dec. 15, 2009)

### 1.07.130 Severability.

If any section of this chapter or its application to any Person or circumstance is held invalid by a court of competent jurisdiction, then the remaining sections of this chapter, or the application of the provisions to other Persons or circumstances, shall not be affected.

(Ord. 27867 Ex. A; passed Dec. 15, 2009)

### 1.07.140 Sunset and review of program.

This chapter shall be in effect through and until December 31, 2019, unless the City Council shall determine at an earlier date that the requirements of this chapter are no longer necessary. If this chapter has not been repealed by July 1, 2019, the City Council shall determine by the end of that year whether substantial effects or lack of opportunity of SBEs remain true in the relevant market and whether, and for how long, some or all of the requirements of this chapter should remain in effect.

(Ord. 28274 Ex. A; passed Dec. 16, 2014: Ord. 28141 Ex. A; passed Mar. 26, 2013: Ord. 27867 Ex. A; passed Dec. 15, 2009)