



City of Tacoma, WA

**DEPARTMENT OF PUBLIC UTILITIES
TACOMA POWER**

REQUEST FOR PROPOSALS

**SUPPLY OF HATCHERY RAINBOW TROUT
FOR CUSHMAN HYDROELECTRIC PROJECT**

SPEC NO. PG17-0168F

**CITY OF TACOMA
DEPARTMENT OF PUBLIC UTILITIES
TACOMA POWER**

**REQUEST FOR PROPOSAL
PG17-0168F
SUPPLY OF HATCHERY RAINBOW TROUT
FOR CUSHMAN HYDROELECTRIC PROJECT**

MAY 2017

CITY OF TACOMA
DEPARTMENT OF PUBLIC UTILITIES
TACOMA POWER

William A. Gaines, Director of Utilities/COO

Chris Robinson, Power Superintendent/COO

Date: May 22, 2017

Each bid to be enclosed in a sealed envelope bearing the superscription
"Tacoma Power –Supply of Hatchery Rainbow Trout for Cushman Hydroelectric Project"



City of Tacoma
Tacoma Public Utilities-Tacoma Power

REQUEST FOR PROPOSALS PG17-0168F
PG17-0168F

Submittal Deadline: 11:00 a.m., Pacific Time, **Tuesday, July 11**

Submittal Delivery: Sealed submittals will be received as follows:

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

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 will not be held.

Project Scope: SUPPLY OF HATCHERY RAINBOW TROUT

Estimate: N/A

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.

Additional Information: Requests for information regarding the specifications may be obtained by contacting Kim Ward, senior buyer by email to kward2@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.

REQUEST FOR PROPOSAL PG17-0168F
SUPPLY OF HATCHERY RAINBOW TROUT
FOR THE CUSHMAN HYDROELECTRIC PROJECT

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**SUPPLY OF HATCHERY RAINBOW TROUT FOR
CUSHMAN HYDROELECTRIC PROJECT
SPECIFICATION NO. PG17-0168F**

I. INTRODUCTION

The City of Tacoma (City), Department of Public Utilities, Light Division (dba Tacoma Power) invites qualified contractors to submit proposals for a contract for the annual supply of 33,333 pounds of hatchery rainbow trout to enhance recreational angling in lakes in Mason, Kitsap, Thurston, Pierce, and Jefferson Counties, Washington. It is Tacoma Power's intent to award a one year contract with the option to renew for up to 4 years.

The primary intention of the City is to award a contract to a single contractor, but the City may determine by the end of the solicitation that the public interest is best served by making more than one award to multiple contractors, and hereby reserves the right to do so.

Unit quantities contained in this RFP are used to establish unit prices for the purpose of evaluation of proposals and may vary from actual ordered quantities.

II. CONTACT PERSON

For information relating to the technical specifications of this Request for Proposal (RFP), please contact Andrew Ollenburg, Cushman Fish Facilities Manager at 253-441-4950. For general purchasing questions, contact Kimberly Ward, Senior Buyer at 253-502-8250.

III. PRE-PROSAL MEETING/QUESTION

A pre-proposal meeting will not be held, however questions from prospective proposers may be submitted in writing via email by **1:00 p.m. June 23, 2017**. to, Purchasing Analyst, by email at KWard2@cityoftacoma.org. No further questions will be accepted after this time and date. The City of Tacoma will not be responsible for unsuccessful email or faxed submittals. Answers to all questions will be posted on the Purchasing website at www.TacomaPurchasing.org on or about, June 26, 2017. **5:00 p.m.** It is the responsibility of the proposer to check the website. These answers are **not** considered an addendum.

IV. SCOPE OF WORK

The successful proposer(s) will supply and plant up to 33,333 pounds of hatchery rainbow trout into lakes in Mason, Kitsap, and Jefferson Counties during spring 2018 (March through May) and during fall 2018 (late September-early October). A total of 8,000 pounds of rainbow trout are to be released into Lake Kokanee (Mason County). The remainder of the rainbow trout will be released into other lakes designated by the Washington Department of Fish and Wildlife (WDFW) in Mason, Kitsap, and Jefferson Counties, that are within 60 road miles (each way) of Hoodspport, Washington. More than one lake may be stocked per delivery, and up to two deliveries per year per lake can be scheduled by WDFW, up to a maximum of 25 deliveries per year. The deliveries to Lake Kokanee are in addition to the 25 deliveries to the other lakes.

The contractor will supply and plant hatchery trout that meet or exceed the following requirements:

- The hatchery rainbow trout source broodstock will be certified disease-free by the producer and WDFW, or other applicable jurisdiction.

All disease testing will adhere to the protocols contained and described in the Salmonid Disease Policy of the Co-Managers of Washington State, revised July 2006.

http://access.nwifc.org/enhance/documents/FinalDiseasePolicy-July2006_Ver3.pdf

- The contractor will make the rainbow trout available for planting per the dates, numbers, fish per pound (fpp), and pounds shown in Table 1.
- The contractor will deliver and plant the rainbow trout per industry standards to lakes in Mason, Kitsap, and Jefferson Counties as directed by Tacoma Power.
- The contractor will have proven experience rearing hatchery salmonids.
- The contractor shall have the ability to provide replacement fish that will meet the requirements as contained in this specification, if the hatchery rainbow trout are lost or deemed unacceptable for delivery.
- The contractor shall have the ability to provide hatchery rainbow trout that meet all of the above requirements during the term of any contract as a result of this RFP.

Table 1. Summary of rainbow trout to be provided by contractor per City of Tacoma Request for proposal –PG17-0168F.

Lake Name	Date in 2018	Number	FPP	Pounds
Kokanee Lake	Mid-March	2,400	1.3	1,846
	Mid-May	3,000	1.3	2,308
	Before July 4	3,000	1.3	2,308
	Before Labor Day	2,000	1.3	1,538
Subtotal		10,400		8,000
Other Lakes in Jefferson, Kitsap, Mason, Pierce and Thurston counties	Mid- March	4,828	1.3	3,714
	Late March	1,300	1.3	1,000
	Early April	2,180	1.3	1,677
	Opening Day	5,360	1.3	4,123
	Opening Day	23,240	2.5	9,296
	Mid-May	2,420	1.3	1,862
	Early October	4,760	1.3	3,662
Subtotal		44,088		25,333
Grand Total		54,488		33,333

V. WORK PLAN

The purpose of this contract is to provide fish to enhance recreational angling in lakes in Mason, Kitsap, Thurston, Pierce, and Jefferson Counties, Washington per the 2009 Supplementation Agreement between the City of Tacoma and WDFW.

Tacoma Power will assign a project manager who will coordinate with the contractor and other Tacoma Power staff, be accountable for schedules and budget, and assure that the project meets the required needs of Tacoma Power. The project manager will be responsible to set clear definitions of duties and organization of the project, and shall be the point of contact for the City throughout the entire contract term.

VI. SCHEDULE

The schedule of events concerning this RFP is as follows.

June 19, 2017	RFPs are made available for review to potential contractors.
June 23, 2017	Questions are due
July 11, 2017	Proposers are required to return proposals on or before 11:00 a.m., Pacific Time.
July 12-14, 2017	Contractor will be selected, and contract will be negotiated between staff and vendor.
July, 2017	Contract award by Tacoma Public Utility Board.

These dates are tentative and subject to change. The City reserves the right to adjust these dates as needed.

VII. CONTRACT TERM

The contract will be for a period of one year from date of award, with four (4) one-year renewal options. Tacoma Power reserves the right to cancel the contract for any reason by thirty (30) days written notice.

VIII. PRICING

Contractors shall provide the “per pound” price for the production of 33,333 pounds of hatchery rainbow trout as summarized in Table 1, and supply the cost per truck to ship the fish to Lake Kokanee in Mason County, Washington. Shipment to other lakes in Mason, Kitsap, and Jefferson Counties within 60 road miles of Hoodspport, Washington, shall be at the unit price per mile rate in the Proposal. Pricing shall remain firm for the initial 12-month contract period.

Proposal submittal prices will establish a base price against which vendors may request price adjustments. The City may consider price adjustments for each 12-month contract period.

The vendor must submit all price increases/decreases in writing 30 days prior to each 12-month contract period, under the following conditions:

- A. Vendor shall submit proposed price changes 30 days prior to the end of each 12-month contract period. Written requests for price changes should be directed to Andrew Ollenburg, Tacoma Power/Generation/Natural Resources, 3628 South 35th Street, Tacoma, Washington 98409, Phone: 253-441-4950.
- B. Any proposed price increase to contract line items must be beyond the control of the vendor and supported by written documentation from the manufacturer or wholesale distributor, indicating new higher cost adjustments in effect.
- C. No adjustment will be made for vendor profit margin.
- D. The City is entitled to any promotional pricing during the contract period which is lower than pricing provided in the bid.
- E. Price decreases shall be immediately passed on to the City.
- F. Prices shall remain firm for each contract period; however, nothing in this contract will prevent the vendor from charging a lower than quoted price.
- G. Price increases may be passed along during a contract period if the increase is due to Federally mandated regulations.
- H. The City reserves the right to accept or reject all such price adjustments.

Increase requests may be evaluated against various market conditions, including but not limited to, Consumer Price Index, for Seattle-Tacoma-Bremerton, All Items 1982-84+100 for the comparable period, State/Federal regulations affecting production costs of the materials, volatile commodity market conditions or minimum wage adjustments.

IX. CONTRACTOR AGREEMENT

The City's standard supply contract agreement must be executed. Concerns with any of the provisions of this agreement must be identified in the proposal, along with any other additional contract provisions desired by the contractor. The City reserves the right to terminate the agreement upon proper notice at any time due to the project termination, unavailability of funds, or any other reason.

X. CONTRACTOR SELECTION PROCESS

Evaluation Criteria. Evaluation of responses to this RFP will be performed by a Selection Advisory Committee (SAC). Proposals will be evaluated and ranked based on the following criteria:

Criteria	%
Stated ability of the Contractor to satisfy disease free requirements as detailed in the Scope of Work	pass/fail
The cost for the production and delivery of hatchery rainbow trout as summarized in Table 1	40%
Stated ability of the contractor to provide 33,333 pounds of hatchery rainbow trout as summarized in Table 1 and per the specifications contained in Section 2: Scope of Work	30%
The vendor's past experience rearing salmonids	5%
The genetic history of the broodstock	5%
Location, description and condition of the source aquaculture facility	5%
The ability of the contractor to provide replacement fish that will meet the specifications in Section 2: Scope of Work, in the event the hatchery rainbow trout are lost or unacceptable for delivery	10%
Ability to respond to emergencies, high priority and routine work, and general inquiries	5%

The SAC shall have the right to determine the criteria and weighing of all the criteria in the evaluation of proposals which are in the best interests of the City.

Should it be necessary, the SAC may interview one or more selected finalists and/or request site visits.

The City has the right to reject any or all proposals, issue subsequent RFP's, negotiate with multiple firms for separate phases, and/or request that further information be presented by the proposers in order to complete evaluations.

After a contractor(s) is selected by the Selection Advisory Committee, all other proposers will be notified.

XI. GENERAL REQUIREMENTS

Following award of contract, the project manager will notify the selected contractor(s) for the location, time and date of a meeting for the purpose establishing the scope and schedule of each task as contained in this RFP. The performance of the assigned tasks or projects will be fully coordinated with the Project Manager. The following provisions will apply:

A. Schedule Control

On a monthly basis, or as approved by the Tacoma Power, the contractor must provide the Project Manager with a brief update on the condition of the hatchery trout stock. This update will include an inventory, growth information, general condition, and the results of any disease evaluations or diagnostics.

B. Compensation

The project manager in coordination with the contractor shall make all measurements and determine all quantities and amount of work done for any progress payments under the contract. The project manager's determination of progress payments shall be conclusive. The City will not pay for material not under City control.

C. Subcontractors

Tacoma Power reserves the right to approve any subcontractor used by the prime contractor to perform work under this Request for Proposal.

In all cases, the City's contract is with the prime contractor and it is the prime contractor's responsibility to ensure all work performed under this contract meets all requirements as contained in any contract(s) as a result of this RFP.

XII. PROPOSAL GUIDELINES AND FORMAT

All interested parties shall submit one (1) one original and five (5) copies of their Proposal. All Proposals are required to be delivered to the below address by 11:00 A.M. Pacific Time on or before: **July 11, 2017**.

Submit sealed proposals to:

Tacoma Public Utilities, Purchasing Division
Attention: Kimberly Ward, Senior Buyer
3628 South 35th Street
Tacoma, Washington 98409-3192

Proposals must be prepared simply and economically, providing a straightforward, concise description of the proposer's ability to meet the requirements of this RFP. Any erasures, changes or strikeovers must be initialed by the proposer's signatory.

The original must be signed in ink by the person who is authorized to do so by the proposer of record.

To facilitate the evaluation process, organize your firm's proposal according to the following subjects and limit the proposal to no more than twenty (20) pages, exclusive of resumes, technical submittals and answers to questions listed in Exhibit A. *Firms are strongly encouraged to use recycled/recyclable products and use both sides of the paper whenever possible.* Submittal documents should reference PG17-0168F.

A. Statement of Qualifications

Describe the experience and expertise your firm has had with similar work. Provide a list of references to include the company or agency name, location, contract amount, and contact name and phone number. Provide the names and relevant background and experience of the key personnel who will be directly involved in rearing and planting the hatchery rainbow trout under this contract. Proposers shall list any current contracts or obligations for providing hatchery trout.

B. Fees and Charges

Per pound price of rainbow trout as listed on Proposal Sheet and the transport and release of fish into selected lakes per the Proposal Sheet,

C. Answers to List of Questions

Provide detailed written responses for each question as listed in Exhibit A.

D. Ability To Actively Pursue The Proposed Work

Proposers shall state ability to accept responsibility for supplying and planting hatchery trout within the time frames required by Tacoma Power, and in view of the firm's current and/or projected work load. Proposers shall also state their ability to supply hatchery rainbow trout with short lead-time, and their ability to provide replacement stock for rainbow trout deemed unacceptable by Tacoma Power and/or WDFW.

E. Additional Required Submittal Forms

- Signature Page
- Price Proposal Sheet
- Prime Contractor's Pre-Work Form
- Sub Contractor's Pre-Work form
- Forms required at contract award:
- One Page Contract
- Insurance Certificate

XIII. GENERAL PROVISIONS

Included in this RFP are Standard Terms and Conditions Section 1 - Solicitation and Section 2 - Supplies, Section 2 - Services which will become a part of any contract awarded as a result of this RFP. Proposers shall state in their proposal any General Provision item that they cannot comply with.

XIV. INSURANCE

In addition to Section 2 – Services, Paragraph 2.22 – Insurance, of the Standard Terms and Conditions and the attached City of Tacoma Certificate Requirements, the successful Proposer(s) shall deliver, with their Certificate of Liability Insurance, an endorsement naming the City as an additional insured and stating that coverage under such policy is primary over and non-contributory with any insurance the City may maintain.

Proposer _____

LIST OF QUESTIONS

The City of Tacoma, Department of Public Utilities, Tacoma Power is required by Section 4 (Resident Fish Program) of the 2009 Cushman Off-License Supplementation Agreement Between the City of Tacoma and Washington Department of Fish and Wildlife to annually release 33,333 pounds of rainbow trout into Lake Kokanee and other lakes designated by the WDFW in Mason, Kitsap, and Jefferson Counties, Washington. Proposers shall fully answer the following questions.

1. Can you provide 33,333 pounds of hatchery rainbow trout for delivery per Table 1 and per the specifications in Section 2: Scope of Work?
2. If you cannot provide 33,333 pounds of hatchery rainbow trout, as described in number 1 above, how many can you provide?
3. What is your experience rearing hatchery rainbow trout and/or salmonids? Also, describe the experience of the staff directly involved with rearing these fish.
4. What is the disease history of your facility and the source of hatchery rainbow trout broodstock? Is your facility certified disease-free by the WDFW or other acceptable jurisdiction?
5. Briefly describe your disease prevention protocols.
6. What is the genetic history of the hatchery rainbow trout broodstock?
7. Briefly describe your methods to maintain genetic quality in your broodstock.
8. Provide a description of the facility proposed to be used for rearing these trout, to include location, physical and mailing addresses, rearing capacity, type and number of rearing unit(s).
9. Provide a description of the water source at your facility, to include source, capacity, quality (i.e., temperature, chemistry) and your firm's ability to control water temperature.
10. What are the growth rate, spawn timing, and size at maturity of the hatchery rainbow trout broodstock at your facility?
11. Will you be available to respond to emergencies, high priority, routine work and answer general inquiries in regard to the fish being reared and released for Tacoma Power?
12. Do you have the capacity to provide replacement fish in the event the hatchery rainbow trout are lost or are otherwise unacceptable for delivery?
13. Description of equipment (including age, condition, location) and methods to transport and plant fish.
14. By what date must the contractor be notified to provide hatchery rainbow trout for the following season?
15. Any other applicable information not listed here.

PROPOSAL SIGNATURE PAGE

**CITY OF TACOMA DEPARTMENT OF PUBLIC UTILITIES
TACOMA POWER / GENERATION**

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 Purchasing Division, located in the Tacoma Public Utilities Administration North Building, Main Floor, at 3628 South 35th Street, Tacoma, WA 98409. See the Request for Proposals page near the beginning of the specification for additional details.

**REQUEST FOR PROPOSALS SPECIFICATION NO. PG17-0168F
Supply of Hatchery Rainbow Trout
for Cushman Hydroelectric Project**

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

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

Address

Printed Name and Title

City, State, Zip

(Area Code) Telephone Number / Fax Number

E-Mail Address

State Business License Number

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

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

Washington UBI (Unified Business Identifier) Number

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

THIS PAGE MUST BE SIGNED AND RETURNED WITH SUBMITTAL

Proposer _____

**CITY OF TACOMA
DEPARTMENT OF PUBLIC UTILITIES**

PRICE PROPOSALSHEET- SPECIFICATION NO. PG17-0168F

Description	Quantity	Unit	Unit Cost	Total Fish Cost
Production of Hatchery Rainbow Trout @ mix of 2.5 and 1.3 fish per pound	33,333 (See Table 1)	LB	\$ _____	\$ _____

<u>Truck*</u>	<u>Miles from Hatchery to Lake Kokanee</u>	<u>Cost per Mile</u>	<u>Total Transport Cost</u>
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____

***List trucks by various delivery capacities, if applicable**



City of Tacoma
 Community & Economic Development
 Office of Small Business Enterprise
 747 Market Street, Room 900
 Tacoma, WA 98402
 253-591-5224 or 253-573-2435

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												
Apprentices												
Trainees												
TOTALS												

CONTRACTOR'S PROJECTED WORK FORCE - THIS PROJECT

Superintendent												
Foreman												
Operators												
Laborers												
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 subcontractor 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 253-591-5224 or 253-573-2435



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

SUBCONTRACTOR'S PRE-WORK FORM

Company Name _____

Telephone _____

Address/City/State/Zip Code _____

Name of Prime Contractor _____

Specification Number _____

Type of work to be performed on this project _____

QUESTIONS 1 and 2 BELOW REFER TO ANY FURTHER SUBCONTRACTING OF YOUR FIRM'S PORTION OF THIS PROJECT

1. What is the total number of **ALL** subcontracts to be let on this project? _____
2. What specific efforts were made by your company to obtain or assure minority and women subcontractor participation on this project? _____

SUBCONTRACTOR'S PRESENT WORK FORCE

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
Officers/Managers												
Foreman												
Apprentices												
Trainees												
TOTALS												

SUBCONTRACTOR'S PROJECTED WORK FORCE - THIS PROJECT

Superintendent												
Foreman												
Operators												
Laborers												
Apprentice												
Trainee												
TOTALS												

Type or Print Name of Responsible Officer / Title _____

Signature of Responsible Officer _____

Date _____

INSTRUCTIONS FOR COMPLETING SUBCONTRACTOR'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 subcontractor 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 253-597-7933 or 253-591-5224.

**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. **CHANGES**

- 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 a 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:

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

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)

CONTRACT

Resolution No.
Contract No.

This Contract is 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 ("City"), and ("Contractor").

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

I. Contractor shall fully execute and diligently and completely perform all work and provide all services and deliverables described herein and in the items listed below each of which are fully incorporated herein and which collectively are referred to as "Contract Documents":

-
1. Specification No. _____ together with all authorized addenda.
 2. Contractor's submittal (or specifically described portions thereof) dated _____ submitted in response to Specification No. _____.
 3. Describe with specific detail and list separately any other documents that will make up the contract (fee schedule, work schedule, authorized personnel etc.) or any other additional items mutually intended to be binding upon the parties.
-

In the event of a conflict or inconsistency between the terms and conditions contained in this document entitled Contract and any terms and conditions contained the above referenced Contract Documents the following order of precedence applies with the first listed item being the most controlling and the last listed item the least controlling:

1. Contract
2. List remaining Contract Documents in applicable controlling order

- II. The total price to be paid by City for Contracts full and complete performance hereunder may not exceed: \$ _____, plus applicable sales tax.
- III. Contractor agrees to accept as full payment hereunder the amounts specified herein and in Contract Documents, and the City agrees to make payments at the times and in the manner and upon the terms and conditions specified. Except as may be otherwise provided herein or in Contract Documents Contractor shall provide and bear the expense of all equipment, work and labor of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the work and providing the services and deliverables required by this Contract.
- IV. Contractor acknowledges, and by signing this Contract agrees, that the Indemnification provisions set forth in the controlling Contract Documents, including the Industrial Insurance immunity waiver (if applicable), are totally and fully part of this Contract and, within the context of the competitive bidding laws, have been mutually negotiated by the Parties hereto.
- V. Contractor and for its heirs, executors, administrators, successors, and assigns, does hereby agree to the full performance of all the requirements contained herein and in Contract Documents.
- VI. It is further provided that no liability shall attach to City by reason of entering into this Contract, except as expressly provided herein.

IN WITNESS WHEREOF, the Parties hereto have accepted and executed, as of the Effective Date stated above, which shall be Effective Date for bonding purposes as applicable.

CITY OF TACOMA:

CONTRACTOR:

By: _____
Signature

By: _____
Signature

By: _____
Printed Name

Printed Name

By: _____
Director of Finance

_____ Title

APPROVED AS TO FORM:

By: _____
City Attorney

Sample



I. GENERAL REQUIREMENTS

- a) The City of Tacoma (the City) reserves the right to approve or reject the insurance provided based upon the insurer (including financial condition), terms and coverage, the Certificate of Insurance (COI), and/or endorsements. The insurance must be provided by an insurer with a rating of (A-) VII or higher in the A.M. Best's Key Rating Guide (<http://www.ambest.com/home/default.aspx>), and pursuant to RCW 48, licensed to do business in the State of Washington (or issued as a surplus line by a Washington Surplus Lines broker).
- b) The 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.
- c) The liability insurance policies required by this section shall:
 - 1. Contain a "severability of insureds," "separation of interest," or "cross liability" provision.
 - 2. Be primary and non-contributory insurance to any insurance coverage or self-insurance program the City may maintain.
 - 3. Contain a Waiver of Subrogation clause in favor of the City.
 - 4. Other than professional liability, reflect coverage on an "occurrence", not "claims-made" policy form.
- d) The Contractor shall provide the City notice of any cancellation or non-renewal of this required insurance within 30 calendar days.
- e) The Contractor shall forward to the City, a full and certified copy of the insurance policy(s) and endorsements required by this section upon the City's request.
- f) The Contractor shall not begin work under the Contract until the required insurance has been obtained and approved by the City.
- g) Failure on the part of the Contractor to obtain and maintain the insurance as required by this section shall constitute a material breach of the Contract, upon which the City may, after giving five business day notice to the 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 the City by the Contractor upon demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.
- h) 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 the City to the Contractor.
- i) For all liability insurance policies required by this Section, the City, including its officers, elected officials, employees, agents, and volunteers, and any other entities as required by the Contract, shall be named as additional insured(s) by amendatory endorsement, EXCEPT Professional Liability (if applicable), Workers Compensation, Owners and Contractors Protective Liability, and Railroad Protective Liability.



EXHIBIT A CITY OF TACOMA INSURANCE REQUIREMENTS

II. EVIDENCE OF INSURANCE

The Contractor shall deliver a COI and endorsements for each policy of insurance meeting the requirements set forth herein when the Contractor delivers the signed Contract for the work to the City. The certificate and endorsements must conform to the following requirements:

- a) An ACORD certificate or a form determined by the City to be equivalent.
- b) Copies of all endorsements showing the policy number and naming the City as an additional insured.
- c) The endorsement is to state that the insurance is primary and non-contributory over any City insurance or self-insurance.
- d) The endorsement is to extend "Products/Completed Operations" coverage to the City as an additional insured.
- e) A statement of additional insured status on an ACORD COI shall not satisfy this requirement.
- f) Any other amendatory endorsements to show the coverage required herein.

III. CERTIFICATE REQUIREMENTS SPECIFIC REPRESENTATIONS

The following must be indicated on the COI:

- a) The City is named as an additional insured ("with respect to a specific Contract" or "for any and all work performed with the City" may be included in this statement).
- b) "This insurance is primary and non-contributory over any insurance or self-insurance the City may carry" ("with respect to a specific Contract" or "for any and all work performed with the City" may be included in this statement).
- c) A Waiver of Subrogation in favor of the City for General Liability and Automobile Liability.
- d) Self-Insured Retention and applicable deductible limits must be disclosed on the COI and be no more than \$10,000.
- e) Contract or Permit number and the City Department.
- f) All coverage other than professional liability, Cyber/Privacy & Security, and Pollution Liability must be written on "occurrence" form and not "claims-made" form.
- g) Reflect the existence and form numbers of all required endorsements.

IV. SUBCONTRACTORS

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

V. CERTIFICATE REQUIREMENTS FOR COVERAGES AND LIMITS

The insurance shall provide the minimum coverages and limits set forth below. Providing coverage in these stated minimum limits shall not be construed to relieve the Contractor from liability in excess of such limits. None of the policies or coverage required by this section shall be subject to a deductible or self-insured retained limit of more than \$10,000 unless first approved in writing by the City Contracting Department.

A. General Liability Insurance



EXHIBIT A CITY OF TACOMA INSURANCE REQUIREMENTS

1. **Commercial General Liability (CGL) Insurance**

The CGL insurance policy must provide limits not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate.

The CGL policy shall be written on an "occurrence", not "claims-made", basis and shall include the following coverage:

- a) Must use (Insurance Services Office (ISO) form CG0001(04-13) or its equivalent).
- b) A per project aggregate policy limit.
- c) Products Hazard/Completed Operations- for a period of one year following final acceptance of the work.
- d) Personal/Advertising Injury.
- e) Contractual Liability.
- f) Explosion, Collapse, or Underground Property Damage.
- g) Blasting (only required when the Contractor's work under this Contract includes exposures to which this specified coverage responds).
- h) If Contractor is performing work within 50 feet of a railroad right of way, the General Liability policy shall be endorsed to eliminate the Contractual Liability exclusion pertaining to work within 50 feet of a railroad right of way using ISO form CG2417(10-01) or equivalent.
- i) Abuse & Molestation, by a separate coverage part or an endorsement to the CGL, with limits not less than \$1,000,000 each occurrence & \$2,000,000 aggregate for Contractors working directly with youth under the age of 18. If Abuse & Molestation coverage is provided on a "claims-made" basis, coverage must be maintained for not less than three years following the end of the contract. This may be done by policy renewals or an Extended Reporting Period Endorsement.
- j) Include the City as additional insured and:
 1. Use ISO forms CG2010(04-13) and CG2037(04-13) or equivalent for Contractors performing work on behalf of the City and name the City as an additional insured for ongoing and completed operations.
 2. Use ISO form CG2012(04-13) or equivalent for Permits and name the City as an additional insured.
 3. Use ISO form CG2026(04-13) or equivalent for Facility Use Agreements and name the City as an additional insured.
 4. Blanket additional insured provisions within a policy form will be accepted in lieu of the specific additional insured endorsement forms specified herein. However, a blanket additional insured endorsement shall provide the equivalent coverage provided by specific additional insured endorsements specified herein.

2. **Marine General Liability (MGL) Insurance**

The MGL policy must provide limits no less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate.

MGL insurance must have no exclusions for non-owned watercraft. A policy of MGL Insurance shall be written on an "occurrence", not "claims-made", basis and shall include the following coverage:



EXHIBIT A CITY OF TACOMA INSURANCE REQUIREMENTS

- a) A per project aggregate policy limit.
- b) Products Hazard/Completed Operations- for a period of one year following final acceptance of the work.
- c) Personal/Advertising Injury.
- d) Contractual Liability.
If Contractor is performing work within 50 feet of a railroad right of way, the General Liability policy shall be endorsed to eliminate the Contractual Liability exclusion pertaining to work within 50 feet of a railroad right of way using ISO form CG2417(10-01) or equivalent.
- e) Include the City as an additional insured for Contracts for both ongoing and completed operations.

3. Aircraft General Liability (AGL) Insurance

~~The Contractor shall provide AGL insurance, with annual limits of not less than \$10,000,000 per occurrence for manned aircraft, and not less than \$1,000,000 per occurrence for unmanned aircraft protecting against claims for damages in all cases where any aircraft is used on the Project that is owned, leased, or chartered by any Related Entity.~~

~~Any aircraft intended for use in performance of the Work, the aircraft crew, flight path, and altitude, including landing of any aircraft on the Site of any property owned by the City shall be subject to review and written acceptance by the City before usage.~~

~~If any aircraft are leased or chartered with crew and/or pilot, evidence of non-owned aircraft liability insurance will be acceptable but must be provided before use of the aircraft. The Indemnified Parties shall be additional insureds with respect to liability arising out of the Project of any acts, errors, or omissions of any Related Entity, whether occurring on or off the Site. For the operation of unmanned aircraft, use the CG2450 ISO endorsement to the ISO CGL policy or equivalent.~~

B. Commercial Automobile Liability (CAL) Insurance

The Contractor shall obtain and keep in force during the term of the Contract, a policy of CAL insurance coverage, providing bodily injury coverage and property damage coverage for owned (if any), non-owned, hired, and leased vehicles.

The Contractor must also maintain an MCS 90 endorsement or equivalent and a CA 9948 endorsement or equivalent if "Pollutants" are to be transported. CAL policies must provide limits not less than \$1,000,000 each accident for bodily injury and property damage. Must use ISO form CA 0001 or equivalent.

C. Workers' Compensation

1. State of Washington Workers' Compensation

The Contractor shall comply with Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

2. Longshore and Harbor Workers' Compensation Act (LHWCA)

The Contractor shall provide proof of insurance coverage in compliance with the statutory requirements of the U.S. LHWCA (administered by the U.S. Department of Labor). The



EXHIBIT A CITY OF TACOMA INSURANCE REQUIREMENTS

Contractor shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with this Act. The Contractor is responsible for all civil and criminal liability arising from failure to maintain such coverage.

~~3. Jones Act~~

~~The Contractor shall provide and maintain insurance coverage for seamen injured during employment resulting from negligence of the owner, master, or fellow crew members in compliance with the statutory requirements of the Jones Act (46 U.S.C Section 688).~~

~~The Contractor shall:~~

- ~~a) Ascertain if such insurance is required and, if required, shall maintain insurance in compliance with this Act.~~
- ~~b) Be responsible for all civil and criminal liability arising from failure to maintain such coverage.~~
- ~~c) Provide Protection and Indemnity (P&I) insurance providing coverage for actions of the crew to third parties, with the same limits stated for CGL Insurance.~~
- ~~d) Provide proof of insurance coverage in compliance with the statutory requirements of the Merchant Marine Act of 1920 (the "Jones Act").~~

D. Employers' Liability (EL) (Stop-Gap) Insurance

The Contractor shall maintain EL coverage with limits not less than \$1,000,000 each employee, \$1,000,000 each accident, and \$1,000,000 policy limit.

~~E. Professional Liability Insurance (PLI)~~

~~The Contractor and/or its subcontractor shall provide evidence of PLI covering professional errors and omissions. Such policy must provide minimum limits of \$1,000,000 per claim and \$2,000,000 aggregate. 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.~~

F.E. Excess or Umbrella Liability (UL) Insurance

The Contractor shall provide Excess or UL coverage at limits of not less than \$5,000,000 per occurrence and in the aggregate. This Excess or UL coverage shall apply, at a minimum, to the CGL, EL and Automobile Liability forms required herein.

~~G. Pollution Liability (PL) Insurance~~

~~The Contractor shall procure and maintain a PL or Environmental Liability policy providing coverage, including investigation and defense costs, for bodily injury and property damage, including loss of use of damaged property or of property that has been physically damaged or destroyed. Such coverage shall provide both on-site and off-site cleanup costs and cover gradual and sudden pollution, and include in its scope of coverage the City damage claims for loss arising out of the Contractor's work with limits not less than \$1,000,000 each occurrence and \$2,000,000 aggregate. This policy shall include Environmental Resource Damage coverage.~~

~~Such insurance may be provided on an "occurrence" or "claims-made" basis. If such coverage is provided on a "claims-made" basis, the following additional conditions must be~~



EXHIBIT A

CITY OF TACOMA INSURANCE REQUIREMENTS

met:

- ~~1. The policy shall not exclude coverage for Hazardous Substance Removal.~~
- ~~1. The policy must contain no retroactive date, or the retroactive date must precede the commencement date of this contract.~~
- ~~2. If provided on a "claims-made" basis and the insurer providing coverage changes during the term of the contract, the prior acts date must remain on or before the commencement date of this contract.~~
- ~~3. The extended reporting period (tail) must be purchased to cover a minimum of six years beyond completion of work.~~

H. Employee Theft (ET) Insurance

~~The Contractor shall maintain an Employee Dishonesty policy with a limit not less than \$1,000,000 per occurrence. Such policy shall include City as Loss Payee.~~

I. Cyber/Privacy and Security (CP&S) Insurance

~~The Contractor shall maintain CP&S insurance with coverage of not less than \$1,000,000 per claim and \$2,000,000 general aggregate that includes, but is not limited to, coverage for first party costs and third party claims from:-~~

- ~~1. Failure to protect data, including unauthorized disclosure, use or access,~~
- ~~2. Security failure or privacy breach,~~
- ~~3. Failure to disclose such breaches as required by law, regulation, or contract,~~
- ~~4. Notifications, public relations, credit monitoring, postage, advertising, and other services to assist public relations, credit monitoring, postage, advertising, and other services to assist in managing and mitigating a cyber incident,~~
- ~~5. Interruptions of business operations,~~
- ~~6. Network security failure,~~
- ~~7. Cyber extortion,~~
- ~~8. Cyber terrorism,~~
- ~~9. 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), and~~
- ~~10. Other cyber liability and cyber crime expenses.~~

J. Commercial Property (CP) Insurance

~~The Contractor or Vendor shall provide CP for loss or damage to any and all equipment owned by the City while in the care, custody or control of the Contractor, Vendor, Subcontractors, or their agents. The coverage shall be provided on an ISO special form Causes of Loss form or equivalent and shall provide full replacement cost coverage, and shall not be subject to a deductible of more than \$2,500. The Contractor/Vendor shall be liable for the payment of the deductible.~~

K. Garage Keepers Legal Liability (GKLL) Insurance

~~The Contractor shall provide GKLL Coverage, including Physical Damage Coverage (section III, ISO policy form CA00 05-03 10 or a more recent form) for all vehicles and/or equipment owned by the City while in the care, custody, or control of the Contractor/Vendor. A minimum policy limit of \$1,000,000 per vehicle and \$5,000,000 per occurrence shall be maintained with a maximum deductible of \$2,500 (see Risk Manager). The Contractor shall be responsible for paying the deductible for the applicable coverage.~~



EXHIBIT A

CITY OF TACOMA INSURANCE REQUIREMENTS

L. ~~Installation Floater Insurance (IFI)~~

~~During the term of this Contract, Contractor shall maintain in force, at its own expense, an IFI covering Contractor's labor, materials and equipment to be used for completion of the work performed under this Contract against all risks of direct physical loss, excluding earthquake and flood, for an amount equal to the full amount of the Contract improvements.~~

M. ~~Builder's Risk (BR) Insurance~~

~~Contractor shall purchase and maintain during the term of the Contract, a policy of BR insurance providing coverage for all risk of physical injury to all structures to be constructed according to the Contract. The City shall be named as an additional insured to the extent of its insurable interests, and a loss payee under the policy. BR insurance shall:~~

- ~~1. Be on an ISO special form Causes of Loss form or equivalent and shall insure against the perils flood, earthquake, theft, vandalism, malicious mischief, and collapse.~~
- ~~2. Include coverage for temporary buildings, debris removal, and damage to materials in transit or stored off-site.~~
- ~~3. Be written in the amount of the completed value of the structures, with no coinsurance provisions exposure on the part of the Contractor or City.~~
- ~~4. Have a deductible of no more than \$5,000 for each occurrence, the payment of which will be the responsibility of the Contractor. Any increased deductibles accepted by the City will remain the responsibility of the Contractor.~~
- ~~5. Be maintained until final acceptance of the work by the City.~~

~~The Contractor and the City waive all rights against each other, their respective subcontractors, agents and representatives for damages caused by fire or other perils to the extent covered by BR insurance or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.~~

N. ~~Railroad Protective Liability (RPL) Insurance~~

~~Note: If the Contractor's work will involve working or being within 50 feet of a City railroad right of way, the Contractor shall obtain and keep in force during the term of the Contract, an ISO form RPL Coverage CG2035 (04-13), or equivalent, with City as a named insured, (not named as an additional insured) with policy limits of no less than \$2,000,000 per occurrence and \$6,000,000 Annual Aggregate. In addition, if the Contractor is working directly on, above, or a City railroad right of way, the limits shall be not less than \$5,000,000 per occurrence and \$10,000,000 aggregate.~~

O. ~~Owners and Contractors Protective Liability (OCPL) Insurance~~

~~The Contractor shall obtain and keep in force during the performance of any and all work required by this Contract, an ISO form OCPL policy, on which the City shall be a named insured. Said policy shall provide coverage for bodily injury and property damage arising from the work to be performed under the Contract, and shall have policy limits of no less than \$----- combined single limit of liability with a dedicated aggregate limit of no less than \$-----~~



EXHIBIT A CITY OF TACOMA INSURANCE REQUIREMENTS

~~(see Risk Manager for amounts).~~

P. ~~Inland Marine (Cargo) Insurance~~

~~Coverage shall protect the property from all risk of injury, and coverage shall be in an amount of the full replacement cost of the property, with no coinsurance exposure. Any applicable deductible shall not exceed \$5,000.~~

Q. ~~Ship Repairer's Legal Liability (SRLL) Insurance~~

~~The Contractor shall maintain SRLL insurance with a limit not less than the actual cash value of all vessels owned by the City that are in the care, custody, or control of the Contractor.~~

R.F. ~~Other Insurance~~

Other insurance as may be deemed appropriate to cover the specified risk and exposure arising from the scope of work or changes to the scope of work required by the City. The costs of such necessary and appropriate insurance coverage shall be borne by the Contractor.