



City of Tacoma
Department of Public Utilities/ Tacoma Power

REQUEST FOR BIDS
PT15-0226F
Underground Utility Locating

Submittal Deadline: 11:00 a.m., Pacific Time, Tuesday, June 23, 2015

Submittal Delivery: Sealed submittals will be received and time stamped at this location only:

City of Tacoma Procurement and Payables Division
Tacoma Public Utilities - Administration Building North, Main Floor
3628 South 35th Street, Tacoma, WA 98409

Submittal Opening: Sealed submittals in response to a RFB 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: Underground Locating of Tacoma Power Electrical and Data Facilities.

Estimate: \$165,000

Additional Information: Requests for information regarding the specifications may be obtained by contacting Jessica Tonka, buyer, by email to jtonka@cityoftacoma.org.

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



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

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All paragraphs of the General Provisions are applicable to this specification and contract except the following:

DELETE: SECTION I, Paragraphs 1.03.A, 1.04, 1.08 B, 1.11, 1.12, & 1.15.B

DELETE: SECTION II, Paragraphs 2.05.B, and 2.08.B

DELETE: SECTION III, Paragraphs 3.03, 3.04, 3.09.B, 3.12, 3.13, 3.16



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Underground Utility Locating

BIDDER'S CHECKLIST

This checklist identifies items to be included with your submittal. Any submittal received without these required items may be deemed non-responsive and may not be considered for award. Please do not include the entire specification document with your submittal.

Submittals must be received by the City of Tacoma Purchasing Division by the date and time specified in the Request for Bids page at the front of this Specification or subsequent addenda.

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

| | |
|---|-------------------------------------|
| The following items make up your submittal package: | <input checked="" type="checkbox"/> |
| One original and one copy of your complete submittal package (with original and copy clearly identified). | |
| One electronic copy of your complete submittal package (USB drive, labeled with company name) in either Word or PDF format, | |
| <p>Signature Page (page 8) with <u>ink signature</u>, including acknowledgement of any addenda</p> <p>This form is intended to serve as the first page of your submittal after the Title Page. Do not alter it in any way or add it to letterhead paper or present cover letters or blank pages ahead of it.</p> | |
| Proposal Pages (Pages 9 - 13) (identified with "Bidder" in the heading) | |
| <p>Supplemental Information (Page 47)</p> <p>> Safety Plan per Section 7.02</p> | |
| After award, the following documents will be executed: | |
| Contract (Appendix #3) | |
| Certificate of Insurance (Appendix #4) | |
| Surety/Performance Bond (Appendix #5) | |



Specification PT15-0229F
Underground Utility Locating

SUBMITTAL INSTRUCTIONS

PRE-SUBMITTAL QUESTIONS

- A. Questions and requests for clarification of these Specifications may be submitted in writing by **3:00 p.m., Pacific Time, June 15, 2015**, via email addressed to the Purchasing contact below. Questions received after this date and time may not be answered.
1. Please indicate the specification number and title in the email subject line.
 2. Present your questions in MS Word format or directly in the body of the email message. If applicable, cross reference the specific section of the RFP.
 3. Questions will not be accepted by telephone or fax.
 4. Questions marked confidential will not be answered.
 5. Individual answers will not be provided directly to Respondents.
 6. The City reserves the discretion to group similar questions to provide a single answer or not to respond when the requested information is confidential.
 7. The City will not be responsible for unsuccessful submittal of questions.
- B. Written answers to all questions will be posted on the Purchasing website at www.TacomaPurchasing.org on or about **June 17, 2015**. Navigate to *Contracting Opportunities / Services*, and scroll to this RFB. A notice will not be posted with the Specification if no questions are received.
- C. The answers are not typically considered an addendum.
- D. To receive notice of the posted answers, you must register as “bid holder” for this solicitation.

| Communication | Addressee |
|--|---|
| For all questions regarding Specification PT15-0226F | Jessica Tonka Buyer jtonka@cityoftacoma.org – email |



Specification PT15-0229F Underground Utility Locating

REVISIONS TO SPECIFICATION

- A. All revisions to this specification will be in the form of written addenda, and no oral revision should be relied upon for any purpose. In the event it becomes necessary to revise any part of this RFB, addenda will be issued to registered planholders and posted on the Purchasing website at www.TacomaPurchasing.org: Navigate to Current Contracting Opportunities / Services Solicitations, and scroll to this RFB. Failure to acknowledge addenda may result in a submittal being deemed non-responsive.
- B. The information provided during the question and answer timeframe listed above is not typically considered an addendum.

RESPONSIVENESS

- A. Respondents agree to provide a minimum of 60 days from the submittal deadline for acceptance by the City.
- B. Submittals will be reviewed by the City to determine compliance with the requirements and instructions specified in this RFB. The Respondent is specifically notified that failure to comply with any part of this RFB may result in rejection of the submittal as non-responsive. The City reserves the right, in its sole discretion, to waive irregularities deemed to be immaterial. The City also reserves the right to not award a contract or to issue a subsequent RFB.
- C. The final selections, if any, will be that submittal which, after review and in the sole judgment of City, best meets the requirements set forth in this RFB.

SIGNATURE PAGE

CITY OF TACOMA DEPARTMENT OF TACOMA POWER

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 Building North, Main Floor, at 3628 South 35th Street, Tacoma, WA 98409. **See the Request for Bids page near the beginning of the specification for additional details.**

REQUEST FOR BIDS SPECIFICATION NO. PT15-0226F

Underground Utility Locating

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
in WA, also known as UBI (Unified Business Identifier) 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.)

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

THIS PAGE MUST BE SIGNED AND RETURNED WITH SUBMITTAL.



Specification PT15-0226F
Underground Utility Locating

Bidder

PROPOSAL – PRICING SHEET

| Item | Task | Personnel & Equipment | 3 years Estimated # of Locates | Unit Cost per Locate | Extended Price (Unit x 3yr Estimate) |
|--|--|--|--------------------------------|----------------------|--------------------------------------|
| Electrical Facilities Locating | | | | | |
| 1 | Underground facility locating and marking for Power Cable . Requires notification. | One-person underground cable-locating, equipment, transportation, and marking supplies | 100 | \$ | \$ |
| 2 | Emergency locates* - On site locator within 1.5 hours of notification. Notification may be done by phone. | One-person underground cable-locating, equipment, transportation, and marking supplies | 30 | \$ | \$ |
| DATA Facilities Locating | | | | | |
| 3 | Underground facility locating and marking for Communications Cable . Requires notification. | One-person underground cable-locating, equipment, transportation, and marking supplies | 30 | \$ | \$ |
| 4 | Emergency Locates* - On site locator within 1.5 hours of notification. Notification may be done by phone. | One-person underground cable-locating, equipment, transportation, and marking supplies | 30 | \$ | \$ |
| Combined Electrical and Data Facilities Locating | | | | | |
| 5 | Underground facility locating and marking for Power and Communications Cable . Requires notification. | One-person underground cable-locating, equipment, transportation, and marking supplies | 2400 | \$ | \$ |
| 6 | Emergency Locates* - On site locator within 1.5 hours of notification. Notification may be done by phone. | One-person underground cable-locating, equipment, transportation, and marking supplies | 150 | \$ | \$ |
| Total of Items 1 Through 6 – Announced at Bid Opening | | | | | \$ |

**See Section 5.05 for additional information on emergency locates*

PROPOSAL - DATA SHEET

| | | |
|--|------------|--|
| 1. Is your firm listed as a Small Business Enterprise (SBE) company with the City of Tacoma? (See Appendix #9 for regulations) | YES | |
| | NO | |

| | | |
|--|--------------|--|
| 2. State the number of years your firm has been performing services of a similar scope to those outlined in this Specification. Per section 4.01.3, a minimum of three (3) years of successful experience is required. | Years | |
|--|--------------|--|

| | | |
|--|------------|--|
| 3. Is your firm capable of performing an average of <u>100 utility locates</u> per month per Section 4.01.3B of this specification? | YES | |
| | NO | |

| | | |
|--|------------|--|
| 4. Is your firm capable of performing an average of <u>1600 utility locates</u> per month with 4 weeks advanced notice per Section 4.01.3B of this specification? | YES | |
| | NO | |

| | | |
|--|------------|--|
| 5. Does your firm accept payment by EFT/ACH? (Electronic Funds Transfer (EFT) by Automated Clearing House (ACH)) | YES | |
| | NO | |

| | | |
|--|------------|--|
| 6. Does your firm accept payment by credit card (Visa)? NOTE: The City of Tacoma will not accept price changes or pay additional fees when a credit card is used. | YES | |
| | NO | |

7. Prompt Payment discount offered _____%, _____ days.
Only discounts offered of 20 days or more will be considered for bid evaluation purposes.

8. **Escalation for Years 2 & 3 of the Contract:**

| Per Sections 5.04 the unit prices listed on the proposal form may be escalated up to the maximum percentage as quoted. The escalation will be included in the bid evaluation per Section 4.03.1B | Contract Year | Maximum Unit Price Escalation |
|--|---------------|-------------------------------|
| | 2nd | % |
| | 3rd | % |
| | 4th* | % |

*Optional contract renewal year as provided for in Section 4.04.3



PROPOSAL – CONDITIONS SHEET

The City requires that Respondents determine the cost of compliance with the City's terms and conditions, and include such costs into the unit prices of the items in the Respondent's submittal. Unless a bid responds to the specification in all material respects, it is not a responsive bid.

- 1. Does your submittal make any restrictions or take any exceptions to the conditions or provisions outlined in this Specification?

| | |
|------------|--|
| YES | |
| NO | |

Identify below all exceptions, restrictions, or conditions to the requirements of this Specification. Note that any such limitations may result in rejection of your submittal as non-responsive.

- 2. Do all services offered per this bid meet and/or exceed the requirements of this specification?

| | |
|------------|--|
| YES | |
| NO | |

Any items that do not meet the requirements of this specification **must** be noted below. Any bid found to contain a deviation that is not noted below may result in rejection of your submittal as non-responsive.



ENVIRONMENTALLY PREFERABLE PROCUREMENT

In accordance with the City's Sustainable Procurement Policy, it is the policy of the City of Tacoma to encourage the use of products or services that help to minimize the environmental and human health impacts of City operations. Respondents are encouraged to incorporate environmentally preferable products or services into their responses 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.

The City of Tacoma encourages the use of sustainability practices and desires any awarded contractor(s) to assist in efforts to address such factors when feasible for:

- Reduction of Pollutant releases
- Toxicity of materials used
- Waste generation
- Greenhouse gas emissions, including transportation of materials and services
- Recycle content
- Comprehensive energy conservation measures
- Waste manage reduction plans
- Potential impact on human health and the environment

Has your firm incorporated sustainability measures into its everyday business practices? ___Y ___N Please Describe:

Has your firm taken measures to minimize impacts to the environment in the delivery of goods and services? ___Y ___N
Please Describe:



CITY OF TACOMA

GENERAL PROVISIONS

GENERAL PROVISIONS

(Revised September 2014)

SECTION I - BIDDING REQUIREMENTS

SECTION I REQUIREMENTS ARE BINDING ON ALL RESPONDENTS.

1.01 USE AND COMPLETION OF CITY PROPOSAL SHEETS

A. Respondent's Proposal

Each Respondent must bid exactly as specified on the Proposal sheets. All proposals must remain open for acceptance by the City for a period of at least 60 calendar days from the date of opening of the bids.

B. Alterations of Proposals Not Allowed

Proposals that are incomplete or conditioned in any way, contain alternatives or items not called for in the General Provisions and Specifications, or not in conformity with law may be rejected as being nonresponsive. The City cannot legally accept any proposal containing a substantial deviation from these Specifications.

C. Filling Out City Proposal Sheets

All proposals must be completed using the proposal sheets and forms included with this specification, and the prices must be stated in figures either written in ink or typewritten. No proposal having erasures or interlineations will be accepted unless initialed by the Respondent in ink.

1.02 CLARIFICATION OF PROPOSAL FOR RESPONDENT

If a prospective Respondent has any questions concerning any part of the Proposal, he/she may submit a written request to the particular Division of the Department of Public Utilities of the City of Tacoma for answer of his/her questions. Any interpretation of the Proposal will be made by an Addendum duly issued and mailed or delivered to each prospective Respondent. Such addendum must be acknowledged in the proposal. The City of Tacoma will not be responsible for any other explanation or interpretation of the bid documents.

1.03 SMALL BUSINESS ENTERPRISE (SBE) PROGRAM AND EQUAL OPPORTUNITY EMPLOYMENT

It is the policy of the City of Tacoma that all citizens be afforded an equal opportunity for full participation in our free enterprise system. In order to implement this policy, the City of Tacoma is committed to ensuring equitable participation of small business enterprises by establishing goals for their utilization in the provision of construction services, and related goods and/or services, to the City.

~~A. Public Work or Improvement Type Projects and Contracts:~~

~~Respondents for public work or improvement type projects and contracts in excess of \$25,000 have an obligation to comply with the requirements set forth in the City's SBE Regulations adopted pursuant to Tacoma Municipal Code (TMC) Chapter 1.07. For further information, contact the City SBE Office, 747 Market Street, Room 900, Tacoma, WA 98402. Phone 253-573-2435. Email SBEOffice@cityoftacoma.org~~

~~Compliance with State Law RCW 35.22.650 is also required. All respondents for public work or improvement contracts (exceeding \$10,000, and \$15,000 for construction of water mains) are required to actively solicit minority and women business enterprise subcontractors. With respect to all such contracts, the Contractor agrees that he/she shall actively solicit the employment of minority group members. Contractor further agrees that he/she shall actively solicit bids for the subcontracting of goods or services from qualified minority businesses. Contractor shall furnish evidence of his/her compliance with these requirements of minority employment and solicitation. Contractor further agrees to consider the grant of subcontracts to said minority respondents on the basis of substantially equal proposals. The contractor shall be required to submit evidence of compliance with this section as part of the bid. ALL RESPONDENTS FOR PUBLIC WORK AND IMPROVEMENTS CONTRACTS MUST COMPLETE AND SUBMIT WITH THEIR BID THE FOLLOWING SOLICITATION FORMS CONTAINED IN THE BID SUBMITTAL PACKAGE AND ATTACHED HERETO:~~

~~➤ **SBE Utilization Form** for contracts of \$25,000 or more per TMC Chapter 1.07~~

~~➤ **Prime Contractor's Pre-Work Form** for contracts per RCW 35.22.650~~

B. Purchase of Goods and/or Services Contracts:

Respondents for supply type contracts to which SBE Regulations do not apply have an obligation to demonstrate efforts to ensure equitable participation of minority and women's businesses. Such respondents shall not discriminate against any person on the basis of race, color, creed, sex, age or nationality in employment and are subject to the City's ordinances and regulations prohibiting discrimination. See TMC Chapter 1.50.

Service contracts involving a single trade are also subject to TMC Chapter 1.07, and respondents for such service contracts must submit applicable SBE program forms to be considered for contract award.

ALL RESPONDENTS FOR PURCHASE and/or SERVICES CONTRACTS MUST COMPLETE AND SUBMIT WITH THEIR BID THE FOLLOWING FORM CONTAINED IN THE BID SUBMITTAL PACKAGE AND ATTACHED HERETO:

➤ **Personnel Inventory Form**

Failure to fully complete and submit the required forms with the bid package may result in the bid being declared non-responsive and rejected.

1.04 ~~RESPONDENT'S BOND OR CERTIFIED CHECK~~

~~Each bid for construction must be accompanied either by a certified or cashiers check for 5 percent of the total amount bid, including tax, payable to the City Treasurer, or an approved bid bond, by a surety company authorized to do business in the State of Washington, for 5 percent of the total amount bid. All bid bonds must be signed by the person legally authorized to sign the bid. The approved bid bond form attached to these Specifications should be used; no substantial variations from the language thereof will be accepted.~~

~~If a bid bond is used, the 5 percent may be shown either in dollars and cents, or the bid bond may be filled in as follows, "5 percent of the total amount of the accompanying proposal."~~

~~The check of the successful Respondent will be returned after award of the Contract, acceptance of the Performance Bond and City's receipt of the signed Contract. The checks of all other Respondents will be returned immediately upon the award of the Contract. Bid bonds will not be returned.~~

1.05 DELIVERY OF PROPOSALS TO THE CITY'S PURCHASING OFFICE

All bid proposals and documents must be returned to the City's Purchasing Division, Tacoma Public Utilities Administration Building, Main Floor, 3628 South 35th Street, Tacoma, WA 98409, in a sealed, properly addressed envelope with the name of the Respondent and Specification number and description of the project plainly written on the outside of the envelope, prior to the scheduled time and date stated in the Call for Bids. The City offices are not open for special mail or other delivery on weekends and City holidays.

Telecopy bid proposals will be accepted by the City provided that the original signed bid proposal is sealed and mailed (to the City's Purchasing Office) and postmarked prior to the time designated for the bid opening. Also, telecopy proposals shall not be sent to the City's telecopy machine but must be sent to the Respondent's agent and delivered sealed to the City's Purchasing Office before the time stated in the Call for Bids.

Bids received after the time stated in the Call for Bids will not be accepted and will be returned, unopened, to the Respondent.

For purposes of determining whether a bid proposal has been timely received, the City's Purchasing Office may rely on Universal Coordinated Time from the National Bureau of Standards as reported by radio broadcast station WWV.

1.06 CONTRACTOR'S STATE REGISTRATION NUMBER

Contractors for construction or public works construction are required to be licensed by the state. If the provisions of Chapter 18.27 of the Revised Code of Washington apply to the Respondent, then the Respondent's Washington State Contractor's Registration No. must accompany the bid.

1.07 BID IS NONCOLLUSIVE

The Respondent represents by the submission of the Proposal that the prices in this Bid are neither directly nor indirectly the result of any formal or informal agreement with another Respondent.

1.08 EVALUATION OF BID

A. Price, Experience, Delivery Time and Responsibility

In the evaluation of bids, the Respondent's experience, delivery time, quality of performance or product, conformance to the specifications and responsibility in performing other contracts (including satisfying all safety requirements) may be considered in addition to price. In addition, the bid evaluation factors set forth in City Code Section 1.06.262 may be considered by the City. Respondents who are inexperienced or who fail to properly perform other contracts may have their bids rejected for such cause.

~~**B. Prequalified Electrical Contractor**~~

~~Certain types of electrical construction requires special expertise, experience and prequalification of the Contractor (or subcontractor) by the City. In such cases, the Respondent must be prequalified or the Respondent must subcontract with a City prequalified electrical contractor for the specialty work.~~

C. Insertions of Material Conflicting with Specifications

Only material inserted by the Respondent to meet requirements of the Specifications will be considered. Any other material inserted by the Respondent will be disregarded as being nonresponsive and may be grounds for rejection of the Respondent's Proposal.

D. Correction of Ambiguities and Obvious Errors

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

1.09 WITHDRAWAL OF BID

A. Prior to Bid Opening

Any Respondent may withdraw his/her Proposal prior to the scheduled bid opening time by delivering a written notice to the City's Purchasing Office. The notice may be submitted in person or by mail; however, it must be received by the City's Purchasing Office prior to the time of bid opening.

B. After Bid Opening

No Respondent will be permitted to withdraw his/her Proposal after the time of bid opening, as set forth in the Call for Bids, and before the actual award of the Contract, unless the award of Contract is delayed more than sixty (60) calendar days after the date set for bid opening. If a delay of more than 60 calendar days does occur, then the Respondent must submit written notice withdrawing his/her Proposal to the Purchasing Manager.

1.10 OPENING OF BIDS

At the time and place set for the opening of bids, all Proposals, unless previously withdrawn, will be publicly opened and read aloud, irrespective of any irregularities or informalities in such Proposal.

~~**1.11 PUBLIC UTILITY BOARD FINAL DETERMINATION**~~

~~The Public Utility Board of the City of Tacoma shall be the final judge as to which is the lowest and best bid in the interest of the City of Tacoma. The City reserves the right to reject any and all bids, waive minor deviations or informalities, and if necessary, call for new bids.~~

~~**1.12 RESPONDENT'S REFUSAL TO ENTER INTO CONTRACT**~~

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

1.13 TAXES

A. Include In Proposal All Taxes

Respondent shall include in his/her Proposal all applicable local, city, state, and federal taxes. It is the Respondent's obligation to state on his/her Proposal sheet the correct percentage and total applicable Washington State and local sales tax. The total cost to the City including all applicable taxes may be the basis for determining the low Respondent.

B. Federal Excise Tax

The City of Tacoma is exempt from federal excise tax. Where applicable, the City shall furnish a Federal Excise Tax Exemption certificate.

C. City of Tacoma Business and Occupation Tax

Sub-Title 6A of the City of Tacoma Municipal Code (TMC) provides that transactions with the City of Tacoma, may be subject to the City of Tacoma's Business and Occupation Tax. It is the responsibility of the Respondent awarded the Contract to register with the City of Tacoma's Department of Tax and License, 733 South Market Street, Room 21, Tacoma, WA 98402-3768, telephone 253-591-5252. The City's Business and Occupation Tax amount shall not be shown separately but shall be included in the unit and/or lump sum prices bid.

1.14 FIRM PRICES/ESCALATION

Except as specifically allowed by the Special Provisions, only firm prices will be accepted.

1.15 AWARD

A. Construction and/or Labor Contracts

Unless specifically noted in the Special Provisions or Proposal sheets, all construction and/or labor contracts will be awarded to only one Respondent.

B. ~~Supply/Equipment Contracts~~

~~The City reserves the right to award an equipment or supply contract for any or all items to one or more Respondents as the interests of the City will be best satisfied.~~

1.16 INCREASE OR DECREASE IN QUANTITIES

The City of Tacoma reserves the right to increase or decrease the quantities of any items under this Contract and pay according to the unit prices quoted in the Proposal (with no adjustments for anticipated profit).

1.17 EXTENSION OF CONTRACT

Contracts resulting from this specification shall be subject to extension by mutual agreement per the same prices, terms and conditions.

1.18 PAYMENT TERMS

Prices will be considered as net 30 calendar days if no cash discount is shown. Payment discount periods of twenty (20) calendar days or more will be considered in determining the apparent lowest responsible bid. Invoices will not be processed for payment nor will the period of cash discount commence until receipt of a properly completed invoice and until all invoiced items are received and satisfactory performance of the Contractor has been attained. If an adjustment in payment is necessary due to damage or dispute, the cash discount period shall commence on the date final approval for payment is authorized.

1.19 COOPERATIVE PURCHASING

The Washington State Interlocal Cooperative Act RCW 39.34 provides that other governmental agencies may purchase goods and services on this solicitation or contract in accordance with the terms and prices indicated therein if all parties are agreeable.

1.20 PROPRIETARY OR CONFIDENTIAL TRADE SECRET INFORMATION

Washington State Public Disclosure Act (RCW 42.56 et seq.) requires public agencies in Washington to promptly make public records available for inspection and copying unless they fall within the specified exemptions contained in the Act. Documents submitted under this Specification are considered public records and, unless exempt from disclosure under the Act, will be made available for inspection and copying by the public in response to a public records request.

If the Respondent considers any submittal document to be exempt from disclosure under the law, the Respondent shall clearly mark on the specific page(s) affected such words as "CONFIDENTIAL," "PROPRIETARY" or "TRADE SECRET." The Respondent shall also submit an index with its submittal identifying the affected page number(s) and location(s) of all such identified material. **Failure to provide an index identifying the location of the material in the submittal that Respondent considers to be**

protected from disclosure will result in the records being released in response to a request for those records without further notice to Respondent. Marking the entire submittal as “confidential” or “proprietary” or “trade secret” is not acceptable and is grounds to reject such submittal.

If a public records request is made for disclosure of all or any part of Respondent’s submittal and Respondent has (i) properly marked and (ii) indexed the material it asserts to be exempt from disclosure, the City will determine whether the material is exempt from public disclosure. If, in the City’s opinion, the material is subject to a possible exemption to disclosure, the City will notify Respondent of the request and impending release and allow the Respondent ten (10) business days to take whatever action Respondent deems necessary to protect its interests. The City will reasonably cooperate with any legal action initiated by the Respondent to prevent release; provided that all expense of such action shall be borne solely by the Respondent, including any damages, penalties, attorney’s fees or costs awarded by reason of having opposed disclosure and Respondent shall indemnify City against same. If the Respondent fails or neglects to take such action within said period, the City will release all materials deemed subject to disclosure. Submission of materials in response to this solicitation shall constitute assent by the Respondent to the foregoing procedure and the Respondent shall have no claim against the City on account of actions taken pursuant to such procedure.

SECTION II - CONTRACT REQUIREMENTS

2.01 CONTRACTOR'S RESPONSIBILITY

A. Contract Documents

The Respondent to whom the Contract is awarded, hereinafter called the Contractor, shall enter into a Contract with the City of Tacoma, Department of Public Utilities, within 10 days after receipt from the City of Tacoma of a properly prepared Contract. In addition, the Contractor will do all things required to promptly perform this Contract pursuant to the terms of this Contract. Certain contracts for supplies, goods or equipment may use the City Purchase Order in place of a formal contract document.

B. Surety Bond

Except as modified by the Special Provisions, the Respondent to whom the Contract is awarded shall provide a performance bond, including power of attorney, for 100 percent of the amount of his/her bid (including sales taxes), to insure complete performance of the Contract including the guarantee. The bond must be executed by a surety company licensed to do business in the State of Washington. For a supply-type contract, a cashiers check or cash may be substituted for the bond; however, this cash or cashiers check must remain with the City through the guarantee period and any interest on said amount shall accrue to the City.

C. Independent Contractor

Contractor is an independent contractor; no personnel furnished by the Contractor shall be deemed under any circumstances to be the agent or servant of the City. Contractor shall be fully responsible for all acts or omissions of Subcontractors and its and their suppliers, and of persons employed by them, and shall be specifically responsible for sufficient and competent supervision and inspection to assure compliance in every respect with the Contract. There shall be no contractual relationship between any Subcontractors or supplier and the City arising out of or by virtue of this agreement. No provision of the Contract is intended or is to be construed to be for the benefit of any third party.

2.02 CONFLICTS IN SPECIFICATIONS

Anything mentioned in the Specifications and not shown on the Drawings and anything on the Drawings and not mentioned in the Specifications shall be of like effect and shall be understood to be shown and/or mentioned in both. In case of differences between Drawings and Specifications, the Specifications shall govern. In addition, in the event of any conflict between these General Provisions, the Special Provisions, the Technical Provisions and/or the Proposal pages, the following order of precedence shall control:

- (a) Proposal pages prevail if they conflict with the General, Special or Technical Provisions.
- (b) Special Provisions prevail if they conflict with the General Provisions and/or Technical Provisions.
- (c) Technical Provisions prevail if they are in conflict with the General Provisions.

In case of discrepancy of figures between Drawings, Specifications or both, the matter shall immediately be submitted to the Engineer for determination. Failure to submit the discrepancy issue to the Engineer shall result in the Contractor's actions being at his/her own risk and expense. The Engineer shall furnish from time to time such detailed drawings and other information as he/she may consider necessary.

2.03 INSPECTION

A. Of the Work

All materials furnished and work done shall be subject to inspection.

The Inspector administering the Contract shall at all times have access to the work wherever it is in progress or being performed, and the Contractor shall provide proper facilities for such access and inspection. Such inspection shall not relieve the Contractor of the responsibility of performing the work correctly, utilizing the best labor and materials in strict accordance with the Specifications of this Contract. All material or work approved and later found to be defective shall be replaced without cost to the City of Tacoma.

B. Inspector's Authority

The inspector shall have power to reject materials or workmanship which do not fulfill the requirements of these Specifications, but in case of dispute the Contractor may appeal to the Superintendent, whose decision shall be final. The word "Superintendent" means the Superintendent of the City of Tacoma, Department of Public Utilities division which is administering the contract.

The Contract shall be carried out under the general control of the representative of the particular Division administering the Contract, who may exercise such control over the conduct of the work as may be necessary, in his or her opinion, to safeguard the interest of the City of Tacoma. The Contractor shall comply with any and all orders and instructions given by the representative of the particular Division administering the Contract in accordance with the terms of the Contract.

Provided, that for the purposes of construction contracts, such control shall only apply (a) to the extent necessary to ensure compliance with the provisions of this contract, and (b) to the extent necessary to fulfill any nondelegable duty of the City for the benefit of third parties not engaged in promoting the activity of this contract.

Nothing herein contained, however, shall be taken to relieve the Contractor of his/her obligations or responsibilities under the Contract.

2.04 FEDERAL, STATE AND MUNICIPAL REGULATIONS

All federal, state, municipal and/or local regulations shall be satisfied in the performance of all portions of this Contract. The Contractor shall be solely responsible for all violations of the law from any cause in connection with work performed under this Contract.

2.05 INDEMNIFICATION

A. Indemnification

Contractor acknowledges that pursuant to the terms of this agreement, Contractor is solely and totally responsible for the safety of all persons and property in the performance of this Contract. To the greatest extent allowed by law, Contractor assumes the risk of all damages, loss, cost, penalties and expense and agrees to indemnify, defend and hold harmless the City of Tacoma, from and against any and all liability which may accrue to or be sustained by the City of Tacoma on account of any claim, suit or legal action made or brought against the City of Tacoma for the death of or injury to persons (including Contractor's or subcontractor's employees) or damage to property involving Contractor, or subcontractor(s) and their employees or agents, arising out of and in connection with or incident to the performance of the Contract including if the City is found to have a nondelegable duty to see that work is performed with requisite care, except for injuries or damages caused by the sole negligence of the City. In this regard, Contractor recognizes that Contractor is waiving immunity under industrial Insurance Law, Title 51 RCW. This indemnification extends to the officials, officers and employees of the City and also includes attorney's fees and the cost of establishing the right to indemnification hereunder in favor of the City of Tacoma. In addition, within the context of competitive bidding laws, it is agreed that this indemnification has been mutually negotiated. Provided however, this provision is intended to be applicable to the parties to this agreement and it shall not be interpreted to allow a Contractor's employee to have a claim or cause of action against Contractor.

~~B. Limitation of Liability for Primarily Supply Type Contracts~~

~~In all contracts where the total cost of the supply of materials and/or equipment constitute at least 70 percent of the total contract price (as determined by the City), the City agrees that it will not hold the contractor, supplier or manufacturer liable for consequential damages for that part of the contract related to the manufacture and/or design of the equipment, materials or supplies.~~

2.06 ASSIGNMENT AND SUBLETTING OF CONTRACT

A. Assignment

The Contract shall not be assigned except with the consent of the Superintendent or his/her designee.

Requests for assignment of this contract must be in writing with the written consent of the surety, and the request must show the proposed person or organization to which the contract is assigned is capable, experienced and equipped to perform such work. The proposed substitute person or organization may be required to submit to the City information as to his/her experience, financial ability and give statements covering tools, equipment, organization, plans and methods to fulfill any portion of the Contract prior to approval of assignment.

B. Subletting

The Contract shall not be sublet except with the written consent of the Superintendent or his/her designee. In the event that a prequalified electrical contractor is necessary to perform certain portions of the work, such work may be subcontracted with a City prequalified electrical contractor for the type of work involved.

Requests for subletting of this Contract must be in writing with the written consent of the Surety, and the request must show the proposed person or organization to which the Contract is sublet is capable, experienced and equipped to perform such work. The proposed substitute person or organization may be required to submit to the City information as to his experience, financial ability and give statements covering tools, equipment, organization, plans and methods to fulfill any portion of the Contract prior to approval of subletting.

The written consent approving the subletting of the Contract shall not be construed to relieve the Contractor of his/her responsibility for the fulfillment of the Contract. The Subcontractor shall be considered to be the agent of the Contractor and the Contractor agrees to be responsible for all the materials, work and indebtedness incurred by the agent.

A subcontractor shall not sublet any portion of a subcontract for work with the City without the written consent of the City.

2.07 DELAY

A. Extension of Time

With the written approval of the Superintendent or his/her designee, the Contractor may be granted additional time for completion of the work required under this Contract, if, in the Superintendent's opinion the additional time requested arises from unavoidable delay.

B. Unavoidable Delay

Unavoidable delays in the prosecution of the work shall include only delays from causes beyond the control of the Contractor and which he/she could not have avoided by the exercise of due care, prudence, foresight and diligence. Delay caused by persons other than the Contractor, Subcontractors or their employees will be considered unavoidable delays insofar as they necessarily interfere with the Contractor's completion of the work, and such delays are not part of this Contract.

Unavoidable delay will not include delays caused by weather conditions, surveys, measurements, inspections and submitting plans to the Engineer of the particular Division involved in administering this Contract.

2.08 GUARANTEE

A. Guarantee for Construction, Labor or Services Contract

Neither the final certificate of payment or any provision in the Contract Documents, nor partial or entire occupancy of the premises by the City, shall constitute an acceptance of work not done in accordance with

the Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall remedy any defects in the work and pay for any damage to other work resulting therefrom, which shall appear within a period of one year from the date of final acceptance of the work unless a longer period is specified. The City will give notice of observed defects with reasonable promptness.

If it has been discovered, before payment is required under the terms of the Contract, that there is a failure to comply with any of the terms and provisions of this Contract, the City has the right and may withhold payment.

In case of a failure of any part of the work, materials, labor and equipment furnished by the Contractor or to fully meet all of the requirements of the Contract, the Contractor shall make such changes as may be necessary to fully meet all of the specifications and requirements of this Contract. Such changes shall be made at the Contractor's sole cost and expense without delay and with the least practicable inconvenience to the City of Tacoma. Rejected material and equipment shall be removed from the City's property by and at the expense of the Contractor.

~~B. Guarantee for Supply Contracts~~

~~Unless a longer period is specified, the supplier and/or manufacturer of the supplies, materials and/or equipment furnished pursuant to this Contract agrees to correct any defect or failure of the supplies, materials and/or equipment which occurs within one year from the date of: (1) test energization if electrical or mechanical equipment; (2) commencement of use if supplies or materials, provided, however, said guarantee period shall not extend beyond eighteen months after date of receipt by the City. All of the costs (including shipping, dismantling and reinstallation) of repairs and/or corrections of defective or failed equipment, supplies and/or material is the responsibility of the supplier and/or manufacturer.~~

~~When the supplier is not the manufacturer of the item of equipment, supplier agrees to be responsible for this guarantee and supplier is not relieved by a manufacturer's guarantee.~~

C. Guarantee Period Extension

The Contract guarantee period shall be suspended from the time a significant defect is first documented by the City until the work or equipment is repaired or replaced by Contractor and accepted by the City. In addition, in the event less than ninety (90) days remain on the guarantee period (after recalculating), the guarantee period shall be extended to allow for at least ninety (90) days from the date the work or equipment is repaired or replaced and accepted by the City.

2.09 DEDUCTIONS FOR UNCORRECTED WORK

If the City of Tacoma deems it expedient to correct work not done in accordance with the terms of this Contract, an equitable deduction from the Contract price shall be made.

2.10 CITY OF TACOMA'S RIGHT TO TERMINATE CONTRACT

If the Contractor should be adjudged as bankrupt, or makes a general assignment for the benefit of creditors, or a receiver should be appointed on account of his/her insolvency, or if he/she or any of his/her subcontractors should violate any of the provisions of the Contract, or if the work is not being properly and diligently performed, the City of Tacoma may serve written notice upon the Contractor and Surety, executing the Performance Bond, of its intention to terminate the Contract; such notice will contain the reasons for termination of the Contract, and unless within 10 days after the serving of such notice, such violation shall cease and an arrangement satisfactory to the City of Tacoma for correction thereof shall be made, the Contract shall, upon the expiration of said 10 days, cease and terminate and all rights of the Contractor hereunder shall be forfeited. In the event the Contract is terminated for cause, Contractor shall not be entitled to any lost profits resulting therefrom.

In the event of any such termination, the City of Tacoma shall immediately send (by regular mail or other method) written notice thereof to the Surety and the Contractor. Upon such termination the Surety shall have the right to take over and perform the Contract, provided however, the Surety must provide written notice to the City of its intent to complete the work within 15 calendar days of its receipt of the original written notice (from the City) of the intent to terminate. Upon termination and if the Surety does not perform the work, the City of Tacoma may take over the work and prosecute the same to completion by any method it may deem advisable, for the account of and at the expense of the Contractor, and the Contractor and the Surety shall be liable to the City of Tacoma for all cost occasioned to the City of Tacoma thereby. The City of Tacoma may without liability for doing so, take possession of and utilize in completing the work, such materials,

equipment, plant and other property belonging to the Contractor as may be on the site of the work and necessary therefore.

2.11 LIENS

In the event that there are any liens on file against the City of Tacoma, the City of Tacoma shall be entitled to withhold final or progress payments to the extent deemed necessary by the City of Tacoma to properly protect the outstanding lien claimants until proper releases have been filed with the City Clerk.

2.12 LEGAL DISPUTES

A. General

Contractor and Surety agree and stipulate that in the event any litigation should occur concerning or arising out of this Contract, or any bids submitted in response to a Call for Bids under the attached Specification, the sole venue of any such legal action shall be the Pierce County Superior Court of the State of Washington and the interpretation of the terms of the Contract shall be governed by the laws of the State of Washington.

B. Attorney Fees

For contracts up to \$250,000 which become the subject of litigation or arbitration, the substantially prevailing party may be entitled to reasonable attorney fees, as provided in RCW 39.04.240. Provided, however, the attorney fee hourly rate for the City of Tacoma's assistant city attorneys is agreed to be \$150 per hour or the same as the hourly rate for Contractor's legal counsel, whichever is greater.

2.13 DELIVERY

Prices must be quoted F.O.B. destination, freight prepaid and allowed with risk of loss during transit remaining with Contractor/Supplier (unless otherwise stated in these Specifications) to the designated address set forth in these Specifications.

Deliveries shall be between 9:00 a.m. and 3:30 p.m.; Monday through Friday only (except legal holidays of the City of Tacoma).

Legal holidays of the City of Tacoma are:

| | |
|-------------------------------|--------------------------|
| 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 |

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.

2.14 Shipping Notices and Invoices

Shipping notices shall furnish complete information of item, or items, contents of item if crated or cased, shipping point, carrier and Bill of Lading number, and City of Tacoma Purchase Order Number.

Unless otherwise directed in these specifications, shipping notices shall be mailed to:

Purchasing Division
City of Tacoma
P. O. Box 11007
Tacoma Washington 98411-2597

Invoices shall be sent in duplicate. Each invoice shall show City of Tacoma Purchase Order Number and Release Number if applicable and the Item Number, Quantity, Description, Unit Price and Total Price by line. Each line total shall be summed to give a grand total to which sales tax shall be added if applicable.

Invoices shall be mailed to:

Accounts Payable
City of Tacoma
P. O. Box 1717
Tacoma Washington 98401-1717

2.15 Approved Equals

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 the respondent specifies the brand and model, and provides all descriptive literature, independent test results, product samples, local servicing and parts availability to enable the City to evaluate the proposed "equal".

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 the respondent 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 the respondent's expense.

C. When a brand name, or level of quality is not stated by the respondent, it is understood the offer is exactly as specified. If more than one brand name is specified, respondents must clearly indicate the brand and model/part number being bid.

2.16 Entire Agreement

This written contract represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

2.17 Code of Ethics

The City's Code of Ethics, Chapter 1.46, Tacoma Municipal Code, provides ethical standards for City personnel and also prohibits certain unethical conduct by others including respondents and contractors. Violation of the City's Code of Ethics will be grounds for termination of this contract.

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[Pages 11 through 16 are for contracts that involve construction and/or labor, and are not applicable to contracts solely for material/supply purchases.]

GENERAL PROVISIONS

SECTION III - CONSTRUCTION AND/OR LABOR CONTRACTS

SECTION III REQUIREMENTS APPLY ONLY TO CONSTRUCTION AND/OR LABOR CONTRACTS.

3.01 RESPONDENT'S DUTY TO EXAMINE

The Respondent agrees to be responsible for examining the site(s) and to have compared them with the Specifications and Contract Drawings, and to be satisfied as to the facilities and difficulties attending the execution of the proposed Contract (such as uncertainty of weather, floods, nature and condition of materials to be handled and all other conditions, obstacles and contingencies) before the delivery of his/her Proposal. No allowance will be subsequently made by the City on behalf of the Respondent by reason of any error or neglect on Respondent's part, for such uncertainties as aforesaid.

3.02 PERMITS

Except when modified by the Special Provisions, the Contractor shall procure and pay for all permits and licenses necessary for the completion of this Contract including those permits required by the City of Tacoma. The City will obtain county or state road crossing permits if required. In the event a necessary permit is not obtained, the Contractor will not be permitted to work on items subject to said permit and any delays caused thereby will not be subject to extra compensation or extensions.

3.03 ~~NOTIFICATION OF OTHER GOVERNMENTAL AGENCIES AND UTILITIES WHEN UNDERGROUND WORK IS INVOLVED~~

~~The Contractor shall notify all other affected governmental agencies and utilities whenever underground work is done under the terms of this Contract. The Contractor is required to obtain permission of the appropriate public and private utilities and governmental agencies before performing underground work pursuant to the terms of this Contract. The Contractor is required to call "one call" at 1-800-424-5555 for all work involving excavation or digging more than 12 inches beneath ground or road surface.~~

~~The City may have indicated on the plans and specifications the existence of certain underground facilities that are known to the City division responsible for this Contract. It is the Contractor's responsibility to fully comply with the Underground Utility Locate Law, Chapter 19.122 RCW. If the site conditions are "changed or differing" as defined by RCW 19.122.040(l), the Contractor may pursue the party responsible for not properly marking or identifying the underground facility. The Contractor agrees not to file any claim or legal action against the City (division responsible for this Contract) for said "changed or differing" conditions unless said City division is solely responsible for the delay or damages that the Contractor may have incurred.~~

3.04 ~~TRENCH EXCAVATION BID ITEM~~

~~In the event that "trench excavation" in excess of four feet requires a safety system pursuant to Washington State law and safety shoring, sloping, sheeting, or bracing is used, a separate bid item should be set forth in the Proposal for this work. If a separate bid item is not set forth in the Proposal pages, said installed safety system shall be paid at \$3.00 per lineal foot of trench, which unit price includes both sides of the trench.~~

3.05 CONTRACTOR'S INSURANCE

The Contractor shall not commence work under this Contract until all required insurance has been obtained and such insurance has been approved by the City of Tacoma, nor shall the Contractor allow any subcontractor to commence work on his/her subcontract until all insurance required herein has been obtained by Subcontractor. It is the Contractor's responsibility to ascertain that all Subcontractors have the insurance as required by this Contract at all times such Subcontractors are performing the work. The insurance coverages required herein shall be maintained and effective at all times any work including guarantee work is being performed by the Contractor or a Subcontractor.

A. Compensation Insurance

The Contractor shall, at all times during the existence of this Contract, fully comply with all of the terms and conditions of the laws of the State of Washington pertaining to Workers' Compensation together with any and all amendments and supplements thereto and any and all regulations promulgated thereunder.

In the event any of the work herein is sublet, the Contractor shall require such Subcontractor to fully comply with all of the terms and conditions of the laws of the State of Washington pertaining to Workers' Compensation. For persons engaged in employment who are not within the mandatory coverage of the state Workers' Compensation laws, the Contractor shall provide and shall cause each subcontractor to provide compensation insurance (including self-insurance if it otherwise meets all requirements of state Workers' Compensation laws), satisfactory to the City, at least equivalent to the benefits provided for covered employment under state Workers' Compensation laws.

B. Public Liability and Property Damage Insurance

The Contractor shall procure and maintain during the life of this Contract, a policy of comprehensive general liability insurance, with an insurance carrier authorized to do business in the State of Washington. The policy shall be approved as to form and content by the City Attorney and shall protect the City of Tacoma from liability imposed by law for damages suffered by any persons arising out of or resulting from acts or omissions in the performance of this contract: (1) for bodily injury or death resulting therefrom caused by accidents or occurrences resulting from any act or omission by the Contractor in the performance of the Contract, and (2) for injury to, or destruction of, any property, including property of the City of Tacoma, and including loss of use. The policy or policies shall include coverage for claims for damages because of bodily injury or death or property damage arising out of the ownership, maintenance or use of any motor vehicle, including hired or non-owned vehicles.

The City of Tacoma shall be designated in said policy as a primary additional named insured and shall be given 30 days written notice of cancellation, nonrenewal, or material change in the coverage provided. Said insurance shall be on a Comprehensive General Liability form with coverages to include Blanket Contractor, Broad Form Property Damage, Personal Injury, Protective Liability and Employers Liability. Limits shall be at \$1,000,000 per occurrence, \$2,000,000 aggregate and for contracts in excess of \$500,000 the minimum coverage limits include Umbrella Excess Liability of \$5,000,000. Further that the City's insurance is excess to any other collectible insurance.

The Contractor shall furnish evidence of the amount of any deductible or self-insured retention under the policy. This must also be approved by the City Attorney if the amount of the deductible or self-insured retention exceeds \$50,000. The City may require the Contractor to furnish evidence of its ability to pay the amount of any deductible or self-insured retention. If the policy provides for a deductible or self-insured retention, the Contractor shall be solely responsible for paying the amount of the deductible or self-insured retention toward the cost of any claim under the policy.

If the Contractor fails to maintain such insurance, the City of Tacoma, at its discretion, may immediately terminate the contract.

Nothing herein contained shall be in any manner construed as limiting the extent to which the Contractor or Subcontractor may be held liable or responsible for payment of damages resulting from their operations.

C. Builder's Risk

The Contractor shall be expected to protect and insure from loss for any tools and equipment owned or rented by the Contractor, Subcontractor of the employees of the Contractor and Subcontractor.

Until the work is completed and accepted by the City of Tacoma, the construction is at the risk of the Contractor and no partial payment shall constitute acceptance of the work or relieve the Contractor of responsibility to deliver to the City of Tacoma the completed project as required by this Contract.

D. Proof of Carriage of Insurance

The Contractor shall furnish and file with the City a certificate of insurance coverage. An up-to-date certificate of insurance must be on file with the City throughout the contract. The City may, at the time the contract is executed or at any other time, require the Contractor to furnish and file with the City a certified true copy of the insurance policy or policies, together with a letter from the insurance carrier verifying that the premium has been paid for the period indicated. The policy or policies shall be approved as to form and content by the City Attorney.

3.06 SAFETY

A. General

The Contractor shall, at all times, exercise adequate precautions for the safety of all persons, including its employees and the employees of a Subcontractor, in the performance of this Contract and shall comply with all applicable provisions of federal, state, county and municipal safety laws and regulations. It is the Contractor's responsibility to furnish safety equipment or to contractually require Subcontractors to furnish adequate safety equipment relevant to their responsibilities.

The Contractor shall obtain the necessary line clearance from the inspector before performing any work in, above, below or across energized Light Division circuits.

The Inspector and/or Engineer may advise the Contractor and the Safety Officer of any safety violations. It is the Contractor's responsibility to make the necessary corrections. Failure to correct safety violations is a breach of this Contract and, as such, shall be grounds for an order from the Safety Officer, Inspector or Engineer to cease further work and remove from the job site until the condition is corrected. Time and wages lost due to such safety shutdowns shall not relieve the Contractor of any provisions of Section 3.14 of this Specification and shall be at the sole cost of the Contractor. The purpose of this authority to stop work is to enforce the contract and not to assume control except to the extent necessary to ensure compliance with the provisions of this contract.

Any of the above actions by employees of the City of Tacoma shall in no way relieve the Contractor of his/her responsibility to provide for the safety of all persons, including his/her employees.

B. Work Hazard Analysis Report

The Contractor will be required to complete a work hazard analysis report. This report shall outline how the Contractor proposes to satisfy all safety laws and regulations involved in performing the work. This report shall be completed and submitted to the City Safety Officer before the pre-construction conference. A copy of the report shall be maintained at the work site (accessible to the supervisor).

3.07 PROTECTION OF WORKERS AND PROPERTY

The Contractor shall erect and maintain good and sufficient guards, barricades and signals at all unsafe places at or near the work and shall, in all cases, maintain safe passageways at all road crossings, and crosswalks, and shall do all other things necessary to prevent accident or loss of any kind.

The Contractor shall protect from damage all utilities, improvements, and all other property that is likely to become displaced or damaged by the execution of the work under this Contract.

The Contractor is responsible for all roads and property damaged by his/her operations as shall be determined by the Engineer administering this Contract. The Contractor shall be responsible for repairing all damage to roads caused by his/her operations to the satisfaction of the particular governmental body having jurisdiction over the road.

3.08 CONTRACTOR - SUPERVISION AND CHARACTER OF EMPLOYEES

A. Superintendent to Supervise Contractor's Employees

The Contractor shall keep on his/her work, during its progress, a competent superintendent and any necessary assistants, all of whom must be satisfactory to the City of Tacoma. The Contractor's superintendent shall not be changed except with the consent of the City of Tacoma, unless the Contractor's superintendent proves to be unsatisfactory to the Contractor and ceases to be in his/her employ. The Contractor's superintendent shall represent the Contractor in his/her absence and all directions given to him/her shall be binding as if given to the Contractor directly. The Contractor shall give efficient supervision to the work, using his/her best skill and attention.

B. Character of Contractor's Employees

The Contractor shall employ only competent, skillful, faithful and orderly persons to do the work, and whenever the Engineer administering the Contract shall notify the Contractor in writing that any person on the work is, in his or her opinion, incompetent, unfaithful, disorderly or otherwise unsatisfactory, the Contractor shall forthwith discharge such persons from the work and shall not again employ him or her on this Contract.

3.09 CONTRACTOR'S COMPLIANCE WITH THE LAW

A. Hours of Labor

The Contractor and Subcontractors shall be bound by the provisions of RCW Chapter 49.28 (as amended) relating to hours of labor. Except as set forth in the Special Provisions, eight (8) hours in any calendar day shall constitute a day's work on a job performed under this Contract.

In the event that the work is not performed in accordance with this provision and in accordance with the laws of the State of Washington, then this Contract may be terminated by the City of Tacoma for the reason that the same is not performed in accordance with the public policy of the State of Washington as defined in said statutes.

~~B. Prevailing Wages~~

~~The Contractor and any Subcontractors shall be bound by the provisions of Chapter 39.12 RCW, as amended, relating to prevailing wages and usual fringe benefits. No worker, laborer, or mechanic employed in the performance of any part of this Contract shall be paid less than the "prevailing rate of wage" as determined by the industrial Statistician of the Department of Labor and Industries. The schedule of the prevailing wage rates for the locality or localities where this Contract will be performed is by reference made a part of this Contract as though fully set forth herein. Current prevailing wage data will be furnished by the Industrial Statistician upon request. The Contractor shall immediately upon award of the Contract, contact the Department of Labor and Industries, ESAC Division, General Administration Building, Olympia, Washington 98504, to obtain full information, forms and procedures relating to these matters.~~

~~Before payment is made by or on behalf of the City, of any sum or sums due on account of a Public Works contract, it shall be the duty of the officer or person charged with the custody and disbursement of public funds to require the Contractor and each and every Subcontractor from the Contractor or a Subcontractor to submit to such officer a "Statement of Intent to Pay Prevailing Wages." Each statement of intent to pay prevailing wages must be approved by the industrial statistician of the Department of Labor and Industries before it is submitted to said officer. Unless otherwise authorized by the Department of Labor and Industries each voucher claim submitted by a Contractor for payment on a project estimate shall state that the prevailing wages have been paid in accordance with the prefiled statement or statements of intent to pay prevailing wages on file with the public agency. Following the final acceptance of a Public Works project, it shall be the duty of the officer charged with the disbursement of public funds to require the Contractor and each and every Subcontractor from the Contractor or a Subcontractor to submit to such officer an "Affidavit of Wages Paid" before the funds retained according to the provisions of RCW 60.28.040 are released to the Contractor. Each affidavit of wages paid must be certified by the industrial statistician of the Department of Labor and Industries before it is submitted to said officer.~~

~~In the event any dispute arises as to what are the prevailing rates of wages for work of a similar nature and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the Director of the State of Washington, Department of Labor and Industries whose decision shall be final, conclusive and binding on all parties involved in the dispute.~~

3.10 CHANGES

A. In Plans or Quantities

The City of Tacoma, without invalidating this Contract, or any part of this Contract, may order extra work or make reasonable changes by altering, adding to or deducting from the materials, work and labor and the Contract sum will be adjusted accordingly. All such work and labor shall be executed under the conditions of the original Contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change. When work or bid items are deducted, reduced or eliminated, it is agreed that no payment will be made to Contractor for anticipated profit.

B. Extra Work

Any claim or order for extra materials, work and labor made necessary by alterations or additions to the plans or by other reasons for which no price is provided in this Contract, shall not be valid unless the Contractor and Engineer administering the Contract have agreed upon a price prior to commencing extra work, and the agreement has been signed by the Contractor and approved by the Superintendent or his/her designee, and approved by the performance bond surety.

C. Extra Work - No Agreed Price

If it is impracticable to fix an increase in price definitely in advance, the order may fix a maximum price which shall not under any circumstances, be exceeded, and subject to such limitation, such alteration, modification, or extra shall be paid for at the actual necessary cost as determined by the City of Tacoma, which cost (including an allowance for profit) shall be determined as the sum of the following items (1) to (7) inclusive:

- (1) Labor, computed at regular wage scale, including premium on compensation insurance and charge for social security taxes, and other taxes, pertaining to labor; no charge for premium pay shall be allowed unless authorized by the Engineer administering the Contract;
- (2) The proportionate cost of premiums on comprehensive general liability and other insurance applicable to the extra work involved and required under this Contract;
- (3) Material, including sales taxes pertaining to materials;
- (4) Plant and equipment rental, to be agreed upon in writing before the work is begun; no charge for the cost of repairs to plant or equipment will be allowed;
- (5) Superintendence, general expense and profit computed at 20 percent of the total of paragraphs (1) to (4) inclusive;
- (6) The proportionate cost of premiums on bond required by this Contract, computed by 1 1/2 percent of the total of paragraphs (1) to (5) inclusive.
- (7) The City of Tacoma reserves the right to furnish such materials as it may deem expedient, and no allowance will be made for profit thereon.

Whenever any extra work is in progress, for which the definite price has not been agreed on in advance, the Contractor shall each day, report to the Engineer the amount and cost of the labor and material used, and any other expense incurred in such extra work on the preceding day, and no claim for compensation for such extra work will be allowed unless such report shall have been made.

The above-described methods of determining the payment for work and materials shall not apply to the performance of any work or the furnishing of any material, which, in the judgment of the Engineer administering the Contract, may properly be classified under items for which prices are established in the Contract.

D. Claims for Extra Work

If the Contractor claims that any instructions by drawings or otherwise, involve extra cost under this Contract, he/she shall give the City of Tacoma written notice thereof within 30 days after receipt of such instruction, and in any event before proceeding to execute the work, except in an emergency endangering life or property, and the procedures governing the same shall be as provided for immediately above in this paragraph. The method in these paragraphs is the only method available to the Contractor for payment of claims for extra work performed under the terms of this Contract.

3.11 CLEANING UP

The Contractor shall at all times, at his/her own expense, keep the premises free from accumulation of waste materials or debris caused by any workers or the work, at the completion of the work the Contractor shall remove all his waste materials from and about the site and all his/her equipment, sanitary facilities and surplus materials. In the case of dispute, the City of Tacoma may remove the debris and charge the cost to the Contractor as the City of Tacoma shall determine to be just. All material that is deposited or placed elsewhere than in places designated or approved by the Engineer administering the Contract will not be paid for and the Contractor may be required to remove such material and deposit or place it where directed.

3.12 PROGRESS PAYMENT

~~Progress payments will be made up to the amount of ninety five percent (95%) of the actual work completed as shall be determined by the Engineer administering the Contract.~~

~~The Contractor may request that an escrow account be established as permitted by law, in which event the Contractor will earn interest on the retained funds.~~

~~When the time for construction, services and/or installation will exceed thirty (30) days, the Contractor may request, by invoice, to be paid a progress payment based on percentage of work completed. The Engineer will review and approve the progress payment request on a monthly basis.~~

3.13 FINAL PAYMENT

~~The final payment of five percent (5%) of the Contract price shall be approved on final acceptance of the work under this Contract by the Superintendent or his/her designee. Also, before final payment is made, the Contractor shall be required to:~~

~~A. Provide a certificate from the Washington State Department of Revenue that all taxes due from the Contractor have been paid or are collectible in accordance with the provisions of Chapter 60.28 and Title 82 of the Revised Code of Washington;~~

~~B. Provide the General Release to the City of Tacoma on the form set forth in these Contract documents;~~

~~C. Provide a release of any outstanding liens that have been otherwise filed against any monies held or retained by the City of Tacoma;~~

~~D. File with the City Director of Finance, and with the Director of the Washington State Department of Labor and Industries, on the state form to be provided, an affidavit of wages paid;~~

~~E. File with the City Director of Finance, on the state form to be provided, a statement from the State of Washington, Department of Labor and Industries, certifying that the prevailing wage requirements have been satisfied.~~

~~F. File with the City Director of Finance, on the state form to be provided, a statement of release from the Public Works Contracts Division of the State of Washington, Department of Labor and Industries, verifying that all industrial insurance and medical aid premiums have been paid.~~

~~If there is a fee assessed to the City for any certificate, release or other form required by law, the contractor agrees that the fee amount may be passed on to the Contractor and deducted from the monies paid to the Contractor.~~

3.14 FAILURE TO COMPLETE THE WORK ON TIME

Should the completion of the work required under the Contract be delayed beyond the expiration of the period herein set for the completion of said work, or such extension of said period as may be allowed by reason of unavoidable delays, there shall be deducted from the total Contract price of work, for each calendar day by which such completion shall be delayed beyond said period of such extension thereof the sum of \$300 or a sum of money as set forth hereinafter in these Specifications, as the amount of such deduction per calendar day.

Said sum shall be considered not as a penalty, but as liquidated damages which the City will suffer by reason of the failure of the Contractor to perform and complete the work within the period herein fixed or such extensions of said period as may be allowed by reason of unavoidable delays.

Any money due or to become due the Contractor may be retained by the City to cover said liquidated damages, and should such money not be sufficient to cover such damages, the City shall have the right to recover the balance from the Contractor or his/her Sureties.

The filing of any bid for the work herein contemplated shall constitute acknowledgment by the Respondent that he/she understands, agrees and has ascertained that the City will actually suffer damages to the amount hereinabove fixed for each and every calendar day during which the completion of the work herein required shall be delayed beyond the expiration of the period herein fixed for such completion or such extension of said period as may be allowed by reason of unavoidable delays.

3.15 CITY RESERVES RIGHT TO USE FACILITIES PRIOR TO ACCEPTANCE

The City of Tacoma hereby reserves the right to use the facilities herein contracted prior to final acceptance under this Contract. The use of said facilities, as mentioned herein, shall not be construed as a waiver or relinquishment of any rights that the City of Tacoma has under this Contract.

3.16 LIST OF SUBCONTRACTORS

~~Bid proposals for construction, alteration or repair of any building or other public works that may exceed \$1,000,000 including tax shall satisfy the following requirement: Respondent shall submit as part of the bid,~~

~~the names of the subcontractors, with whom the respondent, if awarded the contract, will subcontract performance of the work of heating, ventilation and air conditioning, plumbing as described in chapter 18.106 RCW, and electrical as described in chapter 19.28 RCW, or to name itself for the work. The respondent shall not list more than one subcontractor for each category of work identified, unless subcontractors vary with bid alternates, in which case the respondent must indicate which subcontractor will be used for which alternate. Failure to comply with this provision or the naming of two or more subcontractors to perform the same work shall require the City (pursuant to state law RCW 39.30.060) to determine that respondent's bid is nonresponsive, therefore, the bid will be rejected.~~

SECTION IV - SUMMARY OF WORK

4.01 – SCOPE OF BID

The work to be performed in these specifications and the contract consists of furnishing qualified locators, equipment, and the required supervision to identify and mark underground utilities. The work may be performed within the right-of-ways of private, county, city, highway, and limited access freeway roadways. All work shall be done in accordance with the operating standards of Tacoma Power and the State of Washington regulations (RCW 19.122 & WAC).

4.01.1 – PROJECT LOCATION

The contractor will be responsible for locating in the area referred to as Northeast Tacoma. Refer to Appendix #1.

4.01.1A - ADDITIONAL SERVICE AREA

As required the contractor may be requested to provide services to any additional portion and/or all of Tacoma Power's service area. Refer to Appendix #2.

4.01.2 - CONTRACTOR RESPONSIBILITY

The contractor shall ensure the necessary supervision, equipment, transportation, and tools to accomplish the required work.

4.01.3 - QUALIFICATION OF CONTRACTORS

Only contractors experienced in this type of work, and with a record of successful completion of jobs of similar scope over a period of **three (3) years or more** will be considered.

4.01.3A - RECORD OF PRIOR CONTRACTS

All Respondents must submit the "Contractor's Record of Prior Contracts" form included in this specification at the time of bid submittal. Tacoma Power reserves the right to contact references and consider the responses received in the evaluation of bids.

4.01.3B – ABILITY TO DO WORK

Currently an average of **75-100 locates** per month are routed to the third party locator. Tacoma Power employees average **1500 locates** per month. In the event that employees of Tacoma Power are not available to perform the tasks of utility locating it is preferred that the successful awardee have the resources to perform this required service of up to **1600 locates** per month with **4 weeks advanced notice**.

4.01.3C - JUDGE OF QUALIFIED CONTRACTOR

Tacoma Power may consider factors such as the length of time the company has been providing locating services, the type of locating services, past performance, safety violations, references and other factors as listed in section 4.03.1A. Tacoma Power shall be the sole judge of the Respondent's ability to meet the qualification requirements of this specification.

4.01.3D - UNQUALIFIED CONTRACTORS

Submittals of inexperienced contractors and those who have failed to properly perform other similar contracts may be rejected for such cause.

4.01.4 - DEFINITIONS

For the purposes of this specification, the following definitions shall apply:

| Term | Definition |
|-------------------------------|---|
| BIDDER/ RESPONDENT | A potential contractor offering a proposal to supply a service in accordance with these specifications. |
| CITY | The City of Tacoma, Department of Public Utilities |
| SERVICE | The scope of work to be completed under this contract in accordance with these specifications. |
| CONTRACTOR | The Respondent(s) awarded a contract pursuant to this Specification. |
| SPECIFICATION | This document, detailing the scope of service required for underground locating of Tacoma Power Electrical and Data Facilities. |

4.02 - DESCRIPTION OF WORK

The work to be performed shall consist of locating and marking underground facilities. Locating of power cables, coax cables, and fiber optic cables shall be in accordance with Tacoma Power standards, this specification, Washington State WAC Regulations, and American Public Works Association. The contractor shall supply the necessary supervision, equipment, transportation, and tools to accomplish the required work.

4.02.1 - RECEPTION OF LOCATE REQUESTS

The contractor will receive all Tacoma Power locates from the Utility Underground Location Center (see Paragraph 4.02.2C of these provisions) and will be responsible for determining which locates are in the contractor's assigned area of North East Tacoma. See Appendix #8 for the "Tacoma Power Underground Utility Locate Request Process" diagram.

4.02.2 - WORK INCIDENTAL TO BID ITEMS

The following list indicates work which shall be considered incidental to the appropriate bid item as listed in the proposal.

4.02.2A - UNDERGROUND FACILITY LOCATION

The contractor agrees to perform field marking of Tacoma Power's underground facilities within two (2) business days after notification for location request from the Utilities Underground Location Center.

4.02.2A.1 - APPLICATION OF MARKING PRODUCTS

To show the field location of underground facilities the contractor shall use paint strips of a minimum of two inches by 12 inches at distances of every ten feet, and each divergence from a straight line in accordance with the current marking standards of the *American Public Works Association*. Facilities shall be marked with paint that is satisfactory to the Tacoma Power’s Project Manager. The contractor shall furnish all labor, materials, and equipment for the performance of said work.

| Paint Color | Underground Facilities |
|--------------------|--------------------------------|
| Power Red | Electrical facilities |
| Orange | Coax or fiber optic facilities |

4.02.2A.2 - LIABILITY OF LOCATES

The Contractor shall locate all of Tacoma Power’s facilities with "reasonable accuracy" as defined in RCW 19.122.020. The Contractor shall be liable for any and all claims, damages and costs (including reasonable attorney fees) arising in connection with Contractor’s failure to perform Services required in this Specification including, but not limited to, failure to locate facilities with reasonable accuracy.

In the event Tacoma Power is timely notified, in compliance with Chapter 19.122, of damage to its underground facilities by an excavator, Tacoma Power will promptly forward that notice to Contractor. Upon issuance of such notice, Contractor shall conduct a good faith investigation and submit a written investigation report to Tacoma Power within ten (10) business days. Should the investigation reveal the damage resulted in any way from Contractor’s failure to properly mark the location of such facility with reasonable accuracy the Contractor shall indemnify Tacoma Power for all damages and costs actually incurred. Contractor shall further indemnify Tacoma Power for all damages and costs actually incurred in the event the accuracy of Contractor’s locate marks are disputed in any legal action by Tacoma Power to recover for damage to its facilities and it is unable to recover damages from an excavator based on Contractor’s inability to prove the locate was reasonably accurate.

The foregoing indemnification obligations shall not include loss of use damages and the total indemnification liability of Contractor for damages hereunder shall not exceed the total contract price.

4.02.2B - MAPS - UNDERGROUND FACILITY LOCATION

Tacoma Power will provide the contractor with necessary maps to locate its underground facilities. The contractor shall promptly notify Tacoma Power of any discrepancies or omissions in the maps or other information pertinent to locating the underground facilities.

4.02.2C - RECEIPT OF LOCATE REQUESTS

The contractor is responsible to receive location requests directly from the Utilities Underground Location Center, telephone 1-800-424-5555. The contractor shall provide a TelePrompTer compatible with the Utilities Underground Location Center for receiving locates and all associated costs.

4.02.2D - REPORT OF LOCATE REQUESTS

On a weekly basis, the contractor shall provide to Tacoma Power a report of the completed locates. This information will provide verification to Tacoma Power that the locate requests submitted to the contractor have been completed. The report shall be submitted via email to the Tacoma Power locate coordinator.

4.02.3 - TRAFFIC SIGNS AND SIGNALS

The contractor shall be responsible for all temporary signing or barricades placed at the job site to control traffic and protect the public from construction areas.

The supply, placement, and maintenance of all traffic controls shall be the responsibility of the contractor and shall be in accordance with the "Manual on Uniform Traffic Control Devices".

4.03 – EVALUATION & AWARD

4.03.1 - EVALUATION

The award of contract(s) per this specification will not be based on cost alone as other factors and features will be considered in the evaluation criteria.

All other elements or factors, whether or not specifically provided for in this specification, which would affect the final cost to and the benefits to be derived by the City will be considered in determining the award of the contract as described in General Provisions Section 1.08. The final award decision will be based on the best interests of the City.

4.03.1A - EVALUATION CRITERIA

In evaluating the proposals, the City may also consider any or all of the following in determining the lowest and best responsive submittal:

- Compliance with specifications.
- Proposal prices, listed separately as well as a lump-sum total.
- Bidder's responsibility based on, but not limited to:
 1. Ability, capacity, organization, technical qualifications, and skill to perform the contract or provide the services required.
 2. References, judgment, experience, efficiency, and stability.
 3. Whether the contract can be performed within the time specified.
 4. Quality of performance of previous contracts or services.

4.03.1B – UNIT PRICE EVALUATION

As part of the evaluation of bids, unit prices quoted will include consideration of the annual escalation as outlined in Section 5.04. To determine the lowest priced offer the following process will be utilized:

| Year | Price | | Quantity | | Total |
|---------------------------------------|---|---|--------------|---|----------------|
| Year 1 | Unit Price Quoted | x | 1/3 quantity | = | Sum for Year 1 |
| Year 2 | Unit price Quoted x % increase for 2 nd year | x | 1/3 quantity | = | Sum for Year 2 |
| Year 3 | Unit price for 2 nd year x % increase for 3rd year | x | 1/3 quantity | = | Sum for Year 3 |
| Bid Evaluation Sum of the three years | | | | = | Sum (1+2+3) |

4.03.2 - AWARD

The contract will be awarded to the lowest and best responsible Respondent(s) delivering a responsive submittal in compliance with these specifications, provided such submittal is reasonable and it is in the best interests of the City to accept. The City, however, reserves the right to reject any and all bids and to waive any informalities in bids received. The City reserves the right to award the contract to the lowest responsible Respondent(s) whose bid will be most advantageous to the City, price and any other factors considered.

It is anticipated that one contract will be awarded; however, the City may award more than one contract for the services as described in this specification.

4.03.2A - AMOUNT OF WORK

Please note that a contract to perform Underground Locating Services for Tacoma Power does not guarantee that the full value of the contract will be exercised. It also does not guarantee that work will be assigned immediately upon receipt of contract.

4.04 - COMMENCEMENT, PROSECUTION AND COMPLETION

4.04.1 - CONTRACT DOCUMENTS

The contractor will be required to execute the following contract documents including surety/performance bonding per Section 5.03 within ten (10) calendar days after the award of the contract.

- Contract signed by the appropriate officer of the company (sample shown in Appendix #3).
- Certificate of insurance meeting the City of Tacoma requirements (Appendix #4).
- Surety / Performance Bond (sample shown in Appendix #5).

4.04.2 – AWARD DATE OF CONTRACT

The “*Award Date of the Contract*” will commence when all required contract, bonding and insurance documents have been fully signed and executed by the contractor and the City of Tacoma.

4.04.3 - TERM OF CONTRACT

The term of this contract is from the date of award per Section 4.04.2, through the subsequent 3 year period. A single one-year contract extension may be considered based upon the mutual agreement of Tacoma Power and the contractor to extend the contract under the same terms and conditions of the original contract.

4.04.4 - UNIT QUANTITIES SPECIFIED

Quantities indicated in the proposal are for bidding purposes only and reflect the estimated total requirement of Tacoma Power for a three (3) year period. Tacoma Power reserves the right to increase or decrease quantities under the contract and pay according to the unit prices quoted in this proposal. (See Section 1.16 of the General Provisions)

4.04.5 - COMMENCEMENT OF WORK

The contractor shall be able to perform work in the contract within five (5) calendar days following the completion of the contract documents per Section 4.04.1.

This contract work may not be continuous, and several months may go by before more work may be available for each contractor.

4.05 - LOCAL EMPLOYMENT AND APPRENTICESHIP TRAINING PROGRAM (LEAP)

In that the estimated value of this contract does not exceed \$250,000 the LEAP Program does not apply.

4.06 – SMALL BUSINESS ENTERPRISE (SBE) PROGRAM

4.06.1 – SINGLE TRADE DESIGNATION

This project involves only one category of work, “Underground Utility Locating”, hence SBE subcontracting opportunities do not reasonably exist.

4.06.1A – SBE PREFERENCE

Therefore in accordance with City of Tacoma Ordinance 27867, an SBE submitting the Lowest Responsible Bid for a Single Trade Contract shall be deemed the Lowest Responsible Respondent, if such bid is not more than **five percent** greater than the Lowest Bid submitted by any Respondent that is not a SBE.

4.06.2 - ASSISTANCE

Additional information concerning the SBE Program is available on-line at:

http://www.cityoftacoma.org/government/city_departments/community_and_economic_development/

4.07 - PREVAILING WAGES

Per Washington State Department of Labor and Industries the activity of Utility Locating is not covered under prevailing wage.

SECTION V - MEASUREMENT AND PAYMENT

5.01 - ADMINISTRATION

This section shall include the measurement and payment criteria applicable to the work performed under the unit price bid and lump sum payment method.

5.01.1 - MEASUREMENT

The Tacoma Power inspector or project manager in coordination with the contractor shall make all measurements and determine all quantities and amounts of work done for payments under the contract.

5.01.2 - UNIT QUANTITIES SPECIFIED

Quantities indicated on the Proposal Pricing Sheet are for bidding and contract purposes only. Actual quantities and measurements supplied or placed in the work and verified by the designee of Tacoma Power and contractor determine payment.

5.01.3 - CONTRACT PRICE

The unit bid prices shall be full and complete compensation for the contract work stated, together with all appurtenances incidental thereto, including materials, equipment, tools, labor, and all the costs to the contractor for completing the contract in accordance with the plans, specifications, and instructions of the Tacoma Power project manager.

5.01.4 - LOCATION REQUEST FORM

Each request form (see Appendix #6) shall have the following information and shall be returned to Tacoma Power Service Desk within 48 hours of being marked in the field:

- ❖ Date and time request was received.
- ❖ Location of proposed excavation (location).
- ❖ Type of request.
 - Power
 - Data
 - Combined Power & Data
- ❖ Date and time of marking (location).

5.02 - BILLING PLAN AND PAYMENTS

5.02.1 - INVOICES

Payment for the underground facilities location shall be on a locate-request basis and billed per unit as listed on the proposal page. Invoices shall include an itemized tabulation submitted on a weekly basis. The following shall apply:

5.02.1A - INVOICE DETAIL

Only properly filled out locate request forms will be paid when invoiced. The invoice shall identify each locate request form and shall include accumulated contract costs to date.

5.02.1B - SUBMISSION OF INVOICES

Invoices shall be submitted by email on a weekly basis within 10 days of the work performed. Invoices shall be submitted to:

| |
|---|
| Tacoma Power Locate Coordinator ahopkins@cityoftacoma.org |
|---|

5.02.1C - END OF YEAR

End of year invoices are **required by January 10** of the immediately following year.

5.03 - SURETY / PERFORMANCE BONDING

The requirements listed in Paragraph B, Section 2.01 of the General Provisions shall be modified as listed below.

5.03.1 - POSTING OF SURETY / PERFORMANCE BOND

To minimize the burdens related to bonding, Tacoma Power will require a performance bond to be posted as contract amounts are issued. Tacoma Power will require said Respondent to execute a contract for the identified work and submit a performance bond for one hundred percent (100%) of the contract amount awarded. Refer to Appendix #5 for the approved surety / performance bond template.

5.03.2 - ADDITIONAL CONTRACT AMOUNTS

Tacoma Power may elect to issue additional contract amounts to said supplier/contractor. In that event, the selected contractor will be required to execute a contract amendment for the identified work and submit a new or supplemental performance bond securing one hundred percent (100%) of the new contract amount so awarded.

5.04 - ESCALATION / DE-ESCALATION

The successful Respondent(s) may only escalate/de-escalate the unit prices bid for items 1 through 6 annually, on the anniversary date of the contract award, by no more than the maximum percentage provided in the respondent's proposal.

5.05 - EMERGENCY NOTIFICATION

The contractor is to provide the Tacoma Power Project Manager with a 24-hour emergency telephone number(s). This telephone contact will be used outside of regular business hours to notify the contractor when immediate response is required. This contact number for emergency notifications must be available at all times. The contractor will be notified via the "One-Call" Center during regular business hours. See Appendix #8 for a diagram of the "Tacoma Power Underground Locate Notification Process".

5.06 - INDEPENDENT CONTRACTOR

During performance of the contract, the contractor shall be an independent contractor and not an agent of Tacoma Power. The contractor shall supervise the performance of its own services and shall have control of the manner and means by which its services are performed, subject to compliance with the contract and any plans, specifications, schedules or other items approved by Tacoma Power.

SECTION VI - PROJECT COORDINATION

6.01 – PERSONS TO BE CONTACTED

The following is a list of persons who may be contacted during progress of the work:

| Name | Responsibility | Phone # | Email |
|-------------|------------------|--------------|-------------------------|
| Ken Mathes | Project Manager | 253-502-8851 | kmathes@ci.tacoma.wa.us |
| Roberta Cox | Contract Manager | 253-396-3156 | rcox@ci.tacoma.wa.us |

6.02 - MEETINGS

6.02.1 - PREBID MEETING

A pre-Bid meeting is not intended for this specification.

6.02.2 - PRECONSTRUCTION MEETING

Pre-construction meetings will be held as required.

SECTION VII – LOCATER REQUIREMENTS

7.01 - QUALIFIED UTILITY LOCATORS

Utility Locators provided per this contract shall meet the following requirements in addition to the requirements of RCW 19.122.

7.01.1 - TRAINING & EXPERIENCE

All Utility Locators supplied per this contract shall have met the following requirement:

- Have worked as a Locator a minimum of **80 hours** within the prior **6 months**.

7.01.2 - CERTIFICATION

All Utility Locators supplied per this contract shall possess the following:

- A valid State of Washington drivers license
- Proof of car insurance per Chapter 46.29 of the Revised Code of Washington (RCW)

7.01.3 - REMOVAL AND EXCLUSION FROM WORK

Upon documented unsatisfactory performance the City through the Tacoma Power Project Manager will notify the contractor of Utility Locators that are to be removed from work and excluded from future use per this contract.

7.01.4 - APPROPRIATE CLOTHING

Utility Locators shall arrive at the job site in clothing appropriate for the work site and conditions encountered. During the course of work locators shall wear a high visibility safety vest. Dependent upon site conditions a hardhat may be required. The remaining clothing shall be modest in nature and not cause undo distraction to drivers, pedestrians, and job site workers.

7.02 - SAFETY PLAN

The contractor shall submit with their proposal a comprehensive safety plan that includes the following:

- Names and contact information for supervisory and management staff concerning safety related issues.
- Documentation of the process for addressing performance and safety issues brought to the attention of the contractor by Tacoma Power.



APPENDIX #1

LOCATE AREA – NORTHEAST TACOMA



APPENDIX #2

TACOMA POWER SERVICE AREA



APPENDIX #3

CONTRACT TEMPLATE



APPENDIX #4

INSURANCE CERTIFICATE REQUIREMENTS



APPENDIX #5

SURETY / PERFORMANCE BOND TEMPLATE



APPENDIX #6 – LOCATE REQUEST FORM

EMERGENCY 48 Hour Request

Locate Request Form

Contact Information

- ▶ Contact:
- ▶ Phone Number:
- ▶ JO/WO#:

Excavation Information

- ▶ Work being done in ROW? Yes No
- ▶ Type of Work:
- ▶ Work being done for Tacoma Power? Yes No
- ▶ City:
- ▶ House Number:
- ▶ Street:
- ▶ Nearest Intersecting Street:
- ▶ Distance and direction of address from above intersection:
- ▶
- ▶ Marking Instructions:

▶ Township N Range E Section =

Date Called In:

Ticket Number:

Date Good to Dig:

APPENDIX #7 – RCW 19.122

CHAPTER 19.122 RCW

UNDERGROUND UTILITIES

RCW SECTIONS

- [19.122.010](#) Intent.
- [19.122.020](#) Definitions.
- [19.122.027](#) One-number locator services -- Single statewide toll-free telephone number.
- [19.122.030](#) Excavator and facility operator duties before excavation.
- [19.122.031](#) Exempted activities.
- [19.122.033](#) Notice of excavation to pipeline companies.
- [19.122.035](#) Pipeline company duties after notice of excavation -- Examination -- Information of damage -- Notification of local first responders.
- [19.122.040](#) Underground facilities identified in bid or contract -- Excavator's duty of reasonable care -- Liability for damages -- Attorneys' fees.
- [19.122.045](#) Exemption from liability.
- [19.122.050](#) Damage to underground facility -- Notification by excavator -- Repairs or relocation of facility.
- [19.122.053](#) Report of damage to underground facility.
- [19.122.055](#) Failure to notify one-number locator service -- Civil penalty, if damages.
- [19.122.070](#) Civil penalties -- Treble damages -- Existing remedies not affected.
- [19.122.075](#) Damage or removal of permanent marking -- Civil penalty.
- [19.122.080](#) Waiver of notification and marking requirements.
- [19.122.090](#) Excavation without a valid excavation confirmation code -- Penalty.
- [19.122.100](#) Violation of RCW [19.122.090](#) -- Affirmative defense.
- [19.122.110](#) False excavation confirmation code -- Penalty.
- [19.122.120](#) One-number locator service to provide excavation confirmation code.
- [19.122.130](#) Commission to contract with nonprofit entity -- Safety committee -- Review of violations of chapter.
- [19.122.140](#) Commission authority -- Receipt of notification of violation of chapter -- Referral to attorney general.
- [19.122.150](#) Commission authority -- Violations of chapter -- Imposition of penalties.
- [19.122.160](#) Damage prevention account.
- [19.122.170](#) Damage prevention account -- Use of funds.
- [19.122.180](#) Damage prevention account -- Deposit of penalties.
- [19.122.900](#) Severability -- 1984 c 144.
- [19.122.901](#) Short title -- 2011 c 263.

19.122.010 - INTENT.

In this chapter, the underground utility damage prevention act, the legislature intends to protect public health and safety and prevent disruption of vital utility services through a comprehensive damage prevention program that includes:

- (1) Assigning responsibility for providing notice of proposed excavation, locating and marking underground utilities, and reporting and repairing damage;
- (2) Setting safeguards for construction and excavation near hazardous liquid and gas pipelines;
- (3) Improving worker and public knowledge of safe practices;
- (4) Collecting and analyzing damage data;
- (5) Reviewing alleged violations; and
- (6) Enforcing this chapter.

[2011 c 263 § 1; 1984 c 144 § 1.]

Notes:

Report -- 2011 c 263: "By December 1, 2015, the utilities and transportation commission must report to the appropriate committees of the legislature on the effectiveness of the damage prevention program established under chapter [19.122](#) RCW. The legislative report required under this section must include analysis of damage data reported under section 20 of this act." [2011 c 263 § 26.]

Effective date -- 2012 c 96; 2011 c 263: "Except for section 18 of this act (chapter 263, Laws of 2011), this act takes effect January 1, 2013." [2012 c 96 § 2; 2011 c 263 § 27.]

19.122.020 - DEFINITIONS.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Bar hole" means a hole made in the soil or pavement with a hand-operated bar for the specific purpose of testing the subsurface atmosphere with a combustible gas indicator.
- (2) "Business day" means any day other than Saturday, Sunday, or a legal local, state, or federal holiday.
- (3) "Commission" means the utilities and transportation commission.
- (4) "Damage" includes the substantial weakening of structural or lateral support of an underground facility, penetration, impairment, or destruction of any underground protective coating, housing, or other protective device, or the severance, partial or complete, of any underground facility to the extent that the project owner or the affected facility operator determines that repairs are required.
- (5) "Emergency" means any condition constituting a clear and present danger to life or property, or a customer service outage.

(6) "End user" means any utility customer or consumer of utility services or commodities provided by a facility operator.

(7) "Equipment operator" means an individual conducting an excavation.

(8) "Excavation" and "excavate" means any operation, including the installation of signs, in which earth, rock, or other material on or below the ground is moved or otherwise displaced by any means.

(9) "Excavation confirmation code" means a code or ticket issued by a one-number locator service for the site where an excavation is planned. The code must be accompanied by the date and time it was issued.

(10) "Excavator" means any person who engages directly in excavation.

(11) "Facility operator" means any person who owns an underground facility or is in the business of supplying any utility service or commodity for compensation. "Facility operator" does not include a utility customer who owns a service lateral that terminates at a facility operator's main utility line.

(12) "Gas" means natural gas, flammable gas, or toxic or corrosive gas.

(13) "Hazardous liquid" means:

(a) Petroleum, petroleum products, or anhydrous ammonia as those terms are defined in 49 C.F.R. Part 195 as in effect on March 1, 1998;

(b) Carbon dioxide; and

(c) Other substances designated as hazardous by the secretary of transportation and incorporated by reference by the commission by rule.

(14) "Identified but unlocatable underground facility" means an underground facility which has been identified but cannot be located with reasonable accuracy.

(15) "Large project" means a project that exceeds seven hundred linear feet.

(16) "Locatable underground facility" means an underground facility which can be marked with reasonable accuracy.

(17) "Marking" means the use of stakes, paint, or other clearly identifiable materials to show the field location of underground facilities, in accordance with the current color code standard of the American public works association. Markings shall include identification letters indicating the specific type of the underground facility.

(18) "Notice" or "notify" means contact in person or by telephone or other electronic method, and, with respect to contact of a one-number locator service, also results in the receipt of a valid excavation confirmation code.

(19) "One-number locator service" means a service through which a person can notify facility operators and request marking of underground facilities.

(20) "Person" means an individual, partnership, franchise holder, association, corporation, the state, a city, a county, a town, or any subdivision or instrumentality of the state, including any unit of local government, and its employees, agents, or legal representatives.

(21) "Pipeline" or "pipeline system" means all or parts of a pipeline facility through which hazardous liquid or gas moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping or compressor units, metering and delivery stations and fabricated assemblies therein, and breakout tanks. "Pipeline" or "pipeline system" does not include process or transfer pipelines.

(22) "Pipeline company" means a person or entity constructing, owning, or operating a pipeline for transporting hazardous liquid or gas. "Pipeline company" does not include:

(a) Distribution systems owned and operated under franchise for the sale, delivery, or distribution of natural gas at retail; or

(b) Excavation contractors or other contractors that contract with a pipeline company.

(23) "Reasonable accuracy" means location within twenty-four inches of the outside dimensions of both sides of an underground facility.

(24) "Service lateral" means an underground water, storm water, or sewer facility located in a public right-of-way or utility easement that connects an end user's building or property to a facility operator's underground facility, and terminates beyond the public right-of-way or utility easement.

(25) "Transfer pipeline" means a buried or aboveground pipeline used to carry hazardous liquid between a tank vessel or transmission pipeline and the first valve inside secondary containment at a facility, provided that any discharge on the facility side of the first valve will not directly impact waters of the state. "Transfer pipeline" includes valves and other appurtenances connected to the pipeline, pumping units, and fabricated assemblies associated with pumping units. "Transfer pipeline" does not include process pipelines, pipelines carrying ballast or bilge water, transmission pipelines, or tank vessel or storage tanks.

(26) "Transmission pipeline" means a pipeline that transports hazardous liquid or gas within a storage field, or transports hazardous liquid or gas from an interstate pipeline or storage facility to a distribution main or a large volume hazardous liquid or gas user, or operates at a hoop stress of twenty percent or more of the specified minimum yield strength.

(27) "Underground facility" means any item buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, cablevision, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids, or other substances and including but not limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, and those parts of poles or anchors that are below ground. This definition does not include pipelines as defined in subsection (21) of this section, but does include distribution systems owned and operated under franchise for the sale, delivery, or distribution of natural gas at retail.

(28) "Unlocatable underground facility" means, subject to the provisions of RCW [19.122.030](#), an underground facility that cannot be marked with reasonable accuracy using available information to designate the location of an underground facility. "Unlocatable underground facility" includes, but is not limited to, service laterals, storm drains, and nonconductive and nonmetallic underground facilities that do not contain trace wires.

(29) "Utility easement" means a right held by a facility operator to install, maintain, and access an underground facility or pipeline.

[2011 c 263 § 2; 2007 c 142 § 9; 2005 c 448 § 1; 2000 c 191 § 15; 1984 c 144 § 2.]

Notes:

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW [1.08.015\(2\)\(k\)](#).
Report -- Effective date -- 2011 c 263: See notes following RCW [19.122.010](#).

Intent -- Findings -- Conflict with federal requirements -- Short title -- Effective date -- 2000 c 191:
See RCW [81.88.005](#) and [81.88.900](#) through [81.88.902](#).

[19.122.027 - ONE-NUMBER LOCATOR SERVICES — SINGLE STATEWIDE TOLL-FREE TELEPHONE NUMBER.](#)

(1) The commission must establish a single statewide toll-free telephone number to be used for referring excavators to the appropriate one-number locator service.

(2) The commission, in consultation with the Washington utilities coordinating council, must establish minimum standards and best management practices for one-number locator services.

(3) One-number locator services must be operated by nongovernmental agencies.

(4) All facility operators within a one-number locator service area must subscribe to the service.

(5) Failure to subscribe to a one-number locator service constitutes willful intent to avoid compliance with this chapter.

[2011 c 263 § 3; 2005 c 448 § 2; 2000 c 191 § 16.]

Notes:

Report -- Effective date--2011 c 263: See notes following RCW [19.122.010](#).

Intent -- Findings -- Conflict with federal requirements -- Short title -- Effective date -- 2000 c 191:
See RCW [81.88.005](#) and [81.88.900](#) through [81.88.902](#).

[19.122.030 - EXCAVATOR AND FACILITY OPERATOR DUTIES BEFORE EXCAVATION.](#)

(1)(a) Unless exempted under RCW [19.122.031](#), before commencing any excavation, an excavator must mark the boundary of the excavation area with white paint applied on the ground of the worksite, then provide notice of the scheduled commencement of excavation to all facility operators through a one-number locator service.

(b) If boundary marking required by (a) of this subsection is infeasible, an excavator must communicate directly with affected facility operators to ensure that the boundary of the excavation area is accurately identified.

(2) An excavator must provide the notice required by subsection (1) of this section to a one-number locator service not less than two business days and not more than ten business days before the scheduled date for commencement of excavation, unless otherwise agreed by the excavator and facility operators. If an excavator intends to work at multiple sites or at a large project, the excavator must take reasonable steps to confer with facility operators to enable them to locate underground facilities reasonably in advance of the start of excavation for each phase of the work.

(3) Upon receipt of the notice provided for in subsection (1) of this section, a facility operator must, with respect to:

(a) The facility operator's locatable underground facilities, provide the excavator with reasonably accurate information by marking their location;

(b) The facility operator's unlocatable or identified but unlocatable underground facilities, provide the excavator with available information as to their location; and

(c) Service laterals, designate their presence or location, if the service laterals:

(i) Connect end users to the facility operator's main utility line; and

(ii) Are within a public right-of-way or utility easement and the boundary of the excavation area identified under subsection (1) of this section.

(4)(a) A facility operator must provide information to an excavator pursuant to subsection (3) of this section no later than two business days after the receipt of the notice provided for in subsection (1) of this section or before excavation commences, at the option of the facility operator, unless otherwise agreed by the parties.

(b) A facility operator complying with subsection (3)(b) and (c) of this section may do so in a manner that includes any of the following methods:

(i) Placing within a proposed excavation area a triangular mark at the main utility line pointing at the building, structure, or property in question, indicating the presence of an unlocatable or identified but unlocatable underground facility, including a service lateral;

(ii) Arranging to meet an excavator at a worksite to provide available information about the location of service laterals; or

(iii) Providing copies of the best reasonably available records by electronic message, mail, facsimile, or other delivery method.

(c) A facility operator's good faith attempt to comply with subsection (3)(b) and (c) of this section:

(i) Constitutes full compliance with the requirements of this section, and no person may be found liable for damages or injuries that may result from such compliance, apart from liability for arranging for repairs or relocation as provided in RCW [19.122.050](#)(2); and

(ii) Does not constitute any assertion of ownership or operation of a service lateral by the facility operator.

(d) An end user is responsible for determining the location of a service lateral on their property or a service lateral that they own. Nothing in this section may be interpreted to require an end user to subscribe to a one-number locator service or to locate a service lateral within a right-of-way or utility easement.

(5) An excavator must not excavate until all known facility operators have marked or provided information regarding underground facilities as provided in this section.

(6)(a) Once marked by a facility operator, an excavator is responsible for maintaining the accuracy of the facility operator's markings of underground facilities for the lesser of:

(i) Forty-five calendar days from the date that the excavator provided notice to a one-number locator service

pursuant to subsection (1) of this section; or

(ii) The duration of the project.

(b) An excavator that makes repeated requests for location of underground facilities due to its failure to maintain the accuracy of a facility operator's markings as required by this subsection (6) may be charged by the facility operator for services provided.

(c) A facility operator's markings of underground utilities expire forty-five calendar days from the date that the excavator provided notice to a one-number locator service pursuant to subsection (1) of this section. For excavation occurring after that date, an excavator must provide additional notice to a one-number locator service pursuant to subsection (1) of this section.

(7) An excavator has the right to receive reasonable compensation from a facility operator for costs incurred by the excavator if the facility operator does not locate its underground facilities in accordance with the requirements specified in this section.

(8) A facility operator has the right to receive reasonable compensation from an excavator for costs incurred by the facility operator if the excavator does not comply with the requirements specified in this section.

(9) A facility operator is not required to comply with subsection (4) of this section with respect to service laterals conveying only water if their presence can be determined from other visible water facilities, such as water meters, water valve covers, and junction boxes in or adjacent to the boundary of an excavation area identified under subsection (1) of this section.

(10) If an excavator discovers underground facilities that are not identified, the excavator must cease excavating in the vicinity of the underground facilities and immediately notify the facility operator or a one-number locator service. If an excavator discovers identified but unlocatable underground facilities, the excavator must notify the facility operator. Upon notification by a one-number locator service or an excavator, a facility operator must allow for location of the uncovered portion of an underground facility identified by the excavator, and may accept location information from the excavator for marking of the underground facility.

[2011 c 263 § 4; 2000 c 191 § 17; 1988 c 99 § 1; 1984 c 144 § 3.]

Notes:

Report -- Effective date--2011 c 263: See notes following RCW [19.122.010](#).

Intent -- Findings -- Conflict with federal requirements -- Short title -- Effective date -- 2000 c 191: See RCW [81.88.005](#) and [81.88.900](#) through [81.88.902](#).

Damages to facilities on state highways: RCW [47.44.150](#).

[19.122.031 - EXEMPTED ACTIVITIES.](#)

(1) The requirements specified in RCW [19.122.030](#) do not apply to any of the following activities:

(a) An emergency excavation, but only with respect to boundary marking and notice requirements specified in RCW [19.122.030](#) (1) and (2), and provided that the excavator provides notice to a one-number locator service at the earliest practicable opportunity;

(b) An excavation of less than twelve inches in depth on private noncommercial property, if the excavation is performed by the person or an employee of the person who owns or occupies the property on which the excavation is being performed;

(c) The tilling of soil for agricultural purposes less than:

(i) Twelve inches in depth within a utility easement; and

(ii) Twenty inches in depth outside of a utility easement;

(d) The replacement of an official traffic sign installed prior to January 1, 2013, no deeper than the depth at which it was installed;

(e) Road maintenance activities involving excavation less than six inches in depth below the original road grade and ditch maintenance activities involving excavation less than six inches in depth below the original ditch flowline, or alteration of the original ditch horizontal alignment;

(f) The creation of bar holes less than twelve inches in depth, or of any depth during emergency leak investigations, provided that the excavator takes reasonable measures to eliminate electrical arc hazards; or

(g) Construction, operation, or maintenance activities by an irrigation district on rights-of-way, easements, or facilities owned by the federal bureau of reclamation in federal reclamation projects.

(2) Any activity described in subsection (1) of this section is subject to the requirements specified in RCW [19.122.050](#).

[2011 c 263 § 5.]

Notes:

Report -- Effective date--2011 c 263: See notes following RCW [19.122.010](#).

[19.122.033 - NOTICE OF EXCAVATION TO PIPELINE COMPANIES.](#)

(1) Before commencing any excavation, an excavator must notify pipeline companies of the scheduled commencement of excavation through a one-number locator service in the same manner as required for notifying facility operators of excavation under RCW [19.122.030](#). Pipeline companies have the same rights and responsibilities as facility operators under RCW [19.122.030](#) regarding excavation. Excavators have the same rights and responsibilities under this section as they have under RCW [19.122.030](#).

(2) Project owners, excavators, and pipeline companies have the same rights and responsibilities relating to excavation near pipelines that they have for excavation near underground facilities as provided in RCW [19.122.040](#).

(3) The state, and any subdivision or instrumentality of the state, including any unit of local government, must, when planning construction or excavation within one hundred feet, or greater distance if required by local ordinance, of a right-of-way or utility easement containing a transmission pipeline, notify the pipeline company of the scheduled commencement of work.

(4) Any unit of local government that issues permits under codes adopted pursuant to chapter [19.27](#) RCW must, when permitting construction or excavation within one hundred feet, or greater distance if required by

local ordinance, of a right-of-way or utility easement containing a transmission pipeline:

- (a) Notify the pipeline company of the permitted activity when it issues the permit; or
- (b) Require, as a condition of issuing the permit, that the applicant consult with the pipeline company.

(5) The commission must assist local governments in obtaining hazardous liquid and gas pipeline location information and maps, as provided in RCW [81.88.080](#).

[2011 c 263 § 6; 2000 c 191 § 18.]

Notes:

Report -- Effective date--2011 c 263: See notes following RCW [19.122.010](#).

Intent -- Findings -- Conflict with federal requirements -- Short title -- Effective date -- 2000 c 191: See RCW [81.88.005](#) and [81.88.900](#) through [81.88.902](#).

[19.122.035 - PIPELINE COMPANY DUTIES AFTER NOTICE OF EXCAVATION — EXAMINATION — INFORMATION OF DAMAGE — NOTIFICATION OF LOCAL FIRST RESPONDERS.](#)

(1) After a pipeline company has been notified by an excavator pursuant to RCW [19.122.033](#) that excavation will uncover any portion of the pipeline company's pipeline, the pipeline company shall ensure that the pipeline section in the vicinity of the excavation is examined for damage prior to being reburied.

(2) Immediately upon receiving information of third-party damage to a hazardous liquid pipeline, the company that operates the pipeline shall terminate the flow of hazardous liquid in that pipeline until it has visually inspected the pipeline. After visual inspection, the pipeline company shall determine whether the damaged pipeline section should be replaced or repaired, or whether it is safe to resume pipeline operation. Immediately upon receiving information of third-party damage to a gas pipeline, the pipeline company shall conduct a visual inspection of the pipeline to determine whether the flow of gas through that pipeline should be terminated, and whether the damaged pipeline should be replaced or repaired. A record of the pipeline company's inspection report and test results shall be provided to the commission, consistent with reporting requirements under 49 C.F.R. Parts 191 and 195, Subpart B.

(3) Pipeline companies shall immediately notify local first responders and the department of ecology of any reportable release of a hazardous liquid from a pipeline. Pipeline companies shall immediately notify local first responders and the commission of any blowing gas leak from a gas pipeline that has ignited or represents a probable hazard to persons or property. Pipeline companies shall take all appropriate steps to ensure the public safety in the event of a release of hazardous liquid or gas under this subsection.

(4) No damaged pipeline may be buried until it is repaired or relocated. The pipeline company shall arrange for repairs or relocation of a damaged pipeline as soon as is practical or may permit the excavator to do necessary repairs or relocation at a mutually acceptable price.

[2011 c 263 § 7; 2000 c 191 § 19.]

Notes:

Report -- Effective date--2011 c 263: See notes following RCW [19.122.010](#).
Intent -- Findings -- Conflict with federal requirements -- Short title -- Effective date -- 2000 c 191:
See RCW [81.88.005](#) and [81.88.900](#) through [81.88.902](#).

[19.122.040 - UNDERGROUND FACILITIES IDENTIFIED IN BID OR CONTRACT — EXCAVATOR'S DUTY OF REASONABLE CARE — LIABILITY FOR DAMAGES — ATTORNEYS' FEES.](#)

(1) Project owners shall indicate in bid or contract documents the existence of underground facilities known by the project owner to be located within the proposed area of excavation. The following are deemed to be changed or differing site conditions:

- (a) An underground facility not identified as required by this chapter or other provision of law; or
 - (b) An underground facility not located, as required by this chapter or other provision of law, by the project owner, facility operator, or excavator if the project owner or excavator is also a facility operator.
- (2) An excavator shall use reasonable care to avoid damaging underground facilities. An excavator must:
- (a) Determine the precise location of underground facilities which have been marked;
 - (b) Plan the excavation to avoid damage to or minimize interference with underground facilities in and near the excavation area; and
 - (c) Provide such support for underground facilities in and near the construction area, including during backfill operations, as may be reasonably necessary for the protection of such facilities.
- (3) If an underground facility is damaged and such damage is the consequence of the failure to fulfill an obligation under this chapter, the party failing to perform that obligation is liable for any damages. Any clause in an excavation contract which attempts to allocate liability, or requires indemnification to shift the economic consequences of liability, that differs from the provisions of this chapter is against public policy and unenforceable. Nothing in this chapter prevents the parties to an excavation contract from contracting with respect to the allocation of risk for changed or differing site conditions.
- (4) In any action brought under this section, the prevailing party is entitled to reasonable attorneys' fees.

[2011 c 263 § 8; 1984 c 144 § 4.]

Notes:

Report -- Effective date--2011 c 263: See notes following RCW [19.122.010](#).

[19.122.045 - EXEMPTION FROM LIABILITY.](#)

Excavators who comply with the requirements of this chapter are not liable for any damages arising from contact or damage to an underground fiber optics facility other than the cost to repair the facility.

[1988 c 99 § 2.]

19.122.050 - DAMAGE TO UNDERGROUND FACILITY — NOTIFICATION BY EXCAVATOR — REPAIRS OR RELOCATION OF FACILITY.

(1) An excavator who, in the course of excavation, contacts or damages an underground facility shall notify the facility operator and a one-number locator service, and report the damage as required under RCW [19.122.053](#). If the damage causes an emergency condition, the excavator causing the damage shall also alert the appropriate local public safety agencies and take all appropriate steps to ensure the public safety. No damaged underground facility may be buried until it is repaired or relocated.

(2) A facility operator notified in accordance with subsection (1) of this section shall arrange for repairs or relocation as soon as is practical, or permit the excavator to do necessary repairs or relocation at a mutually acceptable price.

[2011 c 263 § 9; 1984 c 144 § 5.]

Notes:

Report -- Effective date--2011 c 263: See notes following RCW [19.122.010](#).

19.122.053 - REPORT OF DAMAGE TO UNDERGROUND FACILITY.

(1) Facility operators and excavators who observe or cause damage to an underground facility must report the damage event to the commission.

(2) A nonpipeline facility operator conducting an excavation, or a subcontractor conducting an excavation on the facility operator's behalf, that strikes the facility operator's own underground facility is not required to report that damage event to the commission.

(3) Reports must be made to the commission's office of pipeline safety within forty-five days of the damage event, or sooner if required by law, using the commission's virtual private damage information reporting tool (DIRT) report form, or other similar form if it reports:

(a) The name of the person submitting the report and whether the person is an excavator, a representative of a one-number locator service, or a facility operator;

(b) The date and time of the damage event;

(c) The address where the damage event occurred;

(d) The type of right-of-way, where the damage event occurred, including but not limited to city street, state highway, or utility easement;

(e) The type of underground facility damaged, including but not limited to pipes, transmission pipelines, distribution lines, sewers, conduits, cables, valves, lines, wires, manholes, attachments, or parts of poles or anchors below ground;

- (f) The type of utility service or commodity the underground facility stores or conveys, including but not limited to electronic, telephonic or telegraphic communications, water, sewage, cablevision, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids, or other substances;
- (g) The type of excavator involved, including but not limited to contractors or facility operators;
- (h) The excavation equipment used, including but not limited to augers, bulldozers, backhoes, or hand tools;
- (i) The type of excavation being performed, including but not limited to drainage, grading, or landscaping;
- (j) Whether a one-number locator service was notified before excavation commenced, and, if so, the excavation confirmation code provided by a one-number locator service;
- (k) If applicable:
 - (i) The person who located the underground facility, and their employer;
 - (ii) Whether underground facility marks were visible in the proposed excavation area before excavation commenced;
 - (iii) Whether underground facilities were marked correctly;
 - (l) Whether an excavator experienced interruption of work as a result of the damage event;
 - (m) A description of the damage; and
 - (n) Whether the damage caused an interruption of underground facility service.
- (4) The commission must use reported data to evaluate the effectiveness of the damage prevention program.

[2011 c 263 § 20.]

Notes:

Report -- Effective date--2011 c 263: See notes following RCW [19.122.010](#).

[19.122.055 - FAILURE TO NOTIFY ONE-NUMBER LOCATOR SERVICE — CIVIL PENALTY, IF DAMAGES.](#)

(1)(a) Any excavator who fails to notify a one-number locator service and causes damage to a hazardous liquid or gas underground facility is subject to a civil penalty of not more than ten thousand dollars for each violation.

(b) The civil penalty in this subsection may also be imposed on any excavator who violates RCW [19.122.090](#).

(2) All civil penalties recovered under this section must be deposited into the damage prevention account created in RCW [19.122.160](#).

[2011 c 263 § 10; 2005 c 448 § 3; 2001 c 238 § 5; 2000 c 191 § 24.]

Notes:

Report -- Effective date--2011 c 263: See notes following RCW [19.122.010](#).

Intent--Finding--Effective date -- 2001 c 238: See notes following RCW [80.24.060](#).

Intent -- Findings -- Conflict with federal requirements -- Short title -- Effective date -- 2000 c 191: See RCW [81.88.005](#) and [81.88.900](#) through [81.88.902](#).

[19.122.070 - CIVIL PENALTIES — TREBLE DAMAGES — EXISTING REMEDIES NOT AFFECTED.](#)

(1) Any person who violates any provision of this chapter not amounting to a violation of RCW [19.122.055](#) is subject to a civil penalty of not more than one thousand dollars for an initial violation, and not more than five thousand dollars for each subsequent violation within a three-year period. All penalties recovered in such actions must be deposited in the damage prevention account created in RCW [19.122.160](#).

(2) Any excavator who willfully or maliciously damages a marked underground facility is liable for treble the costs incurred in repairing or relocating the facility. In those cases in which an excavator fails to notify known facility operators or a one-number locator service, any damage to the underground facility is deemed willful and malicious and is subject to treble damages for costs incurred in repairing or relocating the facility.

(3) This chapter does not affect any civil remedies for personal injury or for property damage, including that to underground facilities, nor does this chapter create any new civil remedies for such damage.

[2011 c 263 § 11; 2005 c 448 § 4; 1984 c 144 § 7.]

Notes:

Report -- Effective date--2011 c 263: See notes following RCW [19.122.010](#).
Damages to facilities on state highways: RCW [47.44.150](#).

[19.122.075 - DAMAGE OR REMOVAL OF PERMANENT MARKING — CIVIL PENALTY.](#)

Any person who willfully damages or removes a permanent marking used to identify an underground facility or pipeline, or a temporary marking prior to its intended use, is subject to a civil penalty of not more than one thousand dollars for an initial violation, and not more than five thousand dollars for each subsequent violation within a three-year period.

[2011 c 263 § 14; 2000 c 191 § 23.]

Notes:

Report -- Effective date--2011 c 263: See notes following RCW [19.122.010](#).

Intent -- Findings -- Conflict with federal requirements -- Short title -- Effective date -- 2000 c 191:

See RCW [81.88.005](#) and [81.88.900](#) through [81.88.902](#).

[19.122.080 - WAIVER OF NOTIFICATION AND MARKING REQUIREMENTS.](#)

The notification and marking provisions of this chapter may be waived for one or more designated persons by a facility operator with respect to all or part of that facility operator's underground facilities.

[2011 c 263 § 15; 1984 c 144 § 8.]

Notes:

Report -- Effective date -- 2011 c 263: See notes following RCW [19.122.010](#).

[19.122.090 - EXCAVATION WITHOUT A VALID EXCAVATION CONFIRMATION CODE — PENALTY.](#)

Any excavator who excavates, without a valid excavation confirmation code when required under this chapter, within thirty-five feet of a transmission pipeline is guilty of a misdemeanor.

[2005 c 448 § 5.]

[19.122.100 - VIOLATION OF RCW 19.122.090 — AFFIRMATIVE DEFENSE.](#)

If charged with a violation of RCW [19.122.090](#), an equipment operator is deemed to have established an affirmative defense to such charges if:

- (1) The equipment operator was provided a valid excavation confirmation code;
- (2) The excavation was performed in an emergency situation;
- (3) The equipment operator was provided a false confirmation code by an identifiable third party; or
- (4) Notice of the excavation was not required under this chapter.

[2011 c 263 § 16; 2005 c 448 § 6.]

Notes:

Report -- Effective date--2011 c 263: See notes following RCW [19.122.010](#).

19.122.110 - FALSE EXCAVATION CONFIRMATION CODE — PENALTY.

Any person who intentionally provides an equipment operator with a false excavation confirmation code is guilty of a misdemeanor.

[2011 c 263 § 17; 2005 c 448 § 7.]

Notes:

Report -- Effective date--2011 c 263: See notes following RCW [19.122.010](#).

19.122.120 - ONE-NUMBER LOCATOR SERVICE TO PROVIDE EXCAVATION CONFIRMATION CODE.

Upon receipt, during normal business hours, of notice of an intended excavation, the one-number locator service shall provide an excavation confirmation code.

[2005 c 448 § 8.]

19.122.130 - COMMISSION TO CONTRACT WITH NONPROFIT ENTITY — SAFETY COMMITTEE — REVIEW OF VIOLATIONS OF CHAPTER. (EXPIRES DECEMBER 31, 2020.)

(1) By January 1, 2013, the commission must contract with a statewide, nonprofit entity whose purpose is to reduce damages to underground and above ground facilities, promote safe excavation practices, and review complaints of alleged violations of this chapter. The contract must not obligate funding by the commission for activities performed by the nonprofit entity or the safety committee under this section, and is therefore exempt under *RCW [39.29.040](#)(1) from the requirements of *chapter [39.29](#) RCW.

(2) By January 1, 2013, the contracting entity must create a safety committee to:

(a) Advise the commission and other state agencies, the legislature, and local governments on best practices and training to prevent damage to underground utilities, and policies to enhance worker and public safety; and

(b) Review complaints alleging violations of this chapter involving practices related to underground facilities.

(3)(a) The safety committee will consist of thirteen members, who must be nominated by represented groups and appointed by the contracting entity to staggered three-year terms. By January 1, 2013, the safety committee must include representatives of:

(i) Local governments;

(ii) A natural gas utility subject to regulation under Titles [80](#) and [81](#) RCW;

(iii) Contractors;

(iv) Excavators;

- (v) An electric utility subject to regulation under Title [80](#) RCW;
- (vi) A consumer-owned utility, as defined in RCW [19.27A.140](#);
- (vii) A pipeline company;
- (viii) The insurance industry;
- (ix) The commission; and
- (x) A telecommunications company.

(b) By January 1, 2013, the safety committee may pass bylaws and provide for those organizational processes that are necessary to complete the safety committee's tasks.

(4) The safety committee must meet at least once every three months.

(5) After January 1, 2013, the safety committee may review complaints of alleged violations of this chapter involving practices related to underground facilities. Any person may bring a complaint to the safety committee regarding an alleged violation occurring on or after January 1, 2013.

(6) To review complaints of alleged violations, the safety committee must appoint at least three and not more than five members as a review committee. The review committee must include the same number of members representing excavators and facility operators. One member representing facility operators must also be a representative of a pipeline company or a natural gas utility subject to regulation under Titles [80](#) and [81](#) RCW. The review committee must also include a member representing the insurance industry.

(7) Before reviewing a complaint alleging a violation of this chapter, the review committee must notify the person making the complaint and the alleged violator of its review and of the opportunity to participate.

(8) After January 1, 2013, the safety committee may provide written notification to the commission, with supporting documentation, that a person has likely committed a violation of this chapter, and recommend remedial action that may include a penalty amount, training, or education to improve public safety, or some combination thereof.

(9) This section expires December 31, 2020.

[2012 c 96 § 1; 2011 c 263 § 18.]

Notes:

***Reviser's note:** RCW [39.29.040](#) was repealed by 2012 c 224. All sections in chapter [39.29](#) RCW were repealed or recodified by 2012 c 224.

Report -- Effective date--2011 c 263: See notes following RCW [19.122.010](#).

19.122.140 - COMMISSION AUTHORITY — RECEIPT OF NOTIFICATION OF VIOLATION OF CHAPTER — REFERRAL TO ATTORNEY GENERAL. (EXPIRES DECEMBER 31, 2020.)

(1) The commission may enforce the civil penalties authorized in RCW [19.122.070](#) or [19.122.075](#) when it receives written notification from the safety committee created under RCW [19.122.130](#) indicating that a violation of this chapter has likely been committed by a person subject to regulation by the commission, or involving the underground facilities of such a person.

(2) If the commission receives written notification from the safety committee pursuant to RCW [19.122.130](#) that a violation of this chapter has likely been committed by a person who is not subject to regulation by the commission, and in which the underground facility involved is also not subject to regulation by the commission, the commission may refer the matter to the attorney general for enforcement of a civil penalty under RCW [19.122.070](#) or [19.122.075](#). The commission must provide funding for such enforcement. However, any costs and fees recovered by the attorney general pursuant to subsection (3) of this section must be deposited by the commission in the fund that paid for such enforcement.

(3) In a matter referred to it by the commission pursuant to subsection (2) of this section, the attorney general may bring an action to enforce the penalties authorized in RCW [19.122.070](#) or [19.122.075](#). In such an action, the court may award the state all costs of investigation and trial, including a reasonable attorneys' fee fixed by the court.

(4) This section expires December 31, 2020.

[2011 c 263 § 19.]

Notes:

Report -- Effective date--2011 c 263: See notes following RCW [19.122.010](#).

19.122.150 - COMMISSION AUTHORITY — VIOLATIONS OF CHAPTER — IMPOSITION OF PENALTIES. (EXPIRES DECEMBER 31, 2020.)

(1) The commission may investigate and enforce violations of RCW [19.122.055](#), [19.122.075](#), and [19.122.090](#) relating to pipeline facilities without initial referral to the safety committee created under RCW [19.122.130](#).

(2) If the commission's investigation of notifications received pursuant to RCW [19.122.140](#) or subsection (1) of this section substantiates violations of this chapter, the commission may impose penalties authorized by RCW [19.122.055](#), [19.122.070](#), [19.122.075](#), and [19.122.090](#), and require training, education, or any combination thereof.

(3) With respect to referrals from the safety committee, the commission must consider any recommendation by the committee regarding enforcement and remedial actions involving an alleged violator.

(4) In an action to impose a penalty initiated by the commission under subsection (1) or (2) of this section, the penalty is due and payable when the person incurring the penalty receives a notice of penalty in writing from the commission describing the violation and advising the person that the penalty is due. The person incurring the penalty has fifteen days from the date the person receives the notice of penalty to file with the commission a request for mitigation or a request for a hearing. The commission must include this time limit information in the notice of penalty. After receiving a timely request for mitigation or hearing, the commission must suspend collection of the penalty until it issues a final order concerning the penalty or mitigation of that

penalty. A person aggrieved by the commission's final order may seek judicial review, subject to provisions of the administrative procedure act, chapter [34.05](#) RCW.

(5) If a penalty imposed by the commission is not paid, the attorney general may, on the commission's behalf, file a civil action in superior court to collect the penalty.

(6) This section expires December 31, 2020.

[2011 c 263 § 21.]

Notes:

Report -- Effective date--2011 c 263: See notes following RCW [19.122.010](#).

[19.122.160 - DAMAGE PREVENTION ACCOUNT.](#)

The damage prevention account is created in the custody of the state treasurer. All receipts from moneys directed by law or the commission to be deposited to the account must be deposited in the account. Expenditures from the account may be used only for purposes designated in RCW [19.122.170](#). Only the commission or the commission's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter [43.88](#) RCW.

[2011 c 263 § 12.]

Notes:

Report -- Effective date--2011 c 263: See notes following RCW [19.122.010](#).

[19.122.170 - DAMAGE PREVENTION ACCOUNT — USE OF FUNDS.](#)

The commission may use money deposited in the damage prevention account created in RCW [19.122.160](#) to:

(1) Develop and disseminate educational programming designed to improve worker and public safety relating to excavation and underground facilities; and

(2) Provide grants to persons who have developed educational programming that the commission and the safety committee created pursuant to RCW [19.122.130](#) deem appropriate for improving worker and public safety relating to excavation and underground facilities.

[2011 c 263 § 13.]

Notes:

Report -- Effective date--2011 c 263: See notes following RCW [19.122.010](#).

19.122.180 - DAMAGE PREVENTION ACCOUNT — DEPOSIT OF PENALTIES.

All penalties collected pursuant to RCW [19.122.150](#) must be deposited in the damage prevention account created in RCW [19.122.160](#).

[2011 c 263 § 22.]

Notes:

Report -- Effective date--2011 c 263: See notes following RCW [19.122.010](#).

19.122.900 - SEVERABILITY — 1984 C 144.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1984 c 144 § 9.]

19.122.901 - SHORT TITLE — 2011 C 263.

This act may be known and cited as the underground utility damage prevention act.

[2011 c 263 § 25.]

Notes:

Report -- Effective date--2011 c 263: See notes following RCW [19.122.010](#).

APPENDIX #8

**TACOMA POWER UNDERGROUND LOCATE
NOTIFICATION PROCESS**



APPENDIX #9

CITY OF TACOMA SMALL BUSINESS ENTERPRISE