



City of Tacoma, WA

**TACOMA POWER
RATES, PLANNING & ANALYSIS**

REQUEST FOR PROPOSALS

RATE DESIGN AND COST OF SERVICE ANALYSIS CONSULTANT

SPECIFICATION NO. RP15-0657F





**City of Tacoma
Tacoma Power / Rates, Planning & Analysis**

**REQUEST FOR PROPOSALS
RP15-0657F
Rate Design and Cost of Service Analysis Consultant**

Submittal Deadline: 11:00 a.m., Pacific Time, Tuesday, March 1, 2106

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: Review of and recommendations regarding Tacoma Power's cost-of-services analysis model (COSA model), rate design, and open-access transmission tariff (OATT) rates.

Estimate: \$50,000 - \$80,000

Additional Information: Requests for information regarding the specifications may be obtained by contacting Richelle Krienke, senior buyer by email to rkrienke@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.

Table of Contents

Request for Proposals

Table of Contents

Submittal Checklist

SECTION 1 – PROJECT OVERVIEW / CALENDAR / INQUIRIES

- 1.01 Project Overview and Purpose
- 1.02 Calendar of Events
- 1.03 Pre-Submittal Conference / Questions and Requests for Clarification
- 1.04 Acceptance and Responsiveness
- 1.05 Contract Term
- 1.06 Pricing
- 1.07 Budget
- 1.08 City Contact Information

SECTION 2 – PROJECT SCOPE / TECHNICAL PROVISIONS

- 2.01 Background
- 2.02 Scope of Work
- 2.03 Projected Timeline
- 2.04 Deliverables

SECTION 3 – SUBMITTAL FORMAT, CONTENT, EVALUATION, AWARD

- 3.01 Format and Presentation
- 3.02 Content to be Submitted
- 3.03 Confidential or Proprietary Information
- 3.04 Submittal Package Requirements
- 3.05 Evaluation Criteria
- 3.06 Interviews / Oral Presentations
- 3.07 Award
- 3.08 Additional Contracts / Interlocal Purchases
- 3.09 Payment Method – Credit Card Acceptance – EFT/ACH Acceptance

SECTION 4 – PROJECT REQUIREMENTS / SPECIAL PROVISIONS

- 4.01 Revisions to RFP – Addenda
- 4.02 Ambiguity, Conflict, or Other Errors In RFP
- 4.03 Delivery of Products and Services – Idling Prohibited
- 4.04 Environmentally Preferable Procurement
- 4.05 Sustainability
- 4.06 Costs to Prepare Submittal
- 4.07 Submittal Clarification
- 4.08 Contract Obligation / Acceptance of Submittal Contents
- 4.09 Commitment of Key Personnel
- 4.10 Additional Products and Services
- 4.11 Expansion Clause
- 4.12 Acceptance / Rejection of Submittals
- 4.13 Reserved Rights

APPENDIX A

- Signature Page

APPENDIX B


- Sample Contract

APPENDIX C

- Standard Terms and Conditions – Solicitation – Section 1
- Standard Terms and Conditions – Services – Section 2
- [Small Business Enterprise \(SBE\) Program](#)

SUBMITTAL CHECK LIST

- A. This checklist identifies items to be included with your submittal. Any submittal received without these required items may be deemed non-responsive and may not be considered for award.
- B. **Please do not include this specification document with your submittal. Doing so may render your submittal non-responsive.**
- C. Sealed submittals must be received by the City of Tacoma Purchasing Division by the date and time specified in the Request for Proposals page at the front of this Specification or subsequent addenda. See also Section 3.04 Submittal Package Requirements.
- D. Respondents are encouraged to use recycled/recyclable products and both sides of paper for printed and photocopied materials, wherever possible.

<p>The following items, in this order, make up your submittal package:</p> <p><u>Other than the forms listed below, please do not include other pages or content from this RFP document.</u></p>		
1	Title Page as described in Section 3.02 A	
2	<p>Signature Page (Appendix A) with <u>ink signature</u>, including acknowledgement of any addenda, as described in Section 3.02 B</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>	
3	Confidential information identified and indexed as indicated in 3.03	
4	Information in Section 3.02 – Content to be Submitted (items C - L)	
<p>Provide the following in a sealed envelope or package labeled with the specification number, specification title, and Respondent name and address as indicated in Section 3.04:</p> <ul style="list-style-type: none"> • One original with ink signature of your complete submittal, arranged as indicated in Sections 3.01 and 3.02. • Four copies of the complete original submittal • One electronic copy (USB drive, labeled with company name) of the complete submittal in either Word or PDF format, arranged as indicated in Sections 3.01 and 3.02. Please provide the electronic copy as a single file rather than multiple individual documents. <p style="text-align: center;">Clearly identify original and copies.</p>		

After award approval, the following documents will be required:	
1	Professional Services Contract (Appendix B) Selected Respondent(s) required to enter into a Contract incorporating terms and conditions contained herein.
2	City of Tacoma business license, if applicable (Appendix C – See item 1.15 C. of the Standard Terms and Conditions Section 1 – Solicitation)

**REQUEST FOR PROPOSALS RP15-0657F
RATE DESIGN AND COST OF SERVICE ANALYSIS CONSULTANT**

SECTION 1 – PROJECT OVERVIEW / CALENDAR / INQUIRIES

1.01 PROJECT OVERVIEW AND PURPOSE

- A. The City of Tacoma (City) / Tacoma Public Utilities (TPU), Power Division is soliciting proposals to establish one or more contracts with qualified vendors to fulfill the City's need for review of and recommendations regarding Tacoma Power's cost-of-services analysis model (COSA model), rate design, and open-access transmission tariff (OATT) rates.
- B. The preference is to award a single contract. However, the City reserves the right to split the award, reduce the award, or make no award, if it is in the City's best interest.
- C. Should a contracted vendor fail to meet quality and/or availability requirements contained in these specifications, the City may move to terminate the Contract.
- D. Submittals must comply with these specifications. Failure to comply with all provisions of the RFP may result in disqualification.
- E. Note that the provisions found in Section 1, Section 2, Section 3, and Section 4 will prevail over any conflicting provisions found in the Standard Terms and Conditions (Appendix C) of this Request for Proposals (RFP).
- F. This solicitation may be found at www.tacomapurchasing.org: Navigate to *Contracting Opportunities / Services Solicitations*, scroll to this RFP and click the word *Specification*.

1.02 CALENDAR OF RFP EVENTS

The anticipated schedule of events concerning this RFP is as follows:

Questions due, 3:00 p.m. Pacific Time	February 12, 2016
Questions and answers posted	February 18, 2016
Submittal deadline, 11:00 a.m., Pacific Time	March 1, 2016
Interviews/presentations, if conducted	March 14, 2016

This is a tentative schedule only and may be altered at the sole discretion of the City.

Contract may be issued after Public Utility Board approval, if required.

1.03 PRE-SUBMITTAL CONFERENCE / QUESTIONS AND REQUESTS FOR CLARIFICATION

- A. A pre-submittal conference will not be held; however, questions and requests for clarification of these Specifications may be submitted in writing by **3:00 p.m., Pacific Time, February 12, 2016**, to Richelle Krienke, Purchasing Division, via email to rkrienke@cityoftacoma.org. Questions received after this date and time may not be answered.

1. Please indicate the RFP specification number and title in the email subject line.
 2. Present your questions in MS Word format or directly in the body of the email message with minimal formatting. 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 questions will be posted with the Specification on or about **February 18, 2016**, on the Purchasing website at www.TacomaPurchasing.org: Navigate to *Contracting Opportunities / Services Solicitations*, and scroll to this RFP. A notice will not be posted with the Specification if no questions are received.
- C. To receive notice of the posted answers, you must register as "[bid holder](#)" for this solicitation. Notices will not be sent if no questions are received.
- D. The answers are not typically considered an addendum. (See Section 4.01)

1.04 ACCEPTANCE AND RESPONSIVENESS

- A. Respondents agree to provide a minimum of 90 days from the submittal deadline for acceptance by the City.
- B. Submittals will be reviewed by the City to determine compliance with the requirements and instructions specified in this RFP. Respondent is specifically notified that failure to comply with any part of this RFP may result in rejection of the submittal as non-responsive. The City reserves the right, in its sole discretion, to waive irregularities deemed to be immaterial.

1.05 CONTRACT TERM

- A. The Contract(s) will be for an estimated two-year period with the option to renew the Contract for three additional one-year terms.
- B. The City reserves the right to cancel the Contract for any reason, by written notice, as stipulated in the Contract.

1.06 PRICING

- A. Pricing under any Contract resulting from this RFP shall be firm for the contract period unless an adjustment is mandated by statute.

- B. The City may award to other than the highest ranked Respondent if the price offered by the Respondent is more than the budget available for this project.
- C. Submitted prices shall include costs of proposal preparation, servicing of the account, all contractual requirements during Contract period such as transportation, permits, labor, insurance costs, wages, materials, tools, components, equipment, and appurtenances necessary to complete the work, which shall conform to the best practice known to the trade in design, quality, material and workmanship and be subject to these Specifications in full.

1.07 BUDGET

- A. The amount budgeted for this project is \$50,000 - \$80,000
- B. Submittals over the budgeted amount may receive reduced or zero points for “Fees and Charges / Value” in the Section 3.05 Evaluation Criteria or be dropped from consideration.

1.08 CITY CONTACT INFORMATION

- A. All communications concerning this solicitation shall be directed via email to the Purchasing contact:
Richelle Krienke / rkrienke@cityoftacoma.org
- B. Unless authorized by the Purchasing contact, no other City official or City employee is empowered to speak for the City with respect to this solicitation. Any Respondent seeking to obtain information, clarification, or interpretations from any other City official or City employee other than the Purchasing contact is advised that such material is used at the Respondent’s own risk. The City will not be bound by any such information, clarification, or interpretation.
- C. Following the submittal deadline, Respondent s shall not contact the City Purchasing contact or any other City employee except to respond to a request by the City Purchasing contact.
- D. Contact by a Respondent regarding this solicitation with a City employee other than the Purchasing contact or an individual specifically approved by the Purchasing contact in writing, may be grounds for rejection of the Respondent’s submittal.

SECTION 2 – PROJECT SCOPE / TECHNICAL PROVISIONS

2.01 BACKGROUND

Customer needs and expectations continue to change as technology influences the way customers interact with the electric utility. Tacoma Power's Rates, Planning, and Analysis group will hire a qualified vendor to assist in the review of the current rate schedule available to customers. This review will help determine if those rates are reflective of customers' needs or if additional rate designs need to be pursued. Additionally, Tacoma Power's COSA model needs to be flexible enough to address immediate rate concerns and new issues that will emerge in subsequent biennia.

2.02 SCOPE OF WORK

- A. Review and Validation of Cost-of-Service Analysis Model (COSA Model):
1. Review the technical aspects of Tacoma Power's COSA Model and provide an opinion on its correctness and suitability. This validation will include, at a minimum, examination of:
 - a. Current and projected monthly peak and energy requirements by customer class
 - b. Appropriateness of the functionalization of plant and operating costs
 - c. Appropriateness of the classification of plant and operating costs
 - d. Appropriateness of all allocation factors, including time-based cost allocations
 - e. Underlying load research assumptions used to develop the demand allocator factors
 - f. Substation ownership credit methodology and calculations
 - g. Transformer ownership credit methodology and calculations
 - h. Primary/secondary voltage credit methodology and calculations for rate adjustments for metering at primary or secondary voltage
 - i. Purchased power cost classification
 - j. Minimum-system analysis used to classify certain distribution costs
 - k. System loss factors
 - l. Assignment of telecommunications costs
 - m. Classification of City-owned generating resources
 2. Provide suggestions for improving the ease-of-use, data entry, data maintenance, and data presentation of the COSA Model.
 3. Provide recommendations based on industry standard and evolving practices (including information about peer utility practices, as appropriate) pertaining to:
 - a. Use of historical load research assumptions to develop the demand allocator factors
 - b. Use of minimum-system analysis to set fixed charges or other rate features
 - c. Coordination with financial model
 - d. Consideration of market-based and/or opportunity-cost-based energy cost allocation methodologies

B. Rate Design

1. Review existing customer classifications and provide suggestions for modification, addition, or deletion of rate classes. If changes to Tacoma Power's existing rate classes are recommended, the consultant will provide recommended modifications to the COSA Model to implement the suggested changes. The rate classification review must include consideration of:
 - a. Options for stratifying the General Service class
 - b. Options for combining high-voltage customer classes
 - c. Options for creation of a separate Military customer class
 - d. Options for special development zones
2. Provide analysis of the methodology used to develop the Small General Service, Street Lighting and Traffic Signals, and Private Off-Street Lighting flat rates. If improvements are recommended, the consultant will provide recommended modifications to the COSA Model to incorporate those improvements.
3. Provide recommendations pertaining to the treatment of special issues in General Service (large commercial) customers:
 - a. Rate discounts for customers owning transformation equipment
 - b. Power factor adjustments
 - c. Demand charge rate ratchets
 - d. Economic development provisions
4. Provide analysis of industry standard and evolving practices regarding the topics below. If changes to Tacoma Power's existing rates or practices are recommended, the consultant will provide recommended modifications to the COSA Model or practice/policy to implement the suggested changes.
 - a. Fixed customer charges, including
 - i. Customer perceptions of changes to fixed charge
 - ii. Methodology, including consideration of minimum-system analysis, for determining dollar value of the charges
 - iii. Frequency of update of the charges
 - b. Rates for customers establishing distributed-generation projects
 - c. Rates for customers with electric vehicles
 - d. Coordination with financial model scenario analysis rate impacts
 - e. Relationship between rates and other customer fees
 - f. Rates for customers desiring time-of-use, interruptible load, or demand response options
 - g. Relationship between rate issues identified in i.-vi. above

C. Open-Access Transmission Tariff (OATT)

The consultant will provide suggestions for development of OATT rates in coordination with the COSA Model.

D. Representation

1. The consultant may be called upon to represent Tacoma Power's interests in discussions with customer rate consultants.
2. The consultant may be called upon to present findings to the Tacoma Power Superintendent, the Tacoma Public Utilities Director, the Tacoma Public Utilities Board, and/or the Tacoma City Council.

2.03 PROJECTED TIMELINE

A. April – August, 2016:

1. Review and discussion of Tacoma Power's current customer class designations and rate design
2. Review and discussion of Tacoma Power Electric Rate and Financial Policy
3. Review of cost of service model inputs
4. Review of cost of service functionalization, classification, and allocation
5. Review and discussion of current industry standards

B. September – December, 2016:

1. Assist in the preparation of the revenue requirements study based on current budget estimates, as needed.
2. Review forecast budget information including capital additions, O&M costs, customer data including projected energy consumption, and number of customers and meters, as needed.
3. Assist in developing cost of service analysis and assist in preparing summary results for Tacoma Power senior management review, as needed.
4. Finalize cost of service analysis and develop appropriate rate design recommendations with special attention being paid to areas noted in the Project Scope, as needed.

C. January – April, 2017:

1. Assist staff in presenting the recommendations to the Tacoma Public Utilities Director/CEO, Public Utility Board, Tacoma City Council and the Public
2. If required, assist in preparing alternatives based on feedback from the Public Utility Board, Tacoma City Council, and the Public
3. Assist in the preparation of a final rate report

2.04 DELIVERABLES

- A. Formulas, calculations, and/or spreadsheets, as appropriate, in response to 2.02 Scope of Work subsections A.1., A.2., A.3., 0.1., 0.2., 0.3., 0.4., and C., in accordance with changes recommended in written materials.
- B. A review of final cost of service (COS), revenue requirements, and rate design recommendations with Tacoma Power staff prior to publication and public presentation.

- C. A presentation of the final cost-of-service, revenue requirement, and rate design recommendations to the Public Utility Board and Tacoma City Council as part of the Tacoma Power rate revision approval process, if requested.
- D. A letter attesting to the appropriateness of the final cost-of-service, revenue requirement, and rate design recommendations made to the Public Utility Board.

SECTION 3 – SUBMITTAL FORMAT, CONTENT, EVALUATION, AWARD

3.01 FORMAT AND PRESENTATION

Submittals should be clear, succinct, and not exceed 25 double-sided pages (50 pages total), excluding Title Page, Signature Page, and COS study sample (See 3.02 L). Pages beyond this limit, including appendices, attachments, brochures, etc., may not be reviewed or evaluated. Use of appendices and attachments will count toward the page limit. The inclusion of standard company brochures or similar marketing materials is allowed but will not be evaluated and may not be used in lieu of providing responses to Section 3.02 Content to be Submitted immediately below.

- A. A full and complete response to each of the “content to be submitted” items (Section 3.02) is expected in a single location; do not use hyperlinks to other documents or cross reference to another section of your submittal document in lieu of a full response.
- B. Required format
 - Page size: 8.5” x 11” (no pages larger or smaller than this size)
 - Margins: 0.75” or greater
 - Font and size: Arial 10 (or equivalent) or larger
 - Numbered pages: Please number all pages in your submittal documents
- C. For purposes of review and in the interest of the City's sustainable business practices, Respondents are encouraged to **print/copy on both sides of a single sheet of paper** wherever possible. The City encourages the use of materials (e.g., paper, dividers, binders, brochures, etc.) that contain post-consumer recycled content and are readily recyclable.
- D. The City prefers the use of **recyclable 3-ring binders** to allow reviewers to remove specific pages/sections. Please do not use gum or spiral bindings. The use of materials that cannot be easily recycled such as PVC (vinyl) binders, spiral bindings, and plastic or glossy covers or dividers is discouraged.
- E. Color is acceptable, but content should not be lost by black-and-white printing or copying.

3.02 CONTENT TO BE SUBMITTED

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

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

A. Title Page

1. The title page shall reflect:
 - a. RFP number and title
 - b. Firm name, address, website address, telephone number, and email address
2. The Title Page shall be a single sheet of paper and is not counted toward the page total.

B. Signature Page*

1. *Do not alter this form in any way or add it to letterhead paper or present cover letters or blank pages ahead of it. This form does not count toward the page total.
2. The Signature Page must be signed by a person authorized to make proposals and enter into contract negotiations on behalf of your agency. This individual must be at least 18 years of age.

C. Executive Summary

1. Introduction and overview of your submittal/proposal.
2. A short history and description of your firm, including organizational structure, areas/regions served, number of employees, etc.
3. Background information of the parent company, if any.
4. Presence, if any, in Puget Sound/Pacific Northwest region.
5. Name and address of firm, telephone number, email address, website address, and contact person, with title, for this solicitation.
6. Name, title, and contact information of the person authorized to execute a contract on behalf of the Respondent.
7. Name, title, and contact information of the person who will be managing this Contract on behalf of the Respondent.
8. List any current or known forthcoming business ventures or related transactions such as proposed sale of company, buy-outs, acquisitions, mergers, new investors, etc., that may impact the business partner relationship with the City of Tacoma.
9. Disclose any affiliations or alliances that are in place with utility companies, software organizations, or other related firms.
10. Identify subcontractors, if any, including contact name, email address, and telephone number.

D. Qualifications/Experience of Firm

1. Describe the experience your firm has had within the last five years in performing work related to this Scope of Work, particularly as it relates to the Pacific Northwest electric industry.
2. Provide an outline of rate design and cost of service studies completed by your firm that shows relevant experience in the matters outlined in this Scope of Work, particularly as this relates to the Pacific Northwest electric industry.
3. Provide additional information that will enable the City to evaluate the financial stability and track record of your firm.
4. Provide any additional information that highlights your firm's qualifications, particularly as these relate to the Pacific Northwest electric industry.

E. Qualifications of Key Personnel to be Assigned to this Project

The personnel presented must be committed to this project for the expected term of the Contract.

1. List key personnel that will manage and work this project including the relevant background and experience, particularly regarding electric utilities, of all staff you propose to assign to this project. Include a brief biography or resume outlining the experience of each that will be involved.
2. Indicate the role(s) each individual will be assigned and the relative amounts of time that will be allocated. For example, clearly identify those that will be directly involved in the implementation of the proposed solution or would act as a support resource.
3. Describe how you would assure the continuity of the assigned personnel during the term of this project.

F. Project Approach / Methodology

1. Describe the approach you will use to conduct this work.
2. Describe your work plan to meet the proposed timeline.
3. Provide a short discussion demonstrating a thorough understanding of the issues related to developing an electric cost-of-service study.
4. Provide a short discussion demonstrating a thorough understanding of rate design issues in the utility industry
5. Provide confirmation that sufficient resources will be available to Tacoma Power to meet project requirements and schedule.
6. Describe the City resources you would require to complete this Scope of Work and accomplish the deliverables.

G. Fees and Charges / Method of Billing / Hourly Rates / Value

1. Total cost to complete this work.
 - a. Provide cost breakout including hourly rates, travel expenses, and any other charges or fees.
 - b. Explain costs that exceed the budgeted amount. (See Section 1.07)
2. Identify and provide a cost table breakout by task and each person assigned to the study. Provide estimated hours by task, other direct expenses billed at cost, and estimated travel expenses billed at cost.
3. Describe any price discounts that may be available, e.g., prompt pay discount.
4. Describe the method or practice that will be used for billing this project.

H. References

Provide three or more recent client references able to verify your firm's overall expertise for this scope of work. The clients should have worked with your firm within the last three years. If applicable, please offer a reference located in the Pacific Northwest. For each reference provide the following information:

1. Company name
2. Website address, if applicable
3. Contact person(s) and title
4. Address
5. Phone number
6. Email address
7. Project description
8. Dates of service

I. Small Business Enterprise (SBE)

1. Indicate whether your firm is a certified City of Tacoma [Small Business Enterprise](#), including the categories in which you are registered.
2. Indicate whether your firm will be partnering with, or subcontracting to, a certified City of Tacoma [Small Business Enterprise](#).
 - a) Include name, address, and contact person of the SBE.
 - b) Describe the work that will be completed by the SBE.
 - c) What percentage of the total project will be completed by the SBE?

J. Credit Card Acceptance – EFT/ACH Acceptance

1. Credit Card Acceptance

Provide a statement regarding your ability to meet the City's credit card requirements as well as identifying your reporting capabilities (Level I, II, or III). See Section 3.09. This information is not a consideration in the evaluation.

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

Provide a statement regarding your ability to accept payment by electronic funds transfer (EFT) by Automated Clearing House (ACH). See Section 3.09. This information is not a consideration in the evaluation.

K. Exceptions to Terms and Conditions

1. It is the City's preference to utilize its standard Professional Services Contract. (Appendix B).
2. Detail proposed alternative forms of contract or exceptions, if any, to the City of Tacoma Professional Services Contract (Appendix B) and Standard Terms and Conditions (Appendix C).

L. COS Study Sample

1. Provide a sample COS study as an appendix to your submittal. (NOTE: The sample will not count toward page total.)

3.03 CONFIDENTIAL OR PROPRIETARY INFORMATION

- A. Information that is confidential or proprietary must be clearly marked on each affected page. Further, an index must be provided indicating the affected page number(s) and location(s) of all such identified material. Information not included in said index will not be reviewed for confidentiality or as proprietary before release. See items 1.17 and 1.18 of the Standard Terms and Conditions Section 1 – Solicitation (Appendix C).
- B. **Marking the entire submittal as “confidential” or “proprietary” or “trade secret” is not acceptable and is grounds to reject such submittal.**

3.04 SUBMITTAL PACKAGE REQUIREMENTS

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

3.05 EVALUATION CRITERIA

- A. A Selection Advisory Committee (SAC) will review and evaluate submittals. After the evaluation, the SAC may conduct interviews of or request presentations by Respondents before final selection is made.
- B. The SAC may use references to clarify and verify information in submittals and interviews, if conducted, which may affect the rating. The City reserves the right to contact references other than those included in the submittal.
- C. The SAC may select one or more Respondents to provide the services required.
- D. The City may award to other than the highest ranked submittal or Respondent if the price submitted by the Respondent is more than the budget available for this project. Also, note that the inclusion of fees and charges as an evaluation factor does not require the City to select the Respondent submitting the lowest cost.
- E. Respondents may be asked to provide their most recent audited financial statements demonstrating the Respondent's financial ability to meet the requirement of any Contract that may result from this RFP.
- F. An incomplete response or no response may result in a score of zero for that criterion.
- G. A serious deficiency in any one criterion, including costs over the budgeted amount, may be grounds for rejection.
- H. The final selection, if any, will be that submittal or Respondent which, after review and potential interviews and reference checks, in the sole judgment of the City, best meets the requirements set forth in this RFP.
- I. Submittals will be evaluated on the following criteria:

	Criteria	Points
1	Qualifications/Experience of Firm and Key Personnel and the means to assure the continuity of those individuals throughout the Contract term.	40
2	Proposed Approach and Methodology	35
3	Fees and Charges / Value	15
4	Submittal quality, organization, completeness a) Presentation of information is logical and clear b) Completeness of proposal content c) Adherence to format and layout requirements d) Compliance with Specifications	5
5	Small Business Enterprise (SBE) a) Respondent is a City of Tacoma certified SBE firm. b) Respondent is partnering with a qualified City of Tacoma certified SBE firm.	5

3.06 INTERVIEWS / ORAL PRESENTATIONS

- A. An invitation to interview or present, either in person or by conference call or video conference, may be extended to Respondents based on Selection Advisory Committee review of the written submittals. The SAC reserves the right to adjust scoring based on additional information and/or clarifications obtained during, or resulting from, interviews. The SAC may determine scoring criteria for the interviews following evaluation of written submittals. This may include the option to rank (1, 2, 3, 3, etc.) rather than score.
- B. The City reserves all rights to begin contract negotiations without conducting interviews.
- C. Respondents must be available to interview within three business days' notice.

3.07 AWARD

- A. After a Respondent(s) is selected by the SAC and prior to award, all Respondents will be notified in writing by the Purchasing Division.
- B. Once a finalist (or finalists) has been selected by the Selection Advisory Committee contract negotiations will begin. If a contract is successfully negotiated, it will, if required, be submitted for final approval by the Public Utility Board and/or City Council. If an agreement cannot be reached, negotiations will be terminated and negotiations will be conducted with the next highest scored Respondent and so on, until an agreement is reached, or until the City exercises its right to cancel the solicitation.

3.08 ADDITIONAL CONTRACTS / INTERLOCAL PURCHASES

- A. The initial award will be for Tacoma Power; however, other City locations/departments may be added to this Contract or develop their own separate contract from these Specifications during the contract term.
- B. Other agencies or entities may enter into a separate contract based on these Specifications per RCW 39.34. See 2.10 of the Standard Terms and Conditions Section 2 – Services (Appendix C).

3.09 PAYMENT METHOD – CREDIT CARD ACCEPTANCE – EFT/ACH ACCEPTANCE

- A. Payment methods include:
 - 1. Credit card. Tacoma's VISA procurement card program is supported by standard bank credit suppliers and requires that merchants abide by the VISA merchant operating rules.
 - a. Contractors must be PCI-DSS compliant (secure credit card data management).
 - b. Contractors must be set up by their card processing equipment provider (merchant acquirer) as a minimum of a Level II merchant with the ability to pass along tax, shipping and merchant references information.
 - 2. Electronic Funds Transfer (EFT) by Automated Clearing House (ACH).
 - 3. Check or other cash equivalent.

4. The City may consider cash discounts when evaluating submittals.
See 1.06 B. of the Standard Terms and Conditions Section 1 – Solicitation (Appendix C).
- B. The City's preferred method of payment is by Visa credit card (aka procurement card). Respondents may be required to have the capability of accepting the City's authorized procurement card as a method of payment. **The City of Tacoma will not accept price changes or pay additional fees when the procurement card is used.**
- C. The City, in its sole discretion, will determine the method of payment for goods and/or services as part of this Contract.

SECTION 4 – PROJECT REQUIREMENTS / SPECIAL PROVISIONS

4.01 REVISIONS TO RFP – ADDENDA

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

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

4.02 AMBIGUITY, CONFLICT, OR OTHER ERRORS IN RFP

Respondent shall notify in writing the City of Tacoma Purchasing contact identified in the Request for Proposals page of any ambiguity, conflict, discrepancy, omission, or other error in these Specifications no later than five business days prior to the submittal deadline. The City will make any necessary modifications by addendum. (See Section 4.01 above)

Respondent is responsible for identifying any ambiguity, conflict, discrepancy, omission, or other error in these Specifications prior to submitting its proposal or the ambiguity, conflict, discrepancy, omission, or other error is waived. Any submittal that includes assumed clarifications and/or corrections without the required authentication of the same is subject to rejection.

4.03 DELIVERY OF PRODUCTS AND SERVICES – IDLING PROHIBITED

The City of Tacoma has a commitment to reduction of unnecessary fuel emissions and improving air quality by reducing unnecessary air pollution from idling vehicles. Limiting car and truck idling supports cleaner air, healthier work environments, the efficient use of city resources, the public's enjoyment of City properties and programs, conservation of natural resources, and good stewardship practices.

Vehicles and/or diesel fuel trucks shall not idle at the time and location of the delivery to the City for more than three minutes. The City requires contractors to utilize practices that reduce fuel consumption and emission discharge, including turning off trucks and vehicles during delivery of products to the City. Exceptions to this requirement include when associated power is necessary to make a delivery or provide the service, when the engine is used to provide power another device, and when a running engine is required for proper warm-up and cool-down of the engine.

4.04 ENVIRONMENTALLY PREFERABLE PROCUREMENT

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

In accordance with the City's Sustainable Procurement Policy, it is the policy of the City of Tacoma to encourage the use of environmentally preferable 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. To view the above City policies go to Section XXIV.A. of the [Purchasing Policy Manual](#).

4.05 SUSTAINABILITY

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:

- A. Pollutant releases
- B. Toxicity of materials used
- C. Waste generation
- D. Greenhouse gas emissions, including transportation of materials and services
- E. Recycle content
- F. Energy consumption
- G. Depletion of natural resources
- H. Potential impact on human health and the environment

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

4.06 COSTS TO PREPARE SUBMITTAL

The City is not liable for any costs incurred by the Respondent for the preparation of materials or a proposal submitted in response to this RFP, conducting presentations to the City, or any other activities related to responding to this RFP.

4.07 SUBMITTAL CLARIFICATION

Respondents may be asked to clarify their submittal. This action shall not be construed as negotiations or any indication of intentions to award. If called upon, the Respondent must respond to such requests within two business days or the timeframe set forth by the City in its request for clarification. A Respondent's failure to respond to such a request may result in rejection of its submittal. See 1.05 of the Standard Terms and Conditions Section 1 – Solicitation (Appendix C).

4.08 CONTRACT OBLIGATION / ACCEPTANCE OF SUBMITTAL CONTENTS

- A. The submittal contents of the successful Respondent will become contractual obligations if a Contract ensues.
- B. In the event the City of Tacoma determines to award a contract, the selected Respondent(s) will be expected to execute a Contract with the CITY in a form identical or substantially similar to the City's Standard Professional Services Contract attached and incorporated as Appendix B. Respondents should identify in their responses any objections or exceptions to the Professional Services Contract and to the Terms and

Conditions contained in this RFP. Failure to note such objections or exceptions will be deemed as acceptance for purposes of negotiating the final Contract.

- C. As part of the negotiation process, Respondents may propose amendments to this Contract, but the City, at its sole option, will decide whether to open discussion on each proposed amendment.
- D. In addition, Respondent may submit alternative or additional forms of contract for City's consideration by the City and Respondent may propose changes or amendments to the City's standard Professional Services Contract and to the Terms and Conditions contained in this RFP, but the CITY, at its sole option, will decide whether to open discussion on each proposed amendment, addition, objection or exception, and/or to accept, reject or modify alternative forms of submitted by Respondents.
- E. Note that the provisions found in the sample Professional Services Contract will prevail over any conflicting provisions found in the Standard Terms and Conditions of this RFP.
- F. No costs chargeable for work under the proposed Contract may be incurred before receipt of a fully executed Contract.

4.09 COMMITMENT OF KEY PERSONNEL

The Respondent agrees that key personnel identified in its submittal or during contract negotiations as committed to this project will, in fact, be the key personnel to perform during the life of this contract. Should key personnel become unavailable for any reason, the Contractor shall provide suitable replacement personnel, subject to the approval of the City. Substantial organizational or personnel changes within the agency are expected to be communicated immediately. Failure to do so could result in cancellation of the Contract. Specific language pertaining to personnel substitution is contained within the sample contract in Appendix B.

4.10 ADDITIONAL PRODUCTS AND SERVICES

Any related additional products and services of benefit to the City not specifically required in this RFP, but which the Contractor offers to provide, may be outlined on a separate page and included with the submittal.

4.11 EXPANSION CLAUSE

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

Any new services accepted by the City may be added to this Contract and/or substituted for discontinued services. New services shall meet or exceed all specifications of original award.

4.12 ACCEPTANCE / REJECTION OF SUBMITTALS

The City reserves the right and holds at its discretion the following rights and options:

- To waive any or all informalities
- To award one or more contracts
- To award by line item or group of line items
- To not award one or more items
- To not award a contract
- To issue subsequent RFPs

4.13 RESERVED RIGHTS

In addition to other rights in this RFP, the City reserves, holds, and may exercise at its sole discretion, the following rights and options:

- A. To supplement, amend, reduce, or otherwise modify this scope of work or cancel this RFP with or without substitution of another solicitation.
- B. To issue additional or subsequent solicitations.
- C. To conduct investigations of Respondents and their proposals, including inspection of their facilities.
- D. To seek partnerships between one or more Respondents.
- E. To award a contract or contracts resulting from this solicitation to the responsible Respondent whose proposal conforming to this solicitation will be most advantageous to the City.
- F. To negotiate any rate/fee offered by a Respondent. The City shall have the sole right to make the final rate/fee offer during contract negotiations. If the selected Respondent does not accept the City's final offer, the City may, in its sole discretion, reject the proposal and start negotiations with other Respondents.
- G. If an award is made and, prior to entering into a contract, subsequent information indicates that such award is not in the best interest of the City, the City may rescind the award without prior notice to the Respondent and either award to another Respondent or reject all proposals or cancel this solicitation.
- H. Respondents are advised that the City reserves the right to cancel award of this Contract at any time before execution of the Contract by both parties if cancellation is deemed to be in the City's best interest. In submitting a proposal, Respondents agree that the City is not liable for any costs or damages for the cancellation of an award. The Respondent assumes the sole risk and responsibility for all expenses connected with the preparation of its proposal.

APPENDIX A

Signature Page

SIGNATURE PAGE

**CITY OF TACOMA
TACOMA POWER / RATES, PLANNING & ANALYSIS**

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 Proposals page near the beginning of the specification for additional details.**

**REQUEST FOR PROPOSALS SPECIFICATION NO. RP15-0657F
RATE DESIGN AND COST OF SERVICE ANALYSIS CONSULTANT**

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.

APPENDIX B

Sample Contract

PROFESSIONAL SERVICES CONTRACT

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

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

1. Scope of Services/Work

- A. The CONTRACTOR agrees to diligently and completely perform the services and/or deliverables described in Exhibit(s) _____ attached hereto and incorporated herein.
- B. Changes To Scope of Work. The CITY shall have the right to make changes within the general scope of services and/or deliverables upon execution in writing of a change order or amendment hereto. If the changes will result in additional work effort by CONTRACTOR, the CITY will agree to reasonably compensate the CONTRACTOR for such additional effort up to the maximum amount specified herein or as otherwise provided by City Code.

2. Term

- A. All services shall be satisfactorily completed on or before _____, or as otherwise specified in Exhibit ____ and this Contract shall expire on said date unless mutually extended in writing by the Parties.
- B. Neither party shall be considered to be in default in the performance of this Contract to the extent such performance is prevented or delayed by any cause which is beyond the reasonable control of the affected party and, in such event, the time for performance shall be extended for a period equal to any time lost as a result thereof. In the event CONTRACTOR is unable to proceed due to a delay solely attributable to CITY, CONTRACTOR shall advise CITY of such delay in writing as soon as is practicable.

3. Compensation and Payment

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

Check ONLY one:

- On the basis of Time and Materials according to the rates and charges set forth in Exhibit _____.
- In accordance with Exhibit _____.
- At the rate of \$ _____ per hour.

- B.** The total price to be paid by CITY for CONTRACTOR'S full and complete performance of the Scope of Work hereunder shall not exceed \$ _____ without the written consent of the CITY. Said price shall be the total compensation for CONTRACTOR'S performance hereunder including, but not limited to, all work, deliverables, materials, supplies, equipment, subcontractor's fees, and all reimbursable travel and miscellaneous or incidental expenses to be incurred by CONTRACTOR.
- C.** The CONTRACTOR shall submit monthly invoices in a format comparable to the invoice attached hereto and identified as Exhibit _____, for services completed and/or deliverables furnished during the previous month. Upon CITY'S request, CONTRACTOR shall submit necessary and appropriate documentation, as determined by the CITY, for all invoiced services and deliverables.
- D.** Payment shall be made through the CITY'S ordinary payment process, and shall be considered timely if made within 30 days of receipt of a properly completed invoice.
- E.** The CITY may withhold payment to the CONTRACTOR for any services or deliverables not performed as required hereunder until such time as the CONTRACTOR modifies such services or deliverables to the satisfaction of the CITY.
- F.** All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced.
- G.** In the event the CONTRACTOR incurs cost in excess of the sum authorized for service under this Contract, the CONTRACTOR shall pay such excess from its own funds, and the CITY shall not be required to pay any part of such excess, and the CONTRACTOR shall have no claim against the CITY on account thereof.

4. Independent Contractor Status

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

5. Professional Services Warranty

- A.** The CONTRACTOR warrants that all services performed pursuant to this Contract shall be generally suitable for the use to which CITY intends to use said services and deliverables

as expressed in Exhibit(s) _____. Additional warranties, if any, for incidental product deliverables hereunder are set forth in Exhibit ____ <<or in Section 1.A.(2) above>>.

- B. In the performance of services under this Contract, the CONTRACTOR and its employees agree to exercise the degree of skill and care required by customarily accepted good practices and procedures followed by professionals/consultants rendering the same or similar type of service. All obligations and services of the CONTRACTOR hereunder shall be performed diligently and completely according to such professional standards.
- C. If the CONTRACTOR intends to rely on information or data supplied by the CITY, other CITY contractor's or other generally reputable sources without independent verification, such intent shall be brought to the attention of the CITY.

6. Contract Administration and Right to Audit

- A. The Insert Dept/Division/Engineer/City Contact for the CITY shall have primary responsibility for contract administration and approval of services to be performed by the CONTRACTOR, and shall coordinate all communications between the CONTRACTOR and the CITY.
- B. The CONTRACTOR shall, at such times and in such form as the CITY may reasonably require, furnish the CITY with periodic status reports pertaining to the services undertaken pursuant to this Contract.
- C. Upon CITY's request, the Contractor shall make available to CITY all accounts, records, and documents related to the Scope of Work for CITY's inspection, auditing, or evaluation during normal business hours as reasonably needed by CITY to assess performance, compliance, and/or quality assurance under this Contract.

7. Records Retention

The CONTRACTOR shall establish and maintain records in accordance with requirements prescribed by the CITY, with respect to all matters covered by this Contract. Except as otherwise authorized by the CITY, the CONTRACTOR shall retain such records for a period of six (6) years after receipt of the final payment under this Contract or termination of this Contract.

8. Notices

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

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

9. Termination and Suspension

- A. The CITY may terminate this Contract at any time, with or without cause, by giving ten (10) business days written notice to CONTRACTOR. In the event of termination, all finished and unfinished work prepared by the CONTRACTOR pursuant to this Contract shall be provided to the CITY. In the event CITY terminates this Contract due to the CITY's own reasons and without cause due to the CONTRACTOR's actions or omissions, the CITY shall pay the CONTRACTOR the amount due for actual work and services necessarily performed under this Contract up to the effective date of termination, not to exceed the total compensation set forth herein.
- B. The CITY may suspend this Contract, at its sole discretion, upon seven (7) business days written notice to the CONTRACTOR. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to the CONTRACTOR'S reasonable expenses and shall be subject to verification. The CONTRACTOR shall resume performance of services under this Contract without delay when the suspension period ends.
- C. Termination or suspension of this Contract by CITY shall not constitute a waiver of any claims or remaining rights the CITY may have against CONTRACTOR relative to performance hereunder.

10. Taxes, Licenses and Permits

- A. The CONTRACTOR acknowledges that it is responsible for the payment of all charges and taxes applicable to the services performed under this Contract, and the CONTRACTOR agrees to comply with all applicable laws regarding the reporting of income, maintenance of records, and all other requirements and obligations imposed pursuant to applicable law. If the CITY is assessed, made liable, or responsible in any manner for such charges or taxes, the CONTRACTOR agrees to hold the CITY harmless from such costs, including attorney's fees.
- B. In the event the CONTRACTOR fails to pay any taxes, assessments, penalties, or fees imposed by any governmental body, including a court of law, then the CONTRACTOR authorizes the CITY to deduct and withhold or pay over to the appropriate governmental body those unpaid amounts upon demand by the governmental body. It is agreed that this provision shall apply to taxes and fees imposed by City ordinance. Any such payments shall be deducted from the CONTRACTOR's total compensation.
- C. The CONTRACTOR, at its expense, shall obtain and keep in force any and all necessary licenses and permits. The CONTRACTOR shall obtain a business license as required by Tacoma Municipal Code Subtitle 6B.20 and shall pay business and occupation taxes as required by Tacoma Municipal Code Subtitle 6A.30.

11. Indemnification

- A. The CONTRACTOR shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers, from any and all claims, demands, damages, lawsuits, liabilities, losses, liens, expenses and costs arising out of the subject matter of this Contract; provided that this provision shall not apply to the extent that damage or injury results from the fault of the CITY, or its officers, agents, or employees. The term "fault" as

used herein shall have the same meaning as set forth in RCW 4.22.015, as that statute may hereafter be amended.

- B. The CONTRACTOR specifically assumes potential liability for actions brought by the CONTRACTOR'S own employees against the CITY and, solely for the purpose of this indemnification and defense, the CONTRACTOR specifically waives any immunity under the state industrial insurance law, Title 51 RCW. THE CONTRACTOR RECOGNIZES THAT THIS WAIVER WAS THE SUBJECT OF MUTUAL NEGOTIATION.
- C. This indemnification shall extend to and include attorneys' fees and the cost of establishing the right of indemnification hereunder in favor of the CITY. This indemnification shall survive the termination of this Contract.

12. Insurance

During the course and performance of the services herein specified, CONTRACTOR will maintain the following insurance coverage:

- A. Workers' Compensation and employer's liability --statutory limits.
- B. Commercial General Liability -- \$1,000,000 single limit combined for personal injury, property damage; \$2,000,000 aggregate.
- C. Automobile public liability and property damage -- \$1,000,000 single limit combined for bodily injury and property damage.
- D. Professional liability or errors and omissions -- \$1,000,000 combined single limit for errors and omissions resulting in monetary loss normally covered by professional liability insurance.

Certificates of the above insurance coverage shall be delivered, within ten (10) days, to the CITY by CONTRACTOR'S insurance carrier or agent certifying the above insurance coverage items are in effect and will not be cancelled or materially changed without 30 days' written notice given to the CITY. The commercial general liability policy shall be on an occurrence basis and shall include an endorsement naming the CITY as an additional insured and stating that coverage under such policy is primary over and non-contributory with any insurance the CITY may maintain.

13. Nondiscrimination

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

14. Conflict of Interest

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

15. City ownership of Work/Rights in Data and Publications:

- A.** To the extent that CONTRACTOR creates any Work subject to the protections of the Copyright Act (Title 17 U.S.C) in its performance of this Contract, CONTRACTOR agrees to the following: The Work has been specially ordered and commissioned by CITY. CONTRACTOR agrees that the Work is a "work made for hire" for copyright purposes, with all copyrights in the Work owned by CITY. To the extent that the Work does not qualify as a work made for hire under applicable law, and to the extent that the Work includes material subject to copyright, CONTRACTOR hereby assigns to CITY, its successors and assigns, all right, title and interest in and to the Work, including but not limited to, all patent, trade secret, and other proprietary rights and all rights, title and interest in and to any inventions and designs embodied in the Work or developed during the course of CONTRACTOR'S creation of the Work. CONTRACTOR shall execute and deliver such instruments and take such other action as may be required and requested by CITY to carry out the assignment made pursuant to this section. Any documents, magnetically or optically encoded media, or other materials created by CONTRACTOR pursuant to this Contract shall be owned by CITY and subject to the terms of this sub-section. To the maximum extent permitted by law, CONTRACTOR waives all moral rights in the Work. The rights granted hereby to CITY shall survive the expiration or termination of this Contract
- B.** The CONTRACTOR shall be solely responsible for obtaining releases for the performance, display, recreation, or use of copyrighted materials.

16. Public Disclosure

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

information pursuant to Chapter 42.56 RCW, shall be provided to CONTRACTOR according to the "Notices" provision herein.

- B. If CONTRACTOR provides the CITY with records that CONTRACTOR considers confidential or proprietary, CONTRACTOR must mark all applicable pages of said record(s) as "Confidential" or "Proprietary." If CONTRACTOR fails to so mark record(s), then (1) the CITY, upon request, may release said record(s) without the need to satisfy the requirements of subsection A above; and (2) the CONTRACTOR expressly waives its right to allege any kind of civil action or claim against the CITY pertaining to the release of said record(s).

17. Duty of Confidentiality

- A. CONTRACTOR acknowledges that unauthorized disclosure of information or documentation concerning the Scope of Work hereunder may cause substantial economic loss or harm to the CITY.
- B. Except for disclosure of information and documents to CONTRACTOR's employees, agents, or subcontractors who have a substantial need to know such information in connection with CONTRACTOR's performance of obligations under this Contract, the CONTRACTOR shall not without prior written authorization by the CITY allow the release, dissemination, distribution, sharing, or other publication or disclosure of information or documentation obtained, discovered, shared or produced pursuant to this Contract.
- C. The CONTRACTOR shall inform its employees, agents, and subcontractors of the confidentiality obligations under this Contract and instruct them so as to ensure such obligations are met. If so requested by the CITY, the CONTRACTOR further agrees to require all such individuals and entities performing services pursuant to this Contract to execute a Confidentiality and Non-Disclosure Agreement in a form acceptable to CITY.
- D. The CONTRACTOR shall not release any information or documentation concerning the work under this Contract or any part thereof for marketing, advertising, or other commercial activities or publication including, but not limited to, news releases or professional articles, without the prior written approval of the CITY. Any and all news releases, professional articles, marketing, advertising, publicity, or other commercial activities that describe or discuss the Scope of Services shall be reviewed and approved by the CITY prior to publication, disclosure and/or distribution. The CONTRACTOR may submit for review and approval a generic abstract describing the component parts of the completed Scope of Services ("Project Abstract"). After receiving written approval of the Project Abstract from the CITY, the CONTRACTOR may make minor insignificant changes to the Project Abstract and use all or parts of the Project Abstract in proposals.
- E. This Section shall survive for six (6) years after the termination or expiration of this Contract.
- F. CONTRACTOR shall ensure that the text of this Section is included in each subcontractor's contract pertaining to the Scope of Services hereunder.

18. Dispute Resolution

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

19. Miscellaneous Provisions

- A. Governing Law and Venue. Washington law shall govern the interpretation of this Contract. Pierce County shall be the venue of any mediation, arbitration or litigation arising out of this Contract.
- B. Assignment. The CONTRACTOR shall not assign, subcontract, delegate, or transfer any obligation, interest or claim to or under this Contract or for any of the compensation due hereunder without the prior written consent of the CITY.
- C. No Third Party Beneficiaries. This Contract shall be for the sole benefit of the parties hereto, and nothing contained herein shall create a contractual relationship with, or create a cause of action in favor of, a third party against either party hereto.
- D. Waiver. A waiver or failure by either party to enforce any provision of this Contract shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision of this Contract.
- E. Severability and Survival. If any term, condition or provision of this Contract is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of this Contract, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of this Contract, shall survive termination of this Contract.
- F. Entire Agreement . This Contract and the attached Exhibits, as modified herein, contain the entire agreement between the parties as to the services to be rendered hereunder. All previous and contemporaneous agreements, representations or promises and conditions relating to the subject matter of this Contract are superseded hereby. The Parties hereto mutually acknowledge, understand and agree that the terms and conditions set forth herein shall control and prevail over any conflicting terms and conditions stated in any attachments hereto.
- G. Modification. No modification or amendment of this Agreement shall be effective unless set forth in writing and signed by the Parties.
- H. Authority to enter into this Contract. The undersigned Contractor representative, by his/her signature below, represents and warrants that he/she is duly authorized to execute this legally binding Contract for and on behalf of Contractor.

IN WITNESS WHEREOF the parties hereto have accepted and executed this Contract as of the day and year first written above.

CITY OF TACOMA

INSERT NAME OF CONTRACTOR

Printed Name/Title Division Head or Representative

Printed Name: _____

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

Title: _____

Director of Finance

Address: _____

Approved as to Form:

City/State/Zip

Deputy/Assistant City Attorney

Tax ID: _____

Approved:

Risk Manager

Attest:

City Clerk

EXHIBIT "A"

SCOPE OF WORK

SAMPLE

EXHIBIT "B"

INVOICE

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

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

Services (Describe):

Deliverables (Describe):

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

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

BY: _____ **DATE SIGNED:** _____
SIGNATURE:

TITLE: _____

ORGANIZATION NAME: _____

FEDERAL TAX ID No. or SS No.: _____

TELEPHONE NUMBER: _____

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

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

Contract Administrator Signature

City Dept/Division:

Contact Name:

Phone: 253-

Fax: 253-

APPENDIX C

Standard Terms and Conditions – Solicitation – Section 1

Standard Terms and Conditions – Services – Section 2

[Small Business Enterprise \(SBE\) Program](#)

**CITY OF TACOMA
STANDARD TERMS AND CONDITIONS
SECTION 1 – SOLICITATION**

THE FOLLOWING TERMS AND CONDITIONS ARE PART OF THIS SPECIFICATION AND ARE BINDING ON ALL RESPONDENTS SUBMITTING RESPONSES TO REQUESTS FOR BIDS, PROPOSALS, QUALIFICATIONS AND INFORMATION.

1.01 DELIVERY OF SUBMITTALS TO THE CITY'S PURCHASING DIVISION

Submittal packages must be received by the City's Purchasing Division, Tacoma Public Utilities Administration Building, Main Floor, 3628 South 35th Street, Tacoma, WA 98409-3115, prior to the scheduled time and date stated in the solicitation announcement. Each submittal, intact and bound, shall be completely sealed, with the name of the submitting party (hereinafter "Respondent"), the specification number and title clearly marked on the exterior of the package. City offices are not open for special mail or other deliveries on weekends and City holidays.

Submittals may be delivered to the City by mail or in person; however, **the Respondent is solely responsible for timely delivery of its submittal to the Purchasing Division.**

Facsimile (fax) copies of submittals for requests for sealed bids, requests for proposals, requests for qualifications and requests for information will not be accepted at any City fax machine.

Submittals received after the time stated in the solicitation announcement will not be accepted and will be returned, unopened, to the Respondent.

For purposes of determining whether a submittal has been timely received, the City's Purchasing Division may rely on Universal Coordinated Time from the National Bureau of Standards as reported by <http://www.greenwichmeantime.com/>

1.02 WITHDRAWAL OF SUBMITTALS

A. Prior to Submittal Deadline (Bid Opening)

Submittals may be withdrawn prior to the scheduled submittal deadline by providing written notice to the City's Purchasing Division. The notice may be submitted in person or by mail; however, it must be received by the City's Purchasing Division prior to the submittal deadline.

B. After Submittal Deadline

No submittal can be withdrawn after having been opened as set forth in the solicitation announcement, and before the actual award of the contract, unless the award is delayed more than 60 calendar days beyond the date of opening. If a delay of more than 60 calendar days does occur, the Respondent must submit written notice to the purchasing manager that Respondent is withdrawing its submittal.

1.03 SUBMITTAL IS NON-COLLUSIVE

The Respondent acknowledges that by its delivery of a submittal to the City in response to this solicitation it represents that the prices in such submittal are neither directly nor indirectly the result of any formal or informal agreement with another Respondent.

1.04 OPENING AND ACCEPTANCE OF SUBMITTALS

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

All submittals must remain open for acceptance by the City for a period of at least 60 calendar days from the date of opening.

1.05 RIGHT TO REJECT

The City of Tacoma reserves the right to reject any and all submittals, waive minor deviations or informalities, and if necessary, call for new submittals.

A. Requests for Proposals (RFP)

By submitting a proposal in response to a City RFP, the Respondent acknowledges and consents to the below City rights and conditions. With regard to this procurement process, the City reserves, holds

without limitation, and may exercise, at its sole discretion, the following rights and conditions:

1. To terminate the procurement process or decide not to award a contract as a result thereof by written notice to the Respondents for any reason whatsoever.
2. To waive any defect, technicality, or any other minor informality or irregularity in any submittal, or any other response from Respondents.
3. To make minor or major changes or alterations to the evaluation, selection and/or performance schedule(s) for any events associated with this procurement process upon notice to the Respondents.
4. To supplement, amend or otherwise modify the RFP specifications, at any time upon prior notice to Respondents, including but not limited to modifications to the description of services and/or products contained in the RFP, by omitting services/products and/or including services/products not currently contemplated therein.
5. To request clarifications, additional information, and/or revised submittals from one or more Respondents.
6. To conduct investigations with respect to the qualifications and experience information for each Respondent included in a submittal and to request additional evidence to support any such information.
7. To eliminate any Respondent that submits an incomplete or inadequate response, or is non-responsive to the requirements of the RFP specifications, or is otherwise deemed to be unqualified during any stage of the procurement process.
8. To select and interview a single finalist or multiple finalists for the purpose of promoting the City's evaluation of submittals provided in response to the RFP specifications. The City may, in its sole and exclusive discretion as to what is in the City's best interest, elect not to conduct interviews of any or all respondents in connection with this RFP process.
9. To discontinue contract negotiations with a selected Respondent and commence such negotiations with another respondent, except as otherwise provided in Chap. 39.80, RCW.
10. To select and enter into a contract with one or more Respondents whose submittal best satisfies the interests of the City and is most responsive, in the sole judgment of the City, to the requirements of the RFP specifications.
11. To take any other action affecting the RFP specifications or the procurement process that is determined to be in the City's best interests.
12. In the event the City receives questions concerning RFP specifications from one or more Respondents prior to the deadline for response, the City reserves the right to provide such questions, and the City's responses, if any, to all Respondents.
13. Neither the City, its officials, staff, agents, employees, representatives, nor consultants will be liable for any claims or damages resulting from any aspect of this procurement process.

1.06 EVALUATION OF SUBMITTALS

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

A. Evaluation Factors

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

1. Compliance with the Specification and with applicable City requirements, including by not limited to, the City's Ethics Code and its Small Business Enterprise and Local Employment and Apprenticeship programs.
2. Submittal prices, listed separately if requested, as well as a lump sum total (if the unit price does not compute to the extended total price, the unit price shall govern).
3. Time of delivery and/or completion of performance (delivery date(s) offered).
4. Warranty terms.
5. Quality of performance of previous contracts or services, including safety requirements and past compliance with the City's Ethics Code.
6. Previous and existing compliance with laws and ordinances relating to contracts or services.
7. Sufficiency of financial resources.
8. Quality, availability and adaptability of the supplies or services to the particular use required.
9. Ability to provide future maintenance and service on a timely basis.
10. Location of nearest factory authorized warranty repair facility or parts dealership.
11. Ability, capacity, experience, stability, reputation, integrity, character, judgment, technical qualifications and skill to perform the contract or provide the services required.

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, may be considered in determining the award of the contract. The final award decision will be based on the best interests of the City.

B. Cash Discount

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

1.07 COMPLETION OF CITY FORMS

All submittals must be completed in ink or typewritten using the forms included with this Specification, and submitted exactly as specified.

City forms requiring signature must be signed in ink by an authorized officer, employee or agent of the Respondent.

Prices must be stated in figures. Corrections shall be initialed in ink by the person signing the submittal. Prices having erasures or interlineations (cross outs) will not be accepted unless initialed in ink by the Respondent.

1.08 CORRECTION OF AMBIGUITIES AND OBVIOUS ERRORS

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

1.09 CLARIFICATION OF SPECIFICATION

Questions regarding this Specification and/or any included terms, conditions, forms, plans or drawings are to be submitted in writing to the City staff person identified as the contact for this Specification. All requests for interpretation must be received by the City no later than five business days prior to the opening date. Any interpretation of this Specification will be made by addendum duly issued and posted to the Purchasing website at www.TacomaPurchasing.org. Such addendum must be acknowledged in the submittal. The City of Tacoma will not be responsible for any other explanation or interpretation of the specification documents.

1.10 ALTERATIONS NOT ALLOWED

Except as otherwise specifically provided in the specification documents, submittals that are incomplete or conditioned in any way, contain erasures, alternatives or items not called for, or not in conformity with law, may be rejected as being non-responsive. Any attempt to condition the submittal by inserting exceptions to the Specification or any conditions, qualifications or additions that vary its terms may result in rejection of the

submittal. The City cannot legally accept any submittal containing a material deviation from the Specifications.

1.11 INSERTION OF MATERIAL CONFLICTING WITH SPECIFICATIONS

Only material inserted by the Respondent to meet requirements of the specification documents will be considered. Any other material inserted by the Respondent will be disregarded by the City of Tacoma as being non-responsive and may be grounds for rejection of the submittal.

1.12 FIRM PRICES/ESCALATION

Except as specifically allowed elsewhere in the specification documents, only firm prices will be accepted.

1.13 SHIPPING

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

1.14 LEGAL HOLIDAYS

The City of Tacoma observes the following holidays, which shall apply to performance of all contracts awarded from this solicitation:

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.

1.15 TAXES

Unless otherwise required in this Specification, applicable federal, state, city and local taxes shall be included in the submittal as indicated below. The total cost to the City, including all applicable taxes, may be the basis for contract award determination. As used herein, the term "taxes" shall include any and all taxes, assessments, fees, charges, interest, penalties, and/or fines imposed by applicable laws and regulations in connection with the procurement of goods and/or services hereunder.

A. Federal Excise Tax

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

B. State and Local Sales Tax

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

C. City of Tacoma Business and Occupation Tax

It is the Respondent's obligation to include City of Tacoma Business and Occupation tax in the unit and/or lump sum prices submitted; it shall not be shown separately on the submittal.

Per Sub-Title 6A of the City of Tacoma Municipal Code, transactions with the City of Tacoma may be subject to the City's Business and Occupation Tax.

It is the responsibility of the Respondent awarded the contract to register with the City of Tacoma's Tax and License Division, 733 South Market Street, Room 21, Tacoma, WA 98402-3768, telephone 253-591-5252, website <http://www.cityoftacoma.org/Page.aspx?nid=201>.

D. Any or All Other Taxes

Any or all other taxes are the responsibility of the Respondent unless otherwise required by law.

1.16 WASHINGTON BUSINESS LICENSE REQUIREMENT

All submittals should include a Washington State Business License number in the space provided on the Submittal Signature Page. If the recommended respondent does not have a Washington State Business License at the time of submittal, it must obtain such license and provide proof thereof to the City of Tacoma prior to contract award. Failure to include a Washington State Business License may be grounds for rejection of the submittal. Information regarding Washington State Business Licenses may be obtained at <http://www.dol.wa.gov/businesses.htm>.

1.17 PUBLIC DISCLOSURE

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.

1.18 PROPRIETARY OR CONFIDENTIAL TRADE SECRET INFORMATION

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 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.

1.19 TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

The City of Tacoma ensures full compliance with Title VI of the Civil Rights Act of 1964 by prohibiting discrimination against any person on the basis of race, color, national origin or sex in the provision of benefits and services resulting from its federally assisted programs and activities. Contact Tacoma's Title VI coordinator at 253-591-5224 for additional information.

1.20 LEGAL DISPUTES

Respondent agrees and stipulates that in the event any litigation should occur concerning or arising out of this solicitation or any submittal delivered in response hereto, 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 solicitation and submittal shall be governed by the laws of the state of Washington.

1.21 PURCHASE ORDER TERMS AND CONDITIONS

Terms and conditions of City of Tacoma purchase orders, if issued, shall apply to contracts and awards resulting from this solicitation.

1.22 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 cashiers check or bid bond, if any, shall be forfeited.

1.23 AWARD

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

1.24 FINAL AWARD DETERMINATION

The Tacoma City Council or Public Utility Board, for awards over \$200,000, shall be the final judge as to which submittal(s) is/are the lowest and best responsible, and best meets the interest of the City of Tacoma to accept. The purchasing manager makes the determination for awards of \$200,000 and less.

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**CITY OF TACOMA
STANDARD TERMS AND CONDITIONS
SECTION 2 – SERVICES**

UNLESS OTHERWISE REQUIRED BY THE SPECIFICATION OR AGREED TO IN WRITING, THE FOLLOWING TERMS AND CONDITIONS SHALL GOVERN THE RIGHTS, RESPONSIBILITIES AND OBLIGATIONS OF THE PARTIES TO THE CONTRACT.

2.01 CONTRACTOR

As used herein, the "Contractor" shall be the Respondent(s) awarded a contract pursuant to this Specification, whether designated as a Respondent, Vendor, Proposer, Bidder, Seller, Merchant, Service Provider or otherwise.

2.02 ENTIRE AGREEMENT

This Specification, purchase orders issued by the City pursuant hereto, and the Contractor's submittal, in that order of precedence, shall constitute the "Contract" between the parties. Said documents represent the entire agreement between the parties and supersede any prior oral statements, discussions or understandings between the parties, and/or subsequent contractor invoices. No modification of this Contract shall be effective unless mutually agreed in writing.

2.03 SERVICES

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

2.04 SCOPE OF WORK

The Contractor agrees to diligently and completely perform the services required by this Contract.

The City shall have the right to make changes within the general scope of services and/or deliverables upon execution in writing of a change order or amendment hereto. If the changes will result in additional work effort by Contractor the City agrees to reasonably compensate the Contractor for such additional effort up to the maximum amount specified in the Contract or as otherwise provided by Tacoma Municipal Code. Delivery of incidental products will be as designated in this Contract.

2.05 TIME FOR PERFORMANCE

All services shall be satisfactorily completed by the termination date contemplated by this Contract, and this Contract shall expire on said date unless mutually extended in writing by the Parties.

2.06 EXTENSION OF CONTRACT

This Contract shall be subject to extension by mutual agreement per the same prices, terms and conditions.

2.07 COMPENSATION

The City shall compensate the Contractor in accordance with the Contract. Said compensation shall be the total compensation for Contractor's performance hereunder including, but not limited to, all work, services, deliverables, materials, supplies, equipment, subcontractor's fees and all reimbursable travel and miscellaneous or incidental expenses to be incurred by Contractor.

2.08 INVOICES

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

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

Any terms, provisions or language in Contractor's invoice(s) that conflict with the terms of this Contract shall not apply to this Contract unless expressly accepted in writing by the City.

2.09 PAYMENT TERMS

Payment shall be made through the City's ordinary payment process, and shall be considered timely if made within 30 days of receipt of a properly completed invoice. Payment will not be considered late if mailed or electronically disbursed within the time specified. Payment(s) made in accordance with this Contract shall fully compensate the Contractor for all risk, loss, damages or expense of whatever nature, and acceptance of payment shall constitute a waiver of all claims submitted by Contractor. All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced.

Invoices will not be processed for payment, nor will the period of cash discount commence, until all invoiced items are received and satisfactory performance of the Contract has been attained, and a properly completed invoice is received by the City. 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.

2.10 ADDITIONAL CITY CONTRACTS

During the term of this Contract, other City of Tacoma Departments/Divisions shall have the right to enter into additional service contracts or issue purchase orders based on the unit prices and/or service rates stated in this Contract. An exception taken specifically to this provision at time of submittal shall not constitute a material deviation in the bidding process.

2.11 COOPERATIVE PURCHASING

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

2.12 WARRANTIES/REPRESENTATIONS

The Contractor warrants that all services performed pursuant to the Contract shall be generally suitable for the use to which the City intends to use said services as expressed in this Contract. The Contractor represents and warrants that it will diligently and completely perform all services and obligations consistent with customarily accepted good practices and standards of performance applicable to service providers rendering the same or similar type of service and that it will comply with all applicable federal, state and local laws, ordinances, rules and regulations including, but not limited to, the Occupational Safety and Health Administration (OSHA) and the Washington Industrial Safety and Health Act (WISHA). If the Contractor intends to rely on information or data supplied by the City, other City contractor's or other generally reputable sources without independent verification, such intent shall be brought to the attention of the City.

2.13 TAXES, LICENSES, PERMITS

Unless otherwise required by applicable law, the tax provisions in Section 1 - Solicitation apply to this Contract. Except for state sales tax, the Contractor acknowledges that it is responsible for the payment of all taxes applicable to this Contract and the Contractor agrees to comply with all applicable laws regarding the reporting of income, maintenance of records and all other requirements and obligations imposed pursuant to applicable law.

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

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

2.14 FEDERAL, STATE AND MUNICIPAL LAWS AND REGULATIONS

All federal, state, municipal and/or local laws and 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 its performance of work under this Contract.

2.15 SMALL BUSINESS ENTERPRISE (SBE) PROGRAM AND EQUAL OPPORTUNITY

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. Contact Tacoma's SBE coordinator at 253-591-5224 for additional information.

2.16 NON-DISCRIMINATION

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

2.17 PREVAILING WAGES PAID – IF REQUIRED

If this Contract involves services for which state and/or local laws may require the Contractor to pay prevailing wages, and Contractor hereby agrees to pay such applicable prevailing wages. If applicable to this Contract, a Schedule of Prevailing Wage Rates for the locality or localities where this Contract will be performed is attached and made of part of this Contract by this reference. If prevailing wages do apply to this Contract, the Contractor and its subcontractors shall (a) be bound by the provisions of Chapter 39.12 RCW, as amended, relating to prevailing wages and usual fringe benefits, (b) ensure that 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 specified on that Schedule, and (c) immediately upon award of the Contract, contact the Department of Labor and Industries, Prevailing Wages section, Olympia, Washington, to obtain full information, forms and procedures relating to these matters. Per such procedures, a Statement of Intent to Pay Prevailing Wages must be submitted by the Contractor and its subcontractors to the City, in the manner requested by the City, prior to any payment by the City hereunder, and an Affidavit of Wages Paid must be received or verified by the City prior to final Contract payment.

2.18 CONFLICT OF INTEREST

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

2.19 REPORTS, RIGHT TO AUDIT, PERSONNEL

A. Reports

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

B. Right to Audit

Upon City's request, the Contractor shall make available to City all accounts, records and documents related to the scope of work for City's inspection, auditing, or evaluation during normal business hours as reasonably needed by City to assess performance, compliance and/or quality assurance under this Contract.

C. Personnel

If before, during, or after the execution of this Contract, the Contractor has represented or represents to the City that certain personnel would or will be responsible for performing services pursuant to this Contract, then the Contractor is obligated to ensure that said personnel perform said Contract services to the maximum extent permitted by law. This Contract provision shall only be waived by written authorization by the City, and on a case by case basis.

2.20 TERMINATION AND SUSPENSION

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

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

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

2.21 INDEMNIFICATION – HOLD HARMLESS

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

The Contractor specifically assumes potential liability for actions brought by the Contractor's own employees against the City and, solely for the purpose of this indemnification and defense, the Respondent specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

These indemnifications shall survive the termination of this Contract.

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

2.22 INSURANCE

The Contractor shall maintain all necessary insurance to protect Contractor and the City from losses and claims that may arise out of or result from performance of duties related to the Contract, including Worker's Compensation, automobile public liability and property damage, commercial general liability, professional liability, errors and omissions and others, as specified in the Insurance Requirements attachment.

2.23 INDEPENDENT CONTRACTOR STATUS

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

Unless otherwise specified in writing, Contractor shall provide at its sole expense all materials, working space, and other necessities and instruments to perform its duties under this Contract. The Contractor, at

its sole expense, shall obtain and keep in force any and all applicable licenses, permits and tax certificates necessary to perform Contract services.

2.24 NOTICES

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

2.25 CITY OWNERSHIP OF WORK/RIGHTS IN DATA/PUBLICATIONS

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

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

2.26 PUBLIC DISCLOSURE

This Contract and documents provided to the City by Contractor hereunder are deemed public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW (Public Records Act). Thus, the City may be required, upon request, to disclose this Contract and documents related to it unless an exemption under the Public Records Act or other laws applies.

2.27 DUTY OF CONFIDENTIALITY

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

2.28 DISPUTE RESOLUTION

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

2.29 GOVERNING LAW AND VENUE

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

2.30 ASSIGNMENT

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

2.31 WAIVER

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

2.32 SEVERABILITY AND SURVIVAL

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

2.33 CONFLICT WITH CONTRACT

In the event of any conflict between this document, Standard Terms and Conditions Section 2, Services, and the Professional Services Contract or other type of Contract (Contract) ultimately negotiated and entered into between Respondent and the City, the provisions of the Contract shall prevail. However, absent any such conflict the provisions of this document, Standard Terms and Conditions Section 2, Services, are fully incorporated into and considered part of the Contract.

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Chapter 1.07

SMALL BUSINESS ENTERPRISE

Sections:

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

1.07.010 Policy and purpose.

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

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

1.07.020 Definitions.

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

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

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

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

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

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

F. “Contract” means any type of legally binding agreement regardless of form or title that governs the terms and conditions for procurement of Public Works and Improvements and/or Non-Public Works and Improvements Supplies and Services.

Contracts include the terms and conditions found in Specifications, Bidder or Respondent Submittals, and purchase orders issued by the City. A “Contract” as used in this chapter shall include an agreement between the City and a non-profit entity to perform construction-related services for Public Works. A “Contract” does not include: (1) awards made by the City with federal/state grant or City general funds monies to a non-profit entity where the City offers assistance, guidance, or supervision on a project or program, and the recipient of the grant awards uses the grant moneys to provide services to the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.07.030 Discrimination prohibited.

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

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

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

1.07.040 Program administration.

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

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

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

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

1.07.050 Certification.

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

1. Each person with an ownership interest in the company has a personal net worth of less than \$1,320,000 excluding one personal residence and the net worth of the business;
2. The company's total gross receipts for any consecutive three year period within the last six years is not more than \$36,500,000 for public works companies and not more than \$15,000,000 for non-public works and improvements companies;
3. The owner(s) of the company executes an Affidavit of Small Business Enterprise Certification and files it with the City which states that all information submitted on the SBE application is accurate, that the business has sought or intends to do business with the City and/or within the Pierce County area and has experienced or expects to experience difficulty competing for such business due to financial limitations that impair its ability to compete against larger firms; and
4. The company can demonstrate that it also meets at least one of the following additional requirements:
 - a. The company's business offices, or the personal residence of the owner, is located within a City of Tacoma designated Renewal Community/Community Empowerment Zone, prior to designation as a SBE, or
 - b. The company's business offices, or the personal residence of the owner, is located within the City of Tacoma for at least six months prior to designation as a SBE; or

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

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

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

1. A completed Statement of Personal Net Worth form;
2. A completed, signed, and notarized Affidavit of Small Business Enterprise Certification that affirms compliance with the certification and documentation requirements of this section;
3. List of equipment and vehicles used by the SBE;
4. Description of company structure and owners;
5. Such additional information as the SBE Program Coordinator or designee may require.

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

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

1. That the company still meets all of the criteria set forth in subsection 1.07.050.A. TMC, and
2. That the company has maintained all applicable and necessary licenses in the intervening period, and
3. That the company demonstrates that the owner and/or designated employees have completed the minimum annual continuing business education training requirements set forth in the SBE Regulations.

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

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

1.07.060 Program requirements.

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

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

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

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

1. Emergency: The supplies, services and/or public works must be provided with such immediacy that neither the City nor the contractor can comply with the requirements herein. Such emergency and waiver must be documented by the department/division awarding the contract.
2. Not Practicable: Compliance with the requirements of this chapter would impose an unwarranted economic burden or risk to the City after consideration of existing budgetary approvals.
3. Sole source: The supplies, services, and/or public works are available from only one source, and subcontracting possibilities do not reasonably exist as determined by the finance purchasing manager.
4. Government purchasing. The City is a party to or included in a federal, state or inter-local government purchasing agreement as approved by the finance purchasing manager.
5. Lack of SBEs: An insufficient number of qualified SBE contractors exist to create SBE utilization opportunities.
6. Best interests of the City: Waiver of SBE goals is in the best interests of the City due to unforeseen circumstances, provided that said circumstances are set forth in writing by the requestor.

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

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

1.07.070 Evaluation of submittals.

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

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

1. General. The dollar value of the contract awarded by the City to a SBE in the procurement of supplies, services, or public works shall be counted toward achievement of the SBE goal.
2. Supplies. A public works and improvements contractor may receive credit toward attainment of the SBE goal for expenditures for supplies obtained from a SBE; provided such SBE assumes the actual and contractual responsibility for delivering the supplies with its resources. The contractor may also receive credit toward attainment of the SBE goal for the amount of the commission paid to a SBE resulting from a supplies contract with the City; provided the SBE performs a commercially useful function in the process.
3. Services and Public Works subcontracts. Any bid by a certified SBE or a bidder that utilizes a certified SBE shall receive credit toward SBE goal attainment based on the percentage of SBE usage demonstrated in the bid. A contractor that utilizes a SBE-certified subcontractor to provide services or public works shall receive a credit toward the contractor's attainment of the SBE goal based on the value of the subcontract with that SBE.
4. Brokers, Fronts, or Similar Pass-Through Arrangements. SBEs acting as brokers, fronts, or similar pass-through arrangements (as such terms are defined in the SBE Regulations) shall not count toward SBE goal attainment unless the activity reflects normal industry practices and the broker performs a commercially useful function.

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

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

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

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

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

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

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

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

- a. Evaluation of solicitations for Architectural and Engineering (A&E) services;
- b. Evaluation and selection of submittals in response to requests for proposals; and
- c. Selection of contractors from pre-qualified roster(s).

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

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

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

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

1.07.080 Contract compliance.

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

- 1. Any substitutions for or failure to utilize SBEs projected to be used must be approved in advance by the SBE Program Coordinator. Substitution of one SBE with another shall be allowed where there has been a refusal to execute necessary agreements by the original SBE, a default on agreements previously made or other reasonable excuse; provided that the substitution does not increase the dollar amount of the bid.
- 2. Where it is shown that no other SBE is available as a substitute and that failure to secure participation by the SBE identified in the solicitation is not the fault of the respondent, substitution with a non-SBE shall be allowed; provided, that, the substitution does not increase the dollar amount of the bid.
- 3. If the SBE Program Coordinator determines that the contractor has not reasonably and actively pursued the use of replacement SBE(s), such contractor shall be deemed to be in non-compliance.

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

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

1.07.090 Program monitoring.

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

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

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

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

1.07.100 Enforcement.

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

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

1.07.110 Remedies.

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

1. Forfeit the contractor's bid bond and/or performance bond;
2. Publish notice of the contractor's noncompliance;
3. Cancel, terminate, or suspend the contractor's contract, or portion thereof;
4. Withhold funds due contractor until compliance is achieved; and/or
5. Recommend appropriate action including, but not limited to, disqualification of eligibility for future contract awards by the City (debarment) per Section 1.06.279 TMC;

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

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

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

1.07.120 Unlawful acts.

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

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

1.07.130 Severability.

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

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

1.07.140 Sunset and review of program.

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

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