



**STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES
OFFICE OF STATE PROCUREMENT**

1500 Jefferson Street SE • P.O. Box 41017 • Olympia, Washington 98504-1017 • (360) 902-7400

CONTRACT INVITATION FOR BID #00412

PHARMACEUTICAL PACKAGING AND DELIVERY SERVICES

- Bids are Due:** **May 17, 2012 @ 2:00 PM**
Please submit Bids to the Bid Clerk/Customer Service at the address shown below
- Pre-Bid Conference:**..... **May 9, 2012 @ 10:00 AM (Third Floor, Room 2322)**
- Physical Location:** 1500 Jefferson St. SE,
Olympia, WA 98501
- Mailing Address:** PO Box 41017
Olympia, WA 98504-1017
- Procurement Coordinator:** Connie Stacy *C. Stacy 4.25.12*
Phone: 360-407-9403
connie.stacy@des.wa.gov
Fax: 360-586-2426
- Map to the Capital Campus** <http://www.ga.wa.gov/images/Campus-Map.pdf>
- Directions/Parking** <http://des.wa.gov/locations-directions>

To request this information in alternative formats call (360) 902-7400

Visit our Internet Site at <http://www.ga.wa.gov/purchase/>

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PART ONE – SOLICITATION INFORMATION

1. ANNOUNCEMENT AND SPECIAL INFORMATION

1.1 INTRODUCTION

This document contains Part One - Solicitation Information, Part Two contains Contract Information, and Appendices.

Bidders are required to read, understand and accept all information contained within this entire document. By responding to this Solicitation the Bidder agrees to read, understand, and accept all parts of the document.

This document will form the Contractual agreement between the Purchasing Activity and the awarded Contractor when countersigned by the State of Washington.

1.2 ECONOMIC AND ENVIRONMENTAL GOALS

In support of the State's economic and environmental goals, although not an award factor (unless otherwise specified herein), bidders are encouraged to consider the following in responding to this solicitation:

- Support for a diverse supplier pool, including small, Minority and Women Owned Business Enterprises (MWBE). Voluntary numerical WBE goals of 3% and MBE goals of 3% have been established for this solicitation. Achievement of these goals is encouraged whether directly or through subcontractors. Bidders may contact the Office of Minority and Women's Business Enterprise to obtain information on certified firms or to become certified.
- Use of environmentally preferable goods and services to include post consumer waste and recycled content.
- Products made or grown in the state of Washington.

2. SUMMARY OF OPPORTUNITY

2.1. PURPOSE

The purpose of this Solicitation is to establish a term Contract for the as needed purchase of pharmaceuticals, their packaging and delivery services for state owned and/or other governmental facilities without a staff pharmacist. Individual prescriptions will be filled by Contractor and delivered within 24 hours or as required, with a provision for emergency deliveries (within four hours). Contractor will be required to conduct onsite customer facility visits as described herein.

This new Contract will replace existing Contract 02606 which is scheduled to expire June 30, 2012.

2.2. PURCHASERS

General Use

While, the resulting Contract is for use by all members of the Washington State Purchasing Cooperative (WSPC) including where applicable: State Agencies, Institutions of Higher Education, Political Subdivisions, and Non-Profit Corporations, the major users are Department of Social and Health facilities; Echo Glen Children's Center, Green Hill School, Naselle Youth Camp and the Special Commitment Center. This Contract will also be

available for use by Oregon's Department of Administrative Services Cooperative Purchasing Program (ORCPP).

Primary users and their purchase history for years 2010 and 2011 have been provided in Appendix F.

While use of the Contract by Political Subdivisions and Non-Profit Corporations that are members of the WSPC and ORCPP members is optional, the Office of State Procurement encourages them to use state Contracts. Their use of the Contracts may significantly increase the purchase volume. Their orders are subject to the same Contract terms, conditions and pricing as state agencies. The Office of State Procurement accepts no responsibility for orders or payment by WSPC members.

A list of WSPC members is available at <https://fortress.wa.gov/ga/apps/coop/Default.aspx>

A list of current authorized ORCPP members is available at:

<http://www.oregon.gov/DAS/SSD/SPO/docs/orcpp-member-list.pdf>

2.3 CONTRACT TERM

The initial term of this Contract is two (2) years from date of award with the option to extend for additional term(s) or portions thereof. Extensions for each additional term(s) or portion thereof shall be exercised at the sole discretion of the Purchasing Activity upon written notice to the Contractor. The total Contract term, including the initial term and all subsequent extensions, shall not exceed six years unless an emergency exists and/or special circumstances require a partial term extension. The State reserves the right to extend with all or some of the Contractors, solely determined by the State.

2.4 ESTIMATED USAGE

Based on past and/or projected usage, it is estimated that purchases over the initial two (2) year term of the Contract will approximate \$4,500,000.00 (includes cost of medications). This estimate was based upon sales history information provided by the current Contractor for years 2010 and 2011 and is solely for the purpose of assisting Bidders in preparing their Response. Orders will be placed only on an as needed basis.

The State of Washington does not represent or guarantee any minimum purchase.

2.5 AWARD

Only one (1) successful Bidder will be identified via this procurement. The Purchasing Activity intends to award only one (1) Contract.

2.6 NO COSTS OR CHARGES

Costs or charges under the proposed Contract incurred before the Contract is fully executed will be the sole responsibility of the Bidder.

2.7 NO BEST AND FINAL OFFER

The Purchasing Activity reserves the right to make an award without further discussion of the Response submitted; i.e., there will be no best and final offer request. Therefore, the Response should be submitted on the most favorable terms that Bidder intends to offer.

3 SOLICITATION OVERVIEW

3.1 ACQUISITION AUTHORITY

The Washington State Department of Enterprise Services (DES) or Purchasing Activity issues this Solicitation acting under the authority of its enabling legislation Revised Code of Washington (RCW) 43.19 which establishes DES and regulates the manner in which state agencies may acquire general goods and services.

3.2 SOLICITATION AMENDMENTS

Prior to submittal due date and time, the Purchasing Activity reserves the right to change portions of this Solicitation. Any changes or corrections will be by one or more written amendment(s), dated, attached to or incorporated in and made a part of this Solicitation document. All changes must be authorized and issued in writing by the Purchasing Activity. If there is any conflict between amendments, or between an amendment and the Solicitation, whichever document was issued last in time shall be controlling. Only Bidders who have properly registered and downloaded the original Solicitation directly via WEBS system will receive notification of amendments and other correspondence pertinent to the procurement.

3.3 CONTRACT FORMATION

A Response submitted to this Solicitation is an offer to Contract with the Purchasing Activity. A Response becomes a Contract only when legally awarded and accepted in writing by the Purchasing Activity.

3.4 INCORPORATION OF DOCUMENTS INTO CONTRACT

This Solicitation document, any subsequent Amendments and the Bidder's response will be incorporated into the resulting Contract.

3.5 RIGHT TO CANCEL

The Purchasing Activity reserves the right to cancel or reissue all or part of this Solicitation at any time as allowed by law without obligation or liability.

3.6 NON-ENDORSEMENT AND PUBLICITY

In selecting a Bidder to supply the Products/Services specified herein to the state of Washington Purchasers, neither the Purchasing Activity nor the Purchasers are endorsing the Bidder's Products or Services, nor suggesting that they are the best or only solution to their needs.

4 TIMELINE

4.1 PROCUREMENT SCHEDULE

The dates listed below represent the projected procurement schedule. The Purchasing Activity reserves the right to change the schedule. Notification of amendments to the procurement schedule prior to Bid opening, will be sent electronically to all properly registered users of the Department of Enterprise Service's Washington Electronic Business Solution (WEBS) www.des.wa.gov/webs who downloaded this Solicitation from WEBS.

Changes to the Procurement Schedule after Bid Opening may be communicated to all Bidders reflecting the change.

4.2 PROJECTED SCHEDULE OF EVENTS

| Date | Time | Event |
|----------|------|---|
| 04/25/12 | | Issue Solicitation document (Available for download from www.des.wa.gov/webs) |

| | | |
|--------------|-------------|--|
| May 9, 2012 | 10:00 am | Bidder Pre-Bid Conference (optional attendance) |
| May 10, 2012 | | Amendment issued, if applicable (Bidders should begin checking the website for any amendments) |
| May 17, 2012 | 2:00 pm | Bids Due |
| May 18, 2012 | | Evaluation begins |
| May 28, 2012 | | Anticipated award date |

NOTE: Response information, including price sheets, will not be available for public disclosure until after award of the Contract consistent with RCW 43.19.1911(8). At Bid due date and time, only the name of the Bidder and time of Response receipt will be read aloud. After award, information regarding results of the Solicitation may be obtained by contacting the Contracts Specialist.

4.3 PRE-BID CONFERENCE

An optional pre-bid conference to address Solicitation requirements will be held at the time and location indicated below. While attendance is not mandatory, Vendors are encouraged to attend and actively participate. If interpretations, specifications, or other changes to the Solicitation are required as a result of the conference, the Contracts Specialist will issue an amendment that will be posted on WEBS.

Assistance for disabled, blind or hearing-impaired persons who wish to attend is available with prior arrangement with the Office of State Procurement (OSP). Contact the identified on the face page of this Invitation For Bid.

| | |
|--------------------------|--|
| Pre Bid Date: | May 9, 2012 |
| Pre Bid Time: | 10:00 am to Noon |
| Pre Bid Location: | 1500 Jefferson Street, 2 nd Floor, Room 2322 Olympia, WA 98504 |

For a site map to the Capitol Campus, click <http://www.des.wa.gov/images/Campus-Map.pdf>

Driving directions and parking information <http://www.des.wa.gov/Visitor/direction-park.htm>

5 PREPARATION OF RESPONSE

5.1 DUE DATE AND TIME:

Original, signed (in ink), sealed Bids must be received as set forth in Section 4.2 "PROCUREMENT SCHEDULE" at the specified location identified below on or before the specified date and time. Time of receipt will be determined by the official time stamp located at the Purchasing Activity. If a Response is late or received at a location other than that specified, it shall be rejected and returned unopened. In the event the official time clock is unavailable, the Bid clerk may establish the official time and take reasonable steps to ensure the integrity of the Response receipt is preserved.

A. FORMAT:

A hard copy bid is to be provided, and must be legible and completed in ink or with electronic printer or other similar office equipment, and properly signed by an authorized representative of the Bidder. All changes and/or erasures shall be initialed in ink. Unsigned Bids will be rejected on opening unless satisfactory evidence was submitted clearly

establishing the Bidder's desire and intent to be bound by the Response, such as a signed cover letter. Incomplete or illegible Bids may be rejected.

Note: In a joint effort to save costs, reduce waste and produce energy savings, Bidders are encouraged to use double-sided printing and recyclable materials. Bidders are highly encouraged to refrain from submitting Bids in 3-ring binders, spiral bindings, and/or other non-recyclable presentation folders.

B. INSTRUCTIONS:

- 1) Complete Appendix D "Price Sheet"
- 2) Complete Appendix E "Bidder Profile"
- 3) Sign Page 14 "Authorized Offer and Award"
- 4) Attach copy of current Wholesale Price List

C. IDENTIFICATION AND DELIVERY:

To facilitate proper delivery and processing, Responses must be delivered in sealed envelopes, boxes or other method of containment. Sealed Bids should be clearly identified on the outside of the package with the following information to the Purchasing Activity at the address below:

| | | |
|--|--|--|
| Bidder Name & Address | | Department of Enterprise Services 1500 Jefferson Street SE Olympia, WA 98504 |
| Solicitation Number 00412 | | Attn: Scott Edwards, Bid Clerk |
| Opening date and time: 05/17/12 – 2:00 pm | | |

5.2 BID OPENING PROTOCOL

Only the name of the Bidder and the time of receipt are read aloud at the time of the Bid opening. The reading does not determine award of the Contract, responsiveness or responsibility of the Bidder. Bidder attendance at the Bid/Proposal opening is not required.

5.3 CONTRACT INFORMATION AVAILABILITY AFTER AWARD

Upon award, electronic notification may be sent to all Bidders. After award, information regarding results of the Solicitation may be obtained by accessing www.des.wa.gov or by contacting the Procurement Coordinator. Bidders may submit a public disclosure request to either schedule an appointment to review the procurement file or obtain specific documents.

5.4 BID PRICING

Response prices must include all cost components needed for the delivery of the goods and/or services as described in this Solicitation document. All costs associated with the goods and/or services specified must be incorporated into the price of the Response to this Solicitation.

Failure to identify all costs in a manner consistent with the instructions in this Solicitation is sufficient grounds for disqualification.

The State makes no volume commitment in this Solicitation. The proposed pricing levels should reflect the market provided by the Contract resulting from this Solicitation.

During initial contract term, bid prices, discounts and/or upcharges shall remain firm and fixed for one year.

5.5 MISCELLANEOUS EXPENSES

Expenses related to day-to-day performance under any Contract, including but not limited to, travel, lodging, meals, incidentals will **not** be reimbursed to the Bidder. Hourly rates, if applicable, proposed by Bidder must include these costs.

6 EVALUATION AND AWARD

6.1 EVALUATION

The Bidder who meets all of the Solicitation requirements and is the lowest responsive, responsible bidder as described in this section, will be declared the Successful Bidder by the Purchasing Activity.

No rejection notice will be sent to unsuccessful Bidders. Bidders whose Bids are determined to be non-responsive will be rejected and will be notified of the reasons for such rejection.

Contract award shall be made to the most Responsive and Responsible Bidder based on the evaluation and award criteria established herein and subject to consideration of all factors identified in RCW 43.19.1911. Only one award will be made to the Bidder offering the lowest total cost for all line items.

Subject to the provisions of RCW 43.19.1911 and Chapter 236-48 WAC, the Purchasing Activity reserves the right to: (1) Waive any informality; (2) Reject any or all Bids, or portions thereof; (3) Accept any portion of the items Bid unless the Bidder stipulates all or nothing in their Bid; (4) Cancel a Solicitation and re-solicit Bids; (5) Negotiate with the lowest Responsive and Responsible Bidder to determine if that Response can be improved for the Purchaser; (6) Award on an all or none consolidated basis taking into consideration "lifecycle costs"; and (7) Award in aggregate when in the best interest of the state.

To aid in the Response evaluation process, after Response due date and time, the Purchasing Activity may require individual Bidders to appear at a date, time and place determined by the Purchasing Activity for the purpose of conducting discussions to determine whether both parties have a full and complete understanding of the nature and scope of Contractual requirements. In no manner shall such action be construed as negotiations or an indication of the Purchasing Activity's intention to award.

6.2 EVALUATION PROCESS

Phase One: Initial Determination of Responsiveness

Responses will be reviewed initially by the Purchasing Activity to determine on a pass/fail basis compliance with administrative requirements as specified herein.

Responses meeting the Initial Determination of Responsiveness will then be reviewed on a pass/fail basis to determine if the Response meets the Mandatory requirements. Only Responses meeting all Mandatory requirements will be further evaluated.

The State reserves the right to determine at its sole discretion whether Bidder's Response to a Mandatory requirement is sufficient to pass. If, however, all responding Bidders fail to meet any single Mandatory item, the Purchasing Activity will cancel the Solicitation and reject all Bids.

Pursuant to RCW 43.19.1911 (9), In determining Bidder responsibility, the following elements shall be given consideration:

- The ability, capacity, and skill of the Bidder to perform the Contract or provide the service required;
- The character, integrity, reputation, judgment, experience, and efficiency of the Bidder;
- Whether the Bidder can perform the Contract within the time specified;
- The quality of performance of previous Contracts or services;
- The previous and existing compliance by the Bidder with laws relating to the Contract or services;
- Such other information as may be secured having a bearing on the decision to award the Contract:

During Response evaluation, the Purchasing Activity reserves the right to make reasonable inquiry to determine the responsibility of any Bidder. Requests may include, but are not limited to, financial statements, credit ratings, references, record of past performance, clarification of Bidder's offer, and on-site inspection of Bidder's or Bidder's subContractor's facilities. Failure to respond to said request(s) may result in Response being rejected as non-responsive.

Phase Two: Only Responses that pass the Initial Determination of Responsiveness review will be further evaluated based on the requirements in this Solicitation and as follows:

- A) Prices bid for items one through ten (1 – 10) in Appendix D "Price Sheet" will be recalculated by the estimated usage quantities to ensure that the "total price" is accurate.
- B) The "total prices" for the line items reflected in item eleven will be reviewed for accuracy, then added together to determine the "Grand Total".
- C) The bidder providing the lowest grand total, adjusted by any prompt payment discounts for payments in thirty days or more, will be declared the Apparent Successful Bidder.

6.3 SELECTION OF APPARENT SUCCESSFUL BIDDER

The Bidder with the lowest price and who otherwise meets all contractual requirements will be declared the Apparent Successful Bidder. The Purchasing Activity may enter into Contract negotiations with the Apparent Successful Bidder.

6.4 AWARD

The Bidder, who meets all of the Solicitation requirements and is determined to be the lowest Responsive, Responsible Bidder, as described in Section 6.1 & 6.2, will be declared the Successful Bidder by the Purchasing Activity. The Purchasing Activity, at its sole discretion, may choose to make a single Award or multiple Awards as a result of this Solicitation.

6.5 NOTIFICATION OF APPARENT SUCCESSFUL BIDDER

All Bidders responding to this Solicitation will be notified when the Purchasing Activity has determined the Apparent Successful Bidder.

The date of announcement of the Apparent Successful Bidder will be the date of the notification from the Purchasing Activity.

PART TWO – CONTRACT INFORMATION

1. PARTIES

This Contract (“Contract”) is entered into by and between the State of Washington, acting by and through the Purchasing Activity located at 1500 Jefferson, Olympia, WA 98504 and Contractor, a corporation/sole proprietor or other business form licensed to conduct business in the State of Washington for the purpose of providing pharmaceutical packaging and delivery services.

2. ENTIRE AGREEMENT

This Solicitation/Contract document, Parts One and Two, all Appendices and attachments, and all subsequently issued amendments comprise the entire agreement between the Purchasing Activity and the Contractor. No other statements or representations, written or oral, shall be deemed a part of the Contract.

3. INCORPORATED DOCUMENTS

Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.

- a. The awarded portion(s) of Contractor’s Response to the Solicitation/Contract Number 00412, Pharmaceutical packaging and delivery services.

4. ORDER OF PRECEDENCE, CONFLICT AND CONFORMITY

In the event of a conflict in such terms, or between the terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. Applicable Federal and State of Washington statutes and regulations
- b. Mutually agreed written amendments to this Contract
- c. This Contract, Number 00412, including all documents incorporated in Part Two, Section 3 above

Conflict: To the extent possible, the terms of this Contract shall be read consistently.

Conformity: If any provision of this Contract violates any Federal or State of Washington statute or rule of law, it is considered modified to conform to that statute or rule of law.

5. LEGAL NOTICES

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except notice of malfunctioning Equipment) shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid, certified mail, return receipt requested, via facsimile or by electronic mail, to the parties at the addresses and fax numbers, e-mail addresses provided in this section. For purposes of complying with any provision in this Contract or applicable law that requires a “writing,” such communication, when digitally signed with a Washington State

Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

| To Contractor at: | To Purchasing Activity at: |
|--------------------------|--|
| | State of Washington Department of Enterprise Services |
| Attn: | Attn: Kevyn Davidson |
| | 1500 Jefferson, Third Floor |
| | Olympia, WA 98504 |
| | |
| Phone: | Phone: (360) 407-9413 |
| Fax: | Fax: (360) 586-2426 |
| E-mail: | E-mail: kevyn.davidson@des.wa.gov |

Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Equipment or Services provided pursuant to this Contract is served upon Contractor or Purchasing Activity, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and Purchasing Activity further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

6. LIENS, CLAIMS AND ENCUMBRANCES

All materials, equipment, supplies and/or services shall be free of all liens, claims, or encumbrances of any kind, and if the Purchasing Activity or the Purchaser requests, a formal release of same shall be delivered to the respective requestor.

7. AUTHORITY TO BIND

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

8. COUNTERPARTS

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

APPENDICES PAGE

| | | |
|--|---|---|
| <p align="center">APPENDIX A Standard Terms & Conditions, Instruction to Bidders, Definitions, Protest Procedures</p> <p align="center"> Appendix A 6-3-2010.doc</p> | <p align="center">APPENDIX B Special Terms and Conditions</p> <p align="center"> Appendix B.doc</p> | <p align="center">APPENDIX C Service Requirements</p> <p align="center"> Appendix C.doc</p> |
| <p align="center">APPENDIX D Price Sheet</p> <p align="center"> Appendix D.doc</p> | <p align="center">APPENDIX E Bidder Profile</p> <p align="center"> Appendix E.doc</p> | <p align="center">APPENDIX F</p> <p align="center"> APPENDIX F.doc</p> |

BIDDER CHECKLIST

| | |
|--|--|
| <p>This checklist is provided for Bidder's convenience only and identifies the documents to be submitted with each Response. Any Response received without any one or more of these documents may be rejected as being non-responsive.</p> | |
| <p>Appendix D: Price Sheets</p> | <p align="center"><input type="checkbox"/></p> |
| <p>Appendix E: Bidder Profile</p> | <p align="center"><input type="checkbox"/></p> |
| <p>Copy of current Wholesale Price List for Medications</p> | <p align="center"><input type="checkbox"/></p> |
| <p>Authorized Offer and Contract Signature Page</p> | <p align="center"><input type="checkbox"/></p> |

CERTIFICATIONS AND ASSURANCES

We make the following certifications and assurances as a required element of the Response, to which it is attached, affirming the truthfulness of the facts declared here and acknowledging that the continuing compliance with these statements and all requirements of the Solicitation are conditions precedent to the award or continuation of the resulting Contract.

1. We have read, understand, and agree to abide by all information contained in Part One- Solicitation Information, Part Two – Contract Information, and all Appendices.
2. The prices in this Response have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered. The prices in this Response have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before Contract award unless otherwise required by law. No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition. However, we may freely join with other persons or organizations for the purpose of presenting a single Response.
3. The attached Response is a firm offer for a period of 120 days following the Response Due Date specified in the Solicitation, and it may be accepted by the Purchasing Activity without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 120 day period. In the case of protest, our Response will remain valid for 180 days or until the protest and any related court action is resolved, whichever is later.
4. In preparing this Response, we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to the State's Solicitation, or prospective Contract, and who was assisting in other than his or her official, public capacity. Neither does such a person nor any member of his or her immediate family have any financial interest in the outcome of this Response. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)
5. We understand that the State will not reimburse us for any costs incurred in the preparation of this Response. All Responses become the property of the State, and we claim no proprietary right to the ideas, writings, items or samples unless so stated in the Response. Submission of the attached Response constitutes an acceptance of the evaluation criteria and an agreement to abide by the procedures and all other administrative requirements described in the Solicitation document.
6. We understand that any Contract awarded, as a result of this Response will incorporate all the Solicitation requirements. Submission of a Response and execution of this Certifications and Assurances document certify our willingness to comply with the Contract terms and conditions appearing in Parts One and Two, and all Appendices, if selected as a Contractor. It is further understood that our standard Contract will not be considered as a replacement for the terms and conditions appearing in Parts One and Two, and all Appendices of this Solicitation.
7. By submitting this Bid, Bidder hereby offers to furnish materials, supplies, services and/or equipment in compliance with all terms, conditions, and specifications contained in this Solicitation.
8. We are not submitting any exceptions.

**AUTHORIZED OFFER
AND
CONTRACT SIGNATURE PAGE**

In submitting this Response, the Authorized Signatory below acknowledges having read and understood the entire Solicitation and agrees to comply with the terms and conditions of the Solicitation including Certifications and Assurances. The Authorized Signatory also agrees to fulfill the offer made in this Response and any subsequently awarded Contract.

The Authorized Signatory below represents that he/she has the authority to bind the entity named below to the Response submitted and any Contract awarded as a result of this Solicitation.

Authorized Signature/Legal Notice Contact Information:

| | |
|-------------------------------|-------|
| Company Name: | |
| Signature: | Date: |
| Name (print): | |
| Title: | |
| Company Mailing Address: | |
| Entity Type: (LLC, LP, etc.): | |
| Phone/Fax: | |
| Email: | |

+++++

**CONTRACT AWARD AND SIGNATURE
(For State of Washington Use Only)**

A Contract is hereby awarded between Purchasing Activity and the above entity

This Contract is effective this ____ day of _____, 20__.

This is a *Partial/Total* Award for:

Contract #/Contract Title/Category

Purchasing Activity Authorized Signatures/ Legal Notice Contact Information:

| | |
|---|-------|
| Agency Name: Department of Enterprise Services, Contracts & Legal | |
| Contracts Specialist Signature: | Date: |
| Name (print): | |
| Address: 1500 Jefferson Street, Olympia, WA 98504 | |
| Phone: (360) 407-9403 Fax: (360) 586-2426 | |
| Email: connie.stacy@des.wa.gov | |
| Manager Signature: | Date: |



State of Washington
Department of Enterprise Services
Office of State Procurement (OSP)
Post Office Box 41014
Olympia, Washington 98504-1017

APPENDIX A (6-3-2010)

**STANDARD TERMS AND CONDITIONS
FOR IFB/CONTRACT # 00412 PHARMACUETICAL PACKAGING AND DELIVERY
SERVICES**



For Purchases of Materials, Supplies, Services, and Equipment

Under the Authority of

Chapter 43.19 RCW

| | |
|----------------------|--------------------------------------|
| Section One | Instructions to Bidders |
| Section Two | Standard Definitions |
| Section Three | Standard Terms and Conditions |
| Section Four | Protest Procedures |

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SECTION ONE

INSTRUCTIONS TO BIDDERS

This section contains instructions for Bidders regarding the preparation and submission of a Bid/proposal/quotation.

1.1 AUTHORIZED COMMUNICATION

Upon release of this Solicitation, all Bidder communications concerning this Solicitation must be directed to the Contracts Specialist. Unauthorized contact regarding this Solicitation with other state employees involved with the Solicitation may result in disqualification. All oral communications will be considered unofficial and non-binding on the Purchasing Activity. Bidders should rely only on written statements issued by the Contracts Specialist.

1.2 BIDDER COMMUNICATION RESPONSIBILITIES

Bidders are responsible for communicating to the Contracts Specialist any issues, exceptions, additions, or omissions concerning the Solicitation as soon as possible. Any explanation of the issue must be submitted in writing to the Contracts Specialist by the deadline for Bidder Questions, Comments and Complaints consistent with Part One, Section Two, 3.1 Procurement Schedule. Failure to notify the Purchasing Activity by the deadline may be considered by the Purchasing Activity to be a waiver of the issue by the Bidder for protest purposes. If Bidder submissions result in changes to the Solicitation, written amendments will be issued and posted on WEBS.

1.3 BIDDER AUTHORIZED REPRESENTATIVE

Bidder must designate an Authorized Representative who will be the principal point of contact for the Purchasing Activity for the duration of this Solicitation process. Bidder shall complete this section in Part I, Section One.

1.4 PETITION FOR EQUIVALENT PRODUCT

Questions, concerning the specifications or line item exceptions must be communicated in writing at least five business days prior to the Bid opening date. Additionally, any exceptions communicated are to be accompanied with a proposed alternative said to meet or exceed minimum mandatory specification requirements and include supporting documentation. The Purchasing Activity will review the Bidders' exceptions and supporting documentation in determining whether or not the proposed alternative will be acceptable. The decision as to whether or not the proposed alternative will be acceptable will be at the sole discretion of the Purchasing Activity. If the proposed alternative is determined to be acceptable then it will be communicated via an amendment. Otherwise, any Bid that does not conform to the minimum mandatory specification will be deemed non-responsive thus be ineligible for award. Only those Bidders who propose a solution that meets or exceed the minimum mandatory specifications will receive further consideration.

1.5 WASHINGTON ELECTRONIC BUSINESS SOLUTION (WEBS)

Bidders are solely responsible for:

Properly registering with the Department of General Administration's WEBS at <http://www.ga.wa.gov/webs>.

Maintaining an accurate Vendor profile in WEBS. Downloading the Solicitation consisting of the Solicitation with all attachments and exhibits related to the Solicitation for which you are interested in Bidding; downloading all current and subsequent amendments to the Solicitation to ensure receipt of all Solicitation documents, the Solicitation for this Solicitation must be downloaded from webs. Notification of amendments to the Solicitation will only be provided to those vendors who have registered with webs and have downloaded the Solicitation from webs. Failure to do so may result in a potential Bidder having incomplete, inaccurate, or otherwise inadequate information, or a Bidder submitting an incomplete, inaccurate, or otherwise inadequate Bid or proposal. Bidders and potential Bidders accept full responsibility and liability for failing to receive any amendments resulting from their failure to register with webs and download the Solicitation from webs, and hold the state of Washington harmless from all claims of injury or loss resulting from such failure.

1.6 BIDDER RESPONSIVENESS

Bidder must respond to each question/requirement contained in this Solicitation. Failure to comply with any applicable item may result in the Response being deemed non-responsive and disqualified.

The Purchasing Activity reserves the right to consider the actual level of Bidder's compliance with the requirements specified in this Solicitation and to waive informalities in a Response. Informality is an immaterial variation from the exact requirements of the competitive Solicitation, having no effect or merely a minor or negligible effect on quality, quantity, or delivery of the supplies or performance of the services being procured, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to Bidders.

1.7 WITHDRAWAL OR MODIFICATION OF BID OR PROPOSAL

Bidders are liable for all errors or omissions contained in their Responses.

- a. **After Response submittal but prior to Bid/Proposal opening:** The Bidder may modify or withdraw his/her Response at any time prior to the due date and time set for Bid/Proposal opening by providing a written request to the Contracts Specialist from an authorized representative of the Bidder.
- b. **After Bid/Proposal opening:** No Response shall be altered or amended. The Contracts Specialist may allow a Response to be withdrawn if the Bidder demonstrates that the prices were miscalculated. A low Bidder, who claims error and fails to enter into a contract with the State of Washington, may not participate in Bidding on the same commodity or service if the Solicitation is subsequently reissued by the Purchasing Activity.

The Purchasing Activity reserves the right to contact Bidder for clarification of Response contents.

1.8 PRESENTATION OF ALL COST COMPONENTS

All elements of recurring and non-recurring costs must be identified and included in the Solicitation response. This must include, but is not limited to, all administrative fees, maintenance, manuals, documentation, shipping charges, labor, travel, training, consultation services, wiring and supplies needed for the installation (including cost of all uncrating, disposal of shipping materials), set-up, testing and initial instruction to agency personnel, warranty work and maintenance of the products/services specified herein.

1.9 PROPRIETARY OR CONFIDENTIAL INFORMATION

All Responses submitted become the property of the State of Washington and a matter of public record, after the contract has been executed.

Any information contained in the Response that is proprietary or confidential must be clearly designated. Marking of the entire Response or entire sections of the Response as proprietary or confidential will not be accepted or honored. The Purchasing Activity will not honor designations by the Bidder where pricing is marked proprietary or confidential.

1.10 IN-STATE PREFERENCE/RECIPROACITY

Pursuant to RCW 43.19.700, RCW 43.19.702, RCW 43.19.704 and WAC 236-48-085, the Department of General Administration has established a schedule of percentage increases to be added to Response from Bidders in states that grant a preference to Contractors located in their state or for goods manufactured in their state. The percentages related to each respective state are provided in the Reciprocity List located at <http://www.ga.wa.gov/pca/ recip.htm> and apply only to Response received from those states listed.

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

This action will be used only for analysis and award purposes. In no instances shall the increase be paid to a Bidder whose Response is accepted and awarded a Contract.

1.11 MINORITY AND WOMEN OWNED BUSINESS ENTERPRISES (MWBE)

In accordance with the legislative findings and policies set forth in RCW 39.19, the State of Washington encourages participation in all of its Contracts by Minority and Woman Owned Business Enterprise (MWBE) firms either self-identified or certified by the Office of Minority and Women's Business Enterprises (OMWBE). While the state does not give preferential treatment, it does seek equitable representation from the minority and women's business community.

Participation may be either on a direct basis in response to this Solicitation or as a Subcontractor to a Contractor. However, unless required by federal statutes, regulations, grants, or Contract terms referenced in the original Solicitation, no preference will be included in the evaluation of Response, no minimum level of MWBE participation shall be required as condition for receiving an award, and Response will not be evaluated, rejected or considered non-responsive on that basis.

Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the original Solicitation will apply. Bidders may contact Office of Minority and Woman Owned Business Enterprise (OMWBE) to obtain information on certified firms for potential sub-contracting arrangements. Nothing in this section is intended to prevent or discourage Bidders from inviting others from participation from non MWBE firms as well as MWBE firms. Bidders who are MWBE or intend to use MWBE Subcontractors are encouraged to identify the participating firm in Part One.

SECTION TWO

STANDARD DEFINITIONS

This section contains definitions of terms commonly used in Solicitations conducted by the State of Washington, Office of State Procurement. Additional definitions may also be found in Chapter 43.19 RCW and WAC 236-48-003, and all terms contained herein will be read consistently with those definitions.

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| Acceptance | The materials, supplies, services, and/or equipment have passed appropriate Inspection. In the event that there is a formal Acceptance Testing period required in the Solicitation document then acceptance is formalized in writing. If there is no Acceptance Testing, acceptance may occur when the Products are delivered and inspected. |
| Acceptance Testing | The process for ascertaining that the materials, supplies, services, and/or equipment meets the standards set forth in the Solicitation, prior to Acceptance by the Purchaser. |
| Agency | Includes State of Washington institutions, the offices of the elective state officers, the Supreme Court, the court of appeals, the administrative and other departments of state government, and the offices of all appointive officers of the state. In addition, colleges, community colleges, and universities who choose to participate in State Contract(s) are included. "Agency" does not include the legislature. |
| All or Nothing | <p>The result of a competitive Solicitation that requires that a Contract be executed with a single Bidder for delivery of goods and/or services. In the event that suppliers are unable to deliver the entirety of the goods and/or services required, no Contract is executed. No partial fulfillment opportunities are available as a result of the Solicitation</p> <p>A method of award resulting from a competitive Solicitation by which the Purchasing Activity will award the resulting Contract to a single Bidder.</p> <p>Also, a designation the Bidder may use in its Response to indicate its offer is contingent upon full award and it will not accept a partial award.</p> |

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| Alternate | A substitute offer of materials, supplies, services and/or equipment that is not at least a functional Equal in features, performance and use and which materially deviates from one or more of the specifications in a competitive Solicitation. |
| Amendment | A change to a legal document. For the purposes of a Solicitation document, an amendment shall be a unilateral change issued by the Purchasing Activity, at its sole discretion. |
| Apparent Successful Bidder(s) | The Bidder identified by the Purchasing Activity, after evaluation of Responses, who is recommended for Award. |
| Authorized Representative | An individual designated by the Bidder or Contractor to act on its behalf and with the authority to legally bind the Bidder or Contractor concerning the terms and conditions set forth in Solicitation, Response and Contract documents. |
| Award | The official act of the Purchasing Activity of accepting the offer to enter into a Contract as contained in the Bidder(s) Response. |
| Bid | A sealed written offer to perform a Contract to provide materials, supplies, services, and/or equipment in reply to an Invitation For Bid (IFB). |
| Bidder | A Vendor who submits a Response in reply to a Solicitation. |
| Business Days | Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington. |
| Calendar Days | Consecutive days of the year including weekends and holidays, each of which commence at 12:00:01 a.m. and end at Midnight, Pacific Time. When "days" are not specified, Calendar Days shall prevail. |
| Contract | An agreement, or mutual assent, between two or more competent parties with the elements of the agreement being offer, acceptance, and consideration. |
| Contractor | Individual, company, corporation, firm, or combination thereof with whom the Purchasing Activity develops a Contract for the procurement of materials, supplies, services, and/or equipment. It shall also include any Subcontractor retained by Contractor as permitted under the terms of the Contract. |
| Contracts Specialist | The individual authorized by the Purchasing Activity who is responsible for conducting a specific Solicitation and/or administration of resulting Contract. |
| Equal | An offer of materials, supplies, services and/or equipment that meets or exceeds the quality, performance and use of the specifications identified in a Solicitation. |

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| Estimated Useful Life | The estimated time from the date of acquisition to the date of replacement or disposal, determined in any reasonable manner. |
| Inspection | An examination of delivered material, supplies, services, and/or equipment prior to Acceptance aimed at forming a judgment as to whether such delivered items are what was ordered, were properly delivered and ready for Acceptance. Inspection may include a high level visual examination or a more thorough detailed examination as is customary to the type of purchase, as set forth in the Solicitation document and/or as agreed between the parties. Inspection shall be acknowledged by an authorized signature of the Purchaser. |
| Intent to Award | Notice of the recommendation for Award for a specific Solicitation. |
| Invitation For Bid (IFB) | The form utilized to solicit Bids in the formal, sealed Bid procedure and any amendments thereto issued in writing by the Purchasing Activity. Specifications and qualifications are clearly defined. |
| Lead Time/After Receipt Of Order (ARO) | The period of time between when the Contractor receives the order and the Purchaser receives the materials, supplies, equipment, or services order. |
| Life Cycle Cost | The total cost of an item to the state over its Estimated Useful Life, including costs of selection, acquisition, operation, maintenance, and where applicable, disposal, as far as these costs can reasonably be determined, minus the salvage value at the end of its estimated useful life. |
| Office Of State Procurement | The Purchasing Activity within the Washington Department of General Administration, Services Division authorized under Chapter 43.19 RCW to develop and administer contracts for goods and services on behalf of state agencies, colleges and universities, non-profit organizations and local governments. |
| Order Document | A written communication, submitted by a Purchaser to the Contractor, which details the specific transactional elements required by the Purchaser within the scope of the Contract such as delivery date, size, color, capacity, etc. An Order Document may include, but is not limited to field orders, purchase orders, work order or other writings as may be designated by the parties hereto. No additional or alternate terms and conditions on such written communication shall apply unless authorized by the Contract and expressly agreed between the Purchaser and the Contractor. |
| Product | Materials, supplies, services, and/or equipment provided under the terms and conditions of this Contract. |
| Proposal | A sealed written offer to perform a Contract to supply materials, supplies, services, and/or equipment in reply to a Request For Proposal (RFP). |

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| Purchasing Activity | The Office of State Procurement or an agency authorized by the state statute to conduct acquisition of goods and services or delegated that authority by the Office of State Procurement. |
| Purchaser | The authorized user of the Contract, as identified in the Solicitation, who may or actually does make purchases of material, supplies, services, and/or equipment under the resulting Contract. |
| Recycled Material | Waste materials and by-products that have been recovered or diverted from solid waste and that can be utilized in place of a raw or virgin material in manufacturing a product and consists of materials derived from post-consumer waste, manufacturing waste, industrial scrap, agricultural wastes and other items, all of which can be used in the manufacture of new or recycled products. |
| Recycled Content Product | A product containing recycled material. |
| Request For Proposal (RFP) | The form utilized to solicit Proposals in the formal, sealed Solicitation procedure and any amendments thereto issued in writing by the Purchasing Activity. The specifications and qualification requirements are written in an outcome based form allowing for consideration of a broad range of different solutions to meet the procurement need. |
| Responsible | The ability, capacity, and skill to perform the Contract or provide the service required , including, but not limited to the character, integrity, reputation, judgment, experience, and efficiency of the Bidder; Further considerations may include, but are not limited to whether the Bidder can perform the contract within the time specified, the quality of performance of previous contracts or services, the previous and existing compliance by the Bidder with laws relating to the contract or services and such other information as may be secured having a bearing on the decision to award the contract: |
| Responsive | A Response that meets all material terms of the Solicitation document. |
| Response | A Response |
| Solicitation | The process of notifying prospective Bidders that the Purchasing Activity desires to receive competitive Bids or Proposals for furnishing specified materials, supplies, services, and/or equipment. Also includes reference to the actual documents used for that process, including: the Invitation For Bids (IFB) or Request For Proposals (RFP), along with all attachments and exhibits thereto. |
| State | The State of Washington acting by and through the Purchasing Activity. |

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| State Contract | <p>The written document memorializing the agreement between the successful Bidder and the Purchasing Activity for materials, supplies, services, and/or equipment and/or administered by the Office of State Procurement on behalf of the State of Washington.</p> <p>“State Contract” does not include the following:</p> <ul style="list-style-type: none"> • Colleges and universities that choose to purchase under <u>RCW 28B.10.029</u> • Purchases made in accordance with state purchasing policy under <u>Washington Purchasing Manual Part 6.11 Best Buy Program</u>; • Purchases made pursuant to authority granted or delegated under <u>RCW 43.19.190(2) or (3)</u> • Purchases authorized as an emergency purchase under <u>RCW 43.19.200(2)</u>; or • Purchases made pursuant to other statutes granting the Agency authority to independently conduct purchases of materials, supplies, services, or equipment. |
| Subcontractor | A person or business that is, or will be, providing or performing an essential aspect of the Contract under the direction and responsibility of the Contractor and with the agreement of the Purchasing Activity. |
| Vendor | A provider of materials, supplies, services, and/or equipment. |
| Washington’s Electronic Business Solution (WEBS) | The Vendor registration and Bidder notification system maintained by the Washington State Department of General Administration located at: www.ga.wa.gov/webs . |

SECTION THREE

STANDARD TERMS AND CONDITIONS

3.1 CONTRACT MODIFICATIONS

The Purchasing Activity reserves the right to modify this Contract (including but not limited to adding or deleting products, services, or delivery locations) by mutual agreement between the Purchasing Activity and the Contractor, so long as such modification is substantially within the scope of the original Contract. Such modifications will be evidenced by issuance of a written authorized amendment by the Purchasing Activity.

3.2 CONTRACT ADMINISTRATION

a. Contracts Specialist

The Purchasing Activity shall appoint a single point of contact that will be the Contracts Specialist for this Contract and will provide oversight of the activities conducted hereunder. The Contracts Specialist will be the principal contact for Contractor concerning business activities under this Contract. The Purchasing Activity will notify Contractor, in writing, when there is a new Contracts Specialist assigned to this Contract.

b. Administration of contract

Purchasing Activity may maintain Contract information and pricing and make it available on the Purchasing Activity's web site. The Contract prices are the maximum price Contractor can charge. The Contractor may also offer volume discounts to Purchasers.

A Contractor may propose a revision to its offerings to reflect changed Products appropriate to the scope of the Contract, and may propose such new Products with associated prices to the Contracts Specialist for approval. Purchasing Activity has the sole discretion in approval of addition of revised offerings and pricing. New or changed Products proposed by Contractor must meet the requirements established in this Solicitation document or subsequent revisions. If approved by Purchasing Activity, the new Products will be added to the Contract by written amendment.

For the term of the Contract, pricing for all Products will be no greater than the prices quoted in the Bidder's Response. If, however, during any term of the Contract lower prices and rates become effective for like quantities of Products under similar terms and conditions, through reduction in Manufacturer's or Contractor's list prices, promotional discounts, or other circumstances, Purchasers must be given immediate benefit of such lower prices and rates.

3.3 CONTRACTOR SUPERVISION AND COORDINATION

Contractor shall:

- a. Competently and efficiently, supervise and coordinate the implementation and completion of all Contract requirements specified herein;**

- b. Identify the Contractor's Representative, who will be the principal point of contact for the Purchasing Activity concerning Contractor's performance under this Contract.
- c. Immediately notify the Contracts Specialist in writing of any change of the designated Contractor's Representative assigned to this Contract; and
- d. Violation of any provision of this paragraph may be considered a material breach establishing grounds for Contract termination.
- e. Be bound by all written communications given to or received from the Contractor's Representative.

3.4 POST AWARD CONFERENCE

The contractor may be required to attend a post award conference scheduled by the Contracts Specialist to discuss contract performance requirements. The time and place of this conference will be scheduled following contract award.

3.5 CONTRACT MANAGEMENT

Upon award of this contract, the contractor shall:

- a. Review the impact of the award and take the necessary steps needed to ensure that contractual obligations will be fulfilled.
- b. Promote and market the use of this contract to all authorized contract Purchasers.
- c. Ensure that those who endeavor to utilize this contract are authorized Purchasers under this Contract.
- d. At no additional charge, assist Purchasers in the following manner to make the most cost effective, value based, purchases including, but not limited to:
 - Visiting the purchaser site and providing purchaser with materials/supplies/equipment recommendations.
 - Providing purchasers with a detailed list of contract items including current contract pricing and part numbers.

The contractor shall designate a customer service representative who will be responsible for addressing Purchaser issues including, but not limited to:

- a. Logging requests for service, ensuring repairs are completed in a timely manner, dispatching service technicians, and processing warranty claim documentation.
- b. Providing Purchasers with regular and timely status updates in the event of an order or repair fulfillment delay.

Acting as the lead and liaison between the manufacturer and Purchaser in resolving warranty claims for contract items purchased.

3.6 CHANGES

Alterations to any of the terms, conditions, or requirements of this Contract shall only be effective upon written issuance of a mutually agreed Contract Amendment by the Purchasing Activity. However, changes to point of contact information may be updated without the issuance of a mutually agreed Contract Amendment.

3.7 STATEWIDE VENDOR PAYMENT REGISTRATION

Contractors are required to be registered in the Statewide Vendor Payment system, prior to submitting a request for payment under this Contract. Purchasers who are Washington state agencies require registration to be completed prior to payment.

The Washington State Office of Financial Management (OFM) maintains a central contractor registration file for Washington State agencies to process contractor payments. To obtain registration materials go to <http://www.ofm.wa.gov/accounting/vendors.asp> the form has two parts; Part 1 is the information required to meet the above registration condition. Part 2 allows the state to pay invoices electronically with direct deposit and is the state's most efficient method of payment and you are encouraged to sign up for this form of payment.

3.8 SALES & SUBCONTRACTOR REPORTS

The Contractor shall provide a Sales and Subcontractor Report to the Office of State Procurement on a quarterly basis in the electronic format provided by the Office of State Procurement at: <https://fortress.wa.gov/ga/apps/CSR/Login.aspx>. A sample Sales & Subcontractor report can be found at:

<http://www.ga.wa.gov/PCA/SL/ExternalForms/contracting/usage.doc>

Reports must be submitted electronically within thirty (30) days after the end of the calendar quarter, i.e., no later than April 30th, July 31st, October 31st and January 31st.

3.9 OTHER REQUIRED REPORT(S)

All reports required under this contract must be delivered to the Purchasing Activity. Contractor may be required to provide a detailed annual contract sales history report that may include but is not limited to products description, part number, per unit quantities sold, contract price in an electronic format that can be read by MS Excel. Other required reports will be designed and approved by the parties by mutual agreement.

3.10 WASHINGTON'S ELECTRONIC BUSINESS SOLUTION (WEBS)

Contractor shall be registered in the Contractor registration system, Washington's Electronic Business Solution (WEBS) www.ga.wa.gov/webs, maintained by the Washington State Department of General Administration. Contractors already registered need not re-register. It is the sole responsibility of Contractor to properly register with WEBS and maintain an accurate Contractor profile in WEBS.

3.11 PRICING

No additional charges

Unless otherwise specified in the Solicitation, no additional charges by the Contractor will be allowed including, but not limited to: handling charges such as packing, wrapping, bags, containers, reels; or the processing fees associated with the use of credit cards.

Notwithstanding the foregoing, in the event that market conditions, laws, regulations or other unforeseen factors dictate, at the Purchasing Activity's sole discretion, additional charges may be allowed.

3.12 CONTRACTOR QUALIFICATIONS AND REQUIREMENTS

Established business

Prior to commencing performance, or prior to that time if required by the Purchasing Activity, law or regulation, Contractor must be an established business firm with all required licenses, fees, bonding, facilities, equipment and trained personnel necessary to meet all requirements and perform the work as specified in the Solicitation. Contractor shall maintain compliance with these requirements throughout the life of this contract.

The Purchasing Activity reserves the right to require receipt of proof of compliance with said requirements within ten (10) calendar days from the date of request, and to terminate this Contract as a material breach for noncompliance with any requirement of this paragraph.

3.13 CONTRACTOR CERTIFICATIONS (IF APPLICABLE)

Contractor must provide evidence as directed in the Purchasing Authority's Solicitation document, of its status as an authorized service and/product reseller. If this reseller status is discontinued, this Contract may be terminated as set forth elsewhere herein. Contractor shall maintain its reseller status for the initial term and any renewals of the resulting Contract.

a. Dealer authorization (if applicable)

Throughout the contract life, the Contractor shall maintain authorization from the manufacturer consistent with the requirements outlined in the original Solicitation.

b. Staff qualifications (if applicable)

If at Contract award or any time thereafter, any specifically named individual(s) identified in the Response to work on this engagement are not available, Purchasing Activity has the right to approve or reject any change in Contractor's personnel. Specific restrictions apply to contracting with current or former state employees pursuant to Chapter 42.52 RCW.

c. Use of subcontractors (if applicable)

In accordance with Solicitation requirements, Contractor agrees to take complete responsibility for all actions of such Subcontractors.

Prior to performance, Contractor shall identify all subcontractors who will perform services in fulfillment of contract requirements, including their name, the nature of services to be performed, address, telephone, facsimile, email, federal tax identification number (TIN), and anticipated dollar value of each subcontract:

The Purchasing Activity reserves the right to approve or reject any and all Subcontractors that identified by the contractor. Any Subcontractors not listed in the Bidder's Response, who are engaged by the Contractor, must be pre-approved, in writing, by the Purchasing Activity.

Specific restrictions apply to contracting with current or former state employees pursuant to Chapter 42.52 RCW.

d. Subcontracts and assignment

Contractor shall not Subcontract, assign, or otherwise transfer its obligations under this Contract without the prior written consent of the Purchasing Activity. Contractor shall provide a minimum of thirty (30) calendar days advance notification of intent to Subcontract, assign, or otherwise transfer its obligations under this Contract. Violation of this condition may be considered a material breach establishing grounds for Contract termination. The Contractor shall be responsible to ensure that all requirements of the Contract shall flow down to any and all Subcontractors. In no event shall the existence of a Subcontract operate to release or reduce the liability of Contractor to the state for any breach in the performance of the Contractor's duties.

e. Contractor authority and infringement

Contractor is authorized to sell under this Contract, only those materials, supplies, services and/or equipment as stated herein and allowed for by the provisions of this Contract. Contractor shall not represent to any Purchasers that they have the contract authority to sell any other materials, supplies, services and/or equipment. Further, Contractor may not intentionally infringe on other established State Contracts.

f. Hours of labor and prevailing wages (if applicable)

In compliance with Chapter 49.28 RCW, Contractor agrees that no worker, laborer, or mechanic in the employ of the Contractor or subcontractor shall be permitted or required to work more than eight (8) hours in any one calendar day, or forty (40) hours in any one calendar week, provided that in cases of extraordinary emergency such as danger to life or property, the hours of work may be extended but in such cases the rate of pay for time employed in excess of the above shall be at the prevailing overtime rate of pay. Except, contracts will not require the payment of overtime rates for the first two hours worked in excess of eight (8) hours per day when the employer has obtained the employee's agreement (as defined in WAC 296-127-022) to work a four-day, ten-hour work week.

The Department of Labor and Industries will publish prevailing wage rates on the first business day of February and August of each year. The wage rates will become effective thirty (30) days following publication. For all contracts, the prevailing wage rates which are in effect on the Bid opening date or on the effective date of any extension of the contract are the wage rates that must be paid for the duration of the contract.

The appropriate labor classifications and prevailing wage rates are identified herein. Questions should be directed to the Industrial Statistician, Department of Labor and Industries, Employment Standards Division, PO Box 44540, Tumwater, WA 98504-4540 (Telephone (360) 902-5334) or the Purchasing Activity. These wage rates are made part of this contract as though fully set forth herein.

The Contractor must submit to the Industrial Statistician of the Department of Labor and Industries a "Statement of Intent to Pay Prevailing Wages." A copy of the approved intent statements must be submitted to the Purchaser in order to receive the first progress payment on this Contract. Following final acceptance of the project, Contractor must submit to the Industrial Statistician an "Affidavit of Wages Paid." An approved affidavit must be submitted to the Purchaser before they are authorized to release the retained funds.

Each "Statement of Intent to Pay Prevailing Wages" or "Affidavit of Wages Paid" submitted for approval to the Industrial Statistician must be accompanied with the current filing fee.

A copy of the approved Statement of Intent to Pay Prevailing Wages shall be posted at the job site with the address and telephone number of the Industrial Statistician, where a complaint or inquiry concerning prevailing wages may be made. If a dispute arises as to what are the prevailing rates of wages for a specific trade, craft or occupation, and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the Director of the Department of Labor and Industries, and his/her decision shall be final, conclusive and binding on all parties involved in the dispute.

Vocationally handicapped workers, i.e., those individuals whose earning capacity is impaired by physical or mental deficiency or injury, may be employed at wages lower than the established prevailing wage. The Fair Labor Standards Act requires that wages based on individual productivity be paid to handicapped workers employed under certificates issued by the Secretary of Labor. These certificates are acceptable to the Department of Labor and Industries. Sheltered workshops for the handicapped may submit a request to the Department of Labor and Industries for a special certificate, which would, if approved, entitle them to pay their employees at wages, lower than the established prevailing wage.

Prevailing wage requirements do not apply to:

- a) Sole owners and their spouses.
- b) Any partner who owns at least 30% of a partnership.
- c) The president, vice-president, and treasurer of a corporation if each one owns at least 30% of the corporation.
- d) Workers regularly employed on monthly or per diem salary by state or any political subdivision created by its laws.

g. Materials and workmanship

The Contractor shall be required to furnish all materials, supplies, equipment and/or services necessary to perform Contractual requirements. Materials, supplies and workmanship used in the construction of equipment for this Contract shall conform to all applicable federal, state, and local codes, regulations and requirements for such equipment, specifications contained herein, and the normal uses for which intended. Materials, supplies and equipment shall be manufactured in accordance with the best commercial practices and standards for this type of materials, supplies, and equipment.

h. Mercury content and preference (if applicable)

Contractor shall provide mercury-free products when available. Should mercury-free products not exist, contractors shall provide products with the lowest mercury content available. Contractor shall disclose products that contain added mercury and provide an explanation that includes the amount or concentration of mercury, and justification as to why added mercury is necessary for the function or performance of the product.

The Contractor is to provide any existing technical data pertaining to the addition of mercury or a mercury compound intentionally added to the product. If the product does not contain mercury or a mercury compound, Contractor shall submit a written statement to that effect. Contractor shall maintain compliance with these requirements throughout the life of this contract.

The Purchasing Activity reserves the right to require receipt of proof of compliance with said requirements within ten (10) calendar days from the date of request, and to terminate this Contract as a material breach for noncompliance with any requirement of this paragraph.

i. Disaster recovery/business continuity (if applicable)

Vendor responsibilities for putting a recovery plan into effect.
Vendor team responsible for disaster recovery/business continuity
Plan for off-site storage of critical data

Vendor's alternative processing strategies and facilities such as:

- a) Command centers.
- b) Alternate business operations.
- c) Alternate data processing.
- d) Alternate data communications.

- e) Alternate voice communications.
- f) Procedures for obtaining resources during both the recovery phase and the restoration phase.

j. DELIVERY REQUIREMENTS

1. Order fulfillment requirements

Authorized Purchasers may place orders against this Contract either in person, electronically, facsimile or by phone. Once an order is issued, the following shall apply:

- a) For purposes of price verification and auditing, upon receipt of a purchase order the contractor shall send the Purchaser an order confirmation notification that identifies the manufacturer's surcharges [IF APPLICABLE] as well as the manufacturer's most current list prices for the equipment ordered.
- b) Upon the request of the Purchaser, the Contractor shall supply Purchaser with manufacturer's list pricing or other documentation needed to verify Contract pricing compliance.
- c) Product damaged prior to acceptance will either be replaced or repaired in an expedited manner at contractor's expense.
- d) Alternatively, at the Purchaser's option, any possible damage to the product can be noted on the receiving report and the cost deducted from final payment.
- e) The Contractor is responsible to verify delivery conditions/requirements with the Purchaser prior to the delivery.

2. Standard of quality/consistency over term of contract

If, in the sole judgment of the Purchasing Activity or the Purchaser, any item is determined not to be an equal, the Purchaser may take any or all of the following actions:

- a) the product may be returned at Contractor's expense;
- b) the contract may be terminated without any liability to the State of Washington or Purchaser

3. Shipping and risk of loss

Contractor shall ship all Products purchased pursuant to this Contract, freight prepaid, FOB Purchaser's destination [or other applicable shipping requirements]. The method of shipment shall be consistent with the nature of the Products and hazards of transportation. Regardless of FOB point, Contractor agrees to bear all risks of loss, damage, or destruction of the Products ordered hereunder that occurs prior to Delivery Date or Acceptance, whichever is applicable, except loss or damage attributable to Purchaser's fault or negligence; and such loss, damage, or destruction shall not release Contractor from any obligation hereunder. After Delivery Date or Acceptance, whichever is applicable, the risk of loss or damage shall be borne by Purchaser, except loss or damage attributable to Contractor's fault or negligence.

4. Delivery

Delivery must be made during Purchaser's normal work hours and within time frames either required in the Solicitation, or if requested in the Solicitation, proposed by Contractor in its Response and subsequently accepted by the Purchasing Activity or as otherwise mutually agreed in writing between the Purchaser and Contractor at the time of order placement.

Failure to comply with agreed upon delivery times may subject Contractor to liquidated or other damages. The Purchaser may refuse shipment when delivered after normal working hours. The Contractor shall verify specific working hours of individual Purchasers and instruct carrier(s) to deliver accordingly. The acceptance by the Purchaser of late performance, with or without objection or reservation by the Purchaser, shall not waive the right to claim damage for such breach, nor preclude the Purchasing Activity or Purchaser from pursuing any other remedy provided herein, including termination, nor shall such acceptance of late performance constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Contractor.

All deliveries are to be made to the applicable delivery location as indicated in the Order Document. When applicable, the Contractor shall take all necessary actions to safeguard items during inclement weather. In no case shall the Contractor initiate performance prior to receipt of written or verbal authorization from authorized Purchasers. Expenses incurred otherwise shall be borne solely by the Contractor.

5. Site security

While on Purchaser's premises, Contractor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations.

6. Inspection and rejection

The Purchaser's inspection of all materials, supplies and equipment upon delivery is for the purpose of forming a judgment as to whether such delivered items are what was ordered, were properly delivered and ready for Acceptance. Such inspection shall not be construed as final acceptance, or as acceptance of the materials, supplies or equipment, if the materials, supplies or equipment does not conform to contractual requirements. If there are any apparent defects in the materials, supplies, or equipment at the time of delivery, the Purchaser will promptly notify the Contractor. Without limiting any other rights, the Purchaser may require the Contractor to: (1) repair or replace, at Contractor's expense, any or all of the damaged goods; (2) refund the price of any or all of the damaged goods; or (3) accept the return of any or all of the damaged goods.

AND, IF APPLICABLE,

The state reserves the right to independently test, at supplier's expense, any product of questionable freshness, quality, or origin delivered against this contract.

7. Installation (if applicable)

Installation shall be performed in a professional manner in accordance with industry standard best practices. The premises shall be left in a clean condition. The state reserves the right to require Contractor to repair all damages or provides full compensation as determined by the state.

8. Title to product (if applicable)

Upon Acceptance, or upon delivery, if there is no Acceptance requirement, Contractor shall convey to Purchaser good title to the Product free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.

Transfer of title to the Product shall include an irrevocable, fully paid-up, perpetual license to use the internal code (embedded software) in the Product. If Purchaser subsequently transfers title to the Product to another entity, Purchaser shall have the right to transfer the license to use the internal code with the transfer of Product title. A subsequent transfer of this software license shall be at no additional cost or charge to either Purchaser or Purchaser's transferee.

9. Treatment of assets

- a) Title to all property furnished by the Purchasing Activity and/or Purchaser shall remain in the Purchasing Activity and/or Purchaser, as appropriate. Title to all property furnished by the Contractor, the cost for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Purchaser upon delivery of such property by the Contractor and Acceptance by the Purchaser. Title to other property, the cost of which is reimbursable to the Contractor under this Contract, shall pass to and vest in the Purchaser upon (i) issuance for use of such property in the performance of this Contract, or (ii) commencement of use of such property in the performance of this Contract, or (iii) reimbursement of the cost thereof by the Purchaser in whole or in part, whichever first occurs.
- b) Any property of the Purchasing Activity and/or Purchaser furnished to the Contractor shall, unless otherwise provided herein or approved by the Purchasing Activity and/or Purchaser, be used only for the performance of this Contract.
- c) The Contractor shall be responsible for damages as a result of any loss or damage to property of the Purchasing Activity and/or Purchaser which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain, administer and protect that property in a reasonable manner and to the extent practicable in all instances.

- d) If any Purchasing Activity and/or Purchaser property is lost, destroyed, or damaged, the Contractor shall immediately notify the Purchasing Activity and/or Purchaser and shall take all reasonable steps to protect the property from further damage.
- e) The Contractor shall surrender to the Purchasing Activity and/or Purchaser all property of the Purchasing Activity and/or Purchaser prior to settlement upon completion, termination, or cancellation of this contract.
- f) All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

10. Labeling

Individual shipping cartons shall be labeled with the name of the ordering agency, order number, contract number, contractor, state stock numbers, and where applicable, date of manufacture, batch number, storage requirements, conditions, and recommended shelf life. Contractors are encouraged to offer product packaging with recycled content.

11. Hazardous materials

"Right to know" legislation requires the Department of Labor and Industries to establish a program to make employers and employees more aware of hazardous substances in their work environment. Implementing Chapter 296-839 WAC requires that all manufacturers and distributors of hazardous substances, including any of the items listed in this Contract, must include a complete material safety data sheet (MSDS) for each hazardous material. Additionally, each container of hazardous materials must be appropriately labeled with:

- a) The identity of the hazardous material,
- b) Appropriate hazard warnings, and
- c) Name and address of the chemical manufacturer, importer, or other responsible party

Labor and Industries may levy appropriate fines for noncompliance and agencies may withhold payment-pending receipt of a legible copy of MSDS. It should be noted that OSHA Form 20 is not acceptable in lieu of this requirement unless it is modified to include appropriate information relative to "carcinogenic ingredients" and "routes of entry" of the product(s) in question.

k. PAYMENT

1. Advance payment prohibited

No advance payment shall be made for the Products and Services furnished by Contractor pursuant to this Contract.

Notwithstanding the above, maintenance payments, if any, may be made on a quarterly basis at the beginning of each quarter.

2. Identification

All invoices, packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written materials associated with this Contract shall be identified by the Contract number and the applicable Purchaser's order number. Packing lists shall be enclosed with each shipment and clearly identify all contents and any backorders.

3. Payment, invoicing and discounts

Payment is the sole responsibility of, and will be made by, the Purchaser.

Contractor shall provide a properly completed invoice to Purchaser. All invoices are to be delivered to the address indicated in the purchase order.

Each invoice shall be identified by the associated Contract Number; the Contractor's Statewide Vendor registration number assigned by Washington State Office of Financial Management (OFM), the applicable Purchaser's order number, and shall be in U.S. dollars. Invoices shall be prominently annotated by the Contractor with all applicable prompt payment and/or volume discount(s) and shipping charges unless otherwise specified in the Solicitation. Hard copy credit memos are to be issued when the state has been overcharged.

Invoices for payment will accurately reflect all discounts due the Purchaser.

Invoices will not be processed for payment, nor will the period of prompt payment discount commence, until receipt of a properly completed invoice denominated in U.S. dollars and until all invoiced items are received and satisfactory performance of Contractor has been accepted by the Purchaser. If an adjustment in payment is necessary due to damage or dispute, any prompt payment discount period shall commence on the date final approval for payment is authorized.

Under Chapter 39.76 RCW, if Purchaser fails to make timely payment(s), Contractor may invoice for 1% per month on the amount overdue or a minimum of \$1.00. Payment will not be considered late if a check or warrant is mailed within the time specified. If no terms are specified, net 30 days will automatically apply. Payment(s) made in accordance with Contract terms shall fully compensate the Contractor for all risk, loss, damages or expense of whatever nature and acceptance of payment shall constitute a waiver of all claims submitted by Contractor. If the Contractor fails to make timely payment(s) or issuance of credit memos, the Purchaser may impose a 1% per month on the amount overdue.

Payment for materials, supplies and/or equipment received and for services rendered shall be made by Purchaser and be redeemable in U.S. dollars. Unless otherwise specified, the Purchaser's sole responsibility shall be to issue this payment. Any bank or transaction fees or similar costs associated with currency exchange procedures or the use of purchasing/credit cards shall be fully assumed by the Contractor.

I. TAXES, FEES AND LICENSES

1. Taxes:

Where required by statute or regulation, the Contractor shall pay for and maintain in current status all taxes that are necessary for Contract performance. Unless otherwise indicated, the Purchaser agrees to pay State of Washington taxes on all applicable materials, supplies, services and/or equipment purchased. No charge by the Contractor shall be made for federal excise taxes and the Purchaser agrees to furnish Contractor with an exemption certificate where appropriate.

2. Collection of Retail Sales and Use Taxes:

In general, Contractors engaged in retail sales activities within the State of Washington are required to collect and remit sales tax to Department of Revenue (DOR). In general, out-of-state Contractors must collect and remit "use tax" to Department of Revenue if the activity carried on by the seller in the State of Washington is significantly associated with Contractor's ability to establish or maintain a market for its products in Washington State. Examples of such activity include where the Contractor either directly or by an agent or other representative:

- a) Maintains an in-state office, distribution house, sales house, warehouse, service enterprise, or any other in-state place of business;
- b) Maintains an in-state inventory or stock of goods for sale;
- c) Regularly solicits orders from Purchasers located within the State of Washington via sales representatives entering the State of Washington;
- d) Sends other staff into the State of Washington (e.g. product safety engineers, etc.) to interact with Purchasers in an attempt to establish or maintain market(s);
or
- e) Other factors identified in WAC 458-20.

3. Department of Revenue Registration for Out-of-State Contractors:

Out-of-state Contractors meeting any of the above criteria must register and establish an account with the Department of Revenue. Refer to WAC 458-20-193, and call the Department of Revenue at 800-647-7706 for additional information. When out-of-state Contractors are not required to collect and remit "use tax," Purchasers located in the State of Washington are responsible for paying this tax, if applicable, directly to the Department of Revenue.

4. Fees/Licenses:

After award of Contract, and prior to commencing performance under the Contract, the Contractor shall pay for and maintain in a current status any licenses, fees, assessments, permit charges, etc., which are necessary for Contract performance. It is the Contractor's sole responsibility to maintain licenses and to monitor and determine any changes or the enactment of any subsequent regulations for said fees, assessments, or charges and to immediately comply with said changes or regulations during the entire term of this Contract.

5. Customs/Brokerage Fees:

Contractor shall take all necessary actions, including, but not limited to, paying all customs, duties, brokerage, and/or import fees, to ensure that materials, supplies, and/or equipment purchased under the Contract are expedited through customs. Failure to do so may subject Contractor to liquidated damages as identified herein and/or to other remedies available by law or Contract. Neither the Purchasing Activity nor the Purchaser will incur additional costs related to Contractor's payment of such fees.

6. Taxes on Invoice:

Contractor shall calculate and enter the appropriate Washington State and local sales tax on all invoices. Tax is to be computed on new items after deduction of any trade-in in accordance with WAC 458-20-247.

7. Ferry Vessel Exemption [IF APPLICABLE]:

Orders for tangible personal property which become a component part of ferry vessels of the State of Washington or local government units in the State of Washington are exempt from use tax under RCW 82.12.0279.

8. Minority and Women's Business Enterprise (MWBE) participation

With each invoice for payment and within thirty (30) days of Purchasers request, Contractor shall provide Purchaser an *Affidavit of Amounts Paid*. The *Affidavit of Amounts Paid* shall either state that Contractor still maintains its MWBE certification, or state that its Subcontractor(s) still maintain(s) its/their MWBE certification(s) and specify the amounts paid to each certified MWBE Subcontractor under this Contract. Contractor shall maintain records supporting the *Affidavit of Amounts Paid* in accordance with this Contract's **Retention of Records** section.

9. Overpayments to contractor

Contractor shall refund to Purchaser the full amount of any erroneous payment or overpayment under this Contract within thirty (30) days' written notice. If Contractor fails to make timely refund, Purchaser may charge Contractor one percent (1%) per month on the amount due, until paid in full.

10. Contractor expenses (if applicable)

Purchaser shall reimburse Contractor for travel and other expenses as identified in this Contract, or as authorized in writing, in advance by Purchaser in accordance with the then-current rules and regulations set forth in the *Washington State Administrative and Accounting Manual* (<http://www.ofm.wa.gov/policy/poltoc.htm>). Contractor shall provide a detailed itemization of expenses, including description, amounts and dates, and receipts for amounts of fifty dollars (\$50) or more when requesting reimbursement. The amount reimbursed to Contractor is included in calculating the total amount spent under this Contract.

11. Audits

The state reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing may be considered complete cause for contract termination.

m. QUALITY ASSURANCE

1. Right of inspection

Contractor shall provide right of access to its facilities to Purchasing Activity, or any of Purchasing Activity's officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

2. Contractor commitments, warranties and representations

Any written commitment by Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in its Response or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Response or used to effect the sale to Purchaser.

3. Warranties

Contractor warrants that all materials, supplies, services and/or equipment provided under this Contract shall be fit for the purpose(s) for which intended, for merchantability, and shall conform to the requirements and specifications herein. Acceptance of any materials, supplies, service and/or equipment, and inspection incidental thereto, by the Purchaser shall not alter or affect the obligations of the Contractor or the rights of the Purchaser.

4. Date warranty

Contractor warrants that all Products provided under this Contract: (i) do not have a life expectancy limited by date or time format; (ii) will correctly record, store, process, and present calendar dates; (iii) will lose no functionality, data integrity, or performance with respect to any date; and (iv) will be interoperable with other software used by Purchaser that may deliver date records from the Products, or interact with date records of the Products ("Date Warranty"). In the event a Date Warranty problem is reported to Contractor by Purchaser and such problem remains unresolved after three (3) calendar days, at Purchaser's discretion, Contractor shall send, at Contractor's sole expense, at least one (1) qualified and knowledgeable

representative to Purchaser's premises. This representative will continue to address and work to remedy the failure, malfunction, defect, or nonconformity on Purchaser's premises. This Date Warranty shall last perpetually. In the event of a breach of any of these representations and warranties, Contractor shall indemnify and hold harmless Purchaser from and against any and all harm, injury, damages, costs, and expenses incurred by Purchaser arising out of said breach.

5. Cost of remedy

Cost of Remedying Defects: All defects, indirect and consequential costs of correcting, removing or replacing any or all of the defective materials or equipment will be charged against the Contractor.

n. INFORMATION AND COMMUNICATIONS

1. Advertising

Contractor shall not publish or use any information concerning this Contract in any format or media for advertising or publicity without prior written consent from the Purchasing Activity.

2. Retention of records

The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and the provision of materials, supplies, services and/or equipment described herein, including, but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract.

Contractor shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review, or audit by the Purchasing Activity, personnel duly authorized by the Purchasing Activity, the Washington State Auditor's Office, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until final resolution of all litigation, claims, or audit findings involving the records.

3. Proprietary or confidential information

To the extent consistent with Chapter 42.56 RCW, the Public Disclosure Act, the Purchasing Activity shall maintain the confidentiality of Contractor's information marked confidential or proprietary. If a request is made to view Contractor's proprietary information, the Purchasing Activity will notify Contractor of the request and of the date that the records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, the Purchasing Activity will release the requested information on the date specified.

The State's sole responsibility shall be limited to maintaining the above data in a secure area and to notify Contractor of any request(s) for disclosure for so long as

the Purchasing Activity retains Contractor's information in the Purchasing Activity records. Failure to so label such materials or failure to timely respond after notice of request for public disclosure has been given shall be deemed a waiver by Contractor of any claim that such materials are exempt from disclosure.

4. Non-endorsement and publicity

Neither the Purchasing Activity nor the Purchasers are endorsing the Contractor's Products or Services, nor suggesting that they are the best or only solution to their needs. Contractor agrees to make no reference to the Purchasing Activity, any Purchaser or the state of Washington in any literature, promotional material, brochures, sales presentation or the like, regardless of method of distribution, without the prior review and express written consent of the Purchasing Activity.

5. Ownership/rights in data

Purchaser and Contractor agree that all data and work products (collectively called "Work Product") produced pursuant to this Contract shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. §101 *et seq*, and shall be owned by Purchaser. Contractor is hereby commissioned to create the Work Product. Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.

If for any reason the Work Product would not be considered a work made for hire under applicable law, Contractor assigns and transfers to Purchaser the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.

Contractor shall execute all documents and perform such other proper acts as Purchaser may deem necessary to secure for Purchaser the rights pursuant to this section.

Contractor shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership in any Work Product, without the prior written permission of Purchaser. Contractor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.

Material that is delivered under this Contract, but that does not originate there from ("Preexisting Material"), shall be transferred to Purchaser with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so except that such license shall be limited to the extent to which Contractor has a right to grant such a license. Contractor shall exert all reasonable effort to advise Purchaser at the time of delivery of Preexisting Material furnished under this Contract, of all known or potential infringements of publicity, privacy or of

intellectual property contained therein and of any portion of such document which was not produced in the performance of this Contract. Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. Purchaser shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Contractor with respect to any Preexisting Material delivered under this Contract. Purchaser shall have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Contractor.

6. Protection of confidential and personal information

Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either Chapter 42.17 RCW or other state or federal statutes ("Confidential Information"). Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, agency security data, etc or information identifiable to an individual that relates to any of these types of information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser's express written consent or as provided by law. Contractor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by Purchaser. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information. "Personal information" including, but not limited to, "Protected Health Information" (PHI) under Health Insurance Portability And Accountability Act (HIPAA), individuals' names, addresses, phone numbers, birth dates, and social security numbers collected, used, or acquired in connection with this Contract shall be protected against unauthorized use, disclosure, modification or loss.

HIPAA establishes national minimum standards for the use and disclosure of certain health information. The Contractor must comply with all HIPAA requirements and rules when determined applicable by the Purchaser. If Purchaser determines that (1) Purchaser is a "covered entity" under HIPAA, and that (2) Contractor will perform "business associate" services and activities covered under HIPAA, then at Purchaser's request, Contractor agrees to execute Purchaser's business associate Contract in compliance with HIPAA.

Contractor shall ensure its directors, officers, employees, Subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein. Contractor and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal

information without the express written consent of the Agency or as otherwise required by law.

Any breach of this provision may result in termination of the Contract and demand for return of all personal information. The Contractor agrees to indemnify and hold harmless the State of Washington and the Purchaser for any damages related to both: (1) the Contractor's unauthorized use of personal information and (2) the unauthorized use of personal information by unauthorized persons as a result of Contractor's failure to sufficiently protect against unauthorized use, disclosure, modification, or loss.

Contractor shall maintain a log documenting the following: the Confidential Information received in the performance of this Contract; the purpose(s) for which the Confidential Information was received; who received, maintained and used the Confidential Information; and the final disposition of the Confidential Information. Contractor's records shall be subject to inspection, review or audit in accordance with Retention of Records.

Purchaser reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

Violation of this section by Contractor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

Immediately upon expiration or termination of this Contract, Contractor shall, at Purchaser's option: (i) certify to Purchaser that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser requires of Contractor to protect Purchaser's Confidential Information.

o. GENERAL PROVISIONS

1. Governing law/venue

This Contract shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

2. Severability

Severability: If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract that can be given effect without the invalid provision, and to this end the provisions of this Contract are declared to be severable.

3. Survivorship

All transactions executed for Products and Services provided pursuant to the authority of this Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled Overpayments to Contractor; Ownership/Rights in Data; Contractor's Commitments, Warranties and Representations; Protection of Purchaser's Confidential Information; Section Headings, Incorporated Documents and Order of Precedence; Publicity; Retention of Records; Patent and Copyright Indemnification; Contractor's Proprietary Information; Disputes; and Limitation of Liability shall survive the termination of this Contract.

4. Independent status of contractor

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under Chapter 41.06 RCW, or Title 51 RCW.

5. Gifts and gratuities

Contractor shall comply with all state laws regarding gifts and gratuities, including but not limited to: RCW 43.19.1937, RCW 43.19.1939, RCW 42.52.150, RCW 42.52.160, and RCW 42.52.170 under which it is unlawful for any person to directly or indirectly offer, give or accept gifts, gratuities, loans, trips, favors, special discounts, services, or anything of economic value in conjunction with state business or contract activities.

Under RCW 43.19.1937 and the Ethics in Public Service Law, Chapter 42.52 RCW state officers and employees are prohibited from receiving, accepting, taking or seeking gifts (except as permitted by RCW 42.52.150) if the officer or employee participates in contractual matters relating to the purchase of goods or services.

6. Immunity and hold harmless

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless State, agencies of State and all officials, agents and employees of State, from and against all claims for injuries, death or damage to property arising out of or resulting from the performance of the contract. Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractors' agents, employees, representatives, or any subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the contract. Contractor shall be required to indemnify, defend, and hold harmless the State only to the extent claim is caused in whole or in part by negligent acts or omissions of Contractor.

Contractor waives its immunity under Title 51 to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

7. Personal liability

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

p. INSURANCE

1. General Requirements:

Contractor shall, at their own expense, obtain and keep in force insurance as follows until completion of the Contract. Upon request, Contractor shall furnish evidence in the form of a certificate of insurance satisfactory to the State of Washington that insurance, in the following kinds and minimum amounts, has been secured. Failure to provide proof of insurance, as required, will result in Contract cancellation.

Contractor shall include all Subcontractors as insureds under all required insurance policies, or shall furnish separate Certificates of Insurance and endorsements for each Subcontractor. Subcontractor(s) must comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

All insurance provided in compliance with this Contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the state.

2. Specific Requirements:

Employers Liability (Stop Gap): The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable and will maintain Employers Liability insurance with a limit of no less than \$1,000,000.00. The State of Washington will not be held responsible in any way for claims filed by the Contractor or their employees for services performed under the terms of this Contract.

Commercial General Liability Insurance: The Contractor shall at all times during the term of this Contract, carry and maintain commercial general liability insurance and if necessary, commercial umbrella insurance for bodily injury and property damage arising out of services provided under this Contract. This insurance shall

cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns, or servants.

The insurance shall also cover bodily injury, including disease, illness and death, and property damage arising out of the Contractor's premises/operations, independent Contractors, products/completed operations, personal injury and advertising injury, and contractual liability (including the tort liability of another assumed in a business Contract), and contain separation of insured's (cross liability) conditions.

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

The limits of liability insurance shall not be less than as follows:

| | |
|---|-------------|
| General Aggregate Limits (other than products-completed operations) | \$2,000,000 |
| Products-Completed Operations Aggregate | \$2,000,000 |
| Personal and Advertising Injury Aggregate | \$1,000,000 |
| Each Occurrence (applies to all of the above) | \$1,000,000 |
| Fire Damage Limit (per occurrence) | \$50,000 |
| Medical Expense Limit (any one person) | \$5,000 |

3. Business Auto Policy (BAP):

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

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

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

4. Additional Insurance Provisions:

All above insurance policies shall include, but not be limited to, the following provisions:

Additional Insured:

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

Notice of Policy(ies) Cancellation/Non-renewal:

For insurers subject to Chapter 48.18 RCW (Admitted and regulated by the Washington State Insurance Commissioner) a written notice shall be given to the director of purchasing or designee forty-five (45) calendar days prior to cancellation or any material change to the policy(ies) as it relates to this Contract. Written notice shall include the affected Contract reference number.

5. Surplus Lines:

For insurers subject to Chapter 48.15 RCW (Surplus Lines) a written notice shall be given to the director of purchasing or designee twenty (20) calendar days prior to cancellation or any material change to the policy(ies) as it relates to this Contract. Written notice shall include the affected Contract reference number.

Cancellation for Non-payment to Premium:

If cancellation on any policy is due to non-payment of premium, a written notice shall be given the director of purchasing or designee ten (10) calendar days prior to cancellation. Written notice shall include the affected Contract reference number.

Identification:

Policy(ies) and Certificates of Insurance shall include the affected Contract reference number.

6. Insurance Carrier Rating:

The insurance required above shall be issued by an insurance company authorized to do business within the State of Washington. Insurance is to be placed with a carrier that has a rating of A- Class VII or better in the most recently published edition of Best's Reports. Any exception must be reviewed and approved by the Risk Manager for the State of Washington, by submitting a copy of the Contract and evidence of insurance before Contract commencement. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and Chapter 284-15 WAC .

7. Excess Coverage:

The limits of all insurance required to be provided by the Contractor shall be no less than the minimum amounts specified. However, coverage in the amounts of these minimum limits shall not be construed to relieve the Contractor from liability in excess of such limits.

8. Limit Adjustments:

The state reserves the right to increase or decrease limits as appropriate.

q. INDUSTRIAL INSURANCE COVERAGE

The Contractor shall comply with the provisions of Title 51 RCW Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, the Purchasing Activity may terminate this Contract. This provision does not waive any of the

Washington State Department of Labor and Industries (L&I) rights to collect from the Contractor.

r. NONDISCRIMINATION

During the performance of this Contract, the Contractor shall comply with all applicable federal and state nondiscrimination laws, regulations and policies, including, but not limited to, Title VII of the Civil Rights Act, 42 U.S.C. section 12101 et. seq.; the Americans with Disabilities Act (ADA); and, Chapter 49.60 RCW, Discrimination – Human Rights Commission.

s. OSHA AND WISHA REQUIREMENTS

Contractor agrees to comply with conditions of the Federal Occupational Safety and Health Administration (OSHA) and, if manufactured or stored in the State of Washington, the Washington Industrial Safety and Health Act (WISHA) and the standards and regulations issued there under, and certifies that all items furnished and purchased will conform to and comply with said laws, standards and regulations. Contractor further agrees to indemnify and hold harmless Purchasing Activity and Purchaser from all damages assessed against Purchaser as a result of Contractor's failure to comply with those laws, standards and regulations, and for the failure of the items furnished under the Contract to so comply.

t. ANTITRUST

The state maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the Purchaser. Therefore, the Contractor hereby assigns to the State of Washington any and all of the Contractor's claims for such price fixing or overcharges which arise under federal or state antitrust laws, relating to the materials, supplies, services and/or equipment purchased under this Contract.

u. WAIVER

Failure or delay of the Purchasing Activity or Purchaser to insist upon the strict performance of any term or condition of the Contract or to exercise any right or remedy provided in the Contract or by law; or the Purchasing Activity's or Purchaser's acceptance of or payment for materials, supplies, services and/or equipment, shall not release the Contractor from any responsibilities or obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of the Purchasing Activity or Purchaser to insist upon the strict performance of the entire agreement by the Contractor. In the event of any claim for breach of Contract against the Contractor, no provision of this Contract shall be construed, expressly or by implication, as a waiver by the Purchasing Activity or Purchaser of any existing or future right and/or remedy available by law.

v. DISPUTES AND REMEDIES

1. Problem resolution and disputes

Problems arising out of the performance of this Contract shall be resolved in a timely manner at the lowest possible level with authority to resolve such problem. If a problem persists and cannot be resolved, it may be escalated within each organization.

In the event a bona fide dispute concerning a question of fact arises between the Purchasing Activity or the Purchaser and Contractor and it cannot be resolved between the parties through the normal problem escalation processes, either party may initiate the dispute resolution procedure provided herein.. The dispute shall be handled by a Dispute Resolution Panel in the following manner. Each party to this Contract shall appoint one member to the Panel. These two appointed members shall jointly appoint an additional member. The Dispute Resolution Panel shall review the facts, Contract terms and applicable statutes and rules and make a determination of the dispute as quickly as reasonably possible. The determination of the Dispute Resolution Panel shall be final and binding on the parties hereto. Purchasing Activity and/or Purchaser and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.

In the event a bona fide dispute concerning a question of fact arises between Purchasing Activity or the Purchaser and Contractor and it cannot be resolved between the parties through the normal escalation processes, either party may initiate the dispute resolution procedure provided herein.

The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days. The initiating party shall have three (3) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.

If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute Resolution Panel within the next three (3) Business Days.

The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.

Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

Both parties agree to be bound by the determination of the Dispute Resolution Panel.

Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible.

Purchasing Activity, the Purchaser and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute. If the subject of the dispute is the amount due and payable by Purchaser for materials, supplies, services and/or equipment being provided by Contractor, Contractor shall continue providing materials, supplies, services and/or equipment pending resolution of the dispute provided Purchaser pays Contractor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

2. Administrative suspension

When it in the best interest of the state, the Purchasing Activity may at any time, and without cause, suspend the Contract or any portion thereof for a period of not more than thirty (30) calendar days per event by written notice from the Purchasing Activity to the Contractor's Representative. Contractor shall resume performance on the next business day following the 30th day of suspension unless an earlier resumption date is specified in the notice of suspension. If no resumption date was specified in the notice of suspension, the Contractor can be demanded and required to resume performance within the 30 day suspension period by the Purchasing Activity providing the Contractor's Representative with written notice of such demand.

3. Force majeure

The term "force majeure" means an occurrence that causes a delay that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences.

Exceptions: Except for payment of sums due, neither party shall be liable to the other or deemed in breach under this Contract if, and to the extent that, such party's performance of this Contract is prevented by reason of force majeure.

Notification: If either party is delayed by force majeure, said party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall likewise be provided. So far as consistent with the Rights Reserved below, the time of completion shall be extended by Contract amendment for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Contract.

Rights Reserved: The Purchasing Activity reserves the right to authorize an amendment to this Contract, terminate the Contract, and/or purchase materials, supplies, equipment and/or services from the best available source during the time of force majeure, and Contractor shall have no recourse against the State.

4. Alternative dispute resolution fees and costs

In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

5. Non-exclusive remedies

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

w. LIQUIDATED DAMAGES

1. Liquidated Damages – General

The Purchasing Activity and or the Purchasers and the Contractor agree that the liquidated damages provisions in the Contract are a reasonable forecast of the actual damages that would be suffered by the Purchaser in the event of contractor's nonperformance, that such liquidated damages are not a penalty but represent the reasonable compensation due purchaser in the event of a breach, and that such liquidated damages will be assessed as set forth herein.

Any delay by Contractor in meeting the Delivery Date, Installation Date, maintenance or repair date, or other applicable date set forth in this Contract will interfere with the proper implementation of Purchaser's programs and will result in loss and damage to Purchaser.

As it would be impracticable to fix the actual damage sustained in the event of any such failure(s) to perform, Purchaser and Contractor agree that in the event of any such failure(s) to perform, the amount of damage which will be sustained will be the amount set forth in the following subsections and the parties agree that Contractor shall pay such amounts as liquidated damages and not as a penalty.

Liquidated damages provided under the terms of this Contract are subject to the same limitations as provided in the section titled Limitation of Liability.

2. Limitation of liability

The parties agree that neither Contractor, Purchasing Activity nor Purchaser shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding liquidated damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled Termination for Default and Retention of Records are not consequential, incidental, indirect, or special damages as that term is used in this section.

Neither the Contractor, the Purchasing Activity nor Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of the Contractor, the Purchasing Activity or Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than the Purchasing Activity or the Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of the Contractor, the Purchasing Activity or the Purchaser, or their respective Subcontractors.

If delays are caused by a Subcontractor without its fault or negligence, Contractor shall not be liable for damages for such delays, unless the Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Contractor to meet its required performance schedule.

Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

3. Federal funding (if applicable)

In the event that a federally funded acquisition results from this procurement, the contractor may be required to provide additional information (free of charge) at the request of the Purchasing Activity or purchaser: Further, the contractor may be subject to those federal requirements specific to the commodity.

4. Federal restrictions on lobbying (if applicable)

Contractor certifies that under the requirements of Lobbying Disclosure Act, 2 U.S.C., Section 1601 et seq., no Federal appropriated funds have been paid or will be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

5. Federal debarment and suspension (if applicable)

The contractor certifies, that neither it nor its "principals" (as defined in 49 CFR. 29.105 (p)) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

x. CONTRACT TERMINATION

1. Material breach

A Contractor may be Terminated for Cause by the Purchasing Activity, at the sole discretion of the Purchasing Activity, for failing to perform a contractual requirement or for a material breach of any term or condition. Material breach of a term or condition of the Contract may include but is not limited to:

- a) Contractor failure to perform services or deliver materials, supplies, or equipment by the date required or by an alternate date as mutually agreed in a written amendment to the Contract;
- b) Contractor failure to carry out any warranty or fails to perform or comply with any mandatory provision of the contract;
- c) Contractor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder;
- d) Contractor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors that endangers the Contractor's proper performance hereunder;
- e) Appointment of any receiver, trustee, or similar official for Contractor or any of the Contractor's property and such appointment endangers the Contractor's proper performance hereunder;
- f) A determination that the Contractor is in violation of federal, state, or local laws or regulations and that such determination renders the Contractor unable to perform any aspect of the Contract.

2. Opportunity to cure:

In the event that Contractor fails to perform a contractual requirement or materially breaches any term or condition, the Purchasing Activity may issue a written cure notice. The Contractor may have a period of time in which to cure. The Purchasing Activity is not required to allow the Contractor to cure defects if the opportunity for cure is not feasible as determined solely within the discretion of the Purchasing Activity. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages, or otherwise affects any other remedies available against Contractor under the Contract or by law.

If the breach remains after Contractor has been provided the opportunity to cure, the Purchasing Activity may do any one or more of the following:

- a) Exercise any remedy provided by law;
- b) Terminate this Contract and any related Contracts or portions thereof;
- c) Procure replacements and impose damages as set forth elsewhere in this Contract;
- d) Impose actual or liquidated damages;
- e) Suspend or bar Contractor from receiving future Solicitations or other opportunities;

- f) Require Contractor to reimburse the state for any loss or additional expense incurred as a result of default or failure to satisfactorily perform the terms of the Contract.

3. Termination for cause

In the event the Purchasing Activity, in its sole discretion, determines that the Contractor has failed to comply with the conditions of this Contract in a timely manner or is in material breach, the Purchasing Activity has the right to suspend or terminate this Contract, in part or in whole. The Purchasing Activity shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within thirty (30) calendar days or as otherwise specified by the Purchasing Activity, or if such corrective action is deemed by the Purchasing Activity to be insufficient, the Contract may be terminated. The Purchasing Activity reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged breach and pending corrective action by the Contractor or a decision by the Purchasing Activity to terminate the Contract.

In the event of termination, the Purchasing Activity shall have the right to procure for all Purchasers any replacement materials, supplies, services and/or equipment that are the subject of this Contract on the open market. In addition, the Contractor shall be liable for damages as authorized by law including, but not limited to, any price difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive Bidding, mailing, advertising and staff time.

If it is determined that: (1) the Contractor was not in material breach; or (2) failure to perform was outside of Contractor's or its Subcontractor's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience". The rights and remedies of the Purchasing Activity and/or the Purchaser provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

4. Termination for convenience

Except as otherwise provided in this Contract, the Purchasing Activity, at the sole discretion of the Purchasing Activity, may terminate this Contract, in whole or in part by giving thirty (30) calendar days or other appropriate time period written notice beginning on the second day after mailing to the Contractor. If this Contract is so terminated, Purchasers shall be liable only for payment required under this Contract for properly authorized services rendered, or materials, supplies and/or equipment delivered to and Accepted by the Purchaser prior to the effective date of Contract termination. Neither the Purchasing Activity nor the Purchaser shall have any other obligation whatsoever to the Contractor for such termination. This Termination for Convenience clause may be invoked by the Purchasing Activity when it is in the best interest of the State of Washington.

5. Termination for withdrawal of authority

In the event that the Purchasing Activity and/or Purchaser's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, the Purchasing Activity may terminate this Contract, in whole or in part, by seven (7) calendar days or other appropriate time period written notice to Contractor.

6. Termination for non-allocation of funds

If funds are not allocated to Purchaser(s) to continue this Contract in any future period, Purchasing Activity may terminate this Contract by seven (7) calendar days or other appropriate time period written notice to Contractor or work with Contractor to arrive at a mutually acceptable resolution of the situation. Purchaser will not be obligated to pay any further charges for materials, supplies, services and/or equipment including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. Purchasing Activity and/or Purchaser agrees to notify contractor in writing of such non-allocation at the earliest possible time.

No penalty shall accrue to the Purchaser in the event this section shall be exercised. This section shall not be construed to permit Purchasing Activity to terminate this Contract in order to acquire similar materials, supplies, services and/or equipment from a third party.

7. Termination for conflict of interest

Purchasing Activity may terminate this Contract by written notice to Contractor if it is determined, after due notice and examination, that any party to this Contract has violated Chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, the Purchasing Activity and /or Purchaser shall be entitled to pursue the same remedies against Contractor as it could pursue in the event that the Contractor breaches this Contract.

8. Termination by mutual agreement

The Purchasing Activity and the Contractor may terminate this Contract in whole or in part, at any time, by mutual agreement.

9. Termination procedure

In addition to the procedures set forth below, if the Purchasing Activity terminates this Contract, Contractor shall follow any procedures the Purchasing Activity specifies in the termination notice.

Upon termination of this Contract and in addition to any other rights provided in this Contract, Purchasing Activity may require the Contractor to deliver to the Purchaser any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The Purchaser shall pay to the Contractor the agreed upon price, if separately stated, for completed work and service(s) Accepted by the Purchaser, and the amount agreed upon by the Contractor and the Purchaser for (i) completed materials, supplies, services rendered and/or equipment for which no separate price is stated, (ii) partially completed materials, supplies, services rendered and/or equipment, (iii) other materials, supplies, services rendered and/or equipment which are Accepted by the Purchaser, and (iv) the protection and preservation of property, unless the termination is for cause, in which case the Purchasing Activity and the Purchaser shall determine the extent of the liability of the Purchaser. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The Purchaser may withhold from any amounts due the Contractor such sum as the Purchasing Activity and Purchaser determine to be necessary to protect the Purchaser against potential loss or liability.

The rights and remedies of the Purchasing Activity and/or the Purchaser provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a termination notice, and except as otherwise expressly directed in writing by the Purchasing Activity, the Contractor shall:

- a) Stop all work, order fulfillment, shipments, and deliveries under the Contract on the date, and to the extent specified, in the notice;
- b) Place no further orders or subcontracts for materials, services, supplies, equipment and/or facilities in relation to the Contract except as is necessary to complete or fulfill such portion of the Contract that is not terminated;
- c) Complete or fulfill such portion of the Contract that is not terminated in compliance with all contractual requirements;
- d) Assign to the Purchaser, in the manner, at the times, and to the extent directed by the Purchasing Activity on behalf of the Purchaser, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Purchaser has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- e) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Purchasing Activity and/or the Purchaser to the extent Purchasing Activity and/or the Purchaser may require, which approval or ratification shall be final for all the purposes of this clause;
- f) Transfer title to the Purchaser and deliver in the manner, at the times, and to the extent directed by the Purchasing Activity on behalf of the Purchaser any property which, if the contract had been completed, would have been required to be furnished to the Purchaser;
- g) Take such action as may be necessary, or as the Purchasing Activity and/or the Purchaser may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Purchasing Activity and/or the Purchaser has or may acquire an interest.

SECTION FOUR
PROTEST PROCEDURES



Protests.doc

APPENDIX B

SPECIAL TERMS AND CONDITIONS

1. REPORTS

The contractor(s) must provide the following report(s) to Department of Enterprise Services, Office of State Procurement.

SALES AND SUBCONTRACTOR REPORT

A quarterly Sales and Subcontractor Report shall be submitted in the format provided by the Office of State Procurement, and shall provide purchases for each facility separately.

Reports should be rounded to nearest dollar. Contractors will be provided with all necessary sample forms, instructions, and lists. Reports are due thirty (30) days after the end of the calendar quarter, i.e., April 30th, July 31st, October 31st and January 31st.

CONTRACTS SPECIALIST REQUIRED REPORT

Upon request, Contractor shall submit reports of sales on this contact in a format suitable to the Contracts Specialist, which will contain, at a minimum, the following information:

- Total quantity and dollar revenue by line item
- Total dollar revenue by individual state agency/political subdivision

REPORTS FOR ORDERING AGENCIES

Upon the request of ordering agency, the contractor shall provide, at no extra charge, preferably via online secured access to the pharmacy's data base, reports by facility, such as, but not limited to the following:

- Real time reporting by patient for medications on order or when last filled.
- A monthly summary listing the facility, number of prescriptions, total purchases and dollar amounts of purchases;
- Number of residents, by facility, that are receiving medications;
- Number of new and refill prescriptions completed per facility;
- Number and percentage, based on facility capacity, of residents on psychotropic medication at each facility;
- Reports, by facility, listing drugs alphabetically or in descending order by cost, with strength, quantity dispensed, number of prescriptions, and total monthly dollar amount with cumulative totals;
- Prescriber's activity reports, by facility, listing drug, strength, unit dose, prescriber quantity if new or refill prescription, total cost and cumulative costs;
- Monthly patient profiles for review by the agency medical director or persons in charge of the program as a quality assurance measure;
- Average cost per resident per facility;
- Drug usage reports on certain agency-identified drugs sorted by total costs for the month.
- Monthly up-to-date list of all medications currently being prescribed to each patient by the third of each month.
- Ability to create custom reports

2. REGULATORY COMPLIANCE

The contractor must be in compliance with the regulations, laws, and statutes of the Washington State Board of Pharmacy, Washington State Board of Nursing, Department of Social & Health Services, USP, FDA, DA, OSHA, WISHA and any and all WAC's and RCW's which are pertinent. Contractor must supply proof of regulatory compliance if requested by customer. Failure to provide adequate proof of compliance may result in the immediate termination of the contract.

3. INSTITUTION SECURITY REQUIREMENTS

Washington State legislation prohibits a person from bringing any contraband such as narcotic substances, weapons or intoxicating liquor into the premises of any governmental facility. An unauthorized introduction of any contraband onto the premise of any Washington State institution by a contractor, or contractor's employee or subcontractor may result in immediate cancellation of the contract.

4. DRIVER ROTATION

The contractor is required to have sufficient personnel to rotate the drivers for deliveries at secured institutions. Drivers must be rotated once per quarter (three months) or as required by DSHS.

5. IDENTIFICATION

Contractor representatives and drivers must be able to produce satisfactory personal identification if requested at an institution. The identification should establish or reference an affiliation with the contractor. Contractor shall provide sufficient representatives and drivers that are authorized by institutions for access.

6. AUTHORIZED PERSONNEL

End users will provide a list of personnel authorized to receive and return medications for facilities utilizing this contract. **ONLY PERSONNEL ON THE LIST MAY AUTHORIZE RECEIPT OR RELEASE OF MEDICATIONS.** Upon award, the contractor will be provided a current authorization list.

Only persons identified as **KEY PERSONNEL** may authorize changes, additions, or deletions to the list of authorized personnel.

7. DEA NUMBER (DRUG ENFORCEMENT ADMINISTRATION)

Upon award, the contractor will provide a copy of their D.E.A. Certificate. D.E.A. number must be maintained throughout the term of the contract.

8. INTERACTIONS AND INDICATIONS

Contractor will screen for interactions, contradictions, allergies, etc. and provide any findings to the designated institution staff.

A pharmacist (provided by the contractor) will conduct a review of the medical charts and conduct an on-site visit at a minimum of once a month or as requested by the customer. Times are to be coordinated with the contracted facilities.

9. RECEIVING PROCEDURES

Transport box will be opened by authorized staff at the receiving facility and contents of container will be checked and inventoried by staff prior to signing for shipment.

10. PRICING AND ADJUSTMENTS

Unless otherwise stipulated all bids must include unit prices and extensions where applicable and be otherwise in the format requested.

All bid pricing is to be FOB Destination, freight prepaid and included, for the destinations specified, and shall include the costs of bid preparation, servicing of accounts, and all contractual requirements.

During contract period pricing shall remain firm and fixed for the initial 12-month period of the contract after effective date of contract. Any accepted adjustments in pricing will remain firm and fixed for a 12-month period.

Adjustments in pricing will be at the discretion of the Department of Enterprise Services, Office of State Procurement and shall:

- be the result of increases at the manufacturer's level, incurred after contract commencement date.
- not produce a higher profit margin than that on the original contract.
- clearly identify the items impacted by the increase.
- be filed with the Contracts Specialist a minimum of 45 calendar days before the effective date of proposed increase.
- be accompanied by documentation acceptable by the Contracts Specialist to warrant the increase.

During the contract period, any price declines at the manufacturer's level or cost reductions to Contractor shall be reflected in a reduction of the contract price retroactive to Contractor's effective date.

During the term of this contract, should the contractor enter into pricing agreements with other customers providing greater benefits or lower pricing, contractor shall immediately amend the state contract to provide similar pricing to the state if the contract with other customers offers similar usage quantities, and similar conditions impacting pricing. Contractor shall immediately notify the state of any such contracts entered into by contractor.

11. CONTRACTOR PERFORMANCE

General Requirements: The state, in conjunction with purchasers, monitors and maintains records of Contractor performance. Said performance shall be a factor in evaluation and award of this and all future contracts. Purchasers will be provided with product/service performance report forms to forward reports of superior or poor performance to the Department of Enterprise Services, Office of State Procurement

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APPENDIX C
SPECIFICATIONS

| Description |
|--|
| ORAL SOLIDS – TABLETS & CAPSULES |
| 1. MEDICATION PACKAGING |
| 1.1 Medication must be packaged in blister pack cards. Medication must be visible through the blister and the seal must be moisture proof. There must be adequate space on the blister side of the card to affix the prescription label. |
| 1.2. Blister pack unit dose cards must be individually labeled (See Blister Pack Labeling #3) |
| 1.3. Blister pack to contain only the prescribed quantity of medication. (ie. 2 Tablet/day for 7 day = 14 tablets) |
| 1.4. Packaged medication to be reverse numbered for dose tracking purposes. |
| 1.5. Each blister pack card may contain only one medication. A new card must be initiated for each pharmaceutical prescribed. |
| 1.6. The pharmaceuticals contained in the blister pack must be visually verifiable. Identification marks, numbers, or imprinting must be visible if the medication is so marked. (Randomly filled blister packs must have the imprinted information visible on some of the medication for identification of the whole package, ie. some tablets with the obverse side visible and some with the reverse side visible). |
| 1.7. Any change of appearance of the oral medications within the individual blister pack unit will always have a notation/label from pharmacist identifying that it is, in fact, the same medication even though from different manufacturers. |
| 1.8. Light sensitive medication must be packaged in FDA approved packaging (ie. clear amber – opaque amber is not acceptable as it would prevent visual identification of the medication). |

| Description |
|--|
| 1.9 Any new medication, when filled for the first time, must be accompanied by educational information about the medication which will be given to the patient. This would include any interaction alerts. |
| 2. REPACKAGING REQUIREMENTS |
| 2.1. The blister pack must meet or exceed and be in compliance with FDA and USP requirements for repackaged medication. |
| 2.2. Supplier must be in compliance with FDA, USP, Washington State Board of Pharmacy and all applicable regulations. Pharmaceutical services are to be at the direction of a licensed pharmacist. |
| 3. BLISTER PACK LABELING |
| 3.1. Each blister pack card must be labeled so that the label and medication are visible simultaneously. This is required for visual verification of the medication (see specification 1.6.) |
| 3.2. The following patient information must be imprinted on the label: |
| a. Patient name -- Last, First, Initial |
| b. Medication name -- Generic or Trade if it is a combination medication. (If the trade name is issued, the generic must also be listed -- except for combination medications) |
| c. Medication Strength |
| d. Quantity |
| e. Date Dispensed |
| f. Expiration Date |
| g. Sig -- Clear direction to the patient |
| h. Prescriber's Name |

| | Description |
|---|--|
| i. | RX # - Prescription Number |
| j. | NDC# (Optional) |
| k. | Packager's Initials |
| l. | Refills – Must be specified if any. |
| m. | Lot number |
| n. | Dispensing directions (how and when medication is to be issued, i.e. with food, avoiding milk, etc.) |
| | 3.3 Auxiliary Warning Labels must be visible and appropriate for the packaged medication. |
| | 3.4 Controlled substances must be clearly marked as being a scheduled item. |
| <p align="center">ORAL LIQUIDS – ORAL SYRINGES & UNIT DOSE BOTTLES</p> | |
| <p align="center">4. MEDICATION PACKAGING – Storage – Identification Requirements (Oral Liquids)</p> | |
| 4.1 | Medication to be packaged in single dose oral syringes or unit dose (UD) bottles (Unit dose bottles to include unit dose cups). |
| 4.2 | Oral syringes to be individually capped. |
| 4.3 | Oral syringes and UD bottles to be individually labeled (See Oral Syringe and Unit Dose Bottle Labeling). |
| 4.4 | Storage requirements must be clearly and prominently marked. (ie. REFRIGERATION REQUIRED, CONTROLLED SUBSTANCE, Etc.) Auxiliary Label Prominently printed on label |
| 4.5 | Oral syringes or UD bottles containing like medication for a patient must be packaged together to prevent mixing of syringes or UD bottles and to facilitate verification of the prescription. |
| 4.6 | Light sensitive medication must be packaged in USP approved packaging. |

| Description |
|---|
| 5. REPACKAGING REQUIREMENTS |
| 5.1. Repackaging in oral syringes or UD bottles must meet or exceed and be in compliance with USP requirements for repackaged medication. |
| 5.2. Supplier must be in compliance with FDA, USP and Washington State Board of Pharmacy regulations. |
| 6. ORAL SYRINGE AND UNIT DOSE LABELING |
| 6.1. Oral syringes and UD bottles must be individually labeled. |
| 6.2. The label must not obscure the measurement marks on the barrel of the syringe or medication information on UD bottles. |
| 6.3. The following patient information must be imprinted on the label. |
| a. Patient Name – Last, First, Initial |
| b. Medication Name – Generic or Trade if it is a combination of medication. (If the trade name is used, the generic must also be listed – except for combination medications) |
| c. Medication Strength |
| d. Quantity – In liquid measure |
| e. Date Dispensed |
| f. Expiration Date |
| g. Sig – Clear direction to the patient |
| h. Prescriber's Name |
| i. RX# - prescription number |
| j. NDC (Optional – not a BOP requirement) |

| | Description |
|--|-------------|
| k. Packager's Initials | |
| l. Lot Number | |
| m. Dispensing directions (how and when medication is to be issued, i.e. with food, avoiding milk, etc.) | |
| 6.4. All label information must be visible (i.e. label must not be wrapped round the barrel of the syringe and over itself or be folded in such a manner as to obscure information). | |
| GENERAL SPECIFICATIONS | |
| 7. TRANSPORTATION CONTAINERS | |
| 7.1a. For the smaller institutions, the supplier must provide 12 to 24 containers (in a tackle box or tool box type) with removable tray. The container to be approved for use by DSHS. DSHS will determine the number of containers required after award. | |
| 7.1b. For SCC, all scheduled medications must be held in a locked tool box as described below, and all non scheduled drugs must be brought over in plastic crates that are zip tied. | |
| 7.2. The container to be approximately 7 ¾ inches High x 7 inches Wide x 16 inches Long. | |
| 7.3. The container must have top mounted and centrally located carrying handle. | |
| 7.4. The container must be durable and break resistant. | |
| 7.5. The container must be lockable by keyed padlock. | |
| 7.6. Padlock and keys to be provided by supplier; lock to be approved by DSHS. Padlock must be (at a minimum) Class 2 certified. The padlock key must be of a type that cannot be duplicated except at an authorized dealership that maintains a key log. | |
| Padlock example: ASSA 65191, Key retaining 8mm shackle, twin cylinder, Class 2. | |

| Description |
|---|
| 7.7. The container must remain locked and the contents secure against attempted entry by hand force (entry with the aid of tools is excluded). |
| 7.8. Container will be locked at the supplier's facility and key retained by supplier. Box to be transported without key. Matching key will be maintained at the receiving facility. Container will be opened by authorized staff only (Note: to be in compliance with WAC 275-80-805 and 900, and RCW 72.05.130.) If a key is lost, the responsible party will bear the cost of replacement of the key and/or lock as determined to be necessary by DSHS-Juvenile Rehabilitation Administration. |
| 7.8. Containers to be supplied at no cost to the end users. |
| 8. ORDERING AND DELIVERY |
| 8.1. Contractor must be able to respond to emergency requests for medication 24 hours a day 7 days a week. |
| 8.2. Contractor shall accept pharmacy orders by fax, phone or modem consistent with regulations governing such use on a basis of 24 hours a day, 7 days a week. A secure web based online ordering system is preferred, with online order entry capabilities. |
| 8.3 Standard deliveries are to be completed 24 hours after receipt of order. For SCC, twice daily standard deliveries are required, spaced approximately at twelve hour intervals. |
| 8.4 Emergency orders are those orders required within 4 hours after receipt of order. For SCC, delivery is defined as the dock house in Steilacoom. |
| 8.5 Upon request, Contractor shall provide customer with an electronic system, including a bar code reading gun, able to scan in new deliveries and medications to include bar coding on delivery containers and blister packs. |
| 8.6 Contractor shall define order cut-off times for the next scheduled delivery |
| 9. PHARMACY REVIEW – INTERACTIONS & INDICATIONS |
| 9.1. RX will be filled and tracked at the supplier's facility per Board of Pharmacy (BOP) regulations/statutes. |

| Description |
|---|
| 9.2 Supplier will screen for interactions, contraindications, allergies, etc. and inform the designated institution staff of any findings. |
| 9.3. A pharmacist (provided by the supplier) will conduct a review of the medical charts and an on-site visit at a minimum of once a month. |
| 9.4. Times to be coordinated with the contracted facilities. |
| 10. GENERIC & BRAND PRODUCTS |
| 10.1 Use of generic medications is required unless a brand name medication has been specifically requested by the prescriber in writing. |
| 10.2 Should a brand name product be substituted for a generic prescription by the contractor without prior consent of the end user, the end user will pay only for the cost of the generic product. |
| 11. OVER THE COUNTER PRODUCTS (OTC) |
| 11.1 The purpose of this contract is to provide prescription medications, Contractor may also be requested to provide OTC medications. When this occurs, OTC's will not be considered as part of this contract and should be billed separately to the requesting facility. No dispensing fee will be charged unless the item is requested as a prescription item. |
| 12. RETURNS |
| 12.1 Returns (unopened original package) shall be made within 30 days of receipt by agency. Returns include unused portions of blister packs. |
| 12.2 Returns for credit apply to cost of pharmaceuticals only. No refunds will be made for dispensing fees if applicable. |
| 12.3 Notes: |
| <ul style="list-style-type: none"> • Returns are not applicable to controlled substances unless for destruction per Board of Pharmacy statutes. • Remaining active shelf life for re-issued returnable products shall be not less than 180 days. • Contractor shall contact agency for acceptability prior to delivery of any re-issued product. |
| 12.4 Remote facilities may require alternate means for returns such as pick by the visiting pharmacist. |

| | Description |
|---|---|
| 13. PERFORMANCE REQUIREMENTS (Based on total deliveries for a 3 month period) | |
| 13.1 Fill Rate: | Contractor to provide a minimum of 98% of products ordered. |
| 13.2 On-Time Rate: | Contractor to provide a minimum of 95% on-time delivery for same day delivery and 100% on-time delivery for second day delivery. |
| 14. PROFESSIONAL REQUIREMENTS | |
| 14.1 | Contractor shall establish an audit trail for all prescriptions requested by each facility. |
| 14.2 | Contractor will report to the facility appointed contact personnel any identifiable procedural errors, abnormal drug usage, or prescribing patterns which require further follow-up action. |
| 14.3 | The Contractor will provide a report to facilities that request a written report following a monthly site visit. |
| 14.4 | All communications of contractor regarding prescriber habits will be directed to the facility's business manager. |
| 14.5 | Contractor shall submit itemized invoices on a monthly basis to the ordering facility. Invoices for prescriptions must separate generic and brand name items and shall be in chronological order and contain prescription number, resident name, date dispensed, refill information, name/strength/size of the drug, quantity dispensed, name of the prescriber, unit price and total cost. A separate itemized invoice shall be submitted for OTC's. |
| 14.6 | Contractor will provide any additional information on invoices as requested by the ordering facility. |
| 14.7 | Upon request, Contractor will provide information regarding the best financial therapeutic alternatives. For example, if it is less expensive to provide a ½ tab of a 40 MG tab rather than a 20 MG tab over a span of thirty days. |
| 14.8 | Upon request, Contractor will provide a monthly review of resident profiles, especially those that are complex, highlighting cost savings. The review is to include interactions or meds being given that may reduce the effect of another med that the resident is taking. This could be a web based program. |

15. DEPT OF SOCIAL AND HEALTH FACILITIES WITH DELIVERY TIMES AND CURRENT POPULATION COUNTS

| Dept of Social and Health Facility & Address | Delivery Time | Population |
|--|--|------------|
| Echo Glen Children's Center 33010 SE 99 th Snoqualmie, WA 98065 | 24 hours a day | 169 |
| Green Hill School 375 SW 11 th Chehalis, WA 98532 | 6:00 am to 10:00 pm | 221 |
| Naselle Youth Camp HCR 78 Box 200 Naselle, WA 98638 | 8:00 am to 9:00 pm | 108 |
| Special Commitment Center <u>Billing Address:</u> CIBS 9601 Steilacoom Blvd. SW Lakewood, WA 98498 <u>Delivery Address:</u> Steilacoom Dock House 56 Union Avenue Steilacoom, WA 98388 | 24 hours a day at dock house in Steilacoom | 300+ |



APPENDIX D

PRICE SHEETS

1. BLISTER PACKAGE ORAL SOLID AND BOTTLE/SYRINGE LIQUID MEDICATIONS

| Description | Bid Price per Unit | Multiply By | Total |
|---------------------------------------|--------------------|------------------|-----------|
| Blister Package Oral Solid Medication | \$ | 5000 units | \$ |
| Bottle UD Liquid Medication | \$ | 2000 units | \$ |
| Syringe Liquid Medication | \$ | 2000 units | \$ |
| | | (A) TOTAL | \$ |

Please note that the above quantities are strictly estimates

2. STANDARD MONTHLY DELIVERY CHARGE FOR DEPARTMENT OF SOCIAL AND HEALTH FACILITIES

| DSHS FACILITY | ESTIMATED MONTHLY DELIVERIES | MONTHLY DELIVERY CHARGE | MULTIPLY BY | TOTAL |
|---------------------|------------------------------|-------------------------|------------------|-----------|
| Echo Glen | 20 | \$ | 12 | \$ |
| Green Hill | 16 | \$ | 12 | \$ |
| Naselle Youth Camp | 12 | \$ | 12 | \$ |
| Special Comm Center | 60 | \$ | 12 | \$ |
| | | | (B) TOTAL | \$ |

3. STANDARD MONTHLY DELIVERY CHARGE FOR OTHER CUSTOMERS:

\$ _____ per month x 20 customers = (C) TOTAL \$ _____
 (if price is based upon number of deliveries per month, please identify the breakdown below, which will be averaged for bid evaluation purposes)
 _____ deliveries = \$ _____/month
 _____ deliveries = \$ _____/month
 _____ deliveries = \$ _____/month

4. EMERGENCY DELIVERY CHARGE FOR DEPARTMENT OF SOCIAL AND HEALTH FACILITIES:

| DSHS FACILITY | EMERGENCY DELIVERY CHARGE | MULTIPLY BY | TOTAL |
|---------------------|---------------------------|-------------|----------|
| Echo Glen | \$ _____ | 10 | \$ _____ |
| Green Hill | \$ _____ | 10 | \$ _____ |
| Naselle Youth Camp | \$ _____ | 10 | \$ _____ |
| Special Comm Center | \$ _____ | 30* | \$ _____ |
| | | (D)TOTAL | \$ _____ |

*The Special Commitment Center requests that an additional five emergency deliveries per year be provided at no cost

5. EMERGENCY DELIVERY CHARGE FOR OTHER CUSTOMERS (such as county and city jails)

\$ _____ per delivery x 50 = (E) TOTAL \$ _____

6. WHOLESALE MEDICATION COST (CURRENT)

Although the medications and usage quantities listed below are estimates only, the figures shown will be used for bid evaluation purposes (ATTACH COPY OF CURRENT WHOLESALE PRICE LIST TO BID RESPONSE)

| | DRUG NAME | STRENGTH | UNIT | ESTIMATED ANNUAL USAGE/UNITS | UNIT COST (CURRENT WHOLESALE) | EXTENDED COST (ANNUAL USAGE MULTIPLIED BY UNIT COST) |
|-----|--------------|----------|------|------------------------------|-------------------------------|--|
| 1. | Seroquel | 100 mg | #30 | 606 | \$ | \$ |
| 2. | Loratadine | 10 mg | #30 | 592 | \$ | \$ |
| 3. | Trazodone | 100 mg | #30 | 568 | \$ | \$ |
| 4. | Seroquel | 200 mg | #30 | 481 | \$ | \$ |
| 5. | Tetracycline | 500 mg | #30 | 472 | \$ | \$ |
| 6. | Strattera | 40 mg | #30 | 380 | \$ | \$ |
| 7. | Trazodone | 50 mg | #30 | 374 | \$ | \$ |
| 8. | Seroquel | 300 mg | #30 | 303 | \$ | \$ |
| 9. | Zoloft | 100 mg | #30 | 284 | \$ | \$ |
| 10. | Ranitidine | 150 mg | #30 | 279 | \$ | \$ |

| | DRUG NAME | STRENGTH | UNIT | ESTIMATED ANNUAL USAGE/UNITS | UNIT COST (CURRENT WHOLESALE) | EXTENDED COST (ANNUAL USAGE MULTIPLIED BY UNIT COST) |
|----|-------------------|----------|------|------------------------------|-------------------------------|--|
| 11 | Concerta | 54 mg | #30 | 272 | \$ | \$ |
| 12 | Cephalexin | 500 mg | #30 | 265 | \$ | \$ |
| 13 | Fluoxetine | 20 mg | #30 | 264 | \$ | \$ |
| 14 | Albuterol | 90 mg | #17 | 232 | \$ | \$ |
| 15 | Guanfacine | 1 mg | #30 | 228 | \$ | \$ |
| 16 | Concerta | 36 mg | #30 | 226 | \$ | \$ |
| 17 | Adderall XR | 20 mg | #30 | 221 | \$ | \$ |
| 18 | Trileptal | 600 mg | #30 | 201 | \$ | \$ |
| 19 | Seroquel | 25 mg | #30 | 192 | \$ | \$ |
| 20 | Chlorpheniramine | 12 mg | #30 | 189 | \$ | \$ |
| 21 | Minocycline | 100 mg | #30 | 181 | \$ | \$ |
| 22 | Amphetamine Salts | 20 mg | #30 | 187 | \$ | \$ |
| 23 | Mirtazapine | 15 mg | #30 | 186 | \$ | \$ |
| 24 | Clonidine | 0.1 mg | #30 | 184 | \$ | \$ |
| 25 | Isoniazid | 300 mg | #30 | 179 | \$ | \$ |

| | DRUG NAME | STRENGTH | UNIT | ESTIMATED ANNUAL USAGE/UNITS | UNIT COST (CURRENT WHOLESALE) | EXTENDED COST (ANNUAL USAGE MULTIPLIED BY UNIT COST) |
|----|--------------|----------|------|------------------------------|-------------------------------|--|
| 26 | Strattera | 60 mg | #30 | 166 | \$ | \$ |
| 27 | Depakote | 500 mg | #30 | 162 | \$ | \$ |
| 28 | Citalopram | 20 mg | #30 | 155 | \$ | \$ |
| 29 | Bupropion SR | 150 mg | #30 | 148 | \$ | \$ |
| 30 | Prilosec | 20 mg | #30 | 140 | \$ | \$ |
| 31 | Trileptal | 300 mg | #30 | 122 | \$ | \$ |
| 32 | Zoloft | 50 mg | #30 | 111 | \$ | \$ |
| 33 | Concerta | 18 mg | #30 | 111 | \$ | \$ |
| 34 | Vitamin B-6 | 50 mg | #30 | 109 | \$ | \$ |
| 35 | Doxycycline | 100 mg | #30 | 106 | \$ | \$ |
| 36 | Flonase | 0.05% | #16 | 102 | \$ | \$ |
| 37 | Clonidine | .2 mg | #30 | 100 | \$ | \$ |
| 38 | Abilify | 10 mg | #30 | 97 | \$ | \$ |
| 39 | Topamax | 100 mg | #30 | 92 | \$ | \$ |
| 40 | Mirtazapine | 30 mg | #30 | 88 | \$ | \$ |

| | DRUG NAME | STRENGTH | UNIT | ESTIMATED ANNUAL USAGE/UNITS | UNIT COST (CURRENT WHOLESALE) | EXTENDED COST (ANNUAL USAGE MULTIPLIED BY UNIT COST) |
|----|-------------------|----------|------|------------------------------|-------------------------------|--|
| 41 | Zyprexa | 5 mg | #30 | 67 | \$ | \$ |
| 42 | Amphetamine Salts | 10 mg | #30 | 59 | \$ | \$ |
| 43 | Topamax | 25 mg | #60 | 50 | \$ | \$ |
| 44 | Zyprexa | 10 mg | #30 | 40 | \$ | \$ |
| 45 | Abilify | 20 mg | #30 | 33 | \$ | \$ |
| 46 | Naproxen | 500 mg | #30 | 28 | \$ | \$ |
| 47 | Geodon | 60 mg | #30 | 28 | \$ | \$ |
| 48 | Concerta | 27 mg | #30 | 27 | \$ | \$ |
| 49 | Geodon | 40 mg | #30 | 25 | \$ | \$ |
| 50 | Zyprexa | 15 mg | #30 | 21 | \$ | \$ |
| | | | | Approx. 9733 units | (F) TOTAL | \$ |

APPENDIX F

YEARS 2010 AND 2011 USAGE REPORT

| CUSTOMER | YEAR 2010 TOTAL PURCHASES | YEAR 2011 TOTAL PURCHASES (may not include last quarter) |
|----------------------------------|----------------------------------|---|
| Asotin County | \$12,730.00 | \$15,525.00 |
| Benton County | \$253,902.00 | \$61,206.00 |
| Chelan County | \$16,469.00 | \$25,157.00 |
| Clallam County | \$69,464.00 | \$15,583.00 |
| Cowlitz County | \$102,016.00 | \$59,284.00 |
| Grays Harbor County | \$47,341.00 | \$18,850.00 |
| Grant County | \$55,687.00 | - |
| Island County | \$5,237.00 | \$5,787.00 |
| Jefferson County | \$34,019.00 | \$7,694.00 |
| Kitsap County | \$491,326.00 | \$147,787.00 |
| Kittitas County | \$10,017.00 | \$13,370.00 |
| Klickitat County | \$4977.00 | \$3285.00 |
| Lewis County | \$59,011.00 | \$34,873.00 |
| City of Marysville | \$262.00 | \$865.00 |
| Mason County | \$35,263.0 | \$14,818.00 |
| Okanogan County | - | \$8,867.00 |
| City of Olympia | \$8,792.00 | \$5,084.00 |
| Dept of Social & Health Services | \$1,581,635.00 | \$793,522.00 |
| City of Sunnyside | - | \$4,703.00 |
| Thurston County | \$97,035.00 | - |
| | | |

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7. PROCESSING FEE

All inclusive fee (to be added to the above wholesale cost price of medication and which is to be billed separately) which covers all service requirements stipulated herein (other than those noted in items one through five, and eight and nine):

_____ % x (F) = (G) TOTAL \$ _____

8. PHARMACIST ONSITE REVIEW FEE

Monthly site visit and chart review as specified by client. Cost to include all expenses incurred, regardless of location:

\$ _____ Site Visit x estimated 48 visits = (H) TOTAL \$ _____

9. PRIVATE INSURANCE CLAIM FEE

\$ _____ per Prescription Transaction Fee for private insurance claims submitted on behalf of client x 100 = (I) TOTAL \$ _____

10. ELECTRONIC SCANNING/BARCODE SYSTEM (FOR SCC):

Bar code labels provided on delivery containers and medication packaging, with bar code reading gun to scan in new deliveries and medications

Yearly Cost: \$ _____ = (J) TOTAL \$ _____

11. TOTAL BID PRICES

| PRICE SHEET ITEM | DESCRIPTION | REFERENCE | INSERT TOTAL |
|---------------------|---|-----------|--------------|
| 1 | BLISTER PACKAGE ORAL SOLID AND BOTTLE OR SYRINGE LIQUID MEDICATIONS | (A) TOTAL | \$ |
| 2 | STANDARD MONTHLY DELIVERY CHARGE FOR DEPARTMENT OF SOCIAL AND HEALTH FACILITIES | (B) TOTAL | \$ |
| 3 | STANDARD DELIVERY CHARGE FOR OTHER CUSTOMERS | (C) TOTAL | \$ |
| 4 | EMERGENCY DELIVERY CHARGE FOR DEPARTMENT OF SOCIAL AND HEALTH FACILITIES | (D) TOTAL | \$ |
| 5 | EMERGENCY DELIVERY CHARGE FOR OTHER CUSTOMERS | (E) TOTAL | \$ |
| 7 | PROCESSING FEE (includes (F) Total Cost of Item 6) | (G) TOTAL | \$ |
| 8 | PHARMACIST ONSITE REVIEW FEE | (H) TOTAL | \$ |
| 9 | PRIVATE INSURANCE CLAIM FEE | (I) TOTAL | \$ |
| 10 | BAR CODE SYSTEM | (J) TOTAL | \$ |
| GRAND TOTAL: | | | \$ |

APENDIX E

BIDDER PROFILE

COMPANY INFORMATION

1. **CONTRACTOR INFORMATION:** Provide the information requested below, which will be used for contract administration purposes:

| | | | |
|--|---------------|--|--|
| Legal Business Name: | | | |
| Federal Tax Identification number: | | | |
| WA State Department of Revenue Registration Tax number: | | | |
| Company Internet URL Address (if available): | | | |
| Company Mailing Addresses: | | | |
| Orders to be sent to: | | | |
| Billing will be from: | | | |
| Payment to be sent to: | | | |
| Authorized Representative: | Name: | | |
| | Phone: | | |
| | Fax: | | |
| | Email: | | |

2. PURCHASING COOPERATIVE MEMBERS:

POLITICAL SUBDIVISIONS: bidder agrees to sell the goods and services on this contract to political subdivisions which are members of the State of Washington Purchasing Cooperative (WSPC): yes no

NONPROFIT CORPORATIONS: Bidder agrees to sell the goods and services on this contract to self-certified nonprofit corporations which are members of the State of Washington Purchasing Cooperative (WSPC): Yes No

OREGON PURCHASING COOPERATIVE PURCHASING PROGRAM: Bidder agrees to sell the goods and services on this contract to political subdivisions and nonprofit organizations which are members of the State of Oregon Cooperative Purchasing Program (ORCPP): Yes No

3. RECIPROCITY

Firms bidding from California only: Is your firm currently certified as a small business under California Code, Title 2, Section 1896.12? Yes No

4. SUBCONTRACTORS:

Identify any subcontractors who will perform services in fulfillment of contract requirements; the nature of services to be performed and include federal tax identification (TIN) number for each subcontractor.

| Name/Address/Contact/Phone : | T.I.N.: | Brief description of the nature of Service Provided (e.g. testing, sampling, pick-up, etc): |
|---------------------------------|---------|---|
| | | |
| | | |
| | | |

5. SALES & ORDERING INFORMATION

| Sales Representative(s): Indicate below the contact information and specific territories covered: | | | |
|---|--|---------------|--|
| Name: | | Name: | |
| Telephone: | | Telephone: | |
| Toll Free No. | | Toll Free No. | |
| Mobile Phone | | Mobile Phone | |

| | | | |
|-----------|--|-----------|--|
| Territory | | Territory | |
| Fax: | | Fax: | |
| Email: | | Email: | |

6. Emergency Phone Number for 24/7 emergency requests for medication: _____

7. **PAYMENT TERMS:** Prompt Payment Discount _____% 30 days. Net 30 days

(Note: Prompt payment discount periods equal to (or greater than) 30 calendar days will receive consideration and bid pricing will be reduced (for evaluation purposes only) by the amount of that discount(s).

Please indicate if PPD applies to payments made by Credit Card: Yes _____ No _____

8. **PURCHASING (CREDIT) CARDS ACCEPTED:** Yes No

(Washington State Purchasing card is VISA) If yes, please list cards accepted:

Visa Master Card American Express Discover

Other _____

9. **COST ANALYSIS:** Please complete one of the following:

For cost analysis purposes, please indicate percent savings that your bid pricing represents compared to price agencies would pay without benefit of a state contract:

Bid discounts offered by your firm average _____% lower than (please check one):

A. _____ Price that would be obtained through individual agency bid.

B. _____ Manufacturer's current suggested retail price.

C. _____ Other (please specify): _____

