Light Division
Department of Public Utilities
City of Tacoma, Washington

PROPOSAL

PG20-0038F
Mossyrock Park
Concessions
REQUEST FOR PROPOSALS PG20-0038F
Mossyrock Park Concession

Submittal Deadline: 11:00 a.m., Pacific Time, Tuesday, April 7, 2020

Submittal Delivery: Sealed submittals will be received as follows:

<table>
<thead>
<tr>
<th>By Carrier:</th>
<th>In Person:</th>
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</thead>
<tbody>
<tr>
<td>City of Tacoma Procurement &amp; Payables Division</td>
<td>City of Tacoma Procurement &amp; Payables Division</td>
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<tr>
<td>Tacoma Public Utilities</td>
<td>Tacoma Public Utilities Lobby Security Desk</td>
</tr>
<tr>
<td>3628 S 35th Street</td>
<td>Administration Building North – Main Floor</td>
</tr>
<tr>
<td>Tacoma, WA 98409</td>
<td>3628 S 35th Street</td>
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<td></td>
<td>Tacoma, WA 98409</td>
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</tbody>
</table>

By Mail:

City of Tacoma Procurement & Payables Division
Tacoma Public Utilities
PO Box 11007
Tacoma, WA 98411-0007

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

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

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

Pre-Proposal Meeting: A pre-proposal meeting will be held at the Concession Building located at Mossyrock Park, 202 AJlune Road, Mossyrock, WA on Thursday, March 12, 2020 at 11 a.m.

Project Scope: The City of Tacoma, Department of Public Utilities, Light Division (dba Tacoma Power) is soliciting for Request for Proposals (RFP) from qualified firms or individuals to provide seasonal concessions at Mossyrock Park on Riffe Lake in Lewis County, Washington. The vendor/operator (provider) will be required to operate at least one (1) concession area, purchase inventory for sales, provide personnel to handle sales, and shall be responsible for accounting, sales tax collection, and reporting associated with the operation of the concessions.

Estimate: The expectation is that the Proposer will reimburse Tacoma Power a percentage of gross revenues annually.

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

Americans with Disabilities Act (ADA Information: The City of Tacoma, in accordance with Section 504 of the Rehabilitation Act (Section 504) and the Americans with Disabilities Act (ADA), commits to nondiscrimination on the basis of disability, in all of its programs and activities. Specification materials can be made available in an alternate format by emailing Gail Himes at ghimes@cityoftacoma.org, or by calling her collect at 253-591-5785.

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

**Additional Information:** Requests for information regarding the specifications may be obtained by contacting Samol Hefley, Senior Buyer by email to shefley@cityoftacoma.org

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

Meeting sites are accessible to persons with disabilities. Reasonable accommodations for persons with disabilities can be arranged with 48 hours advance notice by calling 253-502-8468.
In the event of an award by the City, these Terms and Conditions stated herein, Additional Contract Documents if issued, Solicitation if issued, Purchase Orders if issued by City, and Supplier's Submittal, if provided, shall constitute the Contract between City and Supplier for the acquisition of goods, including materials, supplies, and equipment or for the provision of services and deliverables.

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

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

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

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

1.01 SUPPLIER / CONTRACTOR

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

1.02 SUBMITTAL

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

1.03 FORMS OF SUBMITTAL

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

1.04 COSTS TO PREPARE SUBMITTAL

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

1.05 LICENSES/PERMITS

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

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

C. During the term of the Contract, Supplier, at its expense, shall obtain and keep in force any and all necessary licenses and permits.
1.06 PUBLIC DISCLOSURE: PROPRIETARY OR CONFIDENTIAL INFORMATION

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

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

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

1.07 SUSTAINABILITY

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

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

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

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

1. Pollutant releases
2. Toxicity of materials used
3. Waste generation
4. Greenhouse gas emissions, including transportation of materials and services
5. Recycle content
6. Energy consumption
7. Depletion of natural resources
8. Potential impact on human health and the environment
1.08 ALTERATIONS NOT ALLOWED

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

1.09 CORRECTION OF AMBIGUITIES AND OBVIOUS ERRORS

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

B. Supplier shall notify the City of Tacoma Procurement and Payables Division in writing of any ambiguity, conflict, discrepancy, omission or other error in a Solicitation no later than five business days prior to the submittal deadline.
   1. For solicitations conducted in SAP Ariba, Supplier shall notify the City of Tacoma Procurement and Payables Division on the message board of the event.
   2. For all other solicitations, Supplier shall notify the contract person listed in the Solicitation.

C. The City will make necessary modifications by addendum.

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

1.10 WARRANTIES/GUARANTEE

A. Suppliers warrant that all items, including services, as applicable:
   1. Are merchantable.
   2. Comply with the City's latest drawings and specifications.
   3. Are fit for the City's intended use.
   4. Will be performed according to the skill and care required by customarily accepted good practices and procedures followed by service providers rendering the same or similar type of service.
   5. Are new and unused unless otherwise stated.
   6. Comply with all applicable safety and health standards established for such products by the Occupational Safety and Health Administration (OSHA), Washington Industrial Safety and Health Act (WISHA) and/or Consumer Products Safety Act (CPSA), and all other applicable state and federal laws or agency regulations.
   7. Are properly packaged and contain appropriate instructions or warnings, including applicable MSDS sheets.

1.11 PATENTS, TRADEMARKS AND COPYRIGHTS

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

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

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

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

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

D. For purposes of determining whether a Submittal has been timely received in SAP Ariba, the City’s Procurement and Payables Division will rely on the submittal clock in SAP Ariba.
1.13 SUBMITTAL IS NON-COLLUSIVE
Supplier acknowledges that by its delivery of a Submittal to the City in response to a Solicitation, it represents that the prices in such Submittal are neither directly nor indirectly the result of any formal or informal agreement with another Supplier.

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

1.15 WITHDRAWAL OF SUBMITTALS
A. Prior to Submittal Deadline. Submittals may be withdrawn (including in SAP Ariba) prior to the scheduled submittal deadline.
B. After Submittal Deadline. No Submittal can be withdrawn after having been opened before the actual award of the contract, unless the award is delayed more than 90 calendar days beyond the date of opening. If a delay of more than 90 calendar days does occur, Supplier must submit written notice to the City purchasing manager that Supplier is withdrawing its submittal.

1.16 ACCEPTANCE OF SUBMITTALS
A. If the solicitation announcement so states, submittals, unless previously withdrawn, will be read aloud, irrespective of any irregularities or informalities in such submittal, at the time and place specified in the solicitation announcement.
B. All submittals must remain open for acceptance by the City for a period of at least 90 calendar days from the submittal deadline.

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

1.18 RESERVED RIGHTS
A. By providing a submittal in response to a City solicitation, Supplier acknowledges and consents to the below City rights and conditions. With regard to this procurement process, the City reserves, holds without limitation, and may exercise, at its sole discretion, the following rights and conditions:
   1. To terminate the procurement process or decide not to award a contract as a result thereof by written notice to the Suppliers for any reason whatsoever with or without substitution of another solicitation.
   2. To waive any defect, technicality, or any other minor informality or irregularity in any submittal, or any other response from Suppliers.
   3. To issue addenda for any purpose including:
      a. To make minor or major changes or alterations to the evaluation, selection and/or performance schedule(s) for any events associated with a procurement.
      b. To supplement, amend, reduce, cancel, or otherwise modify a Solicitation, including but not limited to modifications to the description of services and/or products contained in the solicitation, by omitting services/products and/or including services/products.
   4. To request clarifications, additional information, and/or revised Submittals from one or more Suppliers.
   5. To conduct investigations with respect to the qualifications and experience of Supplier(s), including inspection of facilities and to request additional evidence to support any such information.
6. To eliminate any Supplier that submits an incomplete or inadequate response, or is non-responsive to the requirements of a Solicitation, or is otherwise deemed to be unqualified during any stage of the procurement process.

7. To select and interview a single finalist or multiple finalists to further the City’s evaluation of Submittals provided in response to a Solicitation. The City may, in its sole and exclusive discretion as to what is in the City’s best interest, elect not to conduct interviews of any or all Suppliers in connection with a solicitation process.

8. Except in the case of Requests for Bids, to negotiate any rate/fee offered by a Supplier. The City shall have the sole right to make the final rate/fee offer during contract negotiations. If the selected Supplier does not accept the City's final offer, the City may, in its sole discretion discontinue contract negotiations and commence negotiations with another Supplier, except as otherwise provided in Chapter 39.80, RCW.

9. To select and enter into a Contract with one or more Suppliers whose Submittal best satisfies the interests of the City and is most responsive, in the sole judgment of the City, to the requirements of a Solicitation.

10. To award by line item or group of line items.

11. To not award one or more items.

12. To issue additional or subsequent solicitations.

13. To seek partnerships between one or more Suppliers.

14. Request additional related products and services from the selected Supplier(s) as necessary throughout the term of the Contract.

15. Negotiate costs or fees in the event of new legislation or regulatory changes, or issuance of related compliance guidance, technology enhancements, and innovative solutions.

16. In the event the City receives questions concerning a Solicitation from one or more Suppliers prior to the deadline for response, the City reserves the right to provide such questions, and the City’s responses, if any, to all Suppliers.

17. If an award is made and, prior to entering into a contract, subsequent information indicates that such award is not in the best interest of the City, the City may rescind the award without prior notice to Supplier and either award to another Supplier or reject all submittals or cancel this solicitation.

18. To cancel award of a contract at any time before execution of the Contract by both parties if cancellation is deemed to be in the City’s best interest. In providing a submittal, Suppliers agree that the City is not liable for any costs or damages for the cancellation of an award. Supplier assumes the sole risk and responsibility for all expenses connected with the preparation of its submittal.

19. To add additional City departments or divisions to the Contract or develop a separate Contract with the Supplier subject to all terms, conditions and pricing of the original Contract

20. To take any other action affecting a Solicitation or a procurement process that is determined to be in the City’s best interests.

1.19 SUBMITTAL CLARIFICATION

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

1.20 EVALUATION OF SUBMITTALS

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

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

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

   a. ePayable/Credit Card Acceptance. Submittals offering ePayable/Credit card acceptance may be compared against submittals offering a prompt payment discount to evaluate the overall cumulative effect of the discount against the advantage to the City of the ePayable/Credit card acceptance, and may be considered in determining the apparent lowest responsible submittal.

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

1.21 CONTRACT OBLIGATION

   A. The Submittal contents of the successful Supplier will become contractual obligations if a Contract ensues.
   B. In the event the City of Tacoma determines to award a Contract, the selected Supplier(s) may be requested to execute Additional Contract Documents.
   C. Supplier shall register with the City of Tacoma on the SAP Ariba Network and be enabled for transactions upon request by the City.
   D. Suppliers may propose amendments to City’s Contract documents or to these Terms and Conditions, but the City retains the right to accept or reject proposed amendments.
   E. No costs chargeable for work under the proposed Contract may be incurred before mutual acceptance and execution as directed.

1.22 AWARD

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

1.23 SUPPLIER’S REFUSAL TO ENTER INTO CONTRACT

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

1.24 LEGAL HOLIDAYS

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

      New Year's Day       January 1
      Martin Luther King's Birthday       3rd Monday in January
Washington's Birthday 3rd Monday in February
Memorial Day Last Monday in May
Independence Day July 4
Labor Day 1st Monday in September
Veteran's Day November 11
Thanksgiving Day 4th Thursday of November
Day after Thanksgiving 4th Friday of November
Christmas Day December 25

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

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

1.26 EXTENSION OF CONTRACT
Contracts shall be subject to extension at City’s sole discretion.

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

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

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

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

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

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

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

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

1.30 SERVICES DO NOT INCLUDE PUBLIC WORK
Unless otherwise stated, the services and/or work contracted for herein exclude public work and improvements as defined in RCW 39.04, as that statute may hereafter be amended.

1.31 PREVAILING WAGES
A. If federal, state, local, or any applicable law requires Supplier to pay prevailing wages in connection with a Contract, and Supplier is so notified by the City, then Supplier shall pay applicable prevailing wages.
B. If applicable, a Schedule of Prevailing Wage Rates for the locality or localities where the Contract will be performed is attached and made part of the Contract by this reference. If prevailing wages do apply to the Contract, Supplier and its subcontractors shall:
   1. Be bound by the provisions of Chapter 39.12 RCW, as amended, relating to prevailing wages and usual fringe benefits,
   2. Ensure that no worker, laborer or mechanic employed in the performance of any part of the Contract shall be paid less than the prevailing rate of wage specified on that Schedule, and
   3. Immediately upon award of the Contract, contact the Department of Labor and Industries, Prevailing Wages section, Olympia, Washington, to obtain full information, forms and procedures relating to these matters. Per such procedures, a Statement of Intent to Pay Prevailing Wages must be submitted by Contractor and its subcontractors to the City, in the manner requested by the City, prior to any payment by the City hereunder, and an Affidavit of Wages Paid must be received or verified by the City prior to final Contract payment.

1.32 CONTRACT PRICING
A. Submitted prices shall include costs of submittal preparation, servicing of the account, all contractual requirements during contract period such as transportation, permits, insurance costs, bonds, labor, wages, materials, tools, components, equipment, and appurtenances necessary to complete the work, which shall conform to the best practice known to the trade in design, quality, material, and workmanship.
B. Surcharges of any type will not be paid.
C. If applicable, related additional products and corresponding services of benefit to the City not specifically required in a solicitation, but which Supplier offers to provide, may be included with the submittal. Supplier may request to add new products if the City approves them and Supplier can demonstrate the pricing is from the same pricing structure/profit margin.
D. Unless specifically stated otherwise, only firm prices will be accepted and all prices shall remain firm during the term of a Contract.
E. Price increases may at City’s discretion be passed along during a contract period if the increase is mandated by statute, or the result of a tariff.
F. By submitting prices, Supplier warrants prices equal to or better than the equivalent prices, terms, and benefits offered by Supplier to any other government unit or commercial customer.
G. Should Supplier, during the term of a Contract, enter into any other contract, agreement or arrangement that provides lower prices, more favorable terms or greater benefits to any other government unit or commercial customer, the Contract with the City shall thereupon be deemed amended to provide the same price or prices, terms and benefits to the City. This provision applies to comparable products and purchase volumes by the City that are not less than the purchase volumes of the government unit or commercial customer that has received the lower prices, greater benefits, or more favorable terms.
H. If at any time during the term of the Contract, Supplier reduces prices to other buyers purchasing approximately the same quantities stated on the Contract, Supplier will immediately notify the City purchasing manager of such fact, and the price(s) for future orders under the Contract shall be reduced accordingly.
I. The City is entitled to any promotional pricing during the Contract period.
J. Price decreases shall be immediately passed on to the City.
K. The City reserves the right to increase or decrease the quantities of any item awarded pursuant to the Contract and pay according to the unit prices quoted in the submittal with no adjustments for anticipated profit.

1.33 APPROVED EQUALS WHEN ALTERNATES ARE ALLOWED

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

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

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

1.34 RISK OF LOSS, SHIPPING AND DELIVERY

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

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

1.35 DELIVERY OF PRODUCTS AND PROVISION OF SERVICES – IDLING PROHIBITED

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

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

1.36 PACKING SLIPS AND INVOICES

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

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

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

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

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

1.37 COOPERATIVE PURCHASING

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

1.38 TAXES

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

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

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

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

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

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

1.39 COMPENSATION

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

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

1.40 PAYMENT TERMS

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

B. Invoices will not be processed for payment, nor will the period of cash discount commence, until all invoiced items are received and satisfactory performance of the Contract has been attained. Upon CITY’S request, Supplier shall submit necessary and appropriate documentation, as determined by the CITY, for all invoiced services and deliverables. If an adjustment in payment is necessary due to damage or dispute, the cash discount period shall commence on the date final approval for payment is authorized.

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

A. Payment methods include:

1. EPayables (Payment Plus). This is payment made via a virtual, single use VISA card number provided by the City’s commercial card provider. Suppliers accepting this option will receive “due immediately” payment terms. Two options for acceptance are available to suppliers. Both are accompanied by an emailed advice containing complete payment details:
   a. Straight-through processing (buyer initiated). Immediate, exact payments directly deposited to supplier accounts by the City’s provider bank; the supplier does not need to know card account details.
   b. Supplier retrieves card account through the secure, on-line portal provided via email notifications sent by the City’s commercial card provider.

2. Credit card. Tacoma’s VISA procurement card program is supported by standard bank credit suppliers and requires that merchants abide by the VISA merchant operating rules. It provides “due immediately” payment terms.
   a. Suppliers must be PCI-DSS compliant (secure credit card data management) and federal FACTA (sensitive card data display) compliant.
   b. Suppliers must be set up by their card processing equipment provider (merchant acquirer) as a minimum of a Level II merchant with the ability to pass along tax, shipping and merchant references information.

3. Electronic Funds Transfer (EFT) by Automated Clearing House (ACH). Standard terms are net 30 for this payment method.

4. Check or other cash equivalent. Standard terms are net 30 for this payment method.

B. The City’s preferred method of payment is by ePayables (Payment Plus) followed by credit card (aka procurement card). Suppliers may be required to have the capability of accepting the City’s ePayables or credit card methods of payment. **The City of Tacoma will not accept price changes or pay additional fees when ePayables (Payment Plus) or credit card is used.**

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

1.42 NOTICES

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

1.43 INDEPENDENT CONTRACTOR STATUS

A. Supplier is considered an independent contractor who shall at all times perform his/her duties and responsibilities and carry out all services as an independent contractor and shall never represent or construe his/her status to be that of an agent or employee of the City, nor shall Supplier be eligible for any employee benefits. No payroll or employment taxes or contributions of any kind shall be withheld or paid by the City with respect to payments to Supplier. Supplier shall be solely responsible for all said payroll or employment taxes and/or contributions including, but not limited to, FICA, FUTA, federal income tax, state personal income tax, state disability insurance tax and state unemployment insurance tax. If the City is assessed, made liable or responsible in any manner for such taxes or contributions, Supplier agrees to indemnify and hold the City harmless from all costs incurred, including attorney fees.
B. Unless otherwise specified in writing, Supplier shall provide at its sole expense all materials, working space, and other necessities and instruments to perform its duties under the Contract. Supplier, at its sole expense, shall obtain and keep in force any and all applicable licenses, permits and tax certificates necessary to perform the Contract.

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

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

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

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

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

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

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

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

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

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

1.50 CONFLICT OF INTEREST

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

1.51 CITY OWNERSHIP OF WORK RIGHTS IN DATA PUBLICATIONS

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

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

1.52 DUTY OF CONFIDENTIALITY

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

1.53 DISPUTE RESOLUTION

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

1.54 GOVERNING LAW AND VENUE

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

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

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

1.56 WAIVER

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

1.57 SEVERABILITY AND SURVIVAL

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

1.58 NO CITY LIABILITY

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

1.59 SIGNATURES

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

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

Submittals must be received by the City of Tacoma Purchasing Division by the date and time specified in the Request for Proposal page.

<table>
<thead>
<tr>
<th>The following items make up your submittal package:</th>
</tr>
</thead>
<tbody>
<tr>
<td>One original, 3 copies and one electronic copy (CD or flash drive) of your complete submittal package (with original and copies clearly identified)</td>
</tr>
<tr>
<td>Signature Page</td>
</tr>
<tr>
<td>Information in Section N (ex. Content To Be Submitted)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>After award, the following documents will be executed:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Services Contract</td>
</tr>
<tr>
<td>Certificate of Insurance and related endorsements</td>
</tr>
</tbody>
</table>
SECTION 3 – PROJECT INFORMATION AND REQUIREMENTS

A. PROJECT OVERVIEW

The City of Tacoma, Department of Public Utilities, Light Division (dba Tacoma Power) is soliciting for Request for Proposals (RFP) from qualified firms or individuals to provide seasonal concessions at Mossyrock Park on Riffe Lake in Lewis County, Washington. The vendor/operator (provider) will be required to operate at least one (1) concession area, purchase inventory for sales, provide personnel to handle sales, and shall be responsible for accounting, sales tax collection, and reporting associated with the operation of the concessions.

Tacoma Power is seeking and will select a qualified concession provider that best demonstrates the ability to provide innovative, affordable, safe and reliable services to park patrons while paying a reasonable concession fee to Tacoma Power. Providers are encouraged to offer services and/or products that would be complimentary to the existing uses of the park. Tacoma Power reserves the right to approve or disapprove any proposed business activity.

The concessionaire agreement shall commence upon issuance of an agreement on April 1, 2020, whichever is later, and end on March 31, 2021, with an option to extend the agreement for four one-year terms (4) additional years. Either party may terminate the agreement upon ninety (90) days written notice.

B. INQUIRIES TO RFP

A pre-proposal conference is being held at the concession building located at Mossyrock Park, 202 Ajune Road, Mossyrock, WA on at 11 a.m. on Thursday, March 12, 2020. Questions and request for clarifications of the specifications may also be submitted in writing by 3:00 p.m., Pacific Time, Friday, March 13, 2020, to Samol Hefley, Purchasing Division, via email to shefley@cityoftacoma.org. No further questions will be accepted after this date and time. The City will not be responsible for unsuccessful submittal of questions.

Written answers to all questions submitted will be posted on the Purchasing website at www.TacomaPurchasing.org on or about March 18, 2020. The City reserves the discretion to group similar questions to provide a single answer or not to respond when the requested information is confidential. The answers are not typically considered an addendum.

C. RFP REVISIONS

In the event it becomes necessary to revise any part of this RFP, addenda will be issued to all registered planholders and posted on the Purchasing website. Answers in response to RFP inquiries (see Section 3. C. above) are not typically provided as an addendum.

D. CALENDAR OF EVENTS

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

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Publish and issue RFP</td>
<td>March 4, 2020</td>
</tr>
<tr>
<td>Pre-Proposal Questions</td>
<td>March 13, 2020</td>
</tr>
<tr>
<td>Response to Questions</td>
<td>March 18, 2020</td>
</tr>
</tbody>
</table>
E. CONTRACT TERM

The contract will be for a one-year period with the option to renew the contract up to an additional one-year term. The City reserves the right to cancel the contract for any reason, by written notice, as stipulated in the contract.

F. RESPONSIVENESS

Respondents agree to provide 60 days for acceptance from the submittal deadline.

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

The final selection, if any, will be that proposal which, after review of submissions and potential interviews, in the sole judgement of the City, best meets the requirements set forth in this RFP.

G. COSTS TO PREPARE SUBMITTAL

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

H. ACCEPTANCE OF PROPOSAL CONTENTS

The Proposal contents of the successful Respondent will become contractual obligations if a contract ensues.

I. CONTRACT OBLIGATION

The selected Respondent(s) will be expected to execute the Services Contract (Appendix A). As part of the negotiation process, Respondents may propose amendments to this contract, but the City, at its sole option, will decide whether to open discussion on each proposed amendment.

J. PARTNERSHIPS

The City will allow firms to partner in order to respond to this RFP. Respondents may team under a Prime Respondent’s submittal in order to provide responses to all sections in a single submission; however, each Respondent’s participation must be clearly delineated by section.
The Prime Respondent will be considered the responding vendor and the responsible party at contract award. All contract negotiations will be conducted only with the Prime Respondent. Any agreements between the Prime Respondent and other companies will not be a part of the agreement between the City and the Prime Respondent. The City reserves the right to select more than one Prime Respondent.

K. COMMITMENT OF FIRM KEY PERSONNEL

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

L. PROPOSAL FORMAT AND PRESENTATION

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

M. CONFIDENTIAL OR PROPRIETARY INFORMATION

Information that is confidential or proprietary must be clearly marked on each affected page. Further, an index must be provided indicating the affected page number(s) and location(s) of all such identified material. Information not included in said index will not be reviewed for confidentiality or as proprietary before release. See items 1.06 of the Standard Terms and Conditions.

N. CONTENT TO BE SUBMITTED

Respondents are to provide complete and detailed responses to all items below. Submittals that are incomplete or conditioned in any way that contain alternatives or items not called for in this RFP, or not in conformity with law, may be rejected as being non-responsive. The City will not accept any proposal containing a substantial deviation from the requirements outlined in this RFP.

Organization of the submittal shall follow the sequence of contents below so that essential information can be located easily during evaluation.

1. Name, local address, email address, and phone number of the individual or firm submitting the proposal.

2. Prior experience by firm or individual in the food service industry and any additional experience with sales and services, particularly in a recreation setting. Include a statement of qualifications describing the number of years of experience, settings, kinds of services provided and financial stability.
3. Describe food concession services proposed. Provide proposed menu and pricing for the concession.

4. Describe any other services proposed such as ice, and/or rentals

5. Describe any equipment you would want to install in the concession building and your ability to meet the Memorial Day weekend opening date of the recreation season.

6. Proposed staffing plan, including the minimum qualifications for staff, how they will be hired, proposed hours, compensation, what background checks are performed, hiring standards, and discipline procedures. Include plan for staffing when provider is away from the concession area.

7. Proposed compensation to Tacoma Power.

8. Provide three (3) references that can describe your performance in operating this or similar businesses.

9. Describe any exceptions you are requesting to Tacoma Power's scope of work and responsibilities for Attachment B (sample agreement).

10. Any additional information which you feel would be helpful to the Selection Advisory Committee (SAC).

11. Sustainability

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

2. Please demonstrate your firm’s commitment to providing the services identified in the scope of work in a sustainable manner. What measures will your firm take to minimize negative impacts to the environment in the delivery of services? Please provide details of efforts, practices and/or processes.

3. What are the primary negative environmental impacts in your industry? How will you mitigate these impacts in the delivery of your services?

4. Please demonstrate your firm's commitment to sustainable business practices, which could include, but are not limited to a formal sustainability program and/or policies covering recycling measures, energy conservation plans, water conservation policies, or a green cleaning policy. Please provide details and if available, include copies of reports, policies or plans.

5. Required Form
   • Signature Page
6. Equity In Contracting

Please provide answers to the questions below in your proposal. A “yes” answer to any of the questions below will result in the award of five (5) points.

- Is your firm a certified City of Tacoma SBE firm?
- Is your firm partnering with a certified City of Tacoma SBE firm(s)?
- Is your firm a minority/woman owned firm certified with the Washington State Office of Minority and Women’s Business Enterprise?
- Is your firm partnering with a minority/woman owned firm certified with the Washington State Office of Minority and Women’s Business Enterprise?

7. Credit Card Acceptance

Provide a statement regarding your ability to meet the City’s credit card requirements (below) as well as identifying your reporting capabilities (Level I, II, or III).

i. Vendors must be PCI–DSS compliance (secure credit card data management).

ii. Vendors must be set up by their card processing equipment provider (merchant acquirer) as a minimum of a Level II merchant with the ability to pass along tax, shipping and merchant references information.

This information is not a consideration in the evaluation process.

O. EVALUATION CRITERIA

A SAC will review and evaluate submittals. After the evaluation, the SAC may conduct interviews of the most qualified Respondents before final selection.

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

Submittals will be evaluated on the following criteria:

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Points</th>
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<tbody>
<tr>
<td>Proposed food service, including sample menu and times of service</td>
<td>30</td>
</tr>
<tr>
<td>Past concession or food service experiences and references</td>
<td>25</td>
</tr>
<tr>
<td>Financial standing, percentage of revenue returned to Tacoma Power</td>
<td>20</td>
</tr>
<tr>
<td>Ability to meet demands for services other than food</td>
<td>15</td>
</tr>
<tr>
<td>Completeness of proposal</td>
<td>5</td>
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<tr>
<td>Small Business Enterprise</td>
<td>5</td>
</tr>
<tr>
<td>Equity in Contracting</td>
<td>5</td>
</tr>
</tbody>
</table>

The City reserves the right to visit facilities of selected Respondents for the purpose of observing the quality of customer service, food offered and cleanliness of facilities.
The SAC may use references to clarify information in the submittals and interviews, if conducted, which may affect the rating. The City reserves the right to contact references other than those included in the submittal.

P. INTERVIEWS / ORAL PRESENTATIONS

An invitation to interview may be extended to Respondents based on Selection Advisory Committee review of the written submittals. The SAC reserves the right to adjust scoring based on additional information and/or clarifications provided during interviews. The SAC may determine scoring criteria for the interviews following evaluation of written submittals.

The City reserves all rights to begin contract negotiations without conducting interviews.

Respondents must be available to interview within three business days notice.

Q. AWARD

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

Once a finalist (or finalists) has been selected by the Selection Advisory Committee, contract negotiations with that finalist will begin, and if a contract is successfully negotiated, it will, if required, be submitted for final approval by the Public Utility Board and/or City Council.

R. CONTRACT INFORMATION

Any resulting contract(s) or agreement(s) will be subject to City of Tacoma's standard requirements, terms, and conditions for such contracts. Exclosed is a copy of Tacoma Power's concessionaire agreement (Attachment B), which contains insurance and other requirements that must be met. A $200 permitting fee will be charged for the Concessionaire Agreement.

The concessionaire shall pay the agreed upon payment to the City of Tacoma on or before October 31 of the year in business, including the Leasehold Excise Tax as levied by the State of Washington. The payment shall equal the Concession Fee plus applicable Leasehold Excise Tax. For 2020, the Leasehold Excise Tax is 12.84% of the Concessionaire Fee. See https://dor.wa.gov/find-taxes-rates/other-taxes/leasehold-excise-tax. Tacoma Power will pay the Leasehold Tax to Lewis County.
SECTION 2 – TECHNICAL PROVISIONS

A. SCOPE OF WORK

Background
Tacoma Power owns and operates 275-acre Mossyrock Park at 202 Ajlune Road, Mossyrock, Washington, about three (3) miles from the town of Mossyrock on the Riffe Lake shoreline. The campground is part of Tacoma Power’s Cowlitz Hydroelectric Project. The park has 152 individual campsites (76 with water and electricity), four (4) group camp pods, two (2) primitive group camps, a large day-use area, playground, restrooms with showers, swim area, boat launch, two (2) kitchen shelters, laundry facilities, and a concession building with a concession area. Learn more about Mossyrock Park at MyTPU.org/Parks.

The park is open year-round (closed December 20-January 1) but is most popular in the summer months. In 2017, there were an estimated 24,000 campers and 66,000 day-use visitors at the park. Riffe Lake is a hydropower reservoir and is lowered in the winter and refilled to a maximum of 749 feet of elevation in the summer.

The park’s concession building is a one-story building with a concession area, public laundry area, shower room, and restroom. The space available to a concessionaire is the concession area, adjacent patio, and lawn within 100 feet of the building. The building is located in the day-use area with paved access for the operator and is surrounded by lawn. The concession area contains a 20-foot by 18-foot food prep room with sinks, shelving, counters for food preparation, and room to install stoves, hoods, and other commercial kitchen equipment. There is also a 25-foot by 12-foot room with a small amount of space for indoor seating, which also has shelves to sell food and sundries, as well as two (2) storage rooms, a bathroom for employees, a large hallway, and a partially covered outdoor patio.

Tacoma Power Ownership and Responsibilities
Tacoma Power owns the hot water heaters (2), sinks, lights (including bulbs), hood fan, and the plumbing and electrical lines in the walls and floors.

Tacoma Power shall:
- Provide the use of the building for the operation of the concession.
- Maintain the plumbing and electrical systems in the concession area.
- Provide water, electrical service, and septic service for concession use at no charge.
- Provide garbage pickup from Tacoma Power-supplied receptacles during regularly scheduled rounds.
- Mow the lawn in the vicinity of the concession area building.

Tacoma Power shall not provide janitorial or laundry services, cleaning supplies, housing or camping space for staff, pest control in the food areas, or storage for items not related to the park concession. Tacoma Power is not responsible for garbage pickup from inside the concession area building.

The Concessionaire shall not damage or interfere with Tacoma Power’s use of the Premises, structures, or facilities.
General Responsibilities of the Concessionaire

Concessionaire shall:

- Maintain the agreed upon days and hours of operation.
- Provide trained, qualified, and responsible staff.
- Maintain an atmosphere appropriate to a public park that is helpful, courteous, friendly, and welcoming to all. Employees are expected to wear clothing that is clean, modest, and does not display images of alcohol, tobacco, or the like, or include other items or language not appropriate for a public park.
- Manage the concession area according to the permit. Requests outside the scope of the permit must be submitted in writing to the Park Supervisor.
- Procure and maintain all applicable federal, state, county and city health, fire, and safety permits required to operate the facility. A valid Department of Health permit must be provided to Tacoma Power before opening for business.
- Meet all applicable federal, state, county and city health, fire, and safety standards. The Concessionaire will have fire suppression systems associated with the stove hood inspected and provide a copy of the inspection to Tacoma Power.
- Pay all employees' salaries, taxes, license fees, and any other taxes or required expenses incurred as part of operating the facilities.
- Pay the agreed upon Use Fees to Tacoma Power on or before October 31 of the year in business, including a Leasehold Excise Tax as levied by the State of Washington.
- Provide Tacoma Power with copies of financial records detailed enough to determine gross receipts if requested.
- Refrain from using the facilities for any personal or other business use that is not directly related to the operation of the concession area. Once the concession area of the building is closed for the season, it may not be used for food preparation until the start of the next recreation season.

Inventory List

Concessionaire shall:

- Prior to commencing operations for each summer season, submit a complete Inventory list of all trade equipment installed in the concession building and notify Tacoma Power specifically of any changes from the prior list.
- Obtain pre-approval in writing from Tacoma Power for any new equipment that will require a change to the electrical system or to the plumbing.

Maintenance and Equipment

Concessionaire shall:

- Be responsible for acquiring and maintaining any trade equipment needed in the concession area.
- Communicate with Tacoma Power about any electrical or plumbing needs for the building. Secure written permission from Tacoma Power before installing large appliances that require changes to the electrical system. No plumbing or electrical work may be performed by the provider.
- Meet health and fire regulations for any provider-installed equipment in the concession area, whether existing or newly installed. Use of provider-supplied equipment requires that all safety systems, including fire suppression, be up to date and functional. Any costs incurred for the subject fire suppression systems shall be incidental to an agreement.
- Secure written permission from Tacoma Power before attaching anything to the building.
• Clean the concession area, including daily cleaning of the kitchen, patio, and surrounding areas within 100 feet of the building used primarily by concession patrons. The outside area is a shared space with the public. The provider is responsible for the clean-up and waste generated by patrons and must report any special clean-up needs generated by the public to Park Supervisor. Periodically, the Park Supervisor may conduct inspections to determine whether the concession area is being adequately and regularly cleaned.
• The Concessionaire is responsible for cleaning their employee restroom.
• One parking place will be allowed next to the concession building. All other workers are to park in the day-use area.
• Notify Park Supervisor immediately should any repairs to the structure be necessary. If repairs are due to negligence of the provider, provider shall be invoiced for the work and supplies.
• Tacoma Power will issue two sets of keys for the building to the Concessionaire. The Concessionaire may not make copies of Tacoma Power keys. Tacoma Power staff will not open the building for the Concessionaire’s staff. Any alternative key arrangements or access during the closed park season must be made with the Park Manager.
• All pest control in the food service area of the concession building is the responsibility of the Concessionaire.

Garbage
Concessionaire shall:
• Deposit all inside garbage in the Tacoma Power-supplied outside receptacles. No unsecured garbage may be left outside overnight. Tacoma Power will schedule regular rounds for garbage pickup. Contact the park supervisor for extraordinary garbage pick up needs.
• Dispose/recycle all cooking oil properly off-site. It is not allowed or acceptable to dispose of used cooking oil into any drain or in the trash.

Services
• The concessionaire may provide food delivery service to campsites as long as vehicles and drivers are licensed and insured follow campground rules, including speed limits and not driving on pedestrian paths. The vehicle must be visibly identified as operating under a concessionaire.
• Merchandise sales may include items that might be of use to a camper. The concessionaire may not sell or provide alcohol, cigarettes, chewing tobacco, fireworks, vaping materials, marijuana products, balloons, or any other item that Tacoma Power deems not suitable for a public park. For public safety, glass products shall not be sold. Written requests can be made to the park supervisor for a case-by-case exception. Vending machines can be considered in addition to other food services if approved by Tacoma Power.
• Concessionaire shall prohibit alcoholic beverages from being sold or consumed on the permitted areas. Services provided by concessionaire must not be deemed a safety concern or negatively affect the enjoyment of park patrons.
• Concessionaire may rent horseshoes, volleyballs, and other sports equipment if desired.
• Concessionaire shall obtain written permission from Tacoma Power and provide proof of additional insurance before renting equipment for water sports such as boats and rafts.
Open hours
- The concessionaire must adhere to any published/advertised hours of operation.
- Normal operation of the concession(s) will be, at a minimum: the third and fourth weekends in June, the entire three-day Memorial Day weekend, July 4, and Wednesday through Sunday from June 30 to Labor Day (additional days per week optional). Once the operating schedule is set for the year, it must be adhered to unless a change is approved by the Park Supervisor.

Advertising
- Concessionaire shall provide advertising copy to Tacoma Power for review.
- Concessionaire may advertise in the concession area building and patio including handbills, tabletop displays, and removable A-frame signs.
- Portable advertising signs should not create a safety issue and should be secured against the weather. These portable signs are allowed near the concession building, and in the S’mores and Birds Eye campground loops.
- Any permanent or larger signs to be attached to the outside of the building shall be approved by the Park Supervisor or Tacoma Public Utilities Public Affairs.
- Approved advertising copy can be handed out by park employees to patrons at the time of registration at their discretion.
- No advertising may be attached to trees, other signs, kiosks, or building walls with tacks or tape that could mar the walls.

Closed Season
Concessionaire shall:
- Clean and winterize for the closed season by October 30 each year.
- Remove perishables for the closed season.
- Winterize equipment.
- Unplug equipment that has not been approved by the Park Supervisor to remain electrified over the winter.
- Turn off the water to any auxiliary lines such as ice maker, ice cream dipper, sink, etc.
- Notify the Park Supervisor when winterizing is complete and provide emergency phone number, email, and a winter mailing address.
APPENDIX A

Signature Page
Certificate of Insurance Requirements
Sample Contract
Equity In Contracting
Map and Photo
SIGNATURE PAGE
CITY OF TACOMA
TACOMA POWER / GENERATION / NATURAL RESOURCES

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

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

REQUEST FOR PROPOSALS SPECIFICATION NO. PG20-0038F
Mossyrock Park Concessions

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

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

Non-Collusion Declaration

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

Bidder/Proposer’s Registered Name
______________________________
Signature of Person Authorized to Enter into Contracts for Bidder/Proposer
______________________________
Date

Address

City, State, Zip

E-Mail Address


(Area Code) Telephone Number / Fax Number

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

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

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

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

1. **GENERAL REQUIREMENTS**

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

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

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

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

1.4. Insurance policies required under this Contract that name “City of Tacoma” as Additional Insured shall:
   1.4.1. Be considered primary and non-contributory for all claims.
   1.4.2. Contain a “Separation of Insured provision and a “Waiver of Subrogation” clause in favor of City of Tacoma.

1.5. Section 1.4 above does not apply to contracts for purchasing supplies only.

1.6. Verification of coverage shall include:
   1.6.1. An ACORD certificate or equivalent.
   1.6.2. Copies of all endorsements naming the City of Tacoma as additional insured and showing the policy number.
   1.6.3. A notation of coverage enhancements on the Certificate of Insurance shall not satisfy these requirements – actual endorsements must be submitted.

1.7. Liability insurance policies, with the exception of Professional Liability and Workers’ Compensation, shall name the City of Tacoma and its officers, elected officials, employees, agents, and authorized volunteers as additional insured.
   1.7.1. No specific person or department should be identified as the additional insured.
   1.7.2. All references on certificates of insurance and endorsements shall be listed as “City of Tacoma”.
   1.7.3. The City of Tacoma shall be additional insured for both ongoing and completed operations using Insurance Services Office (ISO) form CG 20 10 04 13 and CG 20
1.8. Contractor shall provide a Certificate of Insurance for each policy of insurance meeting the requirements set forth herein when Contractor provides the signed Contract for the work to City of Tacoma. Contractor shall provide copies of any applicable Additional Insured, Waiver of Subrogation, and Primary and Non-contributory endorsements. Contract or Permit number and the City Department must be shown on the Certificate of Insurance.

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

1.10. Liability insurance policies shall be written on an “occurrence” form, except for Professional Liability/Errors and Omissions, Pollution Liability, and Cyber/Privacy and Security

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

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

1.13. Contractor shall provide City of Tacoma notice of any cancellation or non-renewal of this required insurance within Thirty (30) calendar days.

1.14. Contractor shall not allow any insurance to be cancelled or lapse during any term of this Contract, otherwise it shall constitute a material breach of the Contract, upon which City of Tacoma may, after giving Five (5) business day notice to Contractor to correct the breach, immediately terminate the Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith; with any sums so expended to be repaid to City of Tacoma by Contractor upon demand, or at the sole discretion of City of Tacoma, offset against funds due Contractor from City of Tacoma.

1.15. Contractor shall be responsible for the payment of all premiums, deductibles and self-insured retentions, and shall indemnify and hold the City of Tacoma harmless to the extent such a deductible or self-insured retained limit may apply to the City of Tacoma as an additional insured. Any deductible or self-insured retained limits in excess of Twenty Five Thousand Dollars ($25,000) must be disclosed and approved by City of Tacoma Risk Manager and shown on the Certificate of Insurance.

1.16. City of Tacoma reserves the right to review insurance requirements during any term of the Contract and to require that Contractor make reasonable adjustments when the scope of services has changed.
1.17. All costs for insurance shall be incidental to and included in the unit or lump sum prices of the Contract and no additional payment will be made by City of Tacoma to Contractor.

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

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

1.20. If Contractor is a State of Washington or local government and is self-insured for any of the above insurance requirements, a certification of self-insurance shall be attached hereto and be incorporated by reference and shall constitute compliance with this Section.

2. CONTRACTOR

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

3. SUBCONTRACTORS

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

4. REQUIRED INSURANCE AND LIMITS

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

4.1 Commercial General Liability Insurance

Contractor shall maintain Commercial General Liability Insurance policy with limits not less than One Million Dollars ($1,000,000) each occurrence and Two Million Dollars ($2,000,000) annual aggregate. The Commercial General Liability Insurance policy shall be written on an Insurance Services Office form CG 00 01 04 13 or its equivalent. Products and Completed Operations shall be maintained for a period of three years following Substantial Completion of the Work related to performing construction services.

This policy shall include product liability especially when a Contract solely is for purchasing supplies. The Commercial General Liability policy shall be endorsed to include:

4.1.1 A per project aggregate policy limit, using ISO form CG 25 03 05 09 or an equivalent endorsement.

4.2 Sexual Misconduct or Abuse & Molestation Liability Insurance

Contractor shall maintain Sexual Misconduct policy with limits not less than One Million Dollars ($1,000,000) each occurrence and Two Million Dollars ($2,000,000) aggregate. If Abuse and Molestation coverage is provided on a “claims-made” basis, coverage must be maintained for not less than three years following the end of the Contract. This may be done by policy renewals or an Extended Reporting Period Endorsement.
4.2.1

4.3 Commercial (Business) Automobile Liability Insurance
Contractor shall maintain Commercial Automobile Liability policy with limits not less than One Million Dollars ($1,000,000) each accident for bodily injury and property damage and bodily injury and property damage coverage for owned (if any), non-owned, hired, or leased vehicles. Commercial Automobile Liability Insurance shall be written using ISO form CA 00 01 or equivalent. Contractor must also maintain an MCS 90 endorsement or equivalent and a CA 99 48 endorsement or equivalent if “Pollutants” are to be transported.

4.4 Workers’ Compensation
4.4.1 Contractor shall comply with Workers’ Compensation coverage as required by the Industrial Insurance laws of the State of Washington, as well as any other similar coverage required for this work by applicable federal laws of other states. The Contractor must comply with their domicile State Industrial Insurance laws if it is outside the State of Washington.

4.5 Employers’ Liability Insurance
Contractor shall maintain Employers’ Liability coverage with limits not less than One Million Dollars ($1,000,000) each employee, One Million Dollars ($1,000,000) each accident, and One Million Dollars ($1,000,000) policy limit.

4.6 Other Insurance
Other insurance may be deemed appropriate to cover risks and exposures related to the scope of work or changes to the scope of work required by City of Tacoma. The costs of such necessary and appropriate Insurance coverage shall be borne by Contractor.
CITY OF TACOMA
DEPARTMENT OF PUBLIC UTILITIES
LIGHT DIVISION
CONCESSIONAIRE AGREEMENT NO. 2750

Reference No. XXXXXXXXX
Grantor: City of Tacoma, Department of Public Utilities, Light Division (d.b.a. Tacoma Power)
Grantee: XXXXXXXXX
Legal Description: Southeast Quarter (SE¼) of Section 16, Township 12 North, Range 03 East, W.M. (commonly known as Mossyrock Park, Lewis County, WA)
Parcel No.: 029288-001-000

This Agreement entered into this ______ day of __________________, 2011, between CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION (d.b.a. Tacoma Power), hereinafter called “Tacoma Power,” and XXXXXXXXX, hereinafter referred to as “Concessionaire.”

Recitals

WHEREAS, Tacoma Power owns and operates Mossyrock Park, located in Lewis County, Washington; and

WHEREAS, Tacoma Power desires to provide concessionaire food services at Mossyrock Park, Lewis County, Washington, for the benefit of the general public, and

Page 1 of 11
WHEREAS, XXXXXXXXX, owner and operator of XXXXXXXXX, has requested the right and privilege to provide said concessionaire services at Mossyrock Park.

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, IT IS HEREBY AGREED as follows:

PREMISES
Tacoma Power, for and in consideration of the mutual benefits and covenants herein contained, does hereby grant to the Permittee limited, revocable permission to use a portion of that real property described as:

Mossyrock Park located in Sections 9, 15, 16, and 22, Township 12 North, Range 03 East, W.M., Lewis County, Washington.

PURPOSE
Tacoma Power authorizes the above described real property (the “Premises”) to the Concessionaire for the express purpose of:

OPERATING AND MAINTAINING A LICENSED FOOD CONCESSION FOR SERVING THE PUBLIC FROM MAY XX THROUGH SEPTEMBER XX. OTHER SERVICES OR USES OF THE PREMISES SHALL BE REQUESTED AND APPROVED ON A CASE-BY-CASE BASIS.

Permittee agrees to make no other use of the subject Premises or enlarge its use thereof without the prior written consent of Tacoma Power.

TERMS AND CONDITIONS
This permission is further granted to the Permittee under the following terms and conditions:

1. AGREEMENT PERIOD
The period (term) of this AGREEMENT shall be for xxx years commencing on May xxxx and terminating on December xxx.
2. CONSIDERATION/FEES

The Concessionaire shall pay the following:

a. The sum of TWO HUNDRED DOLLARS ($200) for processing this AGREEMENT; and

b. An annual Use Fee in the sum of XXXXXXXXX of the gross revenues.

c. Gross revenues shall mean the total amount of monies or other consideration received, realized or accruing from the sale or rental of concession products, merchandise or services by the Concessionaire pursuant to the terms of this Agreement, LESS any and all sales taxes, use taxes or tax of a similar nature which may be directly levied on said revenues.

d. Gross revenues used to calculate the Concessionaire’s Use Fee shall be based on the Washington State Department of Revenue, Quarterly Business and Operating (B & O) Tax Statement as depicted and demonstrated on Attachment “A” attached hereto and fully incorporated herein by this reference.

e. The Concessionaire shall also pay, if applicable, a Leasehold Excise Tax of TWELVE AND EIGHTY FOUR ONE-HUNDREDTH PERCENT (12.84%) as levied by the State of Washington pursuant to Chapter 82.29A, Revised Code of Washington, as hereafter may be amended, in addition to any payments above required.

f. Payment of all Fees shall be made ANNUALLY on or before the 1st day of December following the concession season. Payments shall be made to City of Tacoma Treasurer and delivered to City of Tacoma, Department of Public Utilities, Attn: Real Property Services re A2750, P.O. Box 11007, Tacoma, Washington 98411, or such other address as the Department of Public Utilities may hereafter designate.

3. OWNERSHIP OF PREMISES

a. Tacoma Power owns and controls Mossyrock Park which is consistent with and part of its Utility System. The permission granted herein is subordinate to and subject to the paramount right of Tacoma Power to use said Premises under its license(s) or permit(s) and any other Tacoma Power uses.

b. The Premises described above are necessary for the operation, maintenance, or improvement to Tacoma Power’s Utility System; therefore, Concessionaire or its agents, employees or property may be
subject to hazards of utility operation which Concessionaire hereby expressly assumes. Concessionaire shall not damage or interfere with Tacoma Power’s use of the Premises, structures or facilities located thereon.

c. The Concessionaire agrees and covenants that any future improvements and/or structures that Tacoma Power permits to be installed by said Concessionaire, or its agents, on the Premises, shall NOT belong to Tacoma Power upon the termination (or expiration) of this Agreement. Said improvements shall be owned by and be the sole responsibility of the Concessionaire. Thus, the Concessionaire covenants and agrees that upon termination of this Agreement, the Concessionaire shall remain solely responsible for all such improvements and structures and shall, at Tacoma Power’s request, promptly remove said improvements/structures and restore the Premises to the same condition as existed upon commencement of the Agreement period.

4. AUDITING AND RECORDS

The Concessionaire’s books and business records pertaining to the Mossyrock Park concession business, including state and federal tax records, shall be open and available to Tacoma Power upon request of the Superintendent of Tacoma Power and/or by his designee. Any inspection shall be strictly for Tacoma Power (the Superintendent or his representatives) review purposes and therefore shall not be disclosed to others, except as required by law. A worksheet (per Attachment “A”) depicting payment computations shall be submitted with each payment.

5. INDEMNIFICATION

To the fullest extent allowed by law, the Concessionaire agrees to indemnify, defend, and hold harmless the City of Tacoma, its officers and employees, from any and all claims for damages or loss to the City of Tacoma operations or property and from any and all claims or litigation arising in connection with this Agreement. This includes damages, loss, and personal injury (including death) to property or persons including injuries or death to Concessionaire, or Concessionaire’s agents, contractors or employees which may be caused or occasioned by the existence, operation, use or maintenance of any and all of the property subject to this Agreement or associated with the Premises granted hereunder, or caused or occasioned by any act, deed or omission of the Concessionaire, Concessionaire’s agents, employees, guests, customers or invitees. In this regard, Concessionaire hereby waives immunity under Title 51 RCW, Industrial Insurance Laws. The City of Tacoma agrees to be responsible for its sole negligence or the sole negligence of its employees and officers occurring within the scope of their employment. This indemnification has been mutually negotiated.
6. LIABILITY INSURANCE

Concessionaire, its agents and contractors, shall procure and keep effective during the term of this Permit a general comprehensive liability insurance policy which, at a minimum:

a. Names the City of Tacoma as an “Additional Insured,” protecting the City of Tacoma, its officers and employees with coverage of not less than $1,000,000 combined single limit for each occurrence of property damage and/or personal injury including death; and

b. Includes contractual type coverage obligating Concessionaire’s insurance carrier to satisfy Concessionaire’s potential liability responsibilities and obligations under the terms of this Agreement;

c. Provides that Concessionaire’s insurance (and/or that of its agents and contractors) is primary over any insurance or self-insurance program the City of Tacoma maintains for its own protection; and

d. Provides that the Tacoma Power will be provided 30 days’ prior written notice in the event of cancellation of policy.

A Certificate of Insurance, including an endorsement naming the City of Tacoma as an “Additional Insured,” and stating that coverage is primary over any insurance or self-insurance the City may have, shall be provided to Tacoma Power for approval and filing. Upon request, Concessionaire shall provide a copy of the required insurance policy to Tacoma Power within thirty (30) days of the request.

This Agreement is conditioned upon Concessionaire’s maintaining the above-stated minimal insurance requirements, and Concessionaire shall not occupy or enter upon the Premises until Tacoma Power has received the Concessionaire’s Certificate of Insurance. The Concessionaire agrees to maintain the required insurance coverage and provide Tacoma Power a current Certificate of Insurance (as required herein). Any lapse or termination of either condition constitutes a material breach of this Permit. As a courtesy, Tacoma Power will endeavor to inform (but is not responsible for informing) the Concessionaire of such a breach. Tacoma Power (at its option) may grant an appropriate grace period in order that the Concessionaire may expeditiously cure the said default(s).

Tacoma Power may charge an administrative fee reflecting its costs arising from attempting to obtain a current Certificate of Insurance. If the required insurance coverage is still not reinstated within the stated grace period, or if Tacoma Power is not provided the required Certificate of Insurance, Tacoma Power may terminate this Permit. Note: The notice provisions set forth in the Termination Section of this Permit do not preclude the immediate termination of this Permit by Tacoma Power under this Section.

Tacoma Power may periodically review the types and amounts of coverage required of Concessionaire and provide notice of required changes in the types and minimum amounts of such coverage.
7. GENERAL CONDITIONS

As a condition of this Agreement, the Concessionaire acknowledges and accepts the following general terms and conditions:

a. **Warranty.** Tacoma Power does not warrant its authority to permit the above described use of the Premises, and the Concessionaire agrees to secure any other rights that are needed by it for its lawful use of said Premises.

b. **Prior Agreements/Permits.** The rights herein granted shall be subject to any prior agreements, permits or contracts made or entered into by Tacoma Power and further shall be subject to any subsequent agreements or permits between city, state, or federal wildlife, fish, ecology, energy, or other regulatory agency having jurisdiction over Tacoma Power's hydroelectric systems.

c. **Other Agencies' Regulations.** The Concessionaire is at all times subject to provisions and requirements of federal, state and local agencies and any future rules and regulations of these agencies or their successors or assigns, including those relating to food processing or operating a food concession business. The Concessionaire is also subject to any lawful rules or regulations now in effect or which hereafter might become effective which are imposed upon the subject Premises by any regulating authority including Tacoma Power. Tacoma Power reserves the right at any and all times to prescribe additional rules and regulations for the conduct, operation and maintenance of any or all the rights and privileges granted under the terms of this Agreement. Tacoma Power will endeavor to give thirty (30) days' notice to Concessionaire of any such additional rules and regulations.

d. **Primary Purpose of Property.** The rights and privileges under this Agreement shall at all times be subservient to the construction, operation and maintenance of the Utility Systems of Tacoma Power, and shall not at any time or in any manner interrupt or interfere therewith; and Tacoma Power shall not be liable to the Concessionaire or to any guests or customers entering upon the Premises on account of such construction, operation or maintenance, or any act or thing done in connection therewith.

e. **Subordination of Rights.** The permission granted herein is subordinate and subject to the paramount right of Tacoma Power to use the subject Premises under its federal power license and any extensions of said license.
f. **Non-Exclusive Rights.** This Agreement is non-exclusive and shall not prohibit Tacoma Power from granting other agreements of like or other nature to others, nor shall it prevent Tacoma Power from using any of the subject Premises or affect its right to full supervision and control over all or any part of the said Premises, none of which is hereby surrendered.

g. **Tacoma Power’s Use of Property.** Concessionaire shall not damage or interfere with Tacoma Power’s use of the Premises, structures, or facilities. If Tacoma Power requires that Concessionaire’s operations, facilities, or structure(s) be moved or modified as a result of interference or conflict with Tacoma Power operations or facilities, Concessionaire will promptly make those modifications at its own expense.

h. **Maintenance of Concessionaire’s Structures.** The structure(s), improvement(s), and any associated habitat conditions permitted herein will be maintained at the Concessionaire’s sole cost in a safe condition and according to the specifications described in this Agreement.

i. **Concessionaire’s Facilities.** Concessionaire shall maintain its facilities, and the Premises subject to this Agreement, in a clean and neat manner. Any improvements that Tacoma Power may allow Concessionaire to install are subject to being damaged by Tacoma Power’s operations and Concessionaire assumes the risk of such limited use rights and will be responsible for its own additional costs and expenses in restoring any such areas.

j. **Supervision.** The Concessionaire, its agents and employees, shall give the conduct, operation and maintenance of the Premises (and authorized improvements thereon) granted herein its personal supervision and direction.

k. **Unlawful Purposes.** The Concessionaire will, at all times, maintain the Premises in an orderly manner and will not create or permit any nuisance to exist or allow the Premises to be used for any immoral or unlawful purposes.

l. **Cooperation.** The Concessionaire shall cooperate fully with the federal, state and county agencies, or other departments and at all times give access to said agencies and departments for the purpose of inspecting and implementing rules and regulations regarding the operations of either the hydroelectric facilities or the Concessionaire’s business.

m. **Minimum Days of Operation.** The Concessionaire shall operate, at a minimum, XXXXXXXXXX.
8. SPECIAL CONDITIONS/ADDITIONAL PROVISIONS

The Concessionaire acknowledges and accepts the following special conditions/provisions:

a. Tacoma Power agrees to provide use of an existing facility (historically used by previous concessionaires) to operate from as consideration of the public services being provided; however, the Concessionaire agrees that all costs of operating, future improvements and maintenance and related equipment are the responsibility of the Concessionaire.

b. The Concessionaire agrees to submit a complete inventory indicating ownership of all trade equipment located in the Mossyrock Park Concessionaire facility to the Cowlitz Hydroelectric Project Office, Dean McLeod at (360) 985.2222, prior to commencing operations for each summer season and not later than May 30 of each year, whichever occurs first. If new or replacement equipment is added or removed during the year, then it is the Concessionaire’s responsibility to revise and submit a new inventory list to the Cowlitz Hydroelectric Project Office.

c. All facilities, including buildings, structures, or signs, or any modifications thereof, which are constructed or erected by the Concessionaire, or its agents or contractors, on the Premises, shall be approved in writing by Tacoma Power prior to construction.

d. Should the location of the Concessionaire’s facilities hinder or in any way interfere with the necessary or convenient operations and/or the development of Tacoma Power’s facilities, Tacoma Power reserves the right to require the Concessionaire to relocate to a different site at the Concessionaire’s expense.

e. The Concessionaire agrees to dispose of kitchen oil and grease, debris, garbage and waste in a timely and environmentally sound manner and that this is solely the Concessionaire’s responsibility.

f. The Concessionaire agrees to and shall maintain all necessary State licenses and any local health certificates during the term of this Agreement.

9. ASSIGNMENT

This Agreement is not assignable or transferable unless expressly stated in writing by Tacoma Power.
10. TERMINATION

a. **Operational Necessity:** In the event it should become necessary for Tacoma Power to make use of the Premises in connection with the operation of its electrical utility facilities to such an extent as to necessitate discontinuance of the use thereof by the Concessionaire, Tacoma Power may terminate this Agreement by giving Concessionaire written notice of such termination at any time. Said notice to be given by certified mail addressed to Concessionaire at XXXXXXXXXX and termination shall be effective IMMEDIATELY upon delivery thereof.

b. **Insolvency/Bankruptcy:** It is hereby agreed that if the Concessionaire becomes either insolvent or files a proceeding in bankruptcy, or if a receiver is appointed, Tacoma Power may upon giving ten (10) days notice to the Concessionaire cancel this Agreement and re-enter and retake possession of the subject Premises and this Agreement and concession shall, at the option of Tacoma Power, be cancelled and terminated and all interests herein shall be forfeited and inure to Tacoma Power.

c. **Other:** This Agreement may be terminated by the Concessionaire or Tacoma Power upon ninety (90) days written notice, for any reason stated in said notice, mailed by certified mail to the Concessionaire at XXXXXXXXXX 98564, OR to Tacoma Power at P.O. Box 11007, Tacoma, Washington 98411. In the event of such termination, Concessionaire shall retain sole responsibility for any permitted improvements and/or structures per paragraph 3 above.

d. **Surrender of Premises:** Upon the termination of this Agreement for any reason, the Concessionaire agrees to promptly and peaceably surrender possession of the subject Premises and to return said Premises and existing structures and/or improvements to Tacoma Power in as good condition as the same now exists, reasonable wear and tear excepted.

e. **Agreement Re-Issuance:** In the event this Agreement is terminated based upon Concessionaire’s failure to comply with the terms and conditions set forth herein, and Tacoma Power thereafter grants a new agreement, then additional processing fees will be charged to cover the administration of re-issuing a new agreement and/or collection of late Use Fees.

11. RECORDING

This Agreement may be filed with the County Auditor’s office. Should any subsequent transactions pertaining to resale, lease, or permitted use of the subject Premises occur, it is the undersigned’s duty to provide notice to each subsequent
purchaser, lessee, Concessionaire, assignee, and user.

12. The Concessionaire acknowledges that the Agreement has been mutually negotiated.

IN WITNESS WHEREOF, the parties have signed and sealed this Agreement the day and year first above written.

Accepted

XXXXXXXXXX

Accepted

TACOMA POWER

XXXXXXXXXX

Patrick D. McCarty
Generation Manager
Dated this _______ day of _________________________, 2011.

Reviewed:_____________________________ Form Approved:_____________________________

Natural Resources Manager Chief Assistant City Attorney

Reviewed:_____________________________ Reviewed:_____________________________

Hydroelectric Project Manager Director of Finance or Designee
CHAPTER 1.07
EQUITY IN CONTRACTING

Sections:
1.07.010 Policy and purpose.
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1.07.010 Policy and purpose.

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

(Ord. 28625 Ex. A; passed Nov. 5, 2019; Ord. 27867 Ex. A; passed Dec. 15, 2009)

1.07.020 Definitions.

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

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

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

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

D. “Contract” means any type of legally binding agreement regardless of form or title that governs the terms and conditions for procurement of Public Works and Improvements and/or Non-Public Works and Improvements Supplies and Services. Contracts include the terms and conditions found in Specifications, Bidder or Respondent Submittals, and purchase orders issued by the City. A “Contract” as used in this chapter shall include an agreement between the City and a non-profit entity to perform construction-related services for Public Works. A “Contract” does not include: (1) awards made by the City with federal/state grant or City general funds monies to a non-profit entity where the City offers assistance, guidance, or supervision on a project or program, and the recipient of the grant awards uses the grant moneys to provide services to the community; (2) sales transactions where the City sells its personal or real property; (3) a loan transaction where the City is acting as a debtor or a creditor; (4) lease, franchise; (5) agreements to use City real property (such as Licenses, Permits and Easements) and, (6) banking and other financial or investment services.

E. “Contractor” means any Person that presents a Submittal to the City, enters into a Contract with the City, and/or performs all or any part of a Contract awarded by the City, for the provision of Public Works, or Non-Public Works and Improvements, Supplies or Services.
F. “Goals” means the annual level of participation by MWBEs and SBEs in City Contracts as established in this chapter, the Program Regulations, or as necessary to comply with applicable federal and state nondiscrimination laws and regulations. Goals for individual Contracts may be adjusted as provided for in this chapter and shall not be construed as a minimum for any particular Contract or for any particular geographical area.

G. “MWBE Certified business” (or “MWBEs”) means a business that meets the criteria set forth in Section 1.07.050 of this chapter and has been certified as meeting that criteria by the Community and Economic Development Department Program Manager.

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

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

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

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

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

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

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

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

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

Q. “Services” means non-Public Works and Improvements services and includes professional services, personal services, and purchased services, as such terms are defined in Section 1.06.251 TMC and/or the City’s Purchasing Policy Manual.

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

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

T. “Tacoma Public Utilities Service Area” means any ZIP code in which Tacoma Public Utilities maintains infrastructure or provides retail services.


1.07.030 Discrimination prohibited.

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

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

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

1.07.040 Program administration.

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

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

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


1.07.050 Certification.

A. The Program Manager shall approve a business as a Certified Business if all of the following criteria are satisfied:

1. The business is certified as a SBE, MBE, WBE, or MWBE through the state of Washington’s Office of Minority & Women Business Enterprises; and

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

a. The personal residence of the owner is located within the City of Tacoma or Tacoma Public Utilities Service Area, or

b. The company’s business offices are located in any county of the Tacoma Public Utilities Service Area or any county adjacent to Pierce County, or

c. When the work is performed outside of Pierce County, the company’s business offices may be located in an adjacent county in which the work is performed, or

d. Such additional information as the Program Manager or designee may require.

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

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

1.07.060 Program requirements.

A. The program shall meet the following requirements:

1. Establishment of Annual Goals. The Program Regulations adopted pursuant to this chapter shall state reasonably achievable cumulative annual goals for utilization of MWBEs and SBEs in the provision of supplies, services, and public works procured by the City. Cumulative annual goals for the participation of MWBEs and SBEs in City contracts shall be based on the number of qualified MWBEs and SBEs operating within the Tacoma Public Utilities Service Area. The dollar value of all contracts awarded by the City to MWBEs and SBEs in the procurement of supplies, services, and public works shall be counted toward the accomplishment of the applicable goal.

2. Application of Annual Goals to Contracts. The Program Manager shall consult with City departments/divisions to establish department/division specific goals for competitively solicited contracts in accordance with this chapter and the Program Regulations.

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

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

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

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

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

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

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

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

(Ord. 28625 Ex. A; passed Nov. 5, 2019; Ord. 28141 Ex. A; passed Mar. 26, 2013; Ord. 27867 Ex. A; passed Dec. 15, 2009)

1.07.070 Evaluation of submittals.

A. All submittals for a supplies, services, or public works and improvements contracts shall be evaluated for attainment of the MWBE and SBE requirements established for that contract in accordance with this chapter and the Program Regulations.

B. The determination of MWBE and SBE usage and the calculation of MWBE or SBE requirements per this section shall include the following considerations:

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

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

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

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

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

1. When contract award is based on price. The lowest priced bid submitted by a responsive and responsible bidder will be reviewed to determine if it meets the requirement. An MWBE and/or SBE firm may self-count utilization on such bids if they will perform the work for the scope the requirement is based upon.
   a. If the low bidder meets the requirements, the bid shall be presumed the lowest and best responsible bid for contract award.
   b. any bidder that does not meet the MWBE and/or SBE requirements shall be considered a non-responsible bidder unless the bidder receives a waiver from the Program Manager or C&A Board.

2. When contract award is based on qualifications or other performance criteria in addition to price. Solicitations shall utilize a scoring system that promotes participation by certified contractors. The Program Regulations may establish further requirements and procedures for final selection and contract award, including:
   a. Evaluation of solicitations for Architectural and Engineering (A&E) services;
   b. Evaluation and selection of submittals in response to requests for proposals; and
   c. Selection of contractors from pre-qualified roster(s).


1.07.080 Contract compliance.

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

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

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

3. If the Program Manager determines that the contractor has not reasonably and actively pursued the use of replacement MWBEs or SBEs, such contractor shall be deemed to be in non-compliance.

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


1.07.090 Program monitoring.

A. An Advisory Committee shall monitor compliance with all provisions of this chapter and the related Regulations. The Program Manager shall establish procedures to collect data and monitor the effect of the provisions of this chapter to assure, insofar as is practical, that the remedies set forth herein do not disproportionately favor one or more racial, gender, ethnic, or other protected groups, and that the remedies do not remain in effect beyond the point that they are required to eliminate the effects of under utilization in City contracting, unless such provisions are supported by a Disparity Study. The Program Manager shall have the authority to obtain from City departments/divisions, respondents, and contractors such relevant records, documents, and other information as is reasonably necessary to determine compliance.

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

(Ord. 28625 Ex. A; passed Nov. 5, 2019: Ord. 28141 Ex. A; passed Mar. 26, 2013: Ord. 28110 Ex. B; passed Dec. 4, 2012:
Ord. 27867 Ex. A; passed Dec. 15, 2009)

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

(Ord. 28625 Ex. A; passed Nov. 5, 2019: Ord. 28141 Ex. A; passed Mar. 26, 2013: Ord. 28110 Ex. B; passed Dec. 4, 2012:
Ord. 27867 Ex. A; passed Dec. 15, 2009)

1.07.110 Remedies.
A. Upon receipt of a determination of contractor violation by the Program Manager, the City Manager or Director of Utilities,
as appropriate, may take the following actions, singly or together, as appropriate:
1. Forfeit the contractor’s bid bond and/or performance bond;
2. Publish notice of the contractor’s noncompliance;
3. Cancel, terminate, or suspend the contractor’s contract, or portion thereof;
4. Withhold funds due contractor until compliance is achieved; and/or
5. Recommend appropriate action including, but not limited to, disqualification of eligibility for future contract awards by the
City (debarment) per Section 1.06.279 TMC;
B. Prior to exercise of any of the foregoing remedies, the City shall provide written notice to the contractor specifying the
violation and the City’s intent to exercise such remedy or remedies. The notice shall provide that each specified remedy
becomes effective within ten business days of receipt unless the contractor appeals said action to the Hearing Examiner
pursuant to Chapter 1.23 TMC.
C. When non-compliance with this chapter or the Program Regulations has occurred, the Program Manager and the
department/division responsible for enforcement of the contract may allow continuation of the contract upon the contractor’s
development of a plan for compliance acceptable to the Director.

(Ord. 28625 Ex. A; passed Nov. 5, 2019: Ord. 28141 Ex. A; passed Mar. 26, 2013: Ord. 28110 Ex. B; passed Dec. 4, 2012:
Ord. 27867 Ex. A; passed Dec. 15, 2009)

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

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

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

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

1.07.140 Review of program.
This chapter shall be in effect through and until December 31, 2024, unless the City Council shall determine at an earlier date
that the requirements of this chapter are no longer necessary. If this chapter has not been repealed by July 1, 2024, the City
Council shall determine by the end of that year whether substantial effects or lack of opportunity of MWBEs and/or SBEs
remain true in the relevant market and whether, and for how long, some or all of the requirements of this chapter should
remain in effect.

(Ord. 28625 Ex. A; passed Nov. 5, 2019: Ord. 28274 Ex. A; passed Dec. 16, 2014: Ord. 28141 Ex. A; passed Mar. 26, 2013:
Ord. 27867 Ex. A; passed Dec. 15, 2009)
Attachment A – Map and Photo

Concession building

Concession building