



City of Tacoma, WA

TACOMA POWER / TRANSMISSION AND DISTRIBUTION
REQUEST FOR BIDS
ELECTRICAL AND DATA PVC CONDUIT STICK PIPE
SPECIFICATION NO. PT21-0005F



**City of Tacoma
Tacoma Power / Transmission and Distribution**

**REQUEST FOR BIDS PT21-0005F
Electrical and Data PVC Conduit Stick Pipe**

Submittal Deadline: 11:00 a.m., Pacific Time, Tuesday, March 23, 2021

Submittal Delivery: Sealed submittals will be received as follows:

By Email:

bids@cityoftacoma.org

Maximum file size: 35 MB. Multiple emails may be sent for each submittal.

Bid Opening: Held virtually each Tuesday at 11AM. Attend [via this link](#) or call 1 (253) 215 8782. Submittals in response to a RFB will be recorded as received. As soon as possible, after 1:00 PM, on the day of submittal deadline, preliminary results will be posted to www.TacomaPurchasing.org.

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

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

Pre-Proposal Meeting: A pre-proposal meeting will not be held.

Project Scope: Supply of Electrical and Data PVC Conduit Stick Pipe on an as needed basis.

Estimate: \$295,000 (three year term)

Paid Sick Leave: The City of Tacoma requires all employers to provide paid sick leave as set forth in Title 18 of the Tacoma Municipal Code. For more information, visit [our Minimum Employment Standards Paid Sick Leave webpage](#).

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.

Federal Title VI Information:

"The City of Tacoma" in accordance with provisions of Title VI of the Civil Rights Act of 1964, (78 Stat. 252, 42 U.S.C. sections 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin in consideration of 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, specifies procedures for protests submitted prior to and after submittal deadline.



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

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SUBMITTAL CHECKLIST

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

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

The following items, in this order, make up your submittal package:		
1	One electronic copy of your complete submittal package in PDF format.	
2	Signature Page with <u>signature</u> , including acknowledgement of any addenda. This form is intended to serve as the first page of your submittal after the Title Page. Do not alter it in any way or add it to letterhead paper or present cover letters or blank pages ahead of it.	
3	Proposal Sheets	
4	Supplemental Information - Section 1.09 <ul style="list-style-type: none"> > Product Data Sheets and Drawings > Manufacturer's Quality Assurance Policy > Manufacturer's Facility Inspection Reports 	

SUBMITTAL INSTRUCTIONS

PRE-SUBMITTAL QUESTIONS

- A. Questions and requests for clarification of these Specifications may be submitted in writing by **3:00 p.m., Pacific Time, March 11, 2021**, via email addressed to the Purchasing contact below. Questions received after this date and time may not be answered.
1. Please indicate the specification number and title in the email subject line.
 2. Present your questions in MS Word format or directly in the body of the email message. If applicable, cross reference the specific section of the RFB.
 3. Questions will not be accepted by telephone or fax.
 4. Questions marked confidential will not be answered.
 5. Individual answers will not be provided directly to Respondents.
 6. The City reserves the discretion to group similar questions to provide a single answer or not to respond when the requested information is confidential.
 7. The City will not be responsible for unsuccessful submittal of questions.
- B. Written answers to all questions will be posted on the Purchasing website at www.TacomaPurchasing.org on or about **March 16, 2021**. Navigate to *Contracting Opportunities / Supplies*, and scroll to this RFB. A notice will not be posted with the Specification if no questions are received.
- C. The answers are not typically considered an addendum.
- D. To receive notice of the posted answers, you must register as “bid holder” for this solicitation.

Communication	Addressee
For all questions regarding Specification PT21-0005F	Sam Hefley Senior Buyer shefley@cityoftacoma.org - email

SUBSTITUTION REQUESTS

- A. If the Respondent elects to bid alternative equipment, materials, or processes where allowed, a Substitution Request Form (Appendix #2) must be submitted by email to Sam Hefley, shefley@cityoftacoma.org, a minimum of **ten (10) business days** prior to the submittal deadline. Substitution Request Forms received after this time will not be accepted. Respondents will be notified of an approved or rejected Substitution Request Form no later than **five (5) business days** prior to the submittal deadline. See Sections 1.08.3B and 1.08.3C.

REVISIONS TO SPECIFICATION

- A. All revisions to this specification will be in the form of written addenda, and no oral revision should be relied upon for any purpose. In the event it becomes necessary to revise any part of this RFB, addenda will be issued to registered planholders and posted on the Purchasing website at www.TacomaPurchasing.org: Navigate to Current Contracting Opportunities / Supplies Solicitations, and scroll to this RFB. Failure to acknowledge addenda may result in a submittal being deemed non-responsive.

SIGNATURE PAGE

CITY OF TACOMA TACOMA POWER / TRANSMISSION AND DISTRIBUTION

All submittals must be in ink or typewritten, executed by a duly authorized officer or representative of the bidding/proposing entity, and received and time stamped as directed in the **Request for Bids page near the beginning of the specification**. 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.

REQUEST FOR BIDS SPECIFICATION NO. PT21-0005F ELECTRICAL AND DATA PVC CONDUIT STICK PIPE

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

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

Non-Collusion Declaration

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

Bidder/Proposer's Registered Name

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

Address

Printed Name and Title

City, State, Zip

(Area Code) Telephone Number / Fax Number

E-Mail Address

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

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

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

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

THIS PAGE MUST BE SIGNED AND RETURNED WITH SUBMITTAL.

PROPOSAL SHEETS

LISTED BELOW ARE THE INDEX VALUES THAT SHALL BE USED FOR THIS BID:

The value of the <u>Chemical Data Index (CDI) PVC Resin</u> to be used for calculation of the unit prices offered on the Proposal Pricing Sheet. At the time of award the unit prices will be adjusted per Section 1.06.4A	\$1.24 per lb
The value of the <u>Chemical Data Index (CDI) PVC Resin</u> at time of bid opening. For reference use only. Bid prices to be offered at the escalated resin index value shown above.	\$1.20 per lb

NOTES:

- Quantities listed on the Proposal Pricing Sheets are an estimate only. Actual quantities will be according to purchase order on an as-needed basis.
- Price adjustments will be made per section 1.06.4 – Quarterly Pricing Adjustment.
- All prices shall be submitted as F.O.B. Destination, freight prepaid and allowed (included in the unit price).

VENDOR INQUIRY

- Does your firm accept payment by EFT/ACH?** ☐ Y ☐ N
(Electronic Funds Transfer (EFT) by Automated Clearing House (ACH))
- Does your firm accept payment by credit card (Visa)?** ☐ Y ☐ N
NOTE: The City of Tacoma will not accept price changes or pay additional fees when a credit card is used.
- Prompt Payment discount offered** _____%, _____ **days.**
Only discounts offered of 20 days or more will be considered for bid evaluation purposes.

PROPOSAL - PRICING SHEET

Item #	Conduit Size	MID's	Estimated 3 Year Quantity (In Feet)	Pounds of Resin per Foot	Price per Ft. w/ PVC Resin @ \$1.24/lb	Total Price FOB Destination (Qty X Unit Price)	Lead Time (weeks)
Stick Conduit, 10 ft. Schedule 40 Gray PVC Conduit with Deep Socket Bellend							
1	1/2"	19333	500'	lbs.	\$		
2	3/4"	19334	1,000'	lbs.	\$		
3	1"	19335	2,000'	lbs.	\$		
4	1 1/4"	19336	1,000'	lbs.	\$		
5	2"	19338	800'	lbs.	\$		
6	2 1/2"	19339	2,500'	lbs.	\$		
7	4"	19342	1,400'	lbs.	\$		
8	5"	19344	2,000'	lbs.	\$		
9	6"	41890	8,000'	lbs.	\$		
Stick Conduit, 20 ft. Schedule 40 Gray PVC Conduit with Deep Socket Bellend							
10	2 1/2"	19340	73,000'	lbs.	\$		
11	4"	19343	27,000'	lbs.	\$		
Stick Conduit, 10 ft. Schedule 80 Gray PVC Conduit with Deep Socket Bellend							
12	2"	19337	1,500'	lbs.	\$		
13	2 1/2"	19341	1,000'	lbs.	\$		
14	4"	19354	1,200'	lbs.	\$		
15	5"	19345	200'	lbs.	\$		
16	6"	41891	200'	lbs.	\$		
Stick Conduit, 20 ft. Schedule 40 Green PVC Conduit with Deep Socket Bellend							
17	2"	21642	60,000'	lbs.	\$		



PROPOSAL - PRICING SHEET (CONT.)

Sub Total for Proposal	\$
Sales Tax @ 10.2%, Location Tax Collected: Tacoma, WA (Note Paragraph 1.41 of Standard Terms and Conditions)	\$
Total for All Items with Tax	\$

Due to constraints in warehouse storage space Tacoma Power would prefer to acquire this material in maximum release amounts of \$5,000 per total purchase order. Can your firm accommodate this request?

YES	
NO	

Identify below the percent increase for the item pricing listed in the proposal sheets for each of the following alternative release amounts.

Minimum release \$4,000 _____ % pricing increase.

Minimum release \$3,000 _____ % pricing increase.

Minimum release \$2,000 _____ % pricing increase.

These factors will be considered during the bid evaluation per section 1.13.2.



PROPOSAL - CONDITIONS SHEET

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

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

YES	
NO	

2. Do all items submitted per this Specification meet and/or exceed the requirements of the Technical Provisions (Section 2)?

YES	
NO	



PROPOSAL - VENDOR QUALIFICATION

Manufacturer	Manufacturing Locations

1. State the number of years your firm has been manufacturing products of a similar scope to those outlined in this Specification. See Section 1.01.3 for minimum qualifications allowed.

	Years
--	--------------

2. Does your firm have a third party certified quality assurance program that conforms to ISO 9001, ISO 9002, ANSI/ASQC Q91, or ANSI/ASQC Q92?

YES	
NO	

List the standard used by your firm:

PROPOSAL - REFERENCES DATA SHEET

(AS DESCRIBED IN SECTION 1.01.3A)

Seven (7) Utility references are the absolute minimum allowed

UTILITY NAME AND ADDRESS	YEAR PRODUCT SOLD	CONTACT NAME	TELEPHONE NUMBER

SUB-VENDOR DATA SHEET

(AS DESCRIBED IN SECTION 1.01.4)

SUB-VENDOR NAME AND ADDRESS	CONTACT NAME	TELEPHONE NUMBER	DESCRIPTION OF WORK PROVIDED

STANDARD TERMS & CONDITIONS REFERENCES

The following identified paragraphs of the City of Tacoma Standard Terms and Conditions have been referenced or modified within Section 1 – Special Provisions:

Standard Terms & Conditions	Description	Special Provisions	Description
1.16	– Acceptance of submittals	1.06.1	– Prices Quoted
1.20	– Evaluation of Submittals	1.13	– Evaluation & Award
1.20.A.1	– Evaluation Factors	1.01.3	– Qualifications
1.22	– Award	1.01.1A	– Award of Contract
1.36	– Approved Equals when Alternates are Allowed	1.12.1	– Determination of Equality
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		1.17.2	– Delivery Location
1.39	– Packing Slips and Invoices	1.16.3	– Shipping Notices
		1.19.1	– Invoices
1.35	– Contract Pricing	1.06.3	– Quantities and Purchase Orders
1.40	– Cooperative Purchasing	1.21	– Cooperative Purchases
1.10	– Warranties/Guarantee	1.18.3	– Warranty
1.27	– Termination and Suspension	1.05.4	– Cancellation of Contract

Note that the provisions found in Section 1 and Section 2 will prevail over any conflicting provisions found in the Standard Terms and Conditions of this RFB.

SECTION I – SPECIAL PROVISIONS

1.01 - SCOPE OF BID

1.01.1 - PURPOSE

The purpose of these Specifications is to define the scope of supply of materials that meet the minimum requirements as to quality, function, and capacity as outlined in the Special and Technical Provisions that follow.

1.01.1A - AWARD OF CONTRACT

With this solicitation, the City intends to award a single contract and does not anticipate award to multiple Suppliers. Regardless, the City reserves the right to award to one or more Suppliers, or make no award, in the best interest of the City.

1.01.2 - DEFINITIONS

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

Term	Definition
RESPONDENT	A potential Supplier offering a submittal to supply equipment in accordance with these Specifications.
SPECIFICATION	This document, detailing the scope of supply.
SUPPLIER/CONTRACTOR	The Respondent(s) awarded a contract pursuant to these Specifications.
SUB-VENDOR	Any Supplier providing parts, materials, and/or services to the Supplier under these Specifications.
EQUIPMENT/ MATERIAL	A fully functional piece of equipment/material supplied and tested in accordance with these Specifications.
MANUFACTURER	The original manufacturer of the equipment/material.
ENGINEER	The project engineer and/or contract administrator.
CITY	The City of Tacoma, Tacoma Power.
DELIVERY TIME	The length of time starting at the date of Supplier receipt of a purchase order or notice to proceed and ending at the time that the item(s) are received at Tacoma Power.

1.01.3 - QUALIFICATIONS

To further detail the requirements of Section 1.06 of the City Standard Terms and Conditions, only submittals which offer products from manufacturers experienced in the supply of materials as detailed within this Specification over a period of **five (5) years** or more will be considered responsive. A responsive submittal will demonstrate a record of successful completion of contracts similar in scope and size to that outlined in this Specification. The City shall be the sole judge of the Respondent's ability to meet the requirements of this paragraph.

1.01.3A - REFERENCES

Each Respondent shall complete the "References Data Sheet" as required in the proposal section. A minimum of seven (7) references over the past five (5) years is required.

1.01.3A.1 - CHANGE OF OWNERSHIP

References are intended to be for material/equipment currently supplied under the proposed manufacturer's name. References for material/equipment that has been previously supplied under a different Company's name shall be clearly noted on the reference list.

1.01.3A.2 - DEFINITION OF REFERENCED UTILITIES

The Respondent shall list as references, only those utilities that have purchased material/equipment as the Respondent proposes to offer to the City, from these Specifications.

1.01.3B - RESPONDENTS ORIGINATING FROM OUTSIDE THE UNITED STATES

Respondents that originate bids from outside the legal jurisdiction of the United States of America will be subject to the City of Tacoma's Legal Department opinion as to the viability of possible litigation pursuant to a supply contract resulting from this Specification. If it is the opinion of the City of Tacoma's Legal Department that any possible litigation would be beyond reasonable cost and/or enforcement the bid may be excluded from evaluation.

1.01.4 - SUB-VENDORS

The Respondent shall list, on the form provided, all sub-vendors it intends to use to fulfill requirements in any part of this Specification. Included in the listing shall be the sub-vendor's name, address, and telephone number; contact name; and description of work they will perform. It shall be the responsibility of the awarded Supplier to police, enforce, and ensure that all work performed by any sub-vendor shall be in accordance with this Specification.

1.02 - CONTACT PERSON

1.02.1 - BID INQUIRIES

Respondent inquiries pertaining to this Specification shall be submitted as directed on the Submittal Instructions Page.

1.03 - PREBID CONFERENCE

A pre-bid conference shall not be required for the acquisition of the material contained in this Specification.

1.04 - POST-AWARD MEETING

A post-award meeting is not scheduled for this bid.

1.05 - CONTRACT

1.05.1 - CONTRACT PERIOD

The contract is intended for a minimum of three (3) years from the award date of the contract.

1.05.2 - CONTRACT EXTENSIONS

Two contract extensions of up to one year per occurrence may be considered upon mutual agreement of both parties to extend the contract under the same terms and conditions of the original contract.

1.05.3 - AWARD DATE OF CONTRACT

The Award Date of Contract is the date that the City of Tacoma Purchasing Division issues the contract. This occurs after the Tacoma Public Utilities Board approves the award of this Contract and all documents (if required) have been returned to the Purchasing Division.

1.05.4 - TERMINATION OF CONTRACT

The City reserves the right to cancel the Contract at any time upon prior notice to the Supplier (refer to Section 1.27 of the Standard Terms and Conditions).

1.06 - PRICING AND PURCHASE ORDERS

1.06.1 - PRICES QUOTED

Per City of Tacoma Standard Terms and Conditions Section 1.16, the prices quoted on the Proposal Pricing Sheets shall remain open for acceptance by the City for a minimum of 60 days from the submittal deadline. Upon award of a contract the unit prices will be adjusted to the most current value of the “**Chemical Data Index (CDI) PVC Resin**” as outlined in Section 1.06.4A. Subsequently the prices will be adjusted quarterly. This process of price adjustment will remain consistent through any contract extension periods.

1.06.2 - FREIGHT ALLOWANCES

The Respondent shall provide prices including delivery F.O.B. Destination, Pre-Paid and Allowed (included in unit price), as noted on the Proposal Pricing Sheets.

1.06.3 - QUANTITIES AND PURCHASE ORDERS

The quantities listed on the “Proposal - Pricing Sheet” are an estimate only using historical data gathered from the previous six (6) years. Delivery will be according to purchase order issued on an as-needed basis throughout the contract. The City reserves the right to increase or decrease quantities under this contract (refer to Section 1.35 of the Standard Terms and Conditions). The purchase order will be delivered to the Supplier by email.

1.06.3A - WORKING DAYS

Working days are weekly Monday through Friday. City observed holidays as listed in City Standard Terms and Conditions Section 1.24 would not be included.

1.06.4 – QUARTERLY PRICING ADJUSTMENT

On a quarterly basis, the unit prices of the items bid may be adjusted reflecting the percentage change of **Chemical Data Index (CDI) PVC Resin**. If another resin index is preferred for the quarterly unit price adjustment, this may be submitted with the bid proposal for evaluation.

The reason this Request for Bid requires the quotation of a PPI value higher than what is current, is that the Public Utility Board authorizes a specific value to the contract (not a specific quantity) and term when approving a recommendation for award. It is hoped that the

authorized value of the contract based on the higher PPI, will allow for the projected quantity of items to be purchased through the contract term.

The use of a third party index such as “**CDI**” greatly simplifies the contract evaluation and award by requesting all Respondents to utilize the same process for escalation. Therefore the evaluation process as listed in Section 1.13 does not need to take into account future escalations when determining the responsible bidder (s) with the lowest responsive bid. The index also allows for a near automatic process of unit price adjustments without the concern for additional oversight by auditors for either side of the agreement.

1.06.4A – FIRST ADJUSTMENT AFTER AWARD

Prices listed on the Proposal Pricing Sheet are requested at an elevated resin value. Upon award of a contract the unit prices will be adjusted to reflect the most current value of “**CDI PVC Resin**”.

1.06.4B – PVC RESIN PRICE ADJUSTMENT FOR STICK PIPE

Step	Action				
1	<p>In the first week of each quarter, the Supplier will submit an adjusted price sheet to the Tacoma Power contract manager. The adjusted pricing will be based upon the value of the <u>CDI PVC Resin</u> from the prior quarter. The information supplied shall demonstrate how the item prices were adjusted.</p> <table border="1"> <tr> <th colspan="2">Price Source</th></tr> <tr> <td>PVC – Pipe (USA Domestic)</td><td><u>Chemical Data Index (CDI)</u></td></tr> </table>	Price Source		PVC – Pipe (USA Domestic)	<u>Chemical Data Index (CDI)</u>
Price Source					
PVC – Pipe (USA Domestic)	<u>Chemical Data Index (CDI)</u>				

1.06.4B.1 – RESIN INDEX CALCULATION

To simplify the evaluation process It is preferred that all Respondents submit proposal pricing agreeable to quarterly adjustment based upon the PVC Resin price formula noted below. The calculation is a function of the change in resin costs and the percentage of resin in the compound for each size conduit.

$$(\text{Unit Price @ .90 resin}) * (1 - ((2\% \text{ resin modifier}) * (.90 \text{ resin} - \text{CR}) * (\text{Comp}\%)))$$

CR = Current Resin Cost “**CDI PVC Resin**” value in cents

Comp% = Compound Resin Percent in pipe

2% = Percent Modifier for every .01 change in resin index

1.06.4C - APPLICATION

The price to be paid by Tacoma Power will be based on the CDI PVC Resin value in effect within the quarter of the purchase order creation, **NOT THE QUARTER OF SHIPMENT**. Purchase orders received within the first 3 business days of the quarter, provided they were created at the end of the prior quarter, shall be billed at the prior quarter rate.

1.06.5 - PROMOTIONAL PRICING

City is entitled to any promotional pricing during contract period that is lower than the Supplier's pricing as provided in bid. This promotional pricing shall include, but not be limited to: sale prices, price lowering, and/or lump-sum rebates.

1.07 - PERFORMANCE BOND/BID BOND

The Performance and Bid Bonds have been waived for this contract.

1.08 - RESPONDENT'S PROPOSAL

1.08.1 - RESPONDENT REQUIREMENTS

Submittals must be emailed with the Specification number, Specification title, and Respondent name in the subject line, and received by the City of Tacoma Purchasing Division by the date and time specified in the "Request for Bids" page or subsequent addenda.

The bid package submitted must be returned with the Respondent's proposal filled in as directed, including all data requested by the Provisions of these Specifications. All blank spaces on the Proposal forms will be properly filled in, printed in ink or typewritten.

1.08.1A - SIGNATURE PAGE

The "Signature Page" included with the original submittal shall be **signed** by the responsible company official and include printed or typewritten designation of the office they hold in the company.

1.08.2 - ALTERNATE BIDS

All bids including alternates shall include an original Signature Page. Each bid package submitted must be returned with the Respondent's proposal completed as directed, including all data requested.

1.08.2A - ALTERNATE BID PROPOSALS

Alternate bid proposals must be submitted as a separate bid package and identified as "**ALTERNATE**".

1.08.2B - ALTERNATE MATERIALS

If the Respondent elects to bid alternative equipment a Substitution Request Form (Appendix #2) must be submitted by email to Sam Hefley, shefley@cityoftacoma.org, a minimum of **ten (10) business days** prior to the submittal deadline. Respondents will be notified of an approved or rejected Substitution Request Form no later than **five (5) business days prior to the submittal deadline**.

An approved Substitution Request Form shall not indicate acceptance of the alternate by the City. Complete data must be submitted with the bid, including the information as requested in Section 1.12.1A "Required Materials". The data shall demonstrate that the alternative item is of a quality equal to or better than that specified and has the required characteristics for the intended use. Failure to submit such data will render the bid **non-responsive**.

1.08.2C - ALTERNATE EVALUATION

Upon request, the Respondent shall furnish to the City, within five (5) working days, additional information relating to such alternative items as the City may require. In the event that the equivalency is not readily ascertained from the information supplied by the Respondent, the City may test the material/equipment or have it tested. The

Respondent shall bear all expenses of the City's determination of whether or not alternative equipment, materials, or processes are equal to those designated.

1.08.3 - ENGLISH LANGUAGE REQUIREMENTS

All drawings, correspondence, catalogs, submittals, nameplates, etc., shall be in the English language as used in the U.S. Dimensions and tolerances shall conform to ANSI Y14.5M and shall be in the U.S. customary units. If units are fabricated utilizing SI units (metric system), both units shall be shown on the drawings, nameplate, etc. U.S. units shall be shown above the SI units. Conversion tolerances shall have a maximum tolerance of 1/32-inch (2.70 mm) and/or one ounce (28.4 grams).

1.08.4 - 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 RFB, conducting presentations to the City, or any other activities related to responding to this RFB.

1.08.5 - EXPANSION CLAUSE

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

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

1.09 - ITEMS TO BE INCLUDED WITH BID

1.09.1 - PRODUCT DATA SHEETS

The Respondent shall include with their submittal manufacturer product data sheets (cut sheets) for each material to be supplied. Manufacturer data furnished **must be sufficient in detail and clarity** to enable making a complete and positive check with compliance of the Technical Provisions of this Specification.

1.09.2 - MANUFACTURER'S QUALITY ASSURANCE POLICY

One (1) copy of the manufacturer's internal "Quality Assurance" policy for the equipment to be supplied shall be included with the submittal. The documentation shall include third party certification of ISO 9000 series qualifications. The policy documents shall include examples of inspection processes and quality control measures utilized to insure supply of a reliable product. Submitted information will be referenced during the bid evaluation. (refer to Section 1.13.2).

1.09.3 - MANUFACTURER'S FACILITY INSPECTION REPORTS

The Respondent shall include the results of the past 2 factory inspection reports conducted to certify that materials meet the test standards as outlined in Section 4.04.1. Reports are required for each facility that will manufacture the materials offered in the submittal.

1.10 - SAFETY AND STANDARDS

The Items supplied shall meet appropriate ANSI, OSHA, WISHA, and all federal, state, and local standards for its intended use. Refer to Section 2.01.4 for specific industry standards that apply to the Specifications of this bid.

1.11 - MATERIALS, DESIGN, WORKMANSHIP, AND TRADE NAMES

Unless otherwise noted in this Specification, all materials and equipment incorporated into any item covered by the Specifications shall be new and of the most suited of their respective kinds for their intended use. All workmanship shall be in accordance with accepted industry practices.

1.11.1 - MANUFACTURING REQUIREMENTS

All major components of the material/equipment must be manufactured or distributed by the original equipment manufacturer and advertised on a factory brochure as a standard or optional component.

1.12 - APPROVED EQUAL

The term "approved equal" shall mean that the quality and characteristics of equipment or materials intended for use must be equal to the listed items.

1.12.1 - DETERMINATION OF EQUALITY

The City or its designee will determine the suitability, reliability, and serviceability of a proposed substitute. Refer to Section 1.36 of the Standard Terms and Conditions.

1.12.1A - REQUIRED MATERIALS

To be considered by the City, the request for substitution shall be accompanied with the complete physical data, technical data, certified test results, manufacturer's catalog data, photographs, user's lists, failure data, samples, and the address of the nearest authorized service representative. Any other information, as required by the Engineer, shall be promptly provided upon request. The City shall be the sole arbiter in the determination of equality.

1.13 - EVALUATION & AWARD

Respondents are to provide unit or lump sum pricing for each line item, which will be summed for a subtotal price. Subtotals will be compared amongst each Respondent, including any offered payment discount terms of 20 days or more.

1.13.1 - AWARD OF CONTRACT

The Contract will be awarded to the lowest and best responsible Respondent(s) delivering a responsive submittal in compliance with these Specifications, provided such submittal is reasonable and it is in the best interests of the City to accept. The City, however, reserves the right to reject any and all bids and to waive any informalities in bids received. The award of this contract will not be based on cost alone, as other factors will be considered in the evaluation criteria

1.13.1A - PRICING CONDITIONS OF SPECIAL SECTION 1.06.4

Those bids that do not accept the pricing conditions of Section 1.06.4 may be considered **non-responsive**.

1.13.2 - EVALUATION CRITERIA

In evaluating the proposals, the City will consider any or all of the following:

- Compliance with Specifications
- Proposal prices, listed separately if requested, as well as a lump-sum total
- Minimum order requirements

1.13.2A - OTHER ELEMENTS

The City may also take into consideration other criteria for determining award. Other elements or factors, whether or not specifically provided for in this Specification, which would affect the final cost to and the benefits to be derived by the City, may be considered in determining the award of the contract. The final award decision will be based on the best interests of the City.

1.14 - DELIVERY DATE

Respondents must guarantee delivery times as stated on their Proposal Pricing Summary Sheet. The delivery time will be enforced for all releases of this contract and any contract renewals.

1.14.1 - NOTIFICATION

Notification to deliver product will be by the issuance of a City of Tacoma purchase order (per Section 1.06.3) for the materials described in this Specification. Should delivery not be completed within the time specified in the Respondent's submittal, the Supplier may be subject to liquidated damages (Section 1.15).

1.14.1A - DELAYS BEYOND THE CONTROL OF THE SUPPLIER

Delays caused by problems beyond the control of the Supplier, if fully documented and submitted to the city, may be excused. This allowance shall in no way be construed to apply to or excuse delays caused by negligence on the part of the Supplier. (For additional information, refer to the Force Majeure portion, located in Section 1.15.4 of this document).

1.15 - LIQUIDATED DAMAGES

Liquidated Damages will be computed as follows when the conditions of Section 1.14 are not met.

1.15.1 - LIQUIDATED DAMAGES

If the stated number of delivery days as listed on the Respondent's Proposal are not met, the City reserves the right to refuse acceptance of the products and purchase them elsewhere. The contractor will reimburse the City for all excess costs over the contract price. If not purchased elsewhere, the contractor agrees to pay liquidated damages for any delay in delivery.

Because of the difficulty in computing the actual damages/rental costs which will result from failure to deliver the equipment/material under this contract on time, the amount of liquidated damages are estimated to be 2% of the purchase order release value per day. The maximum Liquidated Damages to be imposed would be 50% of the value of the release. Said sum shall not be considered as a penalty but as liquidated damages that the City will suffer by reason of the failure of the Supplier to deliver equipment/material hereunder.

1.15.2 - PAYMENT OF LIQUIDATED DAMAGES

Any moneys due the Supplier, or to become due to the Supplier at or after the contract completion date, may be retained by the City as may be necessary to pay said liquidated damages. If such amounts are not sufficient to pay the liquidated damages, the Supplier shall immediately pay any deficiency to the City. Such deductions or amounts retained by the City shall not release the Supplier to any degree whatsoever from further obligation and liability with respect to fulfilling the entire contract.

1.15.3 - CLAIMS BY THE CITY

Nothing contained herein shall preclude claims by the City for damages caused by Supplier errors, omissions, or negligence unrelated to delay in completing the contract on time.

1.15.4 - FORCE MAJEURE

Unavoidable delays in the prosecution of the work shall include only delays from causes beyond the control of the Supplier and which he/she could not have avoided by the exercise of due care, prudence, foresight and diligence.

The Supplier shall not, be responsible for delays in delivery due to acts beyond his/her or manufacturer's reasonable control, or due to act of god, fire, strikes, epidemics, war, riot, unavoidable delay in transportation or rail car/transport shortages, or documented unavoidable material shortages, provided the City is notified in writing by the Supplier of such pending or actual delay and the reasons therefore. If deemed excusable, the City shall authorize an extension of time. In the event of such an excusable delay, the date of delivery shall be extended for a period equal to the time lost due to the reason for delay. Any damage assessment or extensions of time are to be authorized by written purchase order changes issued by the City of Tacoma.

1.15.4A - TERMINATION OF PURCHASE ORDER RELEASE(S)

If the delay will extend beyond 10 working days, the City may exercise the right to terminate any and all purchase order releases that are affected by the delay and obtain the items required materials from other sources.

1.15.4B - TERMINATION OF CONTRACT

If the delay will extend beyond 60 working days the City may exercise the right to terminate the contract and obtain the items required from other sources.

1.15.4C - CONTRACT EXTENSION

Any contract extension shall be limited to a period of time equal in length to the period of such prevention and/or delay.

1.15.4D - DUE DILIGENCE

It shall be the responsibility of the Supplier to supply the City with adequate documentation to demonstrate that the Supplier exercised due diligence in endeavoring to avoid the delay.

1.16 - PACKING AND SHIPPING

The Supplier shall be responsible for industry standard packing that conforms to the requirements of the carrier's tariffs and the ICC regulations.

1.16.1 - PACKING REQUIREMENTS

Stick conduit shall be banded together with 2x4's in such a manner that standard fork lift truck may lift and stack.

Each pallet and conduit sling shall be labeled with:

- Conduit Size
- Quantity
- City of Tacoma Purchase Order Number

1.16.2 - SHIPPING REQUIREMENTS

Materials shall be shipped in such a fashion that they will arrive at the City without transit-associated damage. A complete packing list must be included.

Tacoma Power reserves the right to request and require a change in shipping company utilized by the Supplier based upon history of damaged goods delivered to Tacoma Power

and/or evidence of unsafe work practices by the shipping company.

1.16.3 - SHIPPING NOTICE

The shipper shall notify the Tacoma Power Warehouse a minimum of **24** hours prior to arriving at delivery destination. This notice may be sent **via phone or email** and is required to convey final delivery information and insure sufficient staff available to unload cargo.

Tacoma Power Warehouse	
Contact	Keith Wawrin
Phone Number	(253) 502-8760
Email Address	kwawrin@cityoftacoma.org

1.17 - DELIVERY

1.17.1 - DELIVERY TIME

The completed materials shall be delivered F.O.B. between 9:00 a.m. and 3:30 p.m. Monday through Friday excluding City observed holidays (refer to Section 1.37 of the Standard Terms and Conditions).

1.17.2 - DELIVERY LOCATION

Deliver completed items F.O.B. as directed by the purchase order release to either:

Tacoma Power Warehouse 3628 South 35th Street (rear) Tacoma, Washington 98409 Attention: TPU Light Stores - South End	or	Tacoma Power South Service Center 3002 224 th St. E Spanaway, WA 98387
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1.17.2A – ALTERNATE DELIVERY LOCATIONS

The City retains the option to have the merchandise delivered to an alternate facility or on-site within a 35-mile radius of the Tacoma Power Warehouse. Notification of any change will be on the purchase order release.

1.18 - INSPECTION & WARRANTY

All goods are subject to final inspection and acceptance by the Engineer and the appropriate shop foreman.

1.18.1 - FAILURE OF INSPECTION

Material failing to meet the requirements of this specification will be held at Supplier's risk and may be returned to Supplier. If so returned, the cost of transportation, unpacking, inspection, repacking, reshipping, or other like expenses are the responsibility of the Supplier.

Charges for dismantling and reinstallation of materials furnished pursuant to the Contract will be the responsibility of the Supplier only when a change out or replacement is required because of a suspected or known design defect or large scale failure of manufacturer's quality control system.

1.18.2 - FACTORY INSPECTION

The Engineer/Contract manager shall be permitted to witness the manufacture of items supplied per this contract and to perform a "quality audit" of the facility manufacturing.

1.18.2A - QUALITY ASSURANCE AUDITS

The City or its representative may audit the quality assurance program at any time prior to and during the Contract period or its extensions.

1.18.2B - QUALITY ASSURANCE DOCUMENTATION

The manufacturer shall provide, when requested, access to and copies of quality assurance documents such as material certificates, inspection and test results obtained in the course of quality assurance, control charts, and other quality documents compiled during the work.

1.18.2C - FACTORY ASSISTANCE DURING INSPECTION

The manufacturer shall have engineering, manufacturing, quality control, and operational factory personnel available who speak technical and conversational English without the need of an interpreter.

1.18.3 - WARRANTY

Unless a longer period is specified, the Supplier and/or manufacturer of the supplies, materials and/or equipment furnished pursuant to this Contract agrees to correct any defect or failure of the supplies, materials and/or equipment which occurs within **one year** from the date of commencement of use, however, said warranty period shall not extend beyond **eighteen months** after date of receipt by the City.

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

1.18.3A - WARRANTY PERIOD EXTENSION

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

1.18.3B - WARRANTY WORK

All materials requiring warranty work will be returned to the manufacturer at its expense or the manufacturer may replace the defective materials. All replaced materials will be held for pick up (no more than) 30 days after the arrival of replacement materials. Tacoma Power at its discretion will dispose of any materials not picked up within 30 days.

1.18.3B.1 - RETURN TIME FRAME

All warranty repair work on returned material/equipment shall be accomplished within the specified lead-time for delivery listed in the Supplier's bid submittal. Warranty repair time will be calculated from the time the material/equipment defect or failure is reported to the Supplier. Should delivery not be completed on or before the date stipulated, the Supplier shall be subject to liquidated damages per Section 1.15 - LIQUIDATED DAMAGES.

1.19 - INVOICES & PAYMENT

All items called for in these Specifications, including, but not limited to, the necessary drawings and test results, must be supplied to the City before the final invoice can be processed.

1.19.1 - INVOICES

Invoices shall be emailed to:

(Per Section 1.39 of the Standard
Terms and Conditions)

AccountsPayable@cityoftacoma.org

1.19.2 - PAYMENT

Upon certification by the Engineer and/or appropriate warehouse personnel that the items have been received in accordance with the Specifications and are in satisfactory condition, a 100 percent payment will be made. Payment methods include:

- A. Credit card. Tacoma's VISA procurement card program is supported by standard bank credit Suppliers and requires merchants abide by the VISA merchant operating rules.
 - 1. Vendors must be PCI-DSS compliant (secure credit card data management).
 - 2. 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.
- B. Electronic Funds Transfer (EFT) by Automated Clearing House (ACH).
- C. Check or other cash equivalent.
- D. The City may consider cash discounts when evaluating submittals. See 1.20.2 of the Standard Terms and Conditions.

1.19.2A - UNSATISFACTORY PERFORMANCE

In the case of unsatisfactory performance, the payment shall be made after the Supplier has made the necessary repairs and/or modifications and satisfactory performance is obtained, or the unit is replaced.

1.20 - CONTRACT EXCEPTIONS

1.20.1 - NON-RESPONSIVE

Bid proposals that claim exceptions to the terms and conditions stated within these Specifications may be declared non-responsive and the bid proposal may be rejected.

1.20.2 - COST OF COMPLIANCE

The City prefers that the Respondents determine the cost of compliance, with the City's terms and conditions, and include such costs into the unit prices, of the items, in the Respondent's proposal.



Material Specification PT21-0005F Electrical and Data PVC Conduit Stick Pipe

1.20.3 - MULTIPLE PROPOSALS

Respondents may submit multiple bid proposals to demonstrate the cost savings associated with acceptance of the Respondent's proposed terms and conditions. Refer to Section 1.08.2 for "Alternate Proposals".

1.21 - COOPERATIVE PURCHASES

The Washington State Interlocal Cooperative Act (RCW 39.34) provides that other governmental agencies may purchase goods and services on this solicitation or contract according to the terms and prices indicated therein if all parties are willing. See Section 1.40 of the City Standard Terms and Conditions.

**THESE TECHNICAL SPECIFICATIONS HAVE BEEN PREPARED
BY A LICENSED PROFESSIONAL ENGINEER
REGISTERED IN THE STATE OF WASHINGTON.**

SECTION II - TECHNICAL PROVISIONS

2.01 - SCOPE

These specifications cover the requirements of electrical conduit tested to UL Approved standards for Schedule 40 and Schedule 80 Rigid PVC Conduit.

2.01.1 – APPLICATION

The conduit purchased per this specification will be used as raceways in underground and riser applications for primary and secondary 90°C electrical conductors and telecommunications conductors of coax and fiber construction.

2.01.2 – INSTALLATION PRACTICE

The vast majority of the installations will be installed in underground applications, terminated in pole riser construction and/or vault entry.

2.01.3 – OPERATIONS REQUIREMENTS

The integrity of the conduit has been a significant factor in the past and continues to be so. The more resistant to crushing and breaking the easier it is to handle and install the conduit. Joining with PVC glue is the current method of connection.

2.01.4 – STANDARDS

All PVC Conduit shall meet the most recent editions of the following standards and all others that are applicable as referenced in these specifications:

Standard Number	Standard Title
UL 651	Standard for Safety Schedule 40 and 80 Rigid PVC Conduit
UL 746A	Standard for Polymeric Materials
NEMA TC2	Standard for Schedule 40 and 80 PVC Conduit
ASTM F512-19	Standard for PVC Conduit for Underground Installation
ASTM D1784-20	Standard Specifications for Rigid Poly(Vinyl Chloride) (PVC) Compounds and Chlorinated Poly (Vinyl Chloride)(CPVC) Compounds
ANSI C2	National Electric Safety Code

2.01.5 – THIRD PARTY INSPECTION

The gray electrical conduit must be labeled as approved by Underwriter Laboratories (UL) or one of the following NRTLs (Nationally Recognized Testing Laboratories) as meeting the minimum requirements of Standard UL 651:

CSA (Canadian Standards Association)

ETL Intertek Testing Services

NSF International

2.02 – CONDUIT CHARACTERISTICS

2.02.1 – OPERATING CHARACTERISTICS

The technical requirements for the conduit supplied per this specification is summarized in the table below per UL Standard 651; dimensions for deep socket integral belled ends are also indicated. Specific technical requirements are described in following sections.

Schedule 40 PVC (<2")				
Characteristic	1/2"	3/4"	1"	1-1/4"
Outside Diameter				
Maximum	0.848"	1.060"	1.325"	1.672"
Minimum	0.832"	1.040"	1.305"	1.648"
Average	0.840 ±0.004"	1.050 ±0.004"	1.315 ±0.005"	1.660 ±0.005"
Inside Diameter				
Minimum Average	0.578"	0.780"	1.004"	1.335"
Wall Thickness				
Minimum	0.060"	0.060"	0.060"	0.070"

Schedule 40 PVC (2"-6")					
Characteristic	2"	2 1/2"	4"	5"	6"
Outside Diameter					
Maximum	2.387"	2.890"	4.550"	5.613"	6.675"
Minimum	2.363"	2.860"	4.450"	5.513"	6.575"
Average	2.375 ±0.006"	2.875±0.007	4.500 ±0.009"	5.563 ±0.010"	6.625 ± 0.011"
Inside Diameter					
Minimum	2.021"	2.414"	3.961"	4.975"	5.986"
Wall Thickness					
Minimum	0.154"	0.203"	0.237"	0.258"	0.280"



Dimensions of Integral Belled Ends									
Characteristic	½"	¾"	1"	1-1/4"	2"	2 ½"	4"	5"	6"
Depth of Socket	1.250-2.000"	1.250-2.000"	1.750-2.500"	2.000-2.750"	3.000-3.500"	3.250-4.000"	4.250-5.250"	5.250-6.250"	6.250-7.250"
The Entrance and Bottom dimensions listed in Table 3-2 of TC 2-2020 NEMA shall apply									

2.03 – CONDUIT

2.03.1 – PVC COMPOUND

The compound of PVC to be used for conduit supplied per this specification shall meet or exceed the cell classification 12123 as described in ASTM D 1784.

2.03.2 – CONSTRUCTION/EXTRUSION

Conduit supplied per this specification shall meet the minimum requirements of UL Standard 651 and NEMA Standard TC-2.

2.03.3 – MARKING

Conduit shall be marked in accordance with UL Standard 651 Section 8.

Item Type	Labeling Requirements
GRAY (Electrical)	In accordance with UL Standard 651 Section 8 <ul style="list-style-type: none"> Conduit Size Schedule___ PVC Max 90°C Wire UL or NRTL Mark Manufacturer Manufacturing Location Date of Manufacture “Rigid PVC Conduit”
GREEN (Data)	In accordance with UL Standard 651 Section 8 plus TPU Telecom labeling <ul style="list-style-type: none"> Conduit Size Schedule___ PVC Max 90°C Wire “TPU Telecom” Manufacturer Manufacturing Location Date of Manufacture Phone handset symbol from ANSI C2 – NESC “Rigid PVC Conduit”

2.03.4 – COLOR

Conduit shall be manufactured in the colors listed below

Item Type	Color
GRAY (Electrical)	Standard gray per NEMA Standard TC-2, Section 3.2
GREEN (Data)	Green, the specific color to be approved subsequent to award; sewer pipe green not acceptable

2.04 – TESTING

2.04.1 – FACTORY TESTING

All conduit shall meet the testing requirements of UL 651 section 6.

UL 651 Section	Test	Minimum Results (Summary)
6.2	Tensile Strength	Not Less than 5000 psi
6.3	Extrusion Process	No Flaking
6.4	Low Temperature Handling	two 60" drops @ minus 20° C no shattering, chips, or cracking
6.5	Water Absorption	No more than 0.50% of its own weight in 24 hours
6.6	Resistance to Impact	No Cracking or Tearing longer than 1/32" in 7 out of 10 specimens
6.7	Identification of Compounds	See Standard
6.8	Deflection under load	See Standard
6.9	Resistance to Crushing	6" specimens of finished conduit shall not flatten under load to the point of buckling per table 6.3
6.10	Integral Couplings	Meet Section 6.3 of the Standard
6.11	Flame Test	Not flame longer than 5 seconds after ignition
6.14	Sunlight Resistance	See Table 6.4 of the Standard
6.15	Conduit for 90°C Conductor	See Standard
6.16	Permanency of Printing	See Standard

2.04.1A – LOAD FOR CRUSHING TEST

Per table 6.3 of UL Standard 651 the following loads are applied to testing performed in section 6 of UL Standard 651.

Conduit Size	Load for 6" Long Specimen	
	Schedule 40 (lbf)	Schedule 80 (lbf)
1/2"	1000	2000
3/4"	1000	
1"	1000	
1-1/4"	1000	
2"	700	
2 1/2"	1000	
4"	900	
5"	850	
6"	850	

2.04.1B – HEIGHT FOR IMPACT TEST

Per table 6.2 of UL Standard 651 the following height is from which a test weight is to be dropped onto sample conduit as applied to testing performed in section 6 of UL 651.

Conduit Size	Schedule 40	Schedule 80
	20 lb @ a height of:	75 lb @ a height of:
1/2"	2-1/2'	1-1/4'
3/4"	4'	1-1/4'
1"	5'	2'
1-1/4"	6'	2-1/4'
2"	9 1/2'	4'
2 1/2"	10 1/2'	5'
4"	11'	7'
5"	11'	7'
6"	11'	7'

APPENDIX #1

EQUITY IN CONTRACTING REGULATIONS **TACOMA MUNICIPAL CODE - CHAPTER 1.07**

CHAPTER 1.07

EQUITY IN CONTRACTING

Sections:

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

1.07.010 Policy and purpose.

It is the policy of the City of Tacoma that citizens be afforded an opportunity for full participation in our free enterprise system and that historically underutilized business enterprises shall have an equitable opportunity to participate in the performance of City contracts. The City finds that in its contracting for supplies, services and public works, there has been historical underutilization of small 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.

(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)

1.07.030 Discrimination prohibited.

A. No person that is engaged in the construction of public works for the City, engaged in the furnishing of laborers or craftspeople for public works of the City, or is engaged for compensation in the provision of non-public works and improvements supplies and/or services to the City, shall discriminate against any other person on the basis of race, religion, color, national origin or ancestry, sex, gender identity, sexual orientation, age, marital status, familial status, or the presence of

any sensory, mental or physical disability in employment. Such discrimination includes the unfair treatment or denial of normal privileges to a person as manifested in employment upgrades, demotions, transfers, layoffs, termination, rates of pay, recruitment of employees, or advertisement for employment.

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

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

1.07.040 Program administration.

A. The Community and Economic Development Director, or 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.

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

1.07.050 Certification.

A. The 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.

(Ord. 28625 Ex. A; passed Nov. 5, 2019: Ord. 28274 Ex. A; passed Dec. 16, 2014: Ord. 28147 Ex. A; passed May 7, 2013: Ord. 28141 Ex. A; passed Mar. 26, 2013: Ord. 28110 Ex. B; passed Dec. 4, 2012: Ord. 27867 Ex. A; passed Dec. 15, 2009)

1.07.060 Program requirements.

A. 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).

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

1.07.080 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.

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

1.07.090 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)



APPENDIX #2

SUBSTITUTION REQUEST FORM



Tacoma Public Utilities

SUBSTITUTION REQUEST FORM

Specification No. PT21-0005F

Prospective bidders may request the use of substitute materials below.

All requests must be submitted electronically, via e-mail to shefley@cityoftacoma.org no later than ten (10) business days prior to the submittal deadline.

Manufacturer/Model: _____

Manufacturer Contact Information

Name/Title: _____

Phone Number: _____

E-Mail: _____

Describe the differences between the proposed substitution and specified material:

Please attach documentation from manufacturer that certifies the material meets all the criteria outlined in Technical Specifications of this bid specification.

Contractor Name: _____

Preparer Name/Title: _____

Mailing Address: _____

Phone Number: _____

E-Mail: _____

Signature: _____



Tacoma Public Utilities

INTERNAL USE ONLY

- ☐ Approved as Substitute*
- ☐ Rejected – Material Not Acceptable
- ☐ Rejected – Inadequate Information
- ☐ Rejected – Request Received After Deadline

**Subject to review and approval of submittal documents*

Remarks

Reviewer Name/Title: _____

Signature: _____ Date: _____



APPENDIX #3

CITY OF TACOMA **STANDARD TERMS AND CONDITIONS**

**CITY OF TACOMA
STANDARD TERMS AND CONDITIONS
GOVERNS BOTH GOODS AND SERVICES AS APPLICABLE**

In the event of an award by the City, these Terms and Conditions stated herein, Additional Contract Documents if issued, Solicitation if issued, Purchase Orders if issued by City, and Supplier's Submittal, if provided, shall constitute the Contract between City and Supplier for the acquisition of goods, including materials, supplies, and equipment or for the provision of services and deliverables.

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

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

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

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

1.01 SUPPLIER / CONTRACTOR

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

1.02 SUBMITTAL

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

1.03 FORMS OF SUBMITTAL

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

1.04 COSTS TO PREPARE SUBMITTAL

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

1.05 LICENSES/PERMITS

- A. Suppliers, 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

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. Termination for Convenience

1. Supplies. The City may terminate a Contract for supplies 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.
2. Services. The City may terminate a Contract for services 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.

B. Termination for Cause. The City may terminate a Contract for either services or supplies in the event of any material breach of any of the terms and conditions of the Contract if the Supplier's breach continues in effect after written notice of breach and 30 days to cure such breach and fails to cure such breach.

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.

1.29 SCOPE OF SERVICES/CONTRACT MODIFICATION

Supplier agrees to diligently and completely perform the services and provide the deliverables required by a 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.

1.30 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.

1.31 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 and/or the current prevailing wage determination made by the Secretary of Labor for the locality or localities where the Contract will be performed is attached and made of part of the Contract by this reference. If prevailing wages do apply to the Contract, Supplier and its subcontractors shall:
 - 1. Be bound by and perform all transactions regarding the Contract relating to prevailing wages and the usual fringe benefits in compliance with the provisions of Chapter 39.12 RCW, as amended, the Washington State Prevailing Wage Act and/or the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable, including the federal requirement to pay wages not less than once a week,
 - 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/or specified in a wage determination made by the Secretary of Labor (unless specifically preempted by federal law, the higher of the Washington state prevailing wage or federal Davis-Bacon rate of wage must be paid)and Additionally, in compliance with applicable federal law, contractors are required to pay wages not less than once a week.
 - 3. Immediately upon award of the Contract, contact the Department of Labor and Industries, Prevailing Wages section, Olympia, Washington and/or the federal Department of Labor, to obtain full information, forms and procedures relating to these matters. Per such procedures, a Statement of Intent to Pay Prevailing Wages and/or other or additional documentation required by applicable federal law, 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 and/or other or additional documentation required by federal law must be received or verified by the City prior to final Contract payment.

1.32 COPELAND ANTI-KICKBACK ACT

For contracts subject to Davis Bacon Act the following clauses will be incorporated into the Contract:

1. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
2. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
3. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

1.33 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.

1.34 FEDERAL FINANCIAL ASSISTANCE

If federal funds, including FEMA financial assistance to the City of Tacoma, will be used to fund, pay or reimburse all or a portion of the Contract, Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives and the following clauses will be incorporated into the Contract:

- A. **EQUAL EMPLOYMENT OPPORTUNITY.** During the performance of this Contract, Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
1. Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 3. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.
 4. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
7. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

B. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (B)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (B)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
3. Withholding for unpaid wages and liquidated damages. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (B)(2) of this section.
4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (B)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (B)(1) through (4) of this section.

C. CLEAN AIR ACT

1. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

D. FEDERAL WATER POLLUTION CONTROL ACT

1. Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

E. DEBARMENT AND SUSPENSION

1. This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by the City. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (insert name of recipient/subrecipient/applicant), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

F. BYRD ANTI-LOBBYING AMENDMENT

1. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification with City. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the City.

2. If applicable, Contractor must sign and submit to the City the following certification:

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING
Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap.38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

G. PROCUREMENT OF RECOVERED MATERIALS

1. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
 - a. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - b. Meeting contract performance requirements; or
 - c. At a reasonable price.
2. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
3. Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

1.35 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.

1.36 APPROVED EQUALS WHEN ALTERNATES ARE ALLOWED

- A. Unless an item is indicated as "no substitute," special brands, when named, are intended to describe the standard of quality, performance, or use desired. Equal items will be considered by the City, provided that Supplier specifies the brand and model, and provides all descriptive literature, independent test results, specification sheets, schematic drawings, photographs, product samples, local servicing, parts availability, etc., to enable the City to evaluate the proposed equal. Performance testing in the field may be required.
- B. The decision of the City as to what items are equal shall be final and conclusive. If the City elects to purchase a brand represented by Supplier to be an "equal," the City's acceptance of the item is conditioned on the City's inspection and testing after receipt. If, in the sole judgment of the City, the item is determined not to be an equal, the item shall be returned at Supplier's expense.
- C. When a brand name or level of quality is not stated in Supplier's submittal, it is understood Supplier's submittal shall exactly confirm with those required in the Contract. If more than one brand name is stated in a Solicitation, Supplier(s) must indicate the brand and model/part number to be supplied.

1.37 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.

1.38 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.

1.39 PACKING SLIPS AND INVOICES

- A. Each invoice shall show City of Tacoma purchase order number, release number if applicable, quantity, unit of measure, item description, unit price and extended price for each line if applicable, services and deliverables provided if applicable. Line totals shall be summed to give a grand total to which sales tax shall be added, if applicable.
 - 1. For transactions conducted in SAP Ariba, invoices shall be submitted through Ariba.
 - 2. For invoices paid by ACH or by check, unless stated otherwise, invoices shall be electronically submitted by email with corresponding PO number listed in the subject line to accountspayable@cityoftacoma.org.
 - 3. For invoices paid by credit card, invoices shall also display the last name of the cardholder and last four digits (only) of the card number (e.g., Jones/6311). Unless stated otherwise, invoices shall be electronically submitted by email with corresponding PO number listed in the subject line to (do not combine different POs into one invoice or charge) to pcardadmin@cityoftacoma.org.

- B. Any terms, provisions or language in Supplier's invoice(s) that conflict with the terms of the Contract are superseded and shall not apply to the Contract unless expressly accepted in writing by the City.
- C. Packing slips and shipping notices shall be sent to the specific City Division or Department receiving the item(s) at the address stated in City's Solicitation or as otherwise stated in the Contract and include complete description of items, contents of items if crated or cased, quantity, shipping point, carrier, bill of lading number and City of Tacoma purchase order.
- D. Supplier shall package orders, preferably in environmental friendly packaging such as reduced packaging and recyclable packing materials.

1.40 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.

1.41 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.

1.42 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.

1.43 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.

1.44 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.

1.45 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.

1.46 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.

1.47 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.

1.48 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.

1.49 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.

1.50 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.

1.51 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.

1.52 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.

1.53 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.

1.54 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.

1.55 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.

1.56 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.

1.57 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.

1.58 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.

1.59 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.

1.60 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.