



City of Tacoma, WA

**TACOMA POWER  
REQUEST FOR BIDS**

**FULLY TREATED DOUGLAS FIR DISTRIBUTION WOOD POLES**

**SPECIFICATION NO. PT20-0257N**



City of Tacoma  
Tacoma Power/ T&D

REQUEST FOR BIDS PT20-0257N  
Fully Treated Douglas Fir Distribution Wood Poles

**Submittal Deadline:** 11:00 a.m., Pacific Time, Wednesday, September 2nd, 2020

**Submittal Delivery:** Submittals will be received as follows:

**By Email:**

[sendbid@cityoftacoma.org](mailto:sendbid@cityoftacoma.org)

**Submittal Opening:** Submittals in response to a RFB will be opened by a Purchasing representative. After 1:00 p.m. the day of bid opening, the names of vendors submitting proposals are posted to the website for public viewing.

**Solicitation Documents:** An electronic copy of the complete solicitation documents may be viewed and obtained by accessing the City of Tacoma Purchasing website at [www.TacomaPurchasing.org](http://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:** One-time purchase of CuNap fully treated and DCOI fully treated Douglas Fir Distribution Wood Poles

**Estimate:** \$50,000

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

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

**The following is applicable to Federal Aid Projects:**

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

**Additional Information:** Requests for information regarding the specifications may be obtained by contacting Dawn DeJarlais by email to [ddejarlais@cityoftacoma.org](mailto:ddejarlais@cityoftacoma.org)

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



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

**BIDDER'S CHECK LIST**

This checklist identifies the documents to be submitted. Bids received without this information may be considered non-responsive and may not be considered for award.

The following information is to be included in your proposal:

|                    |  |
|--------------------|--|
| Bid Proposal Sheet |  |
| Signature Page     |  |

## SECTION I – SPECIAL PROVISIONS

### SPECIES

The following wood species are required per this specification.

| Proposal           | Common Name          | Genus and Species     | Code Letters |
|--------------------|----------------------|-----------------------|--------------|
| Distribution Poles | Douglas Fir, Coastal | Pseudotsuga menziesii | DF           |

### REQUIREMENTS

Unless specifically stated, the requirements of ANSI O5.1 shall be followed. Wood pole Use Category shall be 4C in accordance with AWPA U1 Commodity Specification D.

### SPLITS

The top fifteen percent (15%) of the pole shall not have any splits (Split is a lengthwise separation of the wood extending completely through the piece from one surface to another).

### CHECKS

All checks shall meet the following requirements:

| Dimension     | Requirement                                       |
|---------------|---|
| Maximum Depth | no deeper than the pith                           |
| Maximum Width | no wider than one-half inch (1/2") at the surface |

### ROOFING

The pole shall be neatly sawed flat and perpendicular to the length of the pole prior to treatment.

### SHAVING

All poles shall be shaved prior to treatment per Section 7.4 of ANSI O5.1

### MARKING OF POLES

All poles shall be permanently marked as follows:

| Location                               | Requirements   |
|--|--|
| The Butt of the Pole                   | <ul style="list-style-type: none"> <li>▪ Branded or tagged per section 7.5 of ANSI O5.1</li> <li>▪ Serial Number Pole Tag</li> </ul>                             |
| The Face of the Pole<br>(See Figure 1) | <ul style="list-style-type: none"> <li>▪ Manufacture Pole Tag placed on pole per ANSI O5.1, 10 ft from butt of pole</li> <li>▪ Serial Number Pole Tag</li> </ul> |

### CONDITION OF POLES PRIOR TO DELIVERY

Visual inspection of poles shall be done to check for cleanliness and dryness prior to delivery to insure that there are no excessive residual materials or preservative deposits. Poles that are not clean and dry shall be rejected and set aside. **Bleeders will not be accepted!**



## Material Specification PT20-0257N Fully Treated Douglas Fir Distribution Wood Poles

### TEST AND PRODUCTION REPORTS

Data formatted in a Microsoft Excel 2010 or newer version spreadsheet shall be provided for the delivery. The spreadsheet shall be in the format shown below and include the following information on each pole delivered to Tacoma Power.

|   | A      | B            | C                     | D         | E                       | F               | G                           | H                        | I          | J                      | K            | L          | M                |
|---|--------|--------------|-----------------------|-----------|-------------------------|-----------------|-----------------------------|--------------------------|------------|------------------------|--------------|------------|------------------|
| 1 | Length | Manufacturer | Manufacture SerialNo. | Constr.yr | Charge Number (30 Char) | Species or Type | Treatment Process (30 Char) | Treatment Type (15 Char) | Pole Class | Manufacturing Location | Unit Pricing | Contract # | Purchase Order # |
| 2 | 65     | Poles R Us   | PRU100025             | 2017      | 1-00007                 | DF              | Pressure Treated            | PCP-A                    | 1          | Outback, WA            | \$1,200.00   | 4600008966 | 4500445794       |
| 3 | 65     | Poles R Us   | PRU100026             | 2017      | 1-00007                 | DF              | Pressure Treated            | PCP-A                    | 1          | Outback, WA            | \$1,200.00   | 4600008966 | 4500445794       |
| 4 | 85     | Poles R Us   | PRU100027             | 2017      | 1-00007                 | DF              | Pressure Treated            | PCP-A                    | H2         | Outback, WA            | \$2,500.00   | 4600008966 | 4500445794       |
| 5 | 85     | Poles R Us   | PRU100028             | 2017      | 1-00007                 | DF              | Pressure Treated            | PCP-A                    | H2         | Outback, WA            | \$2,500.00   | 4600008966 | 4500445794       |
| 6 | 85     | Poles R Us   | PRU100029             | 2017      | 1-00010                 | DF              | Pressure Treated            | PCP-A                    | H2         | Outback, WA            | \$2,500.00   | 4600008966 | 4500445794       |
| 7 | 85     | Poles R Us   | PRU100030             | 2017      | 1-00010                 | DF              | Pressure Treated            | PCP-A                    | H2         | Outback, WA            | \$2,500.00   | 4600008966 | 4500445794       |
| 8 | 85     | Poles R Us   | PRU100031             | 2017      | BT-017                  | WRC             | Butt Treated                | PCP-A                    | H2         | Outback, WA            | \$2,500.00   | 4600008966 | 4500445794       |

- Length
- Manufacturer
- Manufacturer Serial Numb
- Year of Manufacture
- Charge Number
- Species
- Treatment Process
- Treatment Type
- Pole Class
- Manufacturing Location
- Unit Price
- City of Tacoma Contract Number
- City of Tacoma Purchase Order

### DISTRIBUTION OF REPORT DATA

Prior to the pole delivery time, the report spreadsheets shall be sent via email to Tacoma Power warehouse and data management personnel listed below:

| Tacoma Power Contact | EMAIL Address             |
|----------------------|---------------------------|
| Joseph Parris        | jparris@cityoftacoma.org  |
| Keith Wawrin         | kwawrin@cityoftacoma.org  |
| Joe Gilbert          | jgilbert@cityoftacoma.org |
| Bill Walsh           | bwalsh@cityoftacoma.org   |

### 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 |

### DELIVERY TIMES

The deliveries of treated poles shall arrive between the hours of 8:00 a.m. – 12:00 p.m. and 1:00 p.m. - 2:00 p.m. Tuesday through Thursday excluding City observed holidays.



## Material Specification PT20-0257N Fully Treated Douglas Fir Distribution Wood Poles

### DELIVERY LOCATION

Deliver completed items as directed by the purchase order release to either:

|  |    |  |
|--|----|--|
| Tacoma Power<br>Southwest Substation Pole Yard<br>4102 South 74 <sup>th</sup> Street<br>Tacoma, Washington 98409 | or | Tacoma Power<br>South Service Center<br>3002 224 <sup>th</sup> St. E<br>Spanaway, WA 98387 |
|--|----|--|

### MATERIAL SAFETY DATA SHEET (MSDS)

Vendors must submit a manufacturer's Material Safety Data Sheet (MSDS) that complies with OSHA and WISHA guidelines for Hazard Communications Standard WAC 296-62-054 requirement for items identified as hazardous materials or items in whose normal use produce a hazardous material.

### INSPECTION & WARRANTY

All goods are subject to final inspection and acceptance by the Engineer and/or Tacoma Power Warehouse employees.

### FAILURE OF INSPECTION

Materials received damaged or failing to meet the requirements of these specifications will be held at the Supplier's risk and may be returned to Supplier. If so returned, the cost of transportation, unpacking, inspection, repackaging, 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.

### 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.

### 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.

### WARRANTY WORK

The City has determined that the physical repair of material/equipment, under warranty, is generally not possible due to the nature of the material - wood. If the deviation can be corrected through retreatment then supplier will bear all transportation costs and treatment costs associated with making the correction and returning the item to Tacoma Power.

**SECTION II – POLES, WOOD, 50FT, CLASS 2, DOUGLAS FIR, FULLY TREATED, CuNap**

**STANDARDS**

All wood poles supplied 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   |
|-----------------|--|
| ANSI C2         | National Electric Safety Code  |
| ANSI O5.1       | Wood Poles – Specifications and Dimensions   |
| AWPA A5         | Standard Methods for Analysis of Oil-Borne Preservatives                                   |
| AWPA M6         | Brands Used on Preservative Treated Materials  |
| AWPA P8         | Standard for Oil Borne Preservatives   |
| AWPA T1         | Use Category System: Processing and Treating Standards                                     |
| AWPA U1         | Use Category System: User Specification for Treated Wood, Commodity Specification D: Poles |
| AWPA P36        | Standard for Copper Naphthenate (CuN)  |
| AWPA HSA        | Standard for Hydrocarbon Solvent, Type A   |

**REQUIREMENTS FOR POLE TAGS**

A Manufacture Pole Tag and Serial Number Pole Tag shall be supplied on each pole per the descriptions and Figure 1 below.

**DRILLED RECESS**

The pole tags shall be installed within 2” diameter drilled recesses approx. 1/2” deep located on the exact center of the face of the pole.

**MANUFACTURE POLE TAG**

The manufacture pole tag shall be 1-15/16” aluminum disc set with an aluminum or galvanized nail with the following information:

- Suppliers Name
- Treatment Year
- Pole Length
- Pole Class
- Treatment Plant Location
- Species of wood – per AWPA M6
  - DF – Douglas Fir
- Treatment Type – per AWPA M6
  - N – Copper Naphthenate

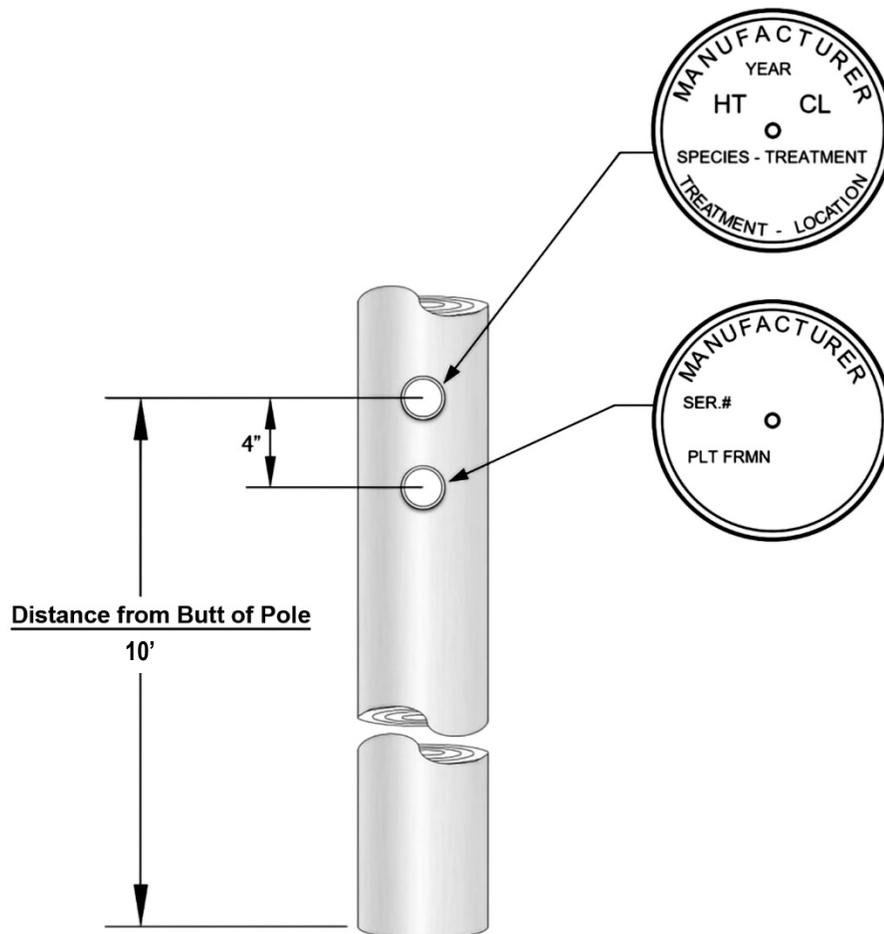
**SERIAL NUMBER POLE TAGS**

The manufacture shall provide two 1-15/16” aluminum discs set with an aluminum or galvanized nail.

The tag shall include the following information:

- A serial number that shall be sequential and non-repeating. **The engineer shall be contacted prior to establishing a serial number format in order to establish a unique format for the supplier.**
- The stamped initials of the plant foreman that approves the shipment of the pole.
- The tags shall be located:
  - on the face of the pole - as shown below in Figure 1
  - on the butt of the pole – Serial Number Only.

**FIGURE 1 – POLE TAGS ON FACE OF POLE**



## WOOD POLE TREATMENT

### TREATMENT PROCESS

The Douglas Fir poles supplied per this specification are to be full-length pressure treated per AWPA T1.

They shall be treated full length with Copper Naphthenate solution meeting the requirements of AWPA P8 compounded with Hydrocarbon Solvent Type A meeting the requirements of AWPA HSA and shall not contain any chlorinated compounds.

### PENETRATION

Penetration of the preservative in the sapwood shall be in accordance with AWPA T1, Section D: Poles.

### RETENTION

Retention shall be in accordance with AWPA U1 Commodity Specification D: Poles, Pressure Process, Use Category 4C.

### INCISING

The entire pole shall be incised to a depth of one-half inch (1/2"). The pattern shall be such as to ensure a uniform penetration of the preservative. The incisions shall be clean cut and not cause the sapwood to splinter or be loosened from the heartwood.

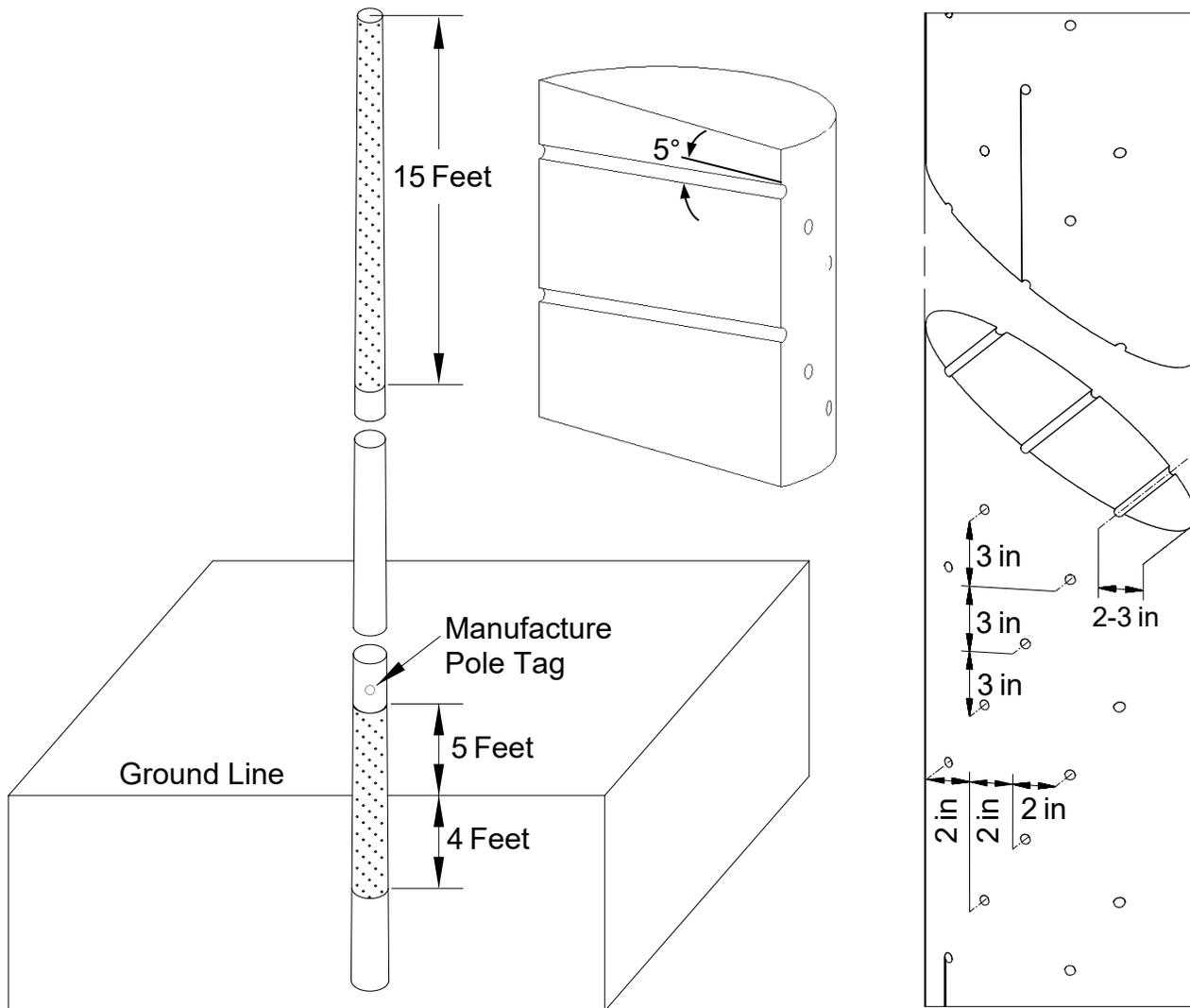
### THROUGH BORING

The poles shall be through bored on **the face of the pole** with 1/2" holes prior to treatment per Figure 2 below. The holes shall be drilled to a **5 degree slope** for moisture drainage.

The area of the poles to be through bored shall be:

| Location on Pole | Area    |
|------------------|---------|
| Below Groundline | 4 feet  |
| Above Groundline | 5 feet  |
| Top of Pole      | 15 feet |

FIGURE 2 – THROUGH BORING



### POST TREATMENT

The intent of post treatment is to minimize the amount of surface residues which are available to migrate to the environment, and soil clothing of workers and the public. The requirements below approximate those found in the **Best Management Practices** (BMPs) as developed by the Western Wood Preservers Institute and the Canadian Institute of Treated Wood.

### ACCEPTABLE PROCESSES

The following processes are acceptable to reduce residual surface treatment.

- Steaming – After the final vacuum is pulled during the treatment process a final steaming is applied to remove excess preservative solution from the surface of the pole.
- Expansion Bath – An expansion bath may be used in accordance with AWPA T1, Section 2.

## **SECTION III – POLES, WOOD, 50FT, CLASS 2, DOUGLAS FIR, FULLY TREATED, DCOI**

### **STANDARDS**

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

| <b>Standard Number</b> | <b>Standard Title</b>  |
|------------------------|--|
| ANSI C2                | National Electric Safety Code  |
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| AWPA A5                | Standard Methods for Analysis of Oil-Borne Preservatives                                   |
| AWPA M6                | Brands Used on Preservative Treated Materials  |
| AWPA P8                | Standard for Oil Borne Preservatives   |
| AWPA T1                | Use Category System: Processing and Treating Standards                                     |
| AWPA U1                | Use Category System: User Specification for Treated Wood, Commodity Specification D: Poles |
| AWPA P39               | Standard for 4,5-Dichloro-2-N-Octyl-4-Isothiazolin-3-One (DCOI)                            |
| AWPA HSA               | Standard for Hydrocarbon Solvent, Type A   |

### **REQUIREMENTS FOR POLE TAGS**

A Manufacture Pole Tag and Serial Number Pole Tag shall be supplied on each pole per the descriptions and Figure 1 below.

#### **DRILLED RECESS**

The pole tags shall be installed within 2" diameter drilled recesses approx. 1/2" deep located on the exact center of the face of the pole.

#### **MANUFACTURE POLE TAG**

The manufacture pole tag shall be 1-15/16" aluminum disc set with an aluminum or galvanized nail with the following information:

- Suppliers Name
- Treatment Year
- Pole Length
- Pole Class
- Treatment Plant Location
- Species of wood – per AWPA M6
  - DF – Douglas Fir
- Treatment Type – per AWPA M6
  - DA – DCOI

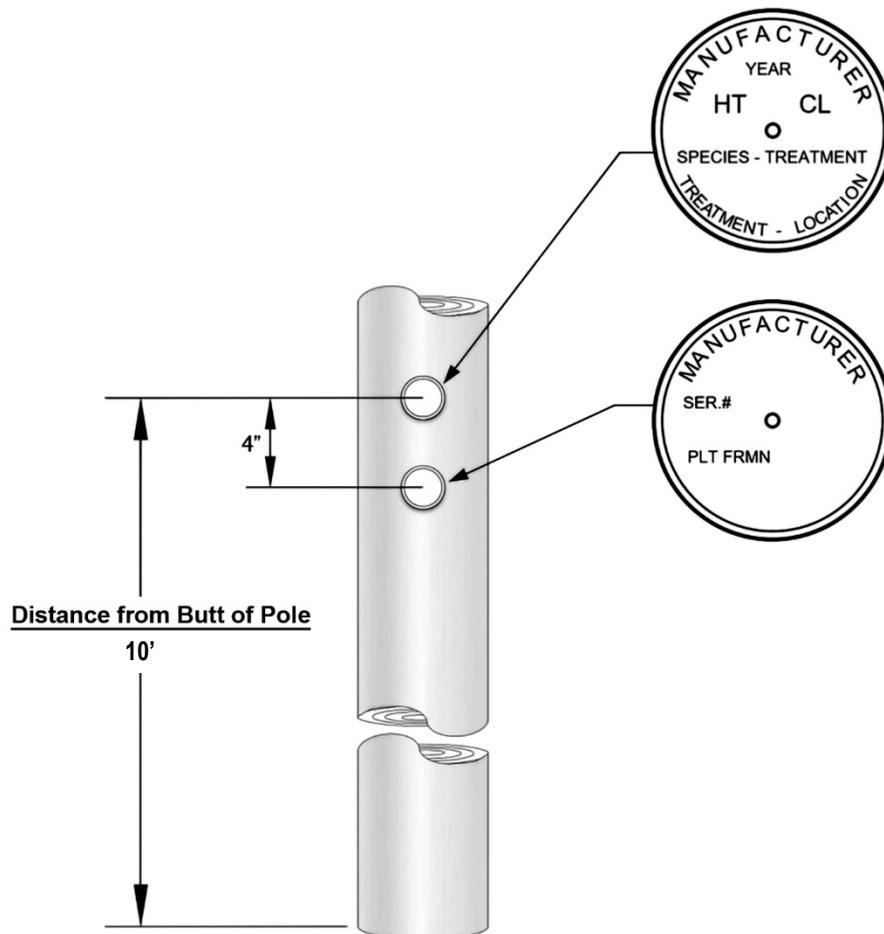
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- The stamped initials of the plant foreman that approves the shipment of the pole.
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  - on the face of the pole - as shown below in Figure 1
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**FIGURE 1 – POLE TAGS ON FACE OF POLE**



## **WOOD POLE TREATMENT**

### **TREATMENT PROCESS**

The Douglas Fir poles supplied per this specification are to be full-length pressure treated per AWPA T1.

They shall be treated full length with DCOI solution meeting the requirements of AWPA P39 compounded with Hydrocarbon Solvent Type A meeting the requirements of AWPA HSA and shall not contain any chlorinated compounds.

### **PENETRATION**

Penetration of the preservative in the sapwood shall be in accordance with AWPA T1, Section D: Poles.

### **RETENTION**

Retention shall be in accordance with AWPA U1 Commodity Specification D: Poles, Pressure Process, Use Category 4C.

### **INCISING**

The entire pole shall be incised to a depth of one-half inch (1/2"). The pattern shall be such as to ensure a uniform penetration of the preservative. The incisions shall be clean cut and not cause the sapwood to splinter or be loosened from the heartwood.

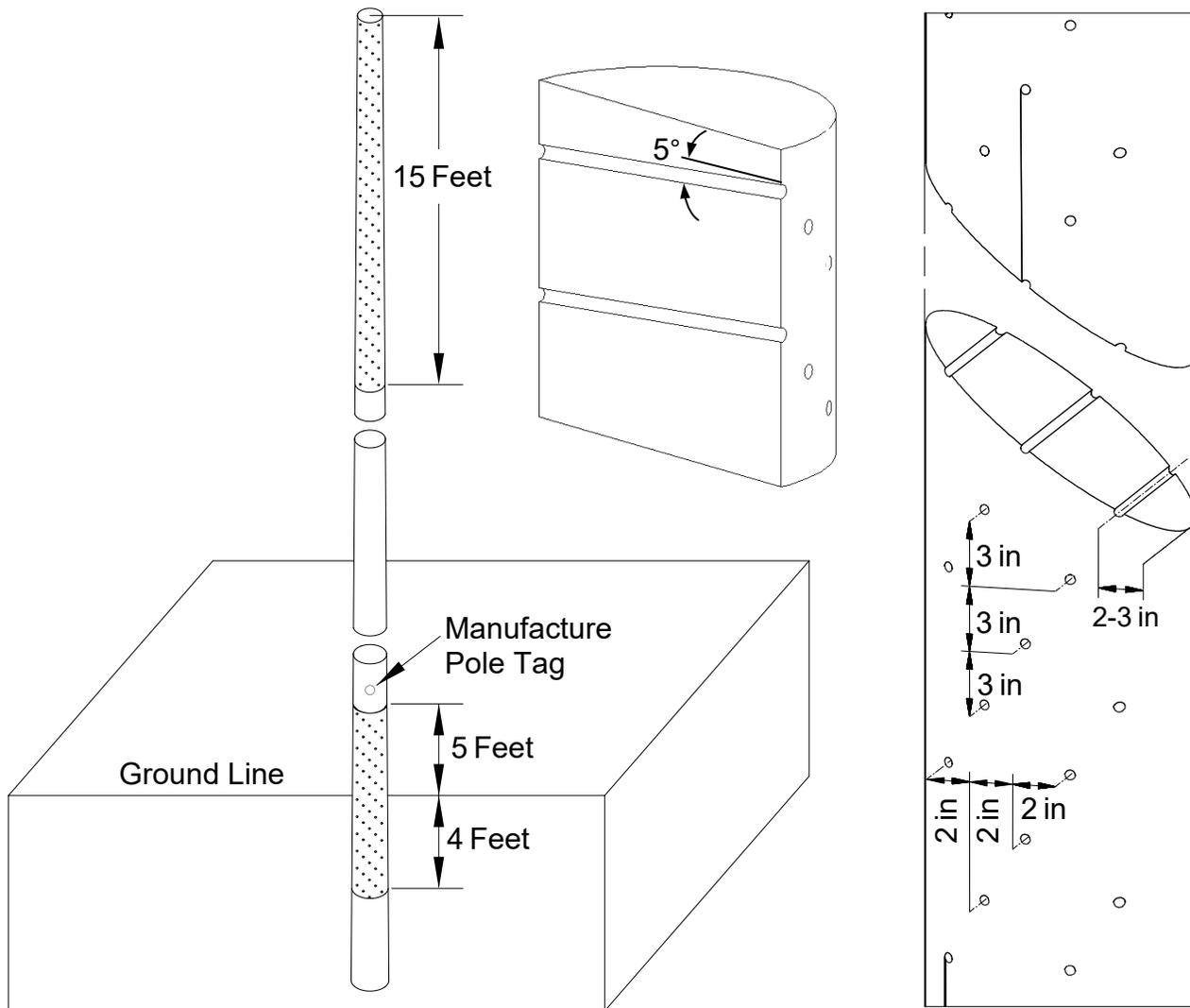
### **THROUGH BORING**

The poles shall be through bored on **the face of the pole** with 1/2" holes prior to treatment per Figure 2 below. The holes shall be drilled to a **5 degree slope** for moisture drainage.

The area of the poles to be through bored shall be:

| <b>Location on Pole</b> | <b>Area</b> |
|-------------------------|-------------|
| Below Groundline        | 4 feet      |
| Above Groundline        | 5 feet      |
| Top of Pole             | 15 feet     |

FIGURE 2 – THROUGH BORING



### POST TREATMENT

The intent of post treatment is to minimize the amount of surface residues which are available to migrate to the environment, and soil clothing of workers and the public. The requirements below approximate those found in the **Best Management Practices** (BMPs) as developed by the Western Wood Preservers Institute and the Canadian Institute of Treated Wood.

### ACCEPTABLE PROCESSES

The following processes are acceptable to reduce residual surface treatment.

- Steaming – After the final vacuum is pulled during the treatment process a final steaming is applied to remove excess preservative solution from the surface of the pole.
- Expansion Bath – An expansion bath may be used in accordance with AWPA T1, Section 2.

**SIGNATURE PAGE**

**CITY OF TACOMA  
POWER/ T&D**

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 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. PT20-0257N  
Fully Treated Douglas Fir Distribution Wood Poles**

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 - PRICING SHEET**

| Item No.  | Description  | Quantity | Unit Price | Total Bid Price |
|---|--|----------|------------|-----------------|
| 1   | POLES, WOOD, 50FT, CLASS 2, DOUGLAS FIR, FULLY TREATED, CuNap per Section II<br>(no substitutions) | 20       | \$         | \$              |
| 2   | POLES, WOOD, 50FT, CLASS 2, DOUGLAS FIR, FULLY TREATED, DCOI per Section III<br>(no substitutions) | 20       | \$         | \$              |
| <b>Sub Total for Proposal</b>   |  |          |            | \$              |
| Sales Tax @ 10.2%, Location Tax Collected: Tacoma, WA<br>(Note Paragraph 1.38 of Standard Terms and Conditions) |  |          |            | \$              |
| <b>Total for All Items with Tax</b>   |  |          |            | \$              |

**NOTES:**

1. All prices shall be submitted as F.O.B. Destination, freight prepaid and allowed included in the unit price
2. **Respondents may bid on one or both items.** The City reserves the right to award for any or all items to one or more Suppliers in the best interests of the City.

**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/](https://www.cityoftacoma.org/government/city_departments/finance/tax_and_license/). Supplier shall obtain a business license as is required by Tacoma Municipal Code Subtitle 6C.20.
- C. During the term of the Contract, Supplier, at its expense, shall obtain and keep in force any and all necessary licenses and permits.

## **1.06 PUBLIC DISCLOSURE: PROPRIETARY OR CONFIDENTIAL INFORMATION**

- A. Supplier Submittals, all documents and records comprising the Contract, and all other documents and records provided to the City by Supplier are deemed public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW (Public Records Act). Thus, City may be required, upon request, to disclose the Contract and documents or records related to it unless an exemption under the Public Records Act or other laws applies. In the event CITY receives a request for such disclosure, determines in its legal judgment that no applicable exemption to disclosure applies, and Supplier has complied with the requirements to mark records considered confidential or proprietary as such requirements are stated below, City agrees to provide Supplier 10 days written notice of impending release. Should legal action thereafter be initiated by Supplier to enjoin or otherwise prevent such release, all expense of any such litigation shall be borne by Supplier, including any damages, attorneys' fees or costs awarded by reason of having opposed disclosure. City shall not be liable for any release where notice was provided and Supplier took no action to oppose the release of information.
- B. If Supplier provides City with records or information that Supplier considers confidential or proprietary, Supplier must mark all applicable pages or sections of said record(s) as "Confidential" or "Proprietary." Further, in the case of records or information submitted in response to a Request for Proposals, an index must be provided indicating the affected pages or sections and locations of all such material identified Confidential or Proprietary. Information not included in the required index will not be reviewed for confidentiality or as proprietary before release. If Supplier fails to so mark or index Submittals and related records, then the City, upon request, may release said record(s) without the need to satisfy the requirements of subsection A above; and Supplier expressly waives its right to allege any kind of civil action or claim against the City pertaining to the release of said record(s).
- C. Submission of materials in response to City's Solicitation shall constitute assent by Supplier to the foregoing procedure and Supplier shall have no claim against the City on account of actions taken pursuant to such procedure.

## **1.07 SUSTAINABILITY**

- A. The City has interest in measures used by its contractors to ensure sustainable operations with minimal adverse impact on the environment. The City seeks to do business with vendors that value community and environmental stewardship that help us meet our sustainable purchasing goals.
- B. The City encourages the use of environmentally preferable products or services that help to minimize the environmental and human health impacts of City operations. Suppliers are encouraged to incorporate environmentally preferable products or services into Submittals wherever possible. "Environmentally preferable" means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.
- C. Environmental Standards. The City seeks to ensure that all purchases comply with current environmental standards and product specifications. Where appropriate, third party independent certifiers such as Green Seal and USEPA Standards shall be a minimum specification for products to the City, unless specified otherwise herein.
- D. The City encourages the use of sustainability practices and desires any awarded Suppliers to assist in efforts to address such factors when feasible for:
  - 1. Pollutant releases
  - 2. Toxicity of materials used
  - 3. Waste generation
  - 4. Greenhouse gas emissions, including transportation of materials and services
  - 5. Recycle content
  - 6. Energy consumption
  - 7. Depletion of natural resources
  - 8. Potential impact on human health and the environment

### **1.08 ALTERATIONS NOT ALLOWED**

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

### **1.09 CORRECTION OF AMBIGUITIES AND OBVIOUS ERRORS**

- A. The City reserves the right to correct obvious errors in Supplier's Submittal. In this regard, if the unit price does not compute to the extended total price, the unit price shall govern.
- B. Supplier shall notify the City of Tacoma Procurement and Payables Division in writing of any ambiguity, conflict, discrepancy, omission or other error in a Solicitation no later than five business days prior to the submittal deadline.
  - 1. For solicitations conducted in SAP Ariba, Supplier shall notify the City of Tacoma Procurement and Payables Division on the message board of the event.
  - 2. For all other solicitations, Supplier shall notify the contract person listed in the Solicitation.
- C. The City will make necessary modifications by addendum.
- D. Supplier is responsible for identifying ambiguities, conflicts, discrepancies, omissions or other errors in the Solicitation prior to providing its Submittal or the ambiguity, conflict, discrepancy, omission, or other error is waived. Any Submittal that includes assumed clarifications and/or corrections without the required authentication of the same is subject to rejection.

### **1.10 WARRANTIES/GUARANTEE**

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

### **1.11 PATENTS, TRADEMARKS AND COPYRIGHTS**

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

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

- A. Submittal packages must be received by the City's Procurement and Payables Division in SAP Ariba (unless another form of delivery is stated), prior to the scheduled time and date stated in the Solicitation.
- B. Supplier is solely responsible for timely delivery of its Submittal.
- C. Submittals received after the time stated in the solicitation will not be accepted.
- D. For purposes of determining whether a Submittal has been timely received in SAP Ariba, the City's Procurement and Payables Division will rely on the submittal clock in SAP Ariba.

### **1.13 SUBMITTAL IS NON-COLLUSIVE**

Supplier acknowledges that by its delivery of a Submittal to the City in response to a Solicitation, it represents that the prices in such Submittal are neither directly nor indirectly the result of any formal or informal agreement with another Supplier.

### **1.14 PARTNERSHIPS**

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

### **1.15 WITHDRAWAL OF SUBMITTALS**

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

### **1.16 ACCEPTANCE OF SUBMITTALS**

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

### **1.17 RIGHT TO REJECT**

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

### **1.18 RESERVED RIGHTS**

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

6. To eliminate any Supplier that submits an incomplete or inadequate response, or is non-responsive to the requirements of a Solicitation, or is otherwise deemed to be unqualified during any stage of the procurement process.
7. To select and interview a single finalist or multiple finalists to further the City's evaluation of Submittals provided in response to a Solicitation. The City may, in its sole and exclusive discretion as to what is in the City's best interest, elect not to conduct interviews of any or all Suppliers in connection with a solicitation process.
8. Except in the case of Requests for Bids, to negotiate any rate/fee offered by a Supplier. The City shall have the sole right to make the final rate/fee offer during contract negotiations. If the selected Supplier does not accept the City's final offer, the City may, in its sole discretion discontinue contract negotiations and commence negotiations with another Supplier, except as otherwise provided in Chapter 39.80, RCW.
9. To select and enter into a Contract with one or more Suppliers whose Submittal best satisfies the interests of the City and is most responsive, in the sole judgment of the City, to the requirements of a Solicitation.
10. To award by line item or group of line items.
11. To not award one or more items.
12. To issue additional or subsequent solicitations.
13. To seek partnerships between one or more Suppliers.
14. Request additional related products and services from the selected Supplier(s) as necessary throughout the term of the Contract.
15. Negotiate costs or fees in the event of new legislation or regulatory changes, or issuance of related compliance guidance, technology enhancements, and innovative solutions.
16. In the event the City receives questions concerning a Solicitation from one or more Suppliers prior to the deadline for response, the City reserves the right to provide such questions, and the City's responses, if any, to all Suppliers.
17. If an award is made and, prior to entering into a contract, subsequent information indicates that such award is not in the best interest of the City, the City may rescind the award without prior notice to Supplier and either award to another Supplier or reject all submittals or cancel this solicitation.
18. To cancel award of a contract at any time before execution of the Contract by both parties if cancellation is deemed to be in the City's best interest. In providing a submittal, Suppliers agree that the City is not liable for any costs or damages for the cancellation of an award. Supplier assumes the sole risk and responsibility for all expenses connected with the preparation of its submittal.
19. To add additional City departments or divisions to the Contract or develop a separate Contract with the Supplier subject to all terms, conditions and pricing of the original Contract
20. To take any other action affecting a Solicitation or a procurement process that is determined to be in the City's best interests.

#### **1.19 SUBMITTAL CLARIFICATION**

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

#### **1.20 EVALUATION OF SUBMITTALS**

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

1. Evaluation Factors. In addition to the factors set forth in Municipal Code Section 1.06.262, the following may be used by the City in determining the lowest and best responsible Submittal:
  - a. Compliance with a Solicitation and with applicable City requirements, including by not limited to, the City's Ethics Code and its Small Business Enterprise and Local Employment and Apprenticeship programs.
  - b. Submittal prices, listed separately if requested, as well as a lump sum total (if the unit price does not compute to the extended total price, the unit price shall govern).
  - c. The total cost to the City, including all applicable taxes, may be the basis for contract award.
  - d. Time of delivery and/or completion of performance (delivery date(s) offered).
  - e. Warranty terms.
  - f. Quality of performance of previous contracts or services, including safety requirements and past compliance with the City's Ethics Code.
  - g. Previous and existing compliance with laws and ordinances relating to contracts or services.
  - h. Sufficiency of financial resources.
  - i. Quality, availability, and adaptability of the supplies or services to the particular use required.
  - j. Ability to provide future maintenance and service on a timely basis.
  - k. Location of nearest factory authorized warranty repair facility or parts dealership.
  - l. Ability, capacity, experience, stability, reputation, integrity, character, judgment, technical qualifications, and skill to perform the contract or provide the services required.
2. Prompt Payment Discount. Payment discount periods of 20 calendar days or more, if offered in the submittal, will be considered in determining the apparent lowest responsible submittal. Discounts will be analyzed in context of their overall cumulative effect.
  - a. ePayable/Credit Card Acceptance. Submittals offering ePayable/Credit card acceptance may be compared against submittals offering a prompt payment discount to evaluate the overall cumulative effect of the discount against the advantage to the City of the ePayable/Credit card acceptance, and may be considered in determining the apparent lowest responsible submittal.
3. All other elements or factors, whether or not specifically provided for in a Solicitation, which would affect the final cost to, and the benefits to be derived by, the City, may be considered in determining the award of a Contract. The final award decision will be based on the best interests of the City.

**1.21 CONTRACT OBLIGATION**

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

**1.22 AWARD**

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

**1.23 SUPPLIER'S REFUSAL TO ENTER INTO CONTRACT**

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

**1.24 LEGAL HOLIDAYS**

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

|                               |                       |
|-------------------------------|-----------------------|
| New Year's Day                | January 1             |
| Martin Luther King's Birthday | 3rd Monday in January |

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

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

**1.25 CONTRACT TERM**

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

**1.26 EXTENSION OF CONTRACT**

Contracts shall be subject to extension at City's sole discretion.

**1.27 TERMINATION AND SUSPENSION**

- A. Supplies. The City reserves the right to terminate a Contract at any time upon prior written notice to Supplier. Upon the effective date of termination specified in such notice, and payment by the City, all conforming supplies, materials, or equipment previously furnished hereunder shall become its property.
- B. Services. The City may terminate a Contract at any time, with or without cause, by giving 10 business days written notice to Supplier. In the event of termination, all finished and unfinished work prepared by Supplier pursuant to the Contract shall be provided to the City. In the event City terminates the Contract due to the City's own reasons and without cause due to Supplier's actions or omissions, the City shall pay Supplier the amount due for actual work and services necessarily performed under the Contract up to the effective date of termination, not to exceed the total compensation set forth in the Contract.
- C. Suspension. For either services or supplies, the City may suspend a Contract, at its sole discretion, upon three business days' written notice to Supplier. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to Supplier's actual expenses and shall be subject to verification. Supplier shall resume performance of services under the Contract without delay when the suspension period ends.
- D. Termination or suspension of a Contract by City shall not constitute a waiver of any claims or remaining rights the City may have against Supplier relative to performance under a Contract.

**1.28 DEFAULT/BREACH**

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

- A. Supplies. The City at any time by written change order or other form of written contract amendment may make reasonable changes in the place of delivery, installation, or inspection, the method of shipment or packing, identification and ancillary matters that Supplier may accommodate without substantial additional expense.
- B. Services. The City shall have the right to make changes within the general scope of services and/or deliverables upon execution in writing of a change order or other written form of contract amendment. If the changes will result in additional work effort by Supplier the City agrees to reasonably compensate Supplier for such additional effort up to the maximum amount specified in the Contract or as otherwise provided by Tacoma Municipal Code. Any new services accepted by the City may be added to the Contract and/or substituted for discontinued services. New services shall meet or exceed all requirements of original award.
- C. Expansion Clause. A Contract may be further expanded in writing to include other related services or products normally offered by Supplier, as long as the price of such additional services or products have a profit margin equal to or less than that in place at the time of original submittal. Such additions and prices will be established in writing. New items not meeting these criteria will not be added to the Contract. Supplier profit margins are not to increase as a result any such expansion.

### **1.29 SCOPE OF SERVICES**

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

### **1.30 SERVICES DO NOT INCLUDE PUBLIC WORK**

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

### **1.31 PREVAILING WAGES**

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

### **1.32 CONTRACT PRICING**

- A. Submitted prices shall include costs of submittal preparation, servicing of the account, all contractual requirements during contract period such as transportation, permits, insurance costs, bonds, labor, wages, materials, tools, components, equipment, and appurtenances necessary to complete the work, which shall conform to the best practice known to the trade in design, quality, material, and workmanship.
- B. Surcharges of any type will not be paid.
- C. If applicable, related additional products and corresponding services of benefit to the City not specifically required in a solicitation, but which Supplier offers to provide, may be included with the submittal. Supplier may request to add new products if the City approves them and Supplier can demonstrate the pricing is from the same pricing structure/profit margin.
- D. Unless specifically stated otherwise, only firm prices will be accepted and all prices shall remain firm during the term of a Contract.
- E. Price increases may at City's discretion be passed along during a contract period if the increase is mandated by statute, or the result of a tariff.
- F. By submitting prices, Supplier warrants prices equal to or better than the equivalent prices, terms, and benefits offered by Supplier to any other government unit or commercial customer.
- G. Should Supplier, during the term of a Contract, enter into any other contract, agreement or arrangement that provides lower prices, more favorable terms or greater benefits to any other government unit or commercial customer, the Contract with the City shall thereupon be deemed amended to provide the same price or prices, terms and benefits to the City. This provision applies to comparable products and purchase volumes by the City that are not less than the purchase volumes of the government unit or commercial customer that has received the lower prices, greater benefits, or more favorable terms.
- H. If at any time during the term of the Contract, Supplier reduces prices to other buyers purchasing approximately the same quantities stated on the Contract, Supplier will immediately notify the City purchasing manager of such fact, and the price(s) for future orders under the Contract shall be reduced accordingly.
- I. The City is entitled to any promotional pricing during the Contract period.
- J. Price decreases shall be immediately passed on to the City.

- K. The City reserves the right to increase or decrease the quantities of any item awarded pursuant to the Contract and pay according to the unit prices quoted in the submittal with no adjustments for anticipated profit.

### **1.33 APPROVED EQUALS WHEN ALTERNATES ARE ALLOWED**

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

### **1.34 RISK OF LOSS, SHIPPING AND DELIVERY**

- A. Shipping. Prices must be quoted FOB destination (the place of destination as defined in RCW 62A.2-319, as that statute may hereafter be amended), with freight prepaid and allowed (shipping costs included in unit prices), and risk of loss remaining with Supplier until delivery is tendered.
- B. Delivery. Delivery will be to the designated addresses set forth in a Solicitation or as otherwise stated in the Contract. Deliveries shall be between 9:00 a.m. and 3:30 p.m., Monday through Friday only, except Legal Holidays. Failure to make timely delivery shall be cause for termination of the contract or order and return of all or part of the items at Supplier's expense except in the case of force majeure.

### **1.35 DELIVERY OF PRODUCTS AND PROVISION OF SERVICES – IDLING PROHIBITED**

- A. The City of Tacoma has a commitment to reduction of unnecessary fuel emissions and improving air quality by reducing unnecessary air pollution from idling vehicles. Limiting car and truck idling supports cleaner air, healthier work environments, the efficient use of city resources, the public's enjoyment of City properties and programs, conservation of natural resources, and good stewardship practices.
- B. Vehicles and/or diesel fuel trucks shall not idle at the time and location of the delivery to the City of Tacoma for more than three minutes. The City requires contractors to utilize practices that reduce fuel consumption and emission discharge, including turning off trucks and vehicles during delivery of products to the City. Exceptions to this requirement include when associated power is necessary to make a delivery or provide the service, when the engine is used to provide power to another device, and when a running engine is required for proper warm-up and cool-down of the engine.

### **1.36 PACKING SLIPS AND INVOICES**

- A. Each invoice shall show City of Tacoma purchase order number, release number if applicable, quantity, unit of measure, item description, unit price and extended price for each line if applicable, services and deliverables provided if applicable. Line totals shall be summed to give a grand total to which sales tax shall be added, if applicable.
  - 1. For transactions conducted in SAP Ariba, invoices shall be submitted through Ariba.
  - 2. For invoices paid by ACH or by check, unless stated otherwise, invoices shall be electronically submitted by email with corresponding PO number listed in the subject line to [accountspayable@cityoftacoma.org](mailto: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](mailto:pcardadmin@cityoftacoma.org).
- B. Any terms, provisions or language in Supplier's invoice(s) that conflict with the terms of the Contract are superseded and shall not apply to the Contract unless expressly accepted in writing by the City.
- C. Packing slips and shipping notices shall be sent to the specific City Division or Department receiving the item(s) at the address stated in City's Solicitation or as otherwise stated in the Contract and include

complete description of items, contents of items if crated or cased, quantity, shipping point, carrier, bill of lading number and City of Tacoma purchase order.

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

### **1.37 COOPERATIVE PURCHASING**

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

### **1.38 TAXES**

- A. Unless otherwise stated, applicable federal, state, City, and local taxes shall be included in the submittal and in contract as indicated below. As used herein, the term "taxes" shall include any and all taxes, assessments, fees, charges, interest, penalties, and/or fines imposed by applicable laws and regulations in connection with the procurement of goods and/or services hereunder.
  - 1. Federal Excise Tax. The City of Tacoma is exempt from federal excise tax. The City will furnish a Federal Excise Tax Exemption certificate, if required. If Supplier fails to include any applicable tax in its submittal, then Supplier shall be solely responsible for the payment of said tax.
  - 2. State and Local Sales Tax. The City of Tacoma is subject to Washington state sales tax. It is Supplier's obligation to state the correct sales tax percentage and include the applicable Washington state, city and local sales tax as a separate line item(s) in the submittal.
  - 3. City of Tacoma Business and Occupation Tax. It is Supplier's obligation to include City of Tacoma Business and Occupation tax in the unit and/or lump sum prices submitted; it shall not be shown separately on the submittal. Per Sub-Title 6A of the City of Tacoma Municipal Code, transactions with the City of Tacoma may be subject to the City's Business and Occupation Tax.
- B. Any or All Other Taxes. Any or all other taxes are the responsibility of Supplier unless otherwise required by law. Except for state sales tax, Supplier acknowledges that it is responsible for the payment of all taxes applicable to the Contract and Supplier agrees to comply with all applicable laws regarding the reporting of income, maintenance of records, and all other requirements and obligations imposed pursuant to applicable law.
- C. If the City is assessed, made liable, or responsible in any manner for taxes contrary to the provisions of the Contract, Supplier agrees to hold the City harmless from such costs, including attorney's fees. In the event Supplier fails to pay any taxes, assessments, penalties, or fees imposed by any governmental body, including a court of law, other than those taxes the City is required to pay, then Supplier authorizes the City to deduct and withhold or pay over to the appropriate governmental body those unpaid amounts upon demand by the governmental body. It is agreed that this provision shall apply to taxes and fees imposed by City ordinance. Any such payments shall be deducted from Supplier's total compensation.

### **1.39 COMPENSATION**

- A. The City shall compensate Supplier in accordance with the Contract. Said compensation shall be the total compensation for Supplier's performance hereunder including, but not limited to, all work, services, deliverables, materials, supplies, equipment, subcontractor's fees and all reimbursable travel and miscellaneous or incidental expenses to be incurred by Supplier. Unless stated otherwise the total stated compensation may not be changed without a written change order or other form of contract amendment.
- B. Payment(s) made in accordance with the Contract shall fully compensate Supplier for all risk, loss, damages or expense of whatever nature, and acceptance of payment shall constitute a waiver of all claims submitted by Supplier.

### **1.40 PAYMENT TERMS**

- A. Payment shall be made through the City's ordinary payment process, and shall be considered timely if made within 30 days of receipt of a properly completed invoice. All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced.

The City may withhold payment to Supplier for any services or deliverables not performed as required hereunder until such time as Supplier modifies such services or deliverables to the satisfaction of the City.

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

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

A. Payment methods include:

- 1. EPayables (Payment Plus). This is payment made via a virtual, single use VISA card number provided by the City's commercial card provider. Suppliers accepting this option will receive "due immediately" payment terms. Two options for acceptance are available to suppliers. Both are accompanied by an emailed advice containing complete payment details:
  - a. Straight-through processing (buyer initiated). Immediate, exact payments directly deposited to supplier accounts by the City's provider bank; the supplier does not need to know card account details.
  - b. Supplier retrieves card account through the secure, on-line portal provided via email notifications sent by the City's commercial card provider.
- 2. Credit card. Tacoma's VISA procurement card program is supported by standard bank credit suppliers and requires that merchants abide by the VISA merchant operating rules. It provides "due immediately" payment terms.
  - a. Suppliers must be PCI-DSS compliant (secure credit card data management) and federal FACTA (sensitive card data display) compliant.
  - b. Suppliers must be set up by their card processing equipment provider (merchant acquirer) as a minimum of a Level II merchant with the ability to pass along tax, shipping and merchant references information.
- 3. Electronic Funds Transfer (EFT) by Automated Clearing House (ACH). Standard terms are net 30 for this payment method.
- 4. Check or other cash equivalent. Standard terms are net 30 for this payment method.

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

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

#### **1.42 NOTICES**

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

#### **1.43 INDEPENDENT CONTRACTOR STATUS**

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

- B. Unless otherwise specified in writing, Supplier shall provide at its sole expense all materials, working space, and other necessities and instruments to perform its duties under the Contract. Supplier, at its sole expense, shall obtain and keep in force any and all applicable licenses, permits and tax certificates necessary to perform the Contract.

#### **1.44 NONDISCRIMINATION**

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

#### **1.45 FEDERAL, STATE, AND MUNICIPAL LAWS AND REGULATIONS**

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

#### **1.46 FEDERAL AID PROJECTS**

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

#### **1.47 REPORTS, RIGHT TO AUDIT, PERSONNEL**

- A. Reports. Supplier shall, at such times and in such form as the City may reasonably require, furnish the City with periodic status reports pertaining to the services undertaken or goods provided pursuant to the Contract.
- B. Right to Audit. Upon City's request, Supplier shall make available to City all accounts, records and documents related to the scope of work for City's inspection, auditing, or evaluation during normal business hours as reasonably needed by City to assess performance, compliance and/or quality assurance under the Contract or in satisfaction of City's public disclosure obligations as applicable.
- C. Personnel. If before, during, or after the execution of a Contract, Supplier has represented or represents to the City that certain personnel would or will be responsible for performing services pursuant to the Contract, then Supplier is obligated to ensure that said personnel perform said Contract services to the maximum extent permitted by law. Substantial organizational or personnel changes within Supplier's firm are expected to be communicated to City immediately. Failure to do so could result in termination of the Contract. This provision shall only be waived by written authorization by the City, and on a case-by-case basis.

#### **1.48 INSURANCE**

- A. During the course and performance of a Contract, Supplier will provide proof and maintain the insurance coverage in the amounts and in the manner specified in the City of Tacoma Insurance Requirements as is applicable to the services, products, and deliverables provided under the Contract. The City of Tacoma Insurance Requirements document, if issued, is fully incorporated into the Contract by reference.
- B. Failure by City to identify a deficiency in the insurance documentation provided by Contractor or failure of City to demand verification of coverage or compliance by Contractor with these insurance requirements shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

#### **1.49 INDEMNIFICATION – HOLD HARMLESS**

- A. Supplier agrees to indemnify, defend, and hold harmless the City of Tacoma, its officers, agents and employees, from and against any and all liability which may accrue to or be sustained by the City of Tacoma for any claim, suit or legal action made or brought against the City for the death of or injury to persons (including Supplier's or subcontractor's employees), or damage to property involving Supplier or subcontractor(s) and their employees or agents, or for any other cause arising out of and in

connection with or incident to the performance of the Contract, except for injuries or damages caused by the sole negligence of the City. In this regard, Supplier recognizes it is waiving immunity under Industrial Insurance Law, Title 51 RCW. This indemnification includes attorney's fees and the cost of establishing the right to indemnification hereunder in favor of the City of Tacoma. By Supplier's acceptance of this order, he/she agrees that this subsection has been mutually negotiated.

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

#### **1.50 CONFLICT OF INTEREST**

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

#### **1.51 CITY OWNERSHIP OF WORK/RIGHTS IN DATA/PUBLICATIONS**

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

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

#### **1.52 DUTY OF CONFIDENTIALITY**

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

#### **1.53 DISPUTE RESOLUTION**

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

#### **1.54 GOVERNING LAW AND VENUE**

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

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

**1.55 ASSIGNMENT**

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

**1.56 WAIVER**

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

**1.57 SEVERABILITY AND SURVIVAL**

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

**1.58 NO CITY LIABILITY**

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

**1.59 SIGNATURES**

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