

STATE OF WASHINGTON – CENTRALIA COLLEGE  
TERMS AND CONDITIONS  
(REVISED 4/2015)

The terms and conditions in this section apply to all purchase orders, invitations to bid and requests for proposals and requests for quotations except as noted.

**1. ENTIRE AGREEMENT**

This document, including all amendment and subsequently issued change notices, comprises the entire agreement between the State Of Washington, Centralia College (hereinafter referred to as "College") and the Contractor and shall be governed by the laws of the State Of Washington incorporated herein by reference. The venue for legal action shall be the Superior Court for the State Of Washington, County of Thurston. The College reserves the right to reject bids that propose alternate or additional terms and conditions.

**2. CONFLICT AND SEVERABILITY**

**Conflict:** In the event of conflict between contract documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this contract to afford the College maximum benefits.

**Severability:** Any provision of this document found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the document.

**3. ANTITRUST**

The College maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, the Contractor hereby assigns to the College any and all claims for such overcharges except overcharges which result from antitrust violations commencing after the price is established under this contract and which are not passed on to the College under an escalation clause.

**4. NONDISCRIMINATION**

A. **Employment:** Acceptance of this contract binds the Contractor to the Terms and Conditions of Section 601, Title VI, Civil Rights Act of 1964, as may be amended: In that "No person in the United States shall, on the grounds of race, color, national origin, sex, or age, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance." In addition, "No otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Unless exempted by Presidential Executive Order #11246, as may be amended or replaced and applicable regulations there under, Contractor shall not discriminate against any employee or applicant for employment.

B. **Contracting:** Contractors, Bidders, and Proposers shall not create barriers to open and fair opportunities for all businesses including MWBE's to participate in all contracts and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate on the basis of race, color, creed, religion, sex, age, nationality, marital status, or the presence of any mental, or physical disability in an otherwise qualified disabled person.

**5. WORKERS RIGHT TO KNOW**

Recently passed "right to know" legislation required the State of Washington, Department of Labor and Industries to establish a program to make employers and employees more aware of the hazardous substances in their work environment. WAC 296-62-054 requires among other things that all manufacturers/distributors of hazardous substances, including any of the items listed on this IFB, RFQ, or contract bid and subsequent award, must include with each delivery completed Material Safety Data Sheets (MSDS) for each hazardous material. Additionally, each container of hazardous material must be appropriately labeled with:

- The identity of the hazardous material,
- Appropriate hazardous warnings, and
- Name and address of the chemical manufacturer, importer, or other responsible party.

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

## **6. GIFTS AND GRATUITIES**

Contractor shall comply with all State of Washington laws regarding gifts and gratuities, including but not limited to: RCW 39.26, RCW 42.52.150, RCW 42.52.160, and RCW 42.52.170 under which it is unlawful for any person to directly or indirectly offer, give or accept gifts, gratuities, loans, trips, favors, special discounts, services, or anything of economic value in conjunction with College business or contract activities.

Under RCW 39.26 and the Ethics in Public Service Law, Chapter 42.52 RCW, State and College officers and employees are prohibited from receiving, accepting, taking or seeking gifts (except as permitted by RCW 42.52.150) if the officer or employee participates in contractual matters relating to the purchase of goods or services.

## **7. RIGHTS AND REMEDIES**

In the event of any claim for default or breach of contract, no provision in this document or in the bidder's offer shall be construed, expressly or by implication, as a waiver by the College of any existing or future right and/or remedy available by law. Failure of the College to insist upon the strict performance of any term or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract or by law, or the acceptance of (or payment for) materials, equipment or services, shall not release the Contractor from any responsibilities or obligations imposed by this contract or by law, and shall not be deemed a waiver of any right of the College to insist upon the strict performance of the contract.

## **8. INSTATE PREFERENCE-RECIPROCITY (THIS PARAGRAPH DOES NOT APPLY TO REQUEST'S FOR QUOTATION'S)**

Pursuant to RCW 39.26.260 to 280 and WAC 200-300-075 & 085 the State of Washington, Department of Enterprise Services (DES) has established a schedule of penalties applicable against firms submitting bids from states which grant a preference to their own in-state businesses. The penalties are available on the DES website at:

<http://www.des.wa.gov/services/ContractingPurchasing/Pages/ReciprocalPreference.aspx>

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

This action will be used only for bid analysis and award. In no instances shall the increase be paid to a supplier whose bid is accepted.

## **9. PROTESTS**

### **A. Grounds for Protest**

For a protest to be considered, the protest must be based on:

- A matter of bias, discrimination or conflict of interest on the part of an evaluator; and/or
- Errors in computing the score; and/or
- Failure to follow procedures described in the procurement document.

### **B. Procedure:**

A protest regarding a matter which could have reasonably been known or discovered prior to award must be received prior to distribution of award information. Protests filed prior to award are to be addressed to the Purchasing manager in charge of the solicitation.

A protest regarding a matter arising after the award must be received before 5:00 pm PST on the fifth (5) business day after the award information has been distributed. Protests filed after the award are to be addressed to the Purchasing manager.

All protests must be in writing (E-mail will be accepted).

### **C. Format and Content:**

Protests shall include:

- Information about the protesting bidder such as name of firm, mailing address, phone number and name of individual responsible for submission of the protest. The protest letter must be submitted by an authorized agent of the vendor.
- The facts and arguments that are relied on as the basis for the protest
- Any relevant exhibits or evidence supporting the protest
- Specific reference to the grounds for the protest
- Description of the relief or corrective action requested

#### D. Review Process

Upon receipt of a protest prior to award, the College may postpone awarding the contract until the protest has been resolved. Upon receipt of a protest after award, the College may suspend implementing the contract until the protest has been resolved. Bidders agree not to institute court action until the protest has been resolved.

The College will perform an objective review of the protest. The review shall consider the protest material submitted by the protestor and all other facts known to the College.

The College will render a written decision to the bidder within ten (10) business days after receipt of the protest, unless more time is needed. The protesting bidder shall be notified if additional time is necessary.

If an award is cancelled as a result of a protest filed after award, the College shall not be liable to the awardee for, and the awardee shall not claim against the College, any alleged (a) bid preparation charges, (b) cost incurred to ensure that the awardee's bid is responsive, (c) claims for anticipated lost profits, or (d) claims for damages.

#### E. Appeal Process

The College's decision regarding a protest received prior to award may be appealed by the protesting bidder or the bidder(s) against whom a protest is made. Such appeals are made to the Vice President of Finance and Administration of Centralia College.

The College's decision to cancel an award as a result of a protest received after award may be appealed by the bidder whose award was cancelled. Such appeals are made to the Vice President of Finance and Administration of Centralia College.

Appeals must be received before 5:00 pm on the fifth (5) business day after receipt by the bidder of the College's protest decision.

The College will render a written decision to the bidder within ten (10) business days after receipt of the appeal, unless more time is needed. The appealing bidder shall be notified if additional time is necessary.

### **10. SAVE HARMLESS**

To the fullest extent permitted by law, Contractor shall indemnify, defend, and save harmless the state, Centralia College, and all officers and employees of the College, from and against any and all claims for injuries or death, including claims by Contractor's employees, or for damages arising out of, resulting from, or incident to Contractor's performance or failure to perform the contract, or for patent, trademark, copyright, or franchise infringement arising from the purchase, installation, or use of goods and services ordered. Contractor's obligation to indemnify, defend and save harmless shall not be eliminated or reduced by any alleged concurrent negligence of the state or the College, employees, and officers. Contractor waives its immunity under Title 51 RCW to the extent required to indemnify, defend, and save harmless the state, the College and its agencies, officers, or employees.

### **11. PERSONAL LIABILITY**

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

### **12. SUPERVISION AND COORDINATION**

Contractor shall:

- Competently and efficiently, supervise and direct the implementation and completion of all contract requirements specified herein.
- Designate in its bid to the College, a representative(s) with the authority to legally commit Contractor's firm. All communications given or received from the Contractor's representative shall be binding on the Contractor.
- Promote and offer to Purchasers only those materials, equipment, and/or services as stated herein and allowed for by contractual requirements. Violation of this condition will be grounds for contract termination.

### **13. ADVERTISING**

Contractor shall not advertise or publish information concerning this contract in any form or media without prior written consent from the Purchasing manager.

## **14. SUBCONTRACTS/ASSIGNMENT**

Contractor shall not subcontract or assign its obligations under this contract without the prior written consent of the SPO. The Contractor shall be responsible to ensure that all requirements of the contract shall flow down to any and all subcontractors.

## **15. TAXES, FEES AND LICENSES**

- A. Taxes: Where required by State of Washington statute or regulation, contractor shall pay for and maintain in current status and all taxes that are necessary for contract performance. Unless otherwise indicated, the purchaser agrees to pay State of Washington sales or use taxes on all applicable consumer services and materials purchased. No charge by contractor shall be made for federal excise taxes and the purchaser agrees to furnish contractor with an exemption certificate where appropriate. Sales tax shall not be included in bid pricing submitted.
- B. Collection of Retail Sales Tax: In state suppliers: In general, in state suppliers engaged in retail sales activities within Washington State are required to collect and remit sales tax to Department of Revenue.
- C. Out-of-state suppliers: In general, out-of-state suppliers must collect and remit "use tax" to Department of Revenue if the activity carried on by the seller in Washington State is significantly associated with supplier's ability to establish or maintain a market for its products in Washington State. Examples of such activity include where the supplier either directly or by an agent or other representative:
- Maintains an in-state office, distribution house, sales house, warehouse, service enterprise, or any other in-state place of business; or
  - Maintains an in-state inventory or stock of goods for sale; or
  - Regularly solicits orders from customers located within state via sales representatives entering the state; or
  - Sends other staff into the state (e.g. product safety engineers, etc.) to interact with customers in an attempt to establish or maintain market(s); or
  - Other factors identified in WAC chapter 458-20.
- D. Out-of-state suppliers meeting one of the above criteria must register and establish an account with the Department of Revenue (DOR). Refer to WAC 458-20-193 (7 through 9) or call Department of Revenue at (800) 647-7706. When out-of-state suppliers are not required to collect and remit "use tax", the agency is responsible for paying this tax, if applicable, directly to DOR.
- E. Fees/Licenses: Prior to bid opening the Contractor shall pay for and maintain in a current status, any license fees, assessments, permit charges, etc., which are necessary for contract performance. It is the contractor's sole responsibility to monitor and determine any changes or the enactment of any subsequent regulations for said fees, assessments, or charges and to immediately comply with said changes or regulations during the entire term of this contract.
- F. Customs/Brokerage Fees: To be considered responsive, bid must include ALL customs duties, brokerage or import fees where applicable. Contractor shall take all-necessary actions to ensure that materials or equipment purchased are expedited through customs. Failure to do so may subject contractor to liquidated damages as identified in this document and/or to other administrative actions considered appropriate.
- G. Supplier is to calculate and enter the appropriate Washington State and local sales tax on the invoice. Tax is to be computed on new items after deduction of any trade-in in accordance with WAC 458-20-247.
- H. Orders for tangible personal property which become a component part of ferry vessels of the State of Washington or local government units in the State of Washington are exempt from use tax under RCW 82.12.0279.

## **16. WARRANTIES**

- A. Product: Contractor warrants that all materials, equipment, and/or services provided under this contract shall be fit for the purpose(s) for which intended, for merchantability, and shall conform to the requirements and specifications herein. Acceptance of any service and inspection incidental thereto by the College shall not alter or affect the obligations of the Contractor or the rights of the College.
- B. Price: Contractor warrants that prices of materials, equipment, and services set forth herein do not exceed those charged by the Contractor to any other customer purchasing the same goods or services under similar conditions and in like or similar quantities.
- C. Date Compliance: Contractor warrants fault free performance in the processing of date and date related data including, but not limited to calculation, comparing, and sequencing by all Equipment and Software provided pursuant to this Contract, individually and in combination, when used in accordance with the product documentation provided by the Contractor. Fault free performance shall include the manipulation of this data when dates are in the 20th or 21st centuries and shall be transparent to the user.

## **17. LIENS, CLAIMS AND ENCUMBRANCES**

All materials, equipment, or services shall be free of all liens, claims, or encumbrances of any kind and if the College requests, a formal release of same shall be delivered to the College.

## **18. DELIVERY**

A. Time: Delivery must be made during normal work hours and within time frames proposed by Bidder herein and subsequently accepted by the College. Failure to comply may subject Contractor to non-delivery assessment charges and/or liquidated damages as appropriate. The College reserves the right to refuse shipment when delivered after normal working hours. Contractor shall verify specific working hours of individual agencies and so instruct carrier(s) to deliver accordingly. The acceptance by the purchaser of late performance with or without objection or reservation by the purchaser shall not waive the right to claim damage for such breach, nor preclude the purchaser from pursuing any other remedy provided herein, including termination, nor constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Contractor.

B. Terms: Unless otherwise specified, all goods are to be shipped FOB Destination freight prepaid and included. Where specific authorization is granted to ship goods FOB shipping point, Contractor agrees to prepay all shipping charges, route as instructed or if instructions are not provided, route by cheapest common carrier. Each invoice for shipping charges shall contain the original or a copy of the freight bill indicating that the payment for shipping has been made. The purchaser reserves the right to refuse COD shipments.

C. Location: All deliveries are to be made to the applicable delivery location in accordance with Interstate Commerce Commission rules or as indicated in purchase order. When applicable, Contractor shall take necessary actions to safeguard items during inclement weather.

D. Unauthorized: In no case shall Contractor initiate performance prior to receipt of written or verbal authorization from authorized purchasers. Expenses incurred otherwise shall be borne solely by the Contractor.

## **19. INSPECTION AND REJECTION**

The Purchaser's inspection of all materials and equipment upon delivery is for the sole purpose of identification. Such inspection shall not be construed as final acceptance, or as acceptance of the materials or equipment, if materials or equipment does not conform to contractual requirements. If there are any apparent defects in the materials or equipment at the time of delivery, the Purchaser will promptly notify the Contractor thereof. Without limiting any other rights, the College at its option, may require the Contractor to:

- Repair or replace, at Contractor's expense, any or all of the damaged goods, or
- Refund the price of any or all of the damaged goods, or
- Accept the return of any or all of the damaged goods.

## **20. TITLE AND RISK OF LOSS**

Regardless of FOB point, Contractor agrees to bear all risks of loss, injury, or destruction of goods and materials ordered herein which occur prior to delivery and acceptance. Such loss, injury, or destruction shall not release Contractor from any obligation hereunder.

## **21. PERFORMANCE**

Acceptance by the purchaser of unsatisfactory performance with or without objection or reservation shall not waive the right to claim damage for breach, or terminate the contract, nor constitute a waiver of requirements for satisfactory performance of any obligation remaining to be performed by Contractor.

## **22. IDENTIFICATION**

All invoices, packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written documents affecting this contract shall be identified by the applicable purchase order or field order number. Packing lists shall be enclosed with each shipment, indicating the contents therein.

## **23. CHARGES FOR HANDLING**

No charges will be allowed for handling that includes but is not limited to packing, wrapping, bags, containers, or reels, unless otherwise stated herein.

## **24. INVOICING**

Contractor shall provide an original and two (2) copies of invoices. Each invoice shall be submitted as required by the contract and shall reference the contract and field order or purchase order number. Invoices shall be properly annotated with applicable prompt payment discount(s).

## **25. PAYMENT**

Payment will be made by the College. Any bid that requires payment in less than thirty (30) calendar days need not be considered. Qualifying prompt payment discount will be considered in determining the apparent lowest responsible and responsive bid. Invoices will not be processed for payment nor will the period of cash discount commence until receipt of a

properly completed invoice and until all invoiced items are received and satisfactory performance of Contractor has been attained. 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. Under "Chapter 39.76 RCW," if purchaser fails to make timely payment(s), Contractor may invoice for 1% per month on the amount overdue or a minimum of \$1.00. Payment will not be considered late if a check or warrant is mailed within the time specified. If no terms are specified, net 30 days will automatically apply. Payment(s) made in accordance with contract terms shall fully compensate the Contractor for all risk, loss, damages or expense of whatever nature and acceptance of payment shall constitute a waiver of all claims submitted by Contractor.

Payment for materials or equipment received or for services rendered shall be made by warrant issued from the College and redeemable in U.S. dollars. Unless otherwise indicated, the College's sole responsibility shall be to issue this warrant. Any bank or transaction fees or similar costs associated with currency exchange procedures shall be fully assumed by the contractor.

Payment term discounts effective for less than a 30-day period unless otherwise identified in bid/quote, will not be considered in the award of this bid.

Bidders are encouraged to offer a discount for prompt payment of invoice, which will be utilized in determining lowest responsive/responsible bidder. To be considered in the College's evaluation, period of entitlement must be 30 calendar days or greater. If bidder indicates no discount, the College will evaluate as net 30 days.

Please indicate your discount proposal on the offer page of this document. If awarded by the College, period of entitlement begins only after:

Receipt of a properly completed invoice  
Receipt of all supplies, equipment or services ordered  
Satisfactory completion of all contractual requirements

## **26. QUALITY STANDARDS**

Product or service specifications herein are intended solely to clearly describe type and quality and not to be restrictive. Trade reference specifications describe the type product thus far found to best meet agency functional requirements and provide the most economical use life under agency use situations. So as not to misrepresent the requirements herein, brands other than those specified will therefore be considered on the basis of whether at least equal in quality/performance. Failure to submit with bid complete documentation sufficient to establish products bid as at least equal may be grounds for rejection. By submitting bid, bidder expressly warrants product bid as at least equal in quality and performance. The College's acceptance of a product bid as an "equal" is conditioned on the College's inspection and testing after receipt. If, in the sole judgment of the College, the item is determined not to be an equal, the bid may be rejected or the product returned at bidder's expense and/or the contract canceled without any liability whatsoever to the College. Any bid containing a brand that is not of equal quality, performance or use specified must be represented as an "alternate" and not as an "equal"; failure to do so shall be sufficient reason to consider the bid non-responsive.

## **27. DETERMINATION OF RESPONSIBILITY**

During bid evaluation, the College reserves the right to make reasonable inquiry to determine the responsibility of any bidder. Requests may include, but not be limited to, financial statements, credit ratings, references, record of past performance, on-site inspection of bidder's, or bidder's subcontractor's facilities. Failure to respond to said request(s) will be sufficient reason to consider the bid non-responsive.

During the contract term, should the contractor be determined to be in violation of federal, State of Washington, or local laws or regulations, the College reserves the right to modify its initial determination of responsibility at the time of award and to take other action as determined appropriate, including but not limited to termination of the contract.

## **28. AWARD FACTORS**

A. Criteria: contracts shall be awarded to the lowest responsible and responsive bidder subject to the preferences provided by law. Award criteria shall include all factors identified in RCW 39.26.160 and the contractual requirements provided herein. No MWBE preference will be included in the evaluation of bids/proposals, no minimum level of MWBE participation shall be required as a condition for receiving an award and bids/proposals will not be rejected or considered non-responsive on that basis.

B. Rights Reserved subject to the provisions of RCW 39.26.160, the College reserves the right to:

- Waive any informality.
- Reject any or all bids, or portions thereof. WAC 200-300-080 allows the College to "accept any portion of the items bid" unless the bidder stipulates all or nothing on the bid.
- Reissue an IFB, RFQ, or RFP, or negotiate under provisions outlined therein.

- Award on an all or none consolidated basis taking into consideration reduction in administrative costs as well as unit bid prices.

## **29. SUPPLIER REGISTRATION**

Prior to award of a contract, any unregistered bidder may be required to complete a Supplier Registration Packet for placement on the College's supplier list.

## **30. CHANGES**

No alteration in any of the terms, conditions, or contractual requirements herein shall be effective without the written consent of the Purchasing manager as evidenced by issuance by the College of a contract change notice.

## **31. ADDITIONS OR DELETIONS**

The College reserves the right to add or delete items, agencies, or locations, as determined to be in the best interest of the College. Added items, agencies or locations will be related to those on contract and additions or deletions will not represent a significant increase or decrease in size or scope of the contract. Such additions or deletions will be by mutual agreement, will be at prices consistent with the original bid price margins, and will be evidenced by issuance of a written contract change notice from the Purchasing manager.

## **32. CONTRACT SUSPENSION**

The College may at any time and without cause, suspend the contract or any portion thereof, for a period of not more than thirty (30) calendar days, by written notice to the Contractor. Contractor shall resume performance within fifteen (15) calendar days of written notice from the College.

## **33. BREACH, DEFAULT, TERMINATION**

A. Breach: A breach of a term or condition of the contract shall mean any one or more of the following events: (1) Contractor fails to perform the services by the date required or by a later date as may be agreed to in a written amendment to the contract signed by the College; (2) Contractor breaches any warranty or fails to perform or comply with any term or agreement in the contract; (3) Contractor makes any general assignment for the benefit of creditors; (4) in the College's sole opinion, Contractor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder; (5) Contractor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors; (6) any receiver, trustee, or similar official is appointed for Contractor or any of the Contractor's property; (7) Contractor is determined to be in violation of federal, State of Washington, or local laws or regulations and that such determination, in the College's sole opinion renders the Contractor unable to perform any aspect of the contract.

B. Default: A Contractor may be declared in default for failing to perform a contractual requirement or for a material breach of any term or condition.

C. Termination for Convenience: The College may terminate this contract, in whole or in part, at any time and for any reason by giving thirty (30) calendar days written termination notice to Contractor. Termination charges shall not apply unless they are subsequently agreed upon by both parties. Where termination charges are applicable, both parties agree to negotiate in good faith and to limit the extent of negotiations to valid documented expenses incurred by Contractor prior to date of termination. Should the parties not agree to a satisfactory settlement, the matter may be subjected to mediation and/or legal proceedings.

D. Termination for Breach and/or Default: Except in the case of delay or failure resulting from circumstances beyond the control and without the fault or negligence of the Contractor or of the Contractor's suppliers or subcontractors, the College shall be entitled, by written or oral notice, to cancel and/or terminate this contract in its entirety or in part for breach and/or for default of any of the terms herein and to have all other rights against Contractor by reason of the Contractor's breach as provided by law.

E. Termination by Mutual Agreement: The College or the Contractor may terminate this contract in whole or in part, at any time, by mutual agreement with thirty (30) calendar days written notice from one party to the other.

F. Sanctions: Any violations of the mandatory provisions of this contract shall be a material breach of contract for which the contractor may be subject to a requirement of specific performance, or damages and sanctions provided by contract, or by applicable laws.

## **34. OPPORTUNITY TO CURE DEFAULT**

A. Events: In the event that Contractor fails to perform a contractual requirement or materially breaches any term or condition, the College may issue a written or oral notice of default and provide a period of time in which Contractor shall have the opportunity to cure. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages. The College is not required to allow the Contractor to cure defects if the opportunity for cure is not feasible

as determined solely by the College. The College may terminate the contract for nonperformance, breach, or default without allowing the opportunity to cure by the Contractor.

B. Remedies: If the nonperformance, breach or default remains after Contractor has been provided the opportunity to cure, the College may do one or more of the following:

- Exercise any remedy provided by law.
- Terminate this contract and any related contracts or portions thereof.
- Impose liquidated damages.
- Suspend Contractor from receiving future Invitations for Bid.

### **35. LEGAL FEES**

The Contractor covenants and agrees that in the event suit is instituted by the purchaser for any nonperformance, breach or default on the part of the Contractor, and the Contractor is adjudged by a court of competent jurisdiction, he shall pay to the purchaser all costs, expenses expended or incurred by the purchaser in connection therewith, and reasonable attorney's fees.

### **36. FORCE MAJEURE**

A. Definition: Except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences.

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

C. Rights Reserved: The College reserves the right to cancel the contract and/or purchase materials, equipment, or services from the best available source during the time of force majeure, and Contractor shall have no recourse against the College.

### **37. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE)**

In accordance with the legislative findings and policies set forth in Chapter 39.19 RCW, the State of Washington encourages participation in all its contracts by MWBE firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this solicitation/invitation or as a subcontractor to a Bidder/Proposer. However, unless required by federal statutes, regulations, grants, or contract terms referenced in the contract documents, no preference will be included in the evaluation of bids/proposals, no minimum level of MWBE participation shall be required as condition for receiving an award, and bids/proposals will not be rejected or considered non-responsive on that basis. Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the contract documents will apply. Bidders may contact OMWBE to obtain information on certified firms for potential subcontracting arrangements.

### **38. ESTABLISHED BUSINESS**

To be considered responsive, contractor must, prior to commencing performance, or prior to that time if required by law or regulation (reference WAC Chapter 18.27), be an established business firm with all required licenses, bonding, facilities, equipment and trained personnel necessary to perform the work as specified in the bid solicitation. All bidders must have Federal Tax Identifier Number as required by IRS regulations and Uniform Business Identifier Number required by Department of Revenue (800) 647-7706. Questions regarding specific licenses should be directed to Department of Licensing at (360) 664-1400.

The College reserves the right to require proof of said requirements including business references within ten (10) calendar days from the date of request.

### **39. PROPRIETARY INFORMATION**

Supplier should clearly identify any material that constitutes valuable formulae, designs, drawings, and research data claimed to be exempt from public disclosure RCW 42.17.310, along with a statement of the basis for such claim of exemption. Pricing and entire bid packages are not considered proprietary. The agency will give notice to the supplier of any request for disclosure of such information received within 5 (five) years from the date of submission. Failure to so label such materials or to timely respond after notice of request for public disclosure has been given shall be deemed a waiver by the submitting supplier of any claim that such materials are, in fact, so exempt.



#### **40. OSHA AND WISHA REQUIREMENTS**

OSHA and WISHA requirements: Supplier agrees to comply with conditions of the Federal Occupational Safety and Health Act of 1970 (OSHA) and, if manufactured or stored in the State of Washington, the Washington Industrial Safety and Health Act of 1973 (WISHA) Chapter 19.28 RCW and WAC 296-24 and the standards and regulations issued there under and certifies that all items furnished and purchased under this order will conform to and comply with said standards and regulations. Supplier further agrees to indemnify and hold harmless purchaser from all damages assessed against purchaser as a result of supplier's failure to comply with the acts and standards there under, and for the failure of the items furnished under this order to so comply.

#### **41. TRAINING**

You may be required to call on the end-users to acquaint them with your product or service, provide necessary training, or discuss the compatibility of your equipment with existing equipment.

#### **42. DEFAULT CHARGES**

Default charge is defined as the cost to procure locally, or on the open market, the replacement of any rejected or undelivered contract item. Supplier is responsible for any price increase over bid price.

#### **43. INSURANCE**

General Requirements: Contractor shall, at their own expense, obtain and keep in force insurance as follows until completion of the contract. Within fifteen (15) calendar days of receipt of notice of award, the Contractor shall furnish evidence in the form of a Certificate of Insurance satisfactory to the College that insurance, in the following kinds and minimum amounts has been secured. Failure to provide proof of insurance, as required, will result in contract cancellation.

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

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

Specific Requirements:

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

Commercial General Liability Insurance: The Contractor shall at all times during the term of this contract, carry and maintain commercial general liability insurance and if necessary, commercial umbrella insurance for bodily injury and property damage arising out of services provided under this contract. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns, or servants.

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

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

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

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

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

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

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

**Additional Provisions:** Above insurance policies shall include the following provisions:

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

**Notice of policy(ies) cancellation/non-renewal:** For insurers subject to RCW 48.18 (Admitted and regulated by the Washington State Insurance Commissioner) a written notice shall be given to the College forty-five (45) calendar days prior to cancellation or any material change to the policy(ies) as it relates to this contract.

For insurers subject to RCW 48.15 (Surplus Lines) a written notice shall be given to the College twenty (20) calendar days prior to cancellation or any material change to the policy(ies) as it relates to this contract.

If cancellation on any policy is due to non-payment of premium, the College shall be given a written notice ten (10) calendar days prior to cancellation.

**Identification:** Policy(ies) and Certificates of Insurance must reference the College's bid/contract number.

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

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