

PURCHASE ORDER

WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES (DNR) 1111 WASHINGTON STREET SE MS 47041 OLYMPIA, WA 98504-7041	(1) PO #: ENTER PO NUMBER (2) DATE: ENTER DATE
AGENCY NUMBER: 490	

(3) VENDOR: ENTER VENDOR NAME enter authorized person name enter vendor address enter vendor address enter city, state, zip enter phone number enter e-mail	(4) SHIP TO: DEPARTMENT OF NATURAL RESOURCES enter region or division enter name of person delivered to enter delivery address enter delivery mail stop enter city, state, zip enter phone number enter e-mail	(5) COMPTAX CODE: <u>WA DEPARTMENT OF REVENUE</u> enter comptax code (6) VENDOR / TIN NUMBER enter vendor TIN/number
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(7) PREPARED BY: DEPARTMENT OF NATURAL RESOURCES enter region or division enter name of person delivered to enter delivery address enter delivery mail stop enter city, state, zip enter phone number enter e-mail	(8) ORIGINAL INVOICE DELIVERED TO: DEPARTMENT OF NATURAL RESOURCES enter region or division enter name of person delivered to enter delivery address enter delivery mail stop enter city, state, zip enter phone number enter e-mail	(9) PROCUREMENT METHOD enter procurement method (10) CONTRACT NUMBER: enter contract number
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(11) SHIPPING METHOD: enter shipping method	(12) SHIPPING TERMS: enter shipping terms	(13) EXPECTED DELIVERY DATE: enter expected delivery date	(14) MASTER CONTRACT NUMBER: enter master contract number
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(15) ITEM #	(16) ITEM	(17) DESCRIPTION	(18) QUANTITY	(19) UNIT	(20) UNIT PRICE	(21) AMOUNT
1						
2						
3						
4						
5						

(22) SPECIAL INSTRUCTIONS: enter special instructions	(23) SUB-TOTAL:	\$
	(24) FREIGHT:	\$
	(25) TAX:	\$
	(26) TOTAL:	\$

BY ACCEPTING THIS PURCHASE ORDER, VENDOR AGREES TO COMPLY WITH ALL TERMS AND CONDITIONS WITHIN THIS CONTRACT INCLUDING BUT NOT LIMITED TO THE SOLICITATION, THE BID, QUOTATION, AND/OR PROPOSAL, ALL APPENDICES, ALL EXHIBITS, ASSOCIATED STATEMENTS OF WORK, ALL AMENDMENTS AWARDED, PURCHASE ORDER, THE WA STATE DEPARTMENT OF NATURAL RESOURCES CONTRACTING FOR GOODS - GENERAL TERMS AND CONDITIONS ATTACHED AND/OR LOCATED AT THE DNR WEBSITE: [HTTPS://WWW.DNR.WA.GOV/NODE/635](https://www.dnr.wa.gov/node/635), AND ACKNOWLEDGES RECEIPT OF THE AGENCY POLICY ON HARASSMENT PREVENTION LOCATED ON THE DNR WEBSITE AT THE FOLLOWING LINK: [HTTPS://WWW.DNR.WA.GOV/NODE/635](https://www.dnr.wa.gov/node/635).

(27) PRINTED NAME OF AUTHORIZED PERSON	(28) SIGNATURE OF AUTHORIZED PERSON	(29) DATE
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(30) ACCOUNTING CLASSIFICATION																				
ITEM	TRANS CODE	MD	RV	FUND	APPN	PI/MI	SUB OBJ	SS OBJ	ORG	TRUST	CO	PROJ	FACIL	MAJ GRP	MAJ SRC	SUB SRC	GL ACCT	SUBS DR	SUBS CR	AMOUNT
1																				
2																				

PURCHASE ORDER

WA STATE DEPARTMENT OF NATURAL RESOURCES GENERAL TERMS AND CONDITIONS

ACCESS TO DATA

The Contractor shall provide access to data generated under this contract to the Agency, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of services or goods to be provided under this contract shall be made by the Agency.

AMENDMENTS

This contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

ANTITRUST

The Contractor hereby assigns to Agency any and all of its claims for price fixing or overcharges, which arise under federal or state law relating to the goods, products, or services purchased under this contract.

ASSIGNMENT

Neither this contract, nor any claim arising under this contract, shall be transferred or assigned by the Contractor without prior written consent of the Agency.

Contractor may not assign its rights under this Agreement without the Department of Natural Resources (DNR) prior written consent and DNR may consider any attempted assignment without such consent to be void; *Provided*, however, that, if Contractor provides written notice to DNR within thirty (30) calendar days, Contractor may assign its rights under this Agreement in full to any parent, subsidiary, or affiliate of the Contractor that controls or is controlled by or under common control with the Contractor, is merged or consolidated with the Contractor, or purchases a majority or controlling interest in the ownership or assets of the Contractor. Unless otherwise agreed, the Contractor guarantees prompt performance of all obligations under this Agreement notwithstanding any prior assignment of its rights.

ATTORNEYS' FEES

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

COMPLIANCE WITH APPLICABLE LAW

At all times during the term of the contract, the Contractor shall comply with all applicable laws.

PURCHASE ORDER

CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

The Contractor shall not use or disclose any information concerning the Agency, or information that may be classified as confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of the Agency, or as may be required by law.

CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the Agency may, in its sole discretion, by written notice to the Contractor terminate this contract if it is found after due notice and examination by the Agent that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the Contractor in the procurement of, or performance under this contract.

In the event this contract is terminated as provided above, the Agency shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of the Agency provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Agent makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

COPYRIGHT PROVISIONS

Unless otherwise provided, all materials produced under this contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the Agency. The Agency shall be considered the author of such materials. In the event the materials are not considered "works for hire" under the U.S. Copyright laws, Contractor hereby irrevocably assigns all right, title, and interest in materials, including all intellectual property rights, to the Agency effective from the moment of creation of such materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For materials that are delivered under the contract, but that incorporate pre-existing materials not produced under the contract, Contractor hereby grants to the Agency a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the Agency.

The Contractor shall exert all reasonable effort to advise the Agency, at the time of delivery of materials furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this contract.

The Agency shall receive prompt written notice of each notice or claim of infringement received by the Contractor with respect to any data delivered under this contract. The Agency shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling Agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent

PURCHASE ORDER

fee, excepting bona fide employees or bona fide established Agents maintained by the Contractor for securing business.

The Agency shall have the right, in the event of breach of this clause by the Contractor, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

DEFAULT

Contractor shall be in default if it is in material breach of any term or condition of the Purchase Order. The time of default shall begin when the material breach occurs or after any applicable opportunity to cure period lapses, whichever is later.

DELIVERY, INSPECTION, REJECTION, CURE:

1. TIME OF THE ESSENCE: Time is of the essence in the performance of the Purchase Order.
2. SHIPPING & RISK OF LOSS. All goods subject to the Purchase Order shall be shipped F.O.B. destination. Risk of loss of the goods shall pass to the Agency at the time the goods are accepted by the Agency.
3. INSPECTION: The Agency's inspection of all goods upon delivery is for the sole purpose of identification. Such inspection shall not be construed as acceptance of the goods.
4. REJECTION: The Agency may reject any nonconforming Deliverables by reasonably notifying the Contractor in writing.
5. OPPORTUNITY TO CURE: Contractor shall have the right to cure the materiality of any breach prior to the time for performance under the Purchase Order. This right to cure terminates upon the time for performance.

DEFINITIONS

Definitions for the purposes of this solicitation include:

AGENCY – any state office or activity of the executive and judicial branches of state government, including state agencies, departments, offices, divisions, boards, commissions, institutions of higher education as defined in RCW 28B.10.016, and correctional and other types of institutions.

AGENT – Personnel authorized to act on behalf of the Agency for matters contained within.

APPARENT SUCCESSFUL CONTRACTOR – Bidder whose bid, quotation and/or proposal provides the best value in meeting AGENCY needs and is selected to contract with DNR for the proposed solution, subject to completion of contract negotiations and execution of contract.

AWARD DATE – the announcement date of the Apparent Successful Contractor.

BID, QUOTATION and/or PROPOSAL – a formal offer, submitted by an individual or entity, in response to a solicitation issued for goods or services by the Agency.

BIDDER – an individual or entity who submits a bid, quotation and/or proposal in response to a solicitation issued for goods or services by the Agency.

BUSINESS DAYS – Monday through Friday, 8AM to 5PM, Pacific Standard Time, or, Pacific Daylight Time, Olympia, Washington, USA.

CALENDAR DAY – Midnight to midnight, any day of the week.

PURCHASE ORDER

CONTRACT – an agreement between DNR and Contractor that includes terms and conditions, the solicitation, the bid, quotation and/or proposal, all appendices, and exhibits, associated Statements of Work (e.g. Services Contract or Purchase Order), and all amendments awarded pursuant to this solicitation.

CONTRACTOR – an individual or entity whose bid, quotation and/or proposal has been accepted and is awarded a contract with the Agency, and who is solely responsible to provide a good or perform a service.

DNR – Washington State Department of Natural Resources, an Agency of the State of Washington, and any division, section, office, unit or other entity of, or any of the officers or other officials lawfully representing the department.

GOODS – products, materials, supplies, or equipment provided by a Contractor.

PURCHASE – the acquisition of goods or services, including the leasing or renting of goods.

SERVICES – labor, work, analysis, or similar activities provided by a Contractor to accomplish a specific scope of work.

SOLICITATION – a documented formal process providing an equal and open opportunity to BIDDERS and culminating in a selection based on predetermined criteria.

SUBCONTRACTOR – one not in the employment of the Contractor, who is performing all or part of the business activities related to this solicitation under a separate contract with the Contractor. The terms "Subcontractor" and "Subcontractors" means Subcontractor(s) in any solicitation tier.

VENDOR – individual, firm, organization, company or other entity offering products and/or services.

WEBS – Washington's Electronic Business Solution System.

WORKING DAYS – Midnight to midnight, Monday through Friday, excluding Saturday, Sunday and state legal holidays.

DISALLOWED COSTS

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

DISPUTES

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Agent.

1. The request for a dispute hearing must:
 - Be in writing;
 - State the disputed issue(s);
 - State the relative positions of the parties;
 - State the Contractor's name, address, and contract number; and
 - Be mailed to the Agent and the other party's (respondent's) contract manager within three (3) working days after the parties agree that they cannot resolve the dispute.
2. The respondent shall send a written answer to the requester's statement to both the Agent and the requester within five 5 working days.
3. The Agent shall review the written statements and reply in writing to both parties within 10 working days. The Agent may extend this period if necessary by notifying the parties.

PURCHASE ORDER

4. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution method in addition to the dispute resolution procedure outlined above.

DUPLICATE PAYMENT

The Agency shall not pay the Contractor, if the Contractor has charged or will charge the State of Washington or any other party under any other contract or agreement, for the same goods delivered or services rendered.

ENVIRONMENTAL CONSIDERATIONS

ELECTRONIC PRODUCTS

The State of Washington encourages the purchase of products that meet environmental performance standards relating to the reduction and elimination of hazardous materials. The database of all products that currently meet EPEAT criteria are viewable at www.greenelectronicscouncil.org. Only products listed as Active in the online EPEAT Registry are considered to have met the EPEAT criteria.

Contractor represents and warrants that, during the term of this contract, for any product(s) for which Contractor sought and was awarded an environmental purchasing preference pursuant to RCW 39.26.265 and Washington State Procurement Policy POL-DES-265-00, such product(s) shall have achieved EPEAT Silver or Gold registration that enabled Contractor to be awarded such preference.

NON-HYDROFLUOROCARBONS (HFCs)

Hydrofluorocarbons (HFCs) contribute to climate change and so have an adverse effect on human health and the environment. Accordingly, the State of Washington, through its procurement of goods is trying to minimize the purchase of products that contain HFCs or contain HFCs with a comparatively low global warming potential and to incentivize its vendors to sell products without HFCs.

Contractor represents and warrants that, during the term of this Contract, for any product(s) for which Contractor sought and was awarded a purchasing preference pursuant to RCW 39.26.310 and Washington State Procurement Policy DES-POL-310-00, such product(s) shall meet or have less than the HFC level(s) that enabled Contractor to be awarded such preference.

NON-MERCURY ADDED PRODUCTS

Mercury has an adverse effect on human health and the environment. Accordingly, the State of Washington, through its procurements of goods is trying to minimize the purchase of products with mercury and to incentivize its vendors to sell products without mercury.

Contractor represents and warrants that, during the term of this Contract, for any product(s) for which Contractor sought and was awarded a purchasing preference pursuant to RCW 70.95M.060 and Washington State Procurement Policy DES-POL-70.95M.060-00, such product(s) shall meet or have less than the lowest amount of mercury that enabled Contractor to be awarded such preference.

POLYCHLORINATED BIPHENYLS (PCBs)

Polychlorinated biphenyls, commonly known as PCBs, have adverse effects on human health and the environment. Accordingly, the State of Washington, through its procurements of goods, is trying to minimize the purchase of products with PCBs and to incentivize its vendors to sell products in packaging without them.

PURCHASE ORDER

Contractor represents and warrants that, during the term of this contract, for any product(s) and/or product packaging for which Contractor sought and was awarded a purchasing preference pursuant to RCW 39.26.280 and Washington State Procurement Policy POL-DES-280-00, such product(s) and/or packaging shall meet or exceed the testing limitations that enabled Contractor to be awarded such preference.

RECYCLED CONTENT PRODUCTS

Buying products made from recycled content creates markets for materials collected in residential & business recycling programs. Recycling does not work without end-markets. In addition buying recycled products supports the development of green technologies, creates jobs and strengthens the local economy, and promotes and supports a more sustainable lifestyle. When manufacturers use recycled material vs. virgin materials to make new products, air and water pollution is reduced, natural resources are conserved, energy is saved, less water is used, and emissions of greenhouse gases that contribute to global climate change are reduced. Accordingly, the State of Washington through its procurements of goods is trying to maximize the purchase of products made from recycled content and to incentivize its vendors to sell products and products in packaging made with recycled content.

Contractor represents and warrants that, during the term of this Contract, for any product(s) for which Contractor sought and was awarded an environmental purchasing preference pursuant to RCW 39.26.255 and Washington State Procurement Policy POL-DES-255-00, such product(s) shall exceed the minimum post-consumer or total recycled content that enabled Contractor to be awarded such preference.

Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30) days, Agency may suspend or terminate this Contract. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under law, to a prevailing party, reasonable attorneys' fees and costs.

EXECUTIVE ORDER 18-03 – WORKERS' RIGHTS

MANDATORY INDIVIDUAL ARBITRATION. If Bidder returned Exhibit E - Contractor Certification – Executive Order 18-03 Worker's Rights, and Contractor represents and warrants, as previously certified in Contractor's bid, quotation and/or proposal submission, that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this contract, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

FUNDING SOURCE

At all times during the course of this contract, the Contractor must comply with applicable laws, rules, policy and regulations required by the source of funding for the contract. If this contract is funded by a grant, the terms and conditions required by the granting entity are attached as Exhibit **Enter exhibit letter**.

GOVERNING LAW

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

HARASSMENT

PURCHASE ORDER

1. Per [RCW 43.01.135](#), Sexual harassment in the workplace, Agency Contractors hereby have access to DNR Policy PO01-052 Sexual Harassment:

https://www.dnr.wa.gov/publications/em_harassment_prevention_policy.pdf

INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless the State, agencies of State and all officials, Agents and employees of State, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim," as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom.

Contractor's obligations to indemnify, defend, and hold harmless includes any claim by Contractors' Agents, employees, representatives, or any Subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Contractor's or any Subcontractor's performance or failure to perform the contract. Contractor's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its Agents, agencies, employees and officials.

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

INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent Contractor relationship will be created by this contract. The Contractor and his or her employees or Agents performing under this contract are not employees or Agents of the Agency. The Contractor will not hold himself/herself out as or claim to be an officer or employee of the Agency or of the State of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with the Contractor.

INDUSTRIAL INSURANCE COVERAGE

The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, Agency may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. The Agency may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the Agency under this contract, and transmit the deducted amount to the Department of Labor and Industries (L&I), Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

INSURANCE COVERAGE

Before using any of said rights granted herein and its own expense, Contractor shall purchase and maintain, or require its Agent(s)/Subcontractor to purchase and maintain, the insurance described below for the entire duration of this Agreement. Failure to purchase and maintain the required insurance may result in the termination of the Agreement at DNR's option.

All insurance provided in compliance with this Agreement shall be primary as to any other insurance or self-insurance programs afforded to, or maintained by, the State of Washington, Department of Natural Resources.

PURCHASE ORDER

Contractor shall provide DNR with certificates of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements specified in this Agreement before using any of said rights granted herein. The description section of the certificate shall contain the Contract Number and the name of the DNR Project Manager. Contractor shall also provide renewal certificates as appropriate during the term of this Agreement.

Contractor shall include all Subcontractors and Agents as insured under all required insurance policies or shall provide separate certificates of insurance for each Subcontractor or Agent. Failure of Contractor to have its Subcontractors and Agents comply with the insurance requirements contained herein does not limit Contractor's liability or responsibility.

INSURANCE TYPES & LIMITS: The limits of insurance, which may be increased by State, as deemed necessary, shall not be less than as follows:

Commercial General Liability (CGL) Insurance: Contractor shall purchase and maintain commercial general liability insurance with a limit of not less than \$1,000,000 per each occurrence. If such CGL insurance contains aggregate limits, the general aggregate limits shall be at least twice the "each occurrence" limit, and the products-completed operations aggregate limit shall be at least twice the "each occurrence" limit. All insurance must cover liability arising out of premises, operations, independent Contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.

Employer's liability ("Stop Gap") Insurance: Contractor shall purchase and maintain employer's liability insurance and if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

Business Auto Policy (BAP) Insurance: Contractor shall purchase and maintain business auto insurance and if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 per accident, with such insurance covering liability arising out of "Any Auto". The policy shall be endorsed to provide contractual liability coverage and cover a "covered pollution cost or expense." Contractor waives all rights of subrogation against the State for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

Industrial Insurance (Workers Compensation): Contractor shall comply with Title 51 RCW by maintaining workers compensation insurance for its employees. Contractor waives all rights of subrogation against the State for recovery of damages to the extent they are covered by Industrial Insurance, employer's liability, general liability, excess, or umbrella insurance. Contractor waives its Title 51 RCW immunity to the extent it is required by its indemnity obligation under this Agreement.

ADDITIONAL PROVISIONS:

Additional Insured: The State of Washington, Department of Natural Resources, its officials, Agents, and employees shall be named as additional insured by endorsement on all general liability, excess, and umbrella insurance policies.

Cancellation: DNR shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications.

PURCHASE ORDER

1. Insurers subject to Chapter 48.18 RCW (Admitted and Regulated by the Insurance Commissioner): The insurer shall give the State 45 calendar days advance notice of cancellation or nonrenewal. If cancellation is due to non-payment of premium, the State shall be given 10 calendar days advance notice of cancellation.
2. Insurers subject to Chapter 48.15 RCW (Surplus Lines): The State shall be given 20 calendar days advance notice of cancellation. If cancellation is due to non-payment of premium, the State shall be given 10 calendar days advance notice of cancellation.

Insurance Carrier Rating: All insurance shall be issued by companies admitted to do business in the State of Washington and have a rating of A-, Class VII, or better. Any exception must be reviewed and approved by the DNR Risk Manager or the DNR Contracts Manager, in the Risk Manager's absence. If an insurer is not admitted to do business in the State of Washington, all insurance policies and procedures for issuing the insurance policies must comply with Chapters 48.15 RCW and 284-15 WAC.

Self-Insurance: If Contractor is self-insured, evidence of its status as a self-insured entity shall be provided to the State. The evidence should demonstrate that Contractor's self-insurance meets all of the required insurance coverage of this Agreement to the satisfaction of the State including the description of the funding mechanism and its financial condition. If the funding mechanism or financial condition of the self-insurance program of the Contractor is inadequate, then the State may require the purchase of additional commercial insurance to comply with this Agreement.

Waiver: The Contractor waives all rights of subrogation against the State for recovery of damages to the extent these damages are covered by general liability, excess, or umbrella insurance maintained pursuant to this Agreement.

INTERGRATION

The contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of the contract shall be deemed to exist or to bind any of the parties hereto.

INVOICING & PAYMENT:

1. **ADVANCE PAYMENT PROHIBITED:** No payments in advance or in anticipation of services or goods to be provided under this contract shall be made by the Agency.
2. **INVOICING:** Contractor shall provide original invoices. Each invoice shall reference the Purchase Order number. Invoices shall be properly annotated with applicable prompt payment discount(s).
3. **IDENTIFICATION:** All invoices, packing lists, packages, instruction manuals, correspondence, shipping notes, shipping containers, and other written documents relating to the Purchase Order shall be identified by the Purchase Order number. Packing lists shall be enclosed with each-shipment, indicating the contents therein.
4. **PAYMENT:** Payment shall be made net 30 calendar days of receipt of invoice. Payment is contingent on Agency acceptance of identified deliverables.

LICENSING, ACCREDITATION AND REGISTRATION

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards necessary for the performance of this contract.

LIMITATION OF AUTHORITY

PURCHASE ORDER

Only the Agent or Agent's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the Agent.

NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the Agency. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

NONDISCRIMINATION

During the performance of this contract, the Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies.

ORDER OF PRECEDENCE

Each of the documents listed below is by this reference hereby incorporated into this contract. In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable federal statutes and regulations
2. State of Washington statutes and regulations
3. Special terms and conditions as contained in this basic contract instrument
4. Purchase Order
5. Washington State Department of Natural Resources Terms and Conditions
6. Solicitation Document (IFB, RFQQ, RFP)
7. Contractor's Bid, Quotation and/or Proposal
8. Any other provision, term or material incorporated herein by reference or otherwise incorporated

PRIVACY

Personal information including, but not limited to, "Protected Health Information," collected, used, or acquired in connection with this contract shall be protected against unauthorized use, disclosure, modification or loss. Contractor shall ensure its directors, officers, employees, Subcontractors or Agents use personal information solely for the purposes of accomplishing the delivery of goods or rendering of services as set forth herein. Contractor and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the Agency or as otherwise required by law.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The Contractor agrees to indemnify and hold harmless the Agency for any damages related to the Contractor's unauthorized use of personal information.

PUBLICITY

The Contractor agrees to submit to the Agency all advertising and publicity matters relating to this contract wherein the Agency's name is mentioned or language used from which the connection of the Agency's name may, in the Agency's judgment, be inferred or implied. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of the Agency.

PURCHASE ORDER

RECORDS MAINTENANCE

The Contractor shall maintain books, records, documents, data and other evidence relating to this contract and performance of services rendered and/or delivery of goods as described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

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

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

REGISTRATION WITH DEPARTMENT OF REVENUE

The Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this contract.

REMEDIES:

1. With respect to any nonconforming Deliverables, the Agency may elect to do one or more of the following:
 - a. **SPECIFIC PERFORMANCE:** If the Deliverables are unique, sole sourced, or otherwise deemed by the Agency to be unavailable elsewhere, the Agency may demand specific performance.
 - b. **COVER:** The Agency may obtain substitute Deliverables and charge the Contractor the difference between the cost of the substitute Deliverables and the contracted for price.
 - c. **PRICE REDUCTION:** The Agency may retain nonconforming Deliverables and equitably reduce the price of the Purchase Order based on the difference between the contracted for price and the fair market value of the nonconforming Deliverables.
 - d. **RETURN:** The Agency may return or set aside for pickup by the Contractor any nonconforming goods and terminate the Purchase Order for cause.
2. The Contractor shall be liable for all compensatory, incidental and consequential damages caused by any breach of the Purchase Order. At the sole option of the Agency, such damages may be recovered, in whole or in part, by price reduction or credit against any amounts that may be owed to the Contractor under the Purchase Order.
3. THE AGENCY'S TOTAL LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THE PURCHASE ORDER SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE PURCHASE ORDER. FURTHERMORE, IN THE EVENT OF A TERMINATION OF THE PURCHASE ORDER, THE AGENCY'S TOTAL LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THE PURCHASE ORDER SHALL NOT EXCEED THE PURCHASE PRICE OF GOODS DELIVERED OR SERVICES RENDERED PRIOR TO THE EFFECTIVE DATE OF THE TERMINATION.
4. The rights and remedies provided by the Purchase Order are cumulative and are not exclusive of any other or additional rights or remedies available at law and in equity.

RIGHT OF INSPECTION

The Contractor shall provide right of access to its facilities to the Agency, or any of its officers, or to any other authorized Agent or official of the State of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

PURCHASE ORDER

SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the Agency may terminate the contract under the "Termination for Convenience" clause, without the ten-day notice requirement, subject to renegotiation at the Agency's discretion under those new funding limitations and conditions.

SEVERABILITY

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

SITE SECURITY

While on Agency premises, Contractor, its Agents, employees, or Subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

SUBCONTRACTING

Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the Agency. In no event shall the existence of the subcontract operate to release or reduce the liability of the Contractor to the Agency for any breach in the performance of the Contractor's duties. This clause does not include contracts of employment between the Contractor and personnel assigned to work under this contract.

Additionally, the Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subcontracts. Contractor and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the Agency or as provided by law.

TAXES

All payments accrued because of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

TERMINATION FOR CAUSE

In the event the Agency determines the Contractor has failed to comply with the conditions of this contract in a timely manner, the Agency has the right to suspend or terminate this contract. Before suspending or terminating the contract, the Agency shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

The Agency reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by the Agency to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

PURCHASE ORDER

The rights and remedies of the Agency provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

TERMINATION FOR CONVENIENCE

Except as otherwise provided in this contract, the Agency may, by 10 calendar days written notice, beginning on the second day after the mailing, terminate this contract, in whole or in part. If this contract is so terminated, the Agency shall be liable only for payment required under the terms of this contract for goods delivered or services rendered prior to the effective date of termination.

TERMINATION PROCEDURES

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

The Agency shall pay to the Contractor the agreed upon price, if separately stated, for goods or services accepted by the Agency, and the amount agreed upon by the Contractor and the Agency for (i) goods delivered or services rendered for which no separate price is stated, (ii) partially completed goods delivered or services rendered, (iii) other goods delivered or services rendered that are accepted by the Agency, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Agent shall determine the extent of the liability of the Agency. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The Agency may withhold from any amounts due the Contractor such sum as the Agent determines to be necessary to protect the Agency against potential loss or liability.

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

After receipt of a notice of termination, and except as otherwise directed by the Agent, the Contractor shall:

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
3. Assign to the Agency, in the manner, at the times, and to the extent directed by the Agent, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Agency has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Agent to the extent Agent may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to the Agency and deliver in the manner, at the times, and to the extent directed by the Agent any property which, if the contract had been completed, would have been required to be furnished to the Agency;
6. Complete performance of such part of the work as shall not have been terminated by the Agent; and

PURCHASE ORDER

7. Take such action as may be necessary, or as the Agent may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which the Agency has or may acquire an interest.

TREATMENT OF ASSETS

1. Title to all property furnished by the Agency shall remain in the Agency. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Agency upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Agency upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Agency in whole or in part, whichever first occurs.
2. Any property of the Agency furnished to the Contractor shall, unless otherwise provided herein or approved by the Agency, be used only for the performance of this contract.
3. The Contractor shall be responsible for any loss or damage to property of the Agency that results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
4. If any Agency property is lost, destroyed or damaged, the Contractor shall immediately notify the Agency and shall take all reasonable steps to protect the property from further damage.
5. The Contractor shall surrender to the Agency all property of the Agency prior to settlement upon completion, termination or cancellation of this contract.
6. All reference to the Contractor under this clause shall also include Contractor's employees, Agents or Subcontractors.

U.S. DEPARTMENT OF TREASURY, OFFICE OF FOREIGN ASSETS CONTROL

The Agency complies with U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC) payment rules. OFAC prohibits financial transactions with individuals or organizations, which have been placed on the OFAC Specially Designated Nationals (SDN) and Blocked Persons sanctions list located at <http://www.treas.gov/offices/enforcement/ofac/index.html>. Compliance with OFAC payment rules ensures that the Agency does not conduct business with individuals or organizations that have been determined to be supporters of terrorism and international drug dealing or that pose other dangers to the United States.

Prior to making payment to individuals or organizations, the Agency will download the current OFAC SDN file and compare it to Agency and statewide vendor files. In the event of a positive match, the Agency reserves the right to: (1) make a determination of "reasonability" before taking the positive match to a higher authority, (2) seek assistance from the Washington State Office of the State Treasurer (OST) for advanced assistance in resolving the positive match, (3) comply with an OFAC investigation, if required, and/or (4) if the positive match is substantiated, notify the Contractor in writing and terminate the contract according to the Termination for Convenience provision without making payment. The Agency will not be liable for any late payment fees or missed discounts that are the result of time required to address the issue of an OFAC match.

WAIVER

Waiver of any default or breach shall not be deemed a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this contract unless stated to be such in writing and signed by authorized representative of the Agency.

PURCHASE ORDER

WARRANTIES

Contractor warrants that all Deliverables provided under this contract shall be fit for the purpose(s) for which intended, are merchantable, and shall conform to the requirements and specifications herein.