

Terms & Conditions

1. **PUBLIC RECORDS:** Under Washington state law, the documents (including but not limited to written, printed, graphic, electronic, photographic or voice mail goods and/or transcriptions, recordings or reproductions thereof) submitted in response to this request for proposals (the “documents”) become a public record upon submission to the City, subject to mandatory disclosure upon request by any person, unless the documents are exempted from public disclosure by a specific provision of law.
2. **PUBLIC INFORMATION:** All quotes are public information once quotations are tabulated and posted for public information.
3. **COOPERATIVE PURCHASING:** All quotes are public information once quotations are tabulated and posted for public information. RCW 39.34 allows cooperative purchasing between public agencies (political subdivision) in the State of Washington. Public agencies which have filed an Intergovernmental Cooperative Purchasing Agreement with the City and which are actively participating may purchase from City contracts. Only those public agencies who have complied with these requirements are eligible to use this PO.

The City does not accept any responsibility for purchase orders issued by other public agencies. The public agency accepts responsibility for compliance with any additional or varying laws and regulations governing purchase by or on behalf of the public agency in question. The City accepts no responsibility for the performance of any purchasing contract by the Vendor, and the City accepts no responsibility for payment of the purchase price for any public agency.

4. **LAWS AND REGULATIONS:** The Vendor shall comply with all applicable laws and regulations pertaining to this PO. In addition, the Vendor shall ensure that any subcontractor performing this PO shall comply with all applicable laws and regulations pertaining to this PO.
5. **OSHA AND WSHA REQUIREMENTS:** Vendor agrees to comply with conditions of the Federal Occupational Safety and Health Acts of 1970 (OSHA), as may be amended, and, if it has a workplace within the State of Washington, the Washington Industrial Safety and Health Act of 1973 (WISHA), as may be amended, and the standards and regulations issued thereunder and certifies that all items furnished and purchased under this order will conform to and comply with said standards and regulations. Vendor further agrees to indemnify and hold harmless purchaser from all damages assessed against purchaser as a result of Vendor’s failure to comply with the acts and standards thereunder and for the failure of the items furnished under this order to so comply.
6. **RETENTION AND RECORDS:** The vendor shall maintain, for at least three years after completion of this contract, all relevant records pertaining to this contract. This shall include, but not be limited to, all records pertaining to actual contract performance from the date of contract award. It shall also include information necessary to document the level of utilization of MWBE’s and other businesses as subcontractors and suppliers in this contract as well as any efforts the vendor makes to increase the participation of MWBE’s. The vendor shall also maintain, for at least three years after completion of this contract, a record of all quotes, bids, estimates, or proposals submitted to the Vendor by all businesses seeking to participate as subcontractors or suppliers in this contract. The City shall have the right to inspect and copy such records. If this contract involves federal funds, Vendor shall comply with all record keeping requirements set forth in any federal rules, regulations, or statutes included or referenced in the contract documents.
7. **PROPRIETARY DATA:** Any document(s) or information which the Vendor believes is exempt from public disclosure under The Public Disclosure Act (RCW 42.17.310), or under The Uniform Trade Secrets Act

(RCW 19.108.010) shall be clearly identified by Vendor and placed in a separate envelope marked with quote number, Vendor's name, and the words "Proprietary Data" along with a statement of the basis for such claim of exemption. The city's sole responsibility shall be limited to maintaining the above data in a secure area and to notify Vendor of any request(s) for disclosure within a period of five (5) years from date of award. Failure to so label such goods or failure to provide a timely response after notice of request for public disclosure has been given shall be deemed a waiver by the Vendor of any claim that such goods are, in fact, so exempt.

8. **CONFLICT AND SEVERABILITY:** In the event of conflict between quote documents and standard contract terms and conditions, Bellevue in its sole authority, shall determine which requirement shall apply and be considered the legally binding requirement. In the event of conflict between this document in its entirety, 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 state and/or purchasing Bellevue 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.
9. **ANTITRUST:** In actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, the Vendor hereby assigns to the purchaser 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 purchaser under an escalation clause.
10. **WORKERS RIGHT TO KNOW:** Recently passed "right to know" legislation required the 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.
11. **GIFTS AND GRATUITIES:** In accordance with RCW 43.19.1937 –1939, RCW 42.23 and RCW 42.52.150 and 160, 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 state business practices to another to refrain from submitting a proposal. Further RCW 43.19.1937 and the Ethics in Public Service Law, Chapter 42.52 RCW prohibits officers or employees 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.
12. **PERSONAL LIABILITY:** It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of the City of Bellevue or the State of Washington 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.
13. **SUPERVISION AND COORDINATION:** Vendor shall:
 - Competently and efficiently, supervise and direct the implementation and completion of all contract requirements specified herein.
 - Designate in the bid a representative with the authority to legally commit Vendor's firm. All communications given or received from the Vendor's representative shall be binding on the Vendor.

- Promote and offer to Purchasers only those goods, equipment and/or services as stated herein and allowed for by contractual requirements. Violation of this condition may be grounds for contract termination.

14. **ADVERTISING:** Vendor shall not advertise or publish information concerning this contract in any form or media without prior written consent.

15. **TAXES, FEES AND LICENSES:** The Vendor awarded said contract will be subject to City of Bellevue business registration and business taxation as presented in chapters 4.02 and 4.08 of the Bellevue City Code. Questions should be directed to the City's Treasury & Tax Division at (425) 452-6851.

Taxes: Where required by statute or regulation, Vendor shall pay for and maintain in status and all taxes that are necessary for contract performance. Unless otherwise indicated, the Purchaser agrees to pay sales or use taxes on all applicable consumer services and goods purchased. No charge by Vendor shall be made for federal excise taxes and the Purchaser agrees to furnish Vendor with an exemption certificate where appropriate. Sales tax shall be included as a separate line item in bid pricing submitted.

Collection of Retail Sales Tax: For information on the collection of retail sales tax, please refer to WAC 458-20-193 (sections 7-9) or call the Department of Revenue at 800-647-7706.

16. **WARRANTIES:** Vendor warrants that all goods and workmanship furnished, whether furnished by Vendor or its subcontractors, will comply with its and the City's specifications supplied or adopted and will be new, fit and sufficient of the purpose for which they are intended, of good materials, design and workmanship and free from defects or failure. All favorable commercial warranties given to any customer for same or similar supplies or services and standard manufacturers warranties shall also apply and be passed on to the City.

- Product: Vendor warrants that all goods, equipment, and/or services provided under this PO 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 Purchaser shall not alter or affect the obligations of the Vendor or the rights of Bellevue.
- Date Compliance: Vendor 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 provided pursuant to this PO, individually and in combination, when used in accordance with the product documentation provided by the Vendor. 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 goods, equipment, or services shall be free of all liens, claims, encumbrances of any kind and if the Purchaser requests, a formal release of same shall be delivered to Bellevue.

18. **TITLE AND RISK OF LOSS:** Regardless of FOB point, Vendor agrees to bear all risks of loss, injury, or destruction of goods and goods ordered herein which occur before delivery and acceptance. Such loss, injury, or destruction shall not release Vendor from any obligation hereunder.

19. **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 Vendor.

20. **DETERMINATION OF RESPONSIBILITY:** During the contract, should the Vendor be determined to be in violation of federal, state, or local laws or regulations, Bellevue 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.

21. **CHANGES:** No alteration in any of the terms, conditions, or contractual requirements herein shall be effective without the written consent of the City; however, an amendment or change to the terms and conditions may be agreed upon between the Vendor and a purchasing agency, as a change in term that Purchaser only, but such changes will not be considered a change to the underlying contract unless such change is issued by the Purchasing Manager.

22. **BREACH, DEFAULT, TERMINATION AND SUSPENSION:** Breach: A breach of a term or condition of the contract shall mean any one or more of the following events: (1) Vendor 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 Bellevue; (2) Vendor breaches any warranty or fails to perform or comply with any term or agreement in the contract; (3) Vendor makes any general assignment for the benefit of creditors; (4) in Bellevue's sole opinion, Vendor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder; (5) Vendor 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 Vendor or any of the Vendor's property; (7) Vendor is determined to be in violation of federal, state, or local laws or regulations and that such determination, in Bellevue's sole opinion renders the Vendor unable to perform any aspect of the contract.

- Sanctions: Any violations of the mandatory provisions of this contract shall be a material breach of contract for which the Vendor may be subject to a requirement of specific performance, or damages and sanctions provided by contract, or by applicable laws.
- Default: A Vendor may be declared in default for failing to perform a contractual requirement or for a material breach of any term or condition.
- Termination for Convenience: Bellevue 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 Vendor. Termination charges shall not apply unless both parties subsequently agree them upon. 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 Vendor 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?
- 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 Vendor or of the Vendor's suppliers or subcontractors, Bellevue 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 Vendor by reason of the Vendor's breach as provided by law.
- Termination by Mutual Agreement: Bellevue or the Vendor 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.
- Termination for Non Appropriate of Funds: Bellevue may terminate this contract or an order placed under the authority of this contract, without notice and without penalty of any kind due to non-appropriation of funds. In event of such termination, there shall be no "Opportunity to Cure Default" and no other recourse for Vendor. Bellevue shall only be obligated to pay for products delivered and received, in event of such termination.
- Contract Suspension: Bellevue 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 Vendor. Vendor shall resume performance within fifteen (15) calendar days of written notice from Bellevue.

23. **OPPORTUNITY TO CURE DEFAULT:** Events: In the event that Vendor fails to perform a contractual requirement or materially breaches any term or condition, Bellevue may issue a written or oral notice of default and provide a period of time in which Vendor shall have the opportunity to cure. Time allowed for cure shall not diminish or eliminate Vendor's liability for liquidated or other damages. Bellevue is not required to allow the Vendor to cure defects if the opportunity for cure is not feasible as determined solely by Bellevue. Bellevue may terminate the contract for nonperformance, breach, or default without allowing the opportunity to cure by the Vendor.

Remedies: If the nonperformance, breach or default remains after Vendor has been provided the opportunity to cure, Bellevue may do one or more of the following:

1. Exercise any remedy provided by law.
2. Terminate this contract and any related contracts or portions thereof
3. Impose liquidated damages
4. Suspend Vendor from receiving future Invitations to Bid

24. **LEGAL FEES:** The Vendor covenants and agrees that in the event suit is instituted by the Purchaser for any nonperformance, breach or default on the part of the Vendor, and the Vendor 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.

25. **FORCE MAJEURE:** 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.

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.

Rights Reserved: Bellevue reserves the right to cancel the contract and/or purchase goods, equipment, or services from the best available source during the time of Force Majeure, and Vendor shall have no recourse against Bellevue.

26. **ESTABLISHED BUSINESS:** To be considered responsive, Vendor must, before commencing performance, or before 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.

27. **FAILURE TO PERFORM:** Failure of Vendor to furnish the equipment, supplies, goods, and/or services which such failure occurred, for the products or services concerned, at the discretion of Bellevue.

28. **COMPLIANCE WITH LAWS:** Vendor shall comply with all applicable federal, state and local laws, rules, and regulations affecting its performance and hold the Purchaser harmless against any claims arising from the

violation thereof. No extension of time or additional payment will be made for loss of time or disruption of work caused by any actions against the Vendor for any of the above reasons.

29. **EMERGENCY AND DISASTERS:** The following shall be in effect during major emergencies or disasters. Vendor acknowledges that government agencies are procuring goods/services for benefit of the public. Vendor agrees, in support of public good purposes, to consider these government customers as first priority and shall make best effort to provide these customers the requested goods/services in as timely a manner as practicable. Vendor and Bellevue agree that a major emergency or disaster includes, but is not limited to: storms, high winds, earthquakes, floods, hazardous material releases, transportation mishaps, loss of utilities, fires, terrorist activities or combinations of above. In the event the Vendor is unable to meet the delivery requirements due to circumstances beyond the reasonable control of the Vendor, Vendor agrees to make such delivery as soon as practicable. If Vendor is prevented from making delivery to the requested location due to circumstance beyond its reasonable control, Vendor shall immediately assist Bellevue in whatever reasonable manner to gain access to such goods/services.
30. **ENERGY CONSERVATION REQUIREMENTS:** Vendor agrees to comply with mandatory standards and policies relating to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
31. **ACCESS TO RECORDS AND REPORTS:** The City shall be entitled to audit the books and records of the Contractor or any subcontractor to the extent that such books and records relate to the performance of the Agreement or any subcontract to the Agreement. Vendor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than 3 years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract.
32. **CLEAN AIR:** Vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC 77401. The Vendor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
33. **NO GOVERNMENT OBLIGATION TO THIRD PARTIES:** Purchaser and Vendor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent any express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Vendor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
34. **FEDERAL REGULATIONS AND SPECIFICATION:** Vendor shall be required to be certified and knowledgeable at all times regarding federal regulations and specifications concerning this contract. Vendor at all times shall comply with all applicable FTA regulations, policies, procedures and directions, between Purchaser and FTA as they may be amended or promulgated from time to time during the term of this contract. Vendor's failure to so comply shall constitute a material breach of this contract.