

PIERCE COLLEGE
STANDARD TERMS AND CONDITIONS FOR THE
STATE OF WASHINGTON AND IT'S AGENCIES
Revised 06/16/99

1. ENTIRE AGREEMENT

This document, including all addenda and subsequently issued change notices, comprises the entire agreement between the State Of Washington 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 state 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 state 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 state maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, the Contractor hereby assigns to the state 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 state under an escalation clause.

4. NONDISCRIMINATION AND AFFIRMATIVE ACTION

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 thereunder, Contractor shall not discriminate against any employee or applicant for employment. Persons with disability requiring any auxiliary aids, services, etc., should contact the college Purchasing Dept. in advance of the opening to ensure accommodations.

5. 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.

Appropriate fines may be levied by Labor and Industries 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

In accordance with RCW 43.19.1937 and 1939 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 state 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.

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 state of any existing or future right and/or remedy available by law. Failure of the state 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 state 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 43.19.702 the Department of General Administration has established a schedule of penalties applicable against firms submitting bids from states that grant a preference to their own in-state businesses. The penalties are listed below and apply only to bids received from the following states:

Alaska	5%	New York	3% (food only)
* California	5%	Ohio	5%
Hawaii	3%	Oklahoma	5%
Illinois	10% (coal only)	South Carolina	2% (under \$2.5 million)
Indiana	5%		1% (over 2.5 million)
Iowa	5% (coal only)	South Dakota	5% (milk only)
Louisiana	7%	West Virginia	5%
Montana	3%	Wyoming	5%
New Mexico	5%		

*California is applicable only to small business firms certified for preference by the State of California and located in distressed areas and enterprise zones. Bidders from California must indicate on their bid whether certified as a small business under California Code, Title 2, Section 1892.12. In determining the lowest responsible bidder, the SPO will add an amount equal to the above percentage to each applicable bid submitted. In no event shall such increase be paid to a contractor whose bid is accepted.

9. **PROTESTS**

Protests shall be filed and resolved in accordance with Washington Administrative Code (WAC) 236-48-141 through 143. Protests filed prior to award are to be addressed to the SPO in charge of the bid. Protests filed after the award, and in accordance with above referenced WAC, are to be addressed to the Assistant Director, Office of State Procurement.

10. **SAVE HARMLESS**

Contractor shall indemnify, defend, and save harmless the state from any and all claims, demands, suits, actions, proceedings, losses, costs and damages of every kind and description, including any attorneys' fees and/or litigation expenses, which may be brought or made against or incurred by the state on account of losses of, or damage to, any property or for injuries to or death of any person, caused by, arising out of, or contributed to, in whole or in part, by reasons of any act, omission, professional error, fault, mistake or negligence of Contractor, Contractor's employees, agents, representatives or subcontractors, their employees, agents or representatives in connection with or incidental to the performance of this agreement, or arising out of Worker's Compensation claims, Unemployment Compensation claims or Unemployment Disability Compensation claims of employees of Contractor and/or subcontractors or claim under similar such laws or obligations. Contractor also agrees to protect and save harmless the purchaser against all claims, suits or proceeding for patent, trademark, copyright, or franchise infringement arising from the purchase, installation, or use of goods and services ordered, and to assume all expenses and damages arising from such claims, suits or proceedings. Contractor's obligation under this Section to indemnify, defend and save harmless shall not be eliminated or reduced by any alleged concurrent or sole negligence of the state or its agencies, employees, and officers. Contractor shall pay all attorney's fees and expenses incurred by the state in establishing and enforcing the state's rights under this paragraph, whether or not suit was instituted.

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 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 state, 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 SPO.

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

Taxes: Contractor shall pay for and maintain in current status any and all taxes that are necessary for contract performance. Unless otherwise indicated, the purchaser agrees to pay all State of Washington sales or use taxes. 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.

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.

16. WARRANTIES

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 state, shall not alter or affect the obligations of the Contractor or the rights of the state.

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.

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 state requests, a formal release of same shall be delivered to the state.

18. DELIVERY

- Time: Delivery must be made during normal work hours and within time frames proposed by Bidder herein and subsequently accepted by the state. Failure to comply may subject Contractor to nondelivery assessment charges and/or liquidated damages as appropriate. The state 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.
- 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.
- 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.
- 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 Purchaser and/or the state 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 state agency or political subdivision indicated on ordering document. Any bid that requires payment in less than thirty (30) calendar days need not be considered. Prompt payment discount periods of thirty (30) calendar days or more 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.

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 will be complete grounds for rejection. By submitting bid, bidder expressly warrants product bid as at least equal in quality and performance. The state's acceptance of a product bid as an "equal" is conditioned on the state's inspection and testing after receipt. If, in the sole judgment of the state, 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 state. 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 nonresponsive.

27. DETERMINATION OF RESPONSIBILITY

- A. During bid evaluation, the state 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 nonresponsive.
- B. During the contract term, should the contractor be determined to be in violation of federal, state, or local laws or regulations, the state 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: State contracts shall be awarded to the lowest responsible and responsive bidder subject to the preferences provided by law. Award criteria shall include all items as stated in RCW 43.19.1911 and WAC 236-48-093 and the contractual requirements provided herein.
- B. Rights Reserved (This subparagraph does not apply to request's for quotations)
Subject to the provisions of Chapter 69, Laws of 1996 (SSB 6572), the state reserves the right to:
 - 1. Waive any informalities.
 - 2. Reject any or all bids, or portions thereof. WAC 236-48-094 allows the state to "accept any portion of the items bid" unless the bidder stipulates all or nothing on the bid.
 - 3. Reissue an IFB, RFQ, or RFP, or negotiate under provisions outlined therein.
 - 4. 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 state'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 SPO as evidenced by issuance by the state of a contract change notice.

31. ADDITIONS OR DELETIONS (This paragraph does not apply to RFQ's)

The state reserves the right to add or delete items, agencies or locations, as determined to be in the best interest of the state. 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 SPO.

32. CONTRACT SUSPENSION

The state 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 state.

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 state; (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 state'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, or local laws or regulations and that such determination, in the state'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 state 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 state 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 state 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.

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 state 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 state is not required to allow the Contractor to cure defects if the opportunity for cure is not feasible as determined solely by the state. The state 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 state 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 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

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: The state 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 state.

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

MWBE requirements are set forth in this IFB, RFQ, or RFP, and are hereby incorporated into the terms and conditions of this contract. Bidders are encouraged to contact the Office of Minority and Women's Business Enterprises (OMWBE) to obtain information on certified MWBE 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 Department of Revenue (360) 902-7180. Questions regarding specific licenses should be directed to Department of Licensing at (360) 753-4401. The state reserves the right to require proof of said requirements including business references within ten (10) calendar days from the date of request.

39. LOWEST COST PURCHASE AUTHORITY (This paragraph applies only to term contracts)

This contract is subject to RCW 43.19.190(2) and RCW 43.19.1905(7), which authorizes any state agency to purchase materials, supplies, services, and equipment of equal quality to those on state contract from non-contract suppliers provided that an agency notifies the OSP SPO, using the Best Buy form, that the pricing is less costly for such goods or services than the price from the state contractor.

If the non-contract supplier's pricing is less, the state contractor shall be given the opportunity to at least meet the non-contract's prices. If the state contractor does not meet the price, then the agency shall purchase the item(s) from the non-contract supplier using the purchase authority of RCW 43.19.190(2). If a lower cost is identified repeatedly due to pricing, the state reserves the right to renegotiate the pricing structure of the applicable contract. If such negotiations fail, the state reserves the right to delete such item(s) from the contract.

40. 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.

41. Acceptance of this contract also binds the contractor to the terms and conditions of section 503 of the Rehabilitation Act of 1973 and the Vietnam Era Veterans Readjustment Assistance Act of 1972, which includes Equal Opportunity for Special Disabled Veterans and Veterans of the Vietnam Era [see Equal Opportunity Clause at 41 CFR 60-250.5(a)] and Equal Opportunity for Workers with Disabilities [see Equal Opportunity Clause at 41 CFR 60-741.5 (a)]. This contract also incorporates by this reference to 41 CFR 60-1.4, the Equal Opportunity Clause prohibiting discrimination in employment because of race, color, religion, sex or national origin.