

Standard Contract Terms and Conditions - Western States Contracting Alliance

Note: Although some of the following terms and conditions are duplicates of the standard State of Oregon terms and conditions, they are required by the WSCA by-laws.

1. **PARTICIPANTS.** Western States Contracting Alliance (herein WSCA) is a cooperative group-contracting consortium for state government departments, institutions, agencies and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington and Wyoming. Obligations under this contract are limited to those Participating States who have signed (and not revoked) an Intent to Contract at the time of award, or who have executed a Participating Addendum where contemplated by the solicitation. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Unless otherwise specified in the solicitation, the resulting award(s) will be permissive.
2. **QUANTITY ESTIMATES.** WSCA does not guarantee to purchase any amount under the contract to be awarded. Estimated quantities are for bidding purposes only and are not to be construed as a guarantee to purchase any amount.
3. **SPECIFICATION.** Any deviation from specifications must be clearly indicated by vendor; otherwise, it will be considered that the bid is in strict compliance. When BRAND NAMES or manufacturers' numbers are stated in the specifications they are intended to establish a standard only and are not restrictive unless the bid states "No substitute". Bids will be considered on other makes, models or brands having comparable quality, style, workmanship and performance characteristics. Alternate bids offering lower quality or inferior performance will not be considered.
4. **ACCEPTANCE OR REJECTION OF BIDS.** WSCA reserves the right to accept or reject any or all bids or parts of bids, and to waive informalities therein.
5. **BID DEMOS.** Generally, when required, demos may be requested in the bid invitation. Demos, when required, are to be furnished free of charge.
6. **CASH DISCOUNT TERMS.** CONTRACTOR may quote a cash discount based upon early payment; however, discounts offered for less than 30 days will not be considered in making the award. The date from which discount time is calculated shall be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date shall be the date of acceptance of the merchandise.
7. **TAXES.** Bid prices shall be exclusive of state sales and federal excise taxes. Where the state government entities are not exempt from sales taxes on sales within their state, the CONTRACTOR shall add the sales taxes on the billing invoice as a separate entry.

8. MODIFICATION OR WITHDRAWAL OF BIDS. Bids may be modified or withdrawn prior to the time set for the opening of bids. After the time set for the opening of bids no bid may be modified or withdrawn.

9. PATENTS, COPYRIGHTS, ETC. The CONTRACTOR shall release, indemnify and hold the Buyer, its officers, agents and employees harmless from liability of any kind or nature, including the CONTRACTOR's use of any copyrighted or uncopied composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract.

10. AWARD. The award will be made to the highest responsive and responsible vendor meeting specifications and all bid terms and conditions. Unless stated in the bid requirements or special terms and conditions, WSCA reserves the right to award items separately or by grouping items, or by total lot.

11. NON-COLLUSION. By signing the bid the CONTRACTOR certifies that the bid submitted, has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the invitation to bid, designed to limit independent bidding or competition.

12. CANCELLATION. Unless otherwise stated in the special terms and conditions, any contract entered into as a result of this bid may be canceled by either party upon 60 days notice, in writing, prior to the effective date of the cancellation. Further, any Participating State may cancel its participation upon 30-days written notice, unless otherwise limited or stated in the special terms and conditions of the solicitation. Cancellation may be in whole or in part. Any cancellation under this provision shall not effect the rights and obligations attending orders outstanding at the time of cancellation, including any right of any Purchasing Entity to indemnification by the CONTRACTOR, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any order. Cancellation of the contract due to CONTRACTOR default may be immediate.

13. DEFAULT AND REMEDIES. Any of the following events shall constitute cause for WSCA to declare CONTRACTOR in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract WSCA shall issue a written notice of default providing a period in which CONTRACTOR shall have an opportunity to cure. Time allowed for cure shall not diminish or eliminate CONTRACTOR's liability for liquidated or other damages. If the default remains, after CONTRACTOR has been provided the opportunity to cure, WSCA 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 bid solicitations.

14. LAWS AND REGULATIONS. Any and all supplies, services and equipment bid and furnished shall comply fully with all applicable Federal and State laws and regulations.

- 15. CONFLICT OF TERMS.** In the event of any conflict between these standard terms and conditions and any special terms and conditions, which follow; the special terms and conditions shall govern.
- 16. REPORTS.** The contractor shall submit quarterly reports to the WSCA Contract Administrator showing the quantities and dollar volume of purchases by each Authorized Purchaser.
- 17. HOLD HARMLESS.** The CONTRACTOR shall release, protect, indemnify and hold WSCA and the respective states and their officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the CONTRACTOR, his employees or subcontractors or volunteers.
- 18. ORDER NUMBERS.** Contract order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.
- 19. GOVERNING LAW AND VENUE.** This procurement shall be governed and the resulting contract(s) construed in accordance with the laws of Oregon ("Lead State"). The construction and effect of any Participating Addendum or order against the contract(s) shall be governed by and construed in accordance with the laws of the Purchasing Entity's State. Venue for any claim, dispute or action concerning the construction and effect of the contract(s) shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against the contract(s) or the effect of a Participating Addendum or shall be in the Purchasing Entity's State.
- 20. DELIVERY.** The prices bid shall be the delivered price to any WSCA state agency or political subdivision. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the contractor. Responsibility and liability for loss or damage shall remain the CONTRACTOR until final inspection and acceptance when responsibility shall pass to the Buyer except as to latent defects, fraud and CONTRACTOR's warranty obligations. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered shall be shipped without charge.
- 21. WARRANTY.** As used herein "Buyer" refers to any WSCA state agency or political subdivision. The CONTRACTOR acknowledges that the Uniform Commercial Code applies to this contract. In general, the CONTRACTOR warrants that: (a) the product will do what the salesperson said it would do, (b) the product will live up to all specific claims that the manufacturer makes in their advertisements, (c) the product will be suitable for the ordinary purposes for which such product is used, (d) the product will be suitable for any *special purposes* that the Buyer has relied on the contractor's skill or judgment to consider.

22. AMENDMENTS.

a. This Contract may be amended, modified, or supplemented only by a written amendment signed by WSCA and CONTRACTOR ("Amendment").

b. The parties anticipate that they might amend this Contract to purchase or acquire additional Goods, Products and Services directly related to the scope of the RFP. At such time as either party proposes any such Amendment, and to the extent necessary, WSCA and CONTRACTOR shall negotiate to finalize the terms of and costs, if any, associated with the Amendment and shall reduce those terms and costs to writing upon mutual agreement.

c. WSCA may add or delete items during the term of the Contract. Adding or deleting items can only be done by written amendment between WSCA and CONTRACTOR. In the event that new Goods, Products or Services become available during the term of the Contract, CONTRACTOR may offer new Good, Products or Services to WSCA. CONTRACTOR shall provide these items at the same discount off manufacturer's list price from CONTRACTOR costs provided for similar items in published list price.

23. ASSIGNMENT/SUBCONTRACT. CONTRACTOR shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the WSCA Contract Administrator.

24. NONDISCRIMINATION. The CONTRACTOR agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. The vendor further agrees to furnish information and reports to requesting State(s), upon request, for the purpose of determining compliance with these statutes. Vendor agrees to comply with each individual state's certification requirements, if any, as stated in the special terms and conditions. This contract may be canceled if the vendor fails to comply with the provisions of these laws and regulations. The vendor must include this provision in every subcontract relating to purchases by the States to insure that subcontractors and vendors are bound by this provision.

25. SEVERABILITY. If any provision of this contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

26. INSPECTIONS. Goods furnished under this contract shall be subject to inspection and test by the Buyer at times and places determined by the Buyer. If the Buyer finds goods furnished to be incomplete or in compliance with bid specifications, the Buyer may reject the goods and require CONTRACTOR to either correct them without charge or deliver them at a reduced price, which is equitable under the circumstances. If CONTRACTOR is unable or refuses to correct such goods within a time deemed reasonable by the Buyer, the Buyer may

cancel the order in whole or in part. Nothing in this paragraph shall adversely affect the Buyer's rights including the rights and remedies associated with revocation of acceptance under the Uniform Commercial Code.

27. PAYMENT. Payment for completion of a contract is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the CONTRACTOR may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card".

28. FORCE MAJEURE. Neither party to this contract shall be held responsible for delay or default caused by fire, riot, acts of God and/or war, which is beyond that party's reasonable control. WSCA may terminate this Contract after determining such delay or default will reasonably prevent successful performance of the contract.

29. HAZARDOUS CHEMICAL INFORMATION. The CONTRACTOR will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to the user agency. All safety data sheets and labels will be in accordance with each participating state's requirements.

30. FIRM PRICE. Unless otherwise stated in the special terms and conditions, for the purpose of award, offers made in accordance with this solicitation must be good and firm for a period of ninety (90) days from the date of bid opening. Bid prices must remain firm for the full term of the contract.

31. EXTENSION OF PRICES. In the case of error in the extension of prices in the bid, the unit prices will govern.

32. BID PREPARATION COSTS. WSCA is not liable for any costs incurred by the vendor in proposal preparation.

33. CONFLICT OF INTEREST. CONTRACTOR certifies that it has not offered or given any gift or compensation prohibited by the state laws of any WSCA Participants to any officer or employee of WSCA or participating states to secure favorable treatment with respect to being awarded this contract.

34. INDEPENDENT CONTRACTOR. CONTRACTOR shall be an independent contractor, and as such shall have no authorization, express or implied to bind WSCA or the respective states to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for WSCA or the states, except as expressly set forth herein.

35. POLITICAL SUBDIVISION PARTICIPATION. Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cities, etc.) of the WSCA participating states shall be voluntarily determined by the political subdivision. The

CONTRACTOR agrees to supply the political subdivisions based upon the same terms, conditions and prices.

36. DEBARMENT. The CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by WSCA.

37. RECORDS ADMINISTRATION. The CONTRACTOR will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the CONTRACTOR for costs authorized by this contract. These records will be retained by the CONTRACTOR for at least four years after the Contract terminates, or until all audits initiated within the four years have been completed, whichever is later.

38. AUDIT OF RECORDS. The CONTRACTOR agrees to allow WSCA, State and Federal auditors, and state agency staff access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

IN WITNESS WHEREOF, the parties have executed this Contract and the Standard Contract Terms and Conditions - Western States Contracting Alliance as of the date of execution by both parties below.

39. SIGNATURE OF CONTRACTOR'S DULY AUTHORIZED REPRESENTATIVE

THIS CONTRACT MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF THE CONTRACTOR; ANY ALTERATIONS OR ERASURES TO THE OFFER MUST BE INITIALED IN INK BY THE UNDERSIGNED AUTHORIZED REPRESENTATIVE.

The undersigned acknowledges, attests and certifies individually and on behalf of the Contractor that:

(1) He/she is an Authorized Representative of the Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract, if any, issued, and to execute this Contract on behalf of Contractor; (2) Contractor is bound by and will comply with all requirements, specifications, and terms and conditions contained in this Contract (including all listed attachments and Addenda, if any, issued); (3) Contractor will furnish the designated Goods in accordance with the Contract specifications and requirements, and will comply in all respects with the terms of the resulting Contract upon award; (4) CONTRACTOR WILL PROVIDE/FURNISH FEDERAL EMPLOYEE IDENTIFICATION NUMBER OR SOCIAL SECURITY NUMBER WITH OFFER; and (5) All affirmations contained in the RFP are true and correct.

Authorized Representative Name (Print): MINH DUC THI SHERIDAN

Authorized Representative Signature: MinhDucSheridan

Title: PRESIDENT

Contractor FEIN ID# or SSN# (required) 52-1756201

Telephone Number: (410) 297-6666 Ext 130

Fax Number: (410) 297-6677

40. STATE SIGNATURE (to be completed by the State)

The DAS/SPO accepts Contractor's offer and awards a Contract to the above Contractor for the item(s) and/or Service(s).

Authorized Signature: Melissa Canfield

Title: Internal Ops Mgr

Date: 12/30/09

Term of Contract: 3 YEARS with option to Extend

Contract Administrator (Type or Print): Pam Johnson

Title: State Procurement Analyst

Telephone Number: (503) 378-4731

Fax Number: (503) 373-1624

APPROVED:

Authorized Signature: See Email for Approval Dated 12/3/09

Title: Assistant Attorney General

Date: 12/3/09

