

STANDARD TERMS AND CONDITIONS (T's & C's)

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

1. ENTIRE AGREEMENT

This document, including all amendment and subsequently issued change notices, comprises the entire agreement between Olympic College and the Contractor and shall be governed by the laws of the Washington State and are incorporated herein by reference. The venue for legal action shall be the Superior Court for Bremerton WA, County of Kitsap. The college reserves the right to reject bids that propose alternate or additional terms and conditions.

2. CONFLICT AND SEVERABILITY

- **Conflict:** In the event of conflict between contract documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this contract to afford the college maximum benefits.
- **Severability:** Any provision of this document found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the document.

3. ANTITRUST

The 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

- **Employment:** Acceptance of this contract binds the Contractor to the Terms and Conditions of Section 601, Title VI, Civil Rights Act of 1964, as may be amended: In that "No person in the United States shall, on the grounds of race, color, national origin, sex, or age, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance." In addition, "No otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Unless exempted by Presidential Executive Order #11246, as may be amended or replaced and applicable regulations there under, Contractor shall not discriminate against any employee or applicant for employment.
- **Contracting:** Contractors, Bidders, and Proposers shall not create barriers to open and fair opportunities for all businesses including MWBE's to participate in all State contracts and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate on the basis of race, color, creed, religion, sex, age, nationality, marital status, or the presence of any mental, or physical disability in an otherwise qualified disabled person.

5. GIFTS AND GRATUITIES

In accordance with RCW 42.52.140 No state officer or state employee may receive, accept, take, seek, or solicit, directly or indirectly, anything of economic value as a gift, gratuity, or favor from a person if it could be reasonably expected that the gift, gratuity, or favor would influence the vote, action, or judgment of the officer or employee, or be considered as part of a reward for action or inaction.

6. 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.

7. COMPLAINT AND PROTESTS PROCEDURES per RCW 39.26.170

- **Complaint Process:** The complaint process occurs early in the solicitation, after the question/answer period, to catch mistakes and errors before vendors submit a response. The complaint process helps the college insure an open/transparent process. The purpose is to settle unresolved vendor issues before bids are submitted. A vendor may file a complaint relative to this solicitation based on the following:
 - The solicitation unnecessarily restricts competition;
 - The solicitation evaluation or scoring process is unfair or flawed; or
 - The solicitation requirements are inadequate or insufficient to prepare a response
 - Vendor Complaints are accepted up to 5 days prior to the bid deadline.
 - Must be in writing via email
 - Must be sent to the Procurement Coordinator
 - Should clearly articulate the basis for the complaint
 - Should include a proposed remedy
 - The Procurement Coordinator will:
 - Respond to complaint in writing via email
 - Post the complaint and solution, if any, to WEBS, the state procurement website
 - The agency complaint process does not include an appeal process. The complaint may not be raised again during the protest period.

- **Debriefing:** After the announcement of the apparent successful bidder (ASB), the college will offer a debriefing conference to any bidder upon request, by phone or in person.
 - The request must be made within 3 days of the announcement of the ASB.
 - Olympic College requires the bidder to participate in a debriefing conference as a prerequisite for submitting a protest.

- **Protest Process:** The protest process occurs after the bids are submitted and evaluated. Protests can raise issues related to the evaluation process as set out in the solicitation or how the process was executed. Any issue addressed in the complaint process may not be brought up again. Bidders have 5 business days after their debriefing conference to file a protest. For a vendor protest to be considered, the protest must be based on:
 - A matter of bias, discrimination or conflict of interest on the part of an evaluator;
 - Errors in computing the score; or
 - Non-compliance with procedures described in the procurement documents, agency protest process or DES requirements.

- **Format and Content: Protests shall include,**
 - Information about the protesting bidder such as name of firm, mailing address, phone number and name of the individual responsible for submission of the protest. The protest letter must be submitted by an authorized agent of the vendor.
 - The facts and arguments that are relied on as the basis for the protest
 - Any relevant exhibits or evidence supporting the protest
 - Specific reference to the grounds for the protest
 - Description of the relief or corrective action requested
- **Review Process:** Upon receipt of a protest the College will postpone implementing final award of the contract until the protest has been resolved. Bidders agree not to institute court action until the protest has been resolved.

The College will perform an objective review of the protest by assigning the appeal to neutral party that had no involvement in the evaluation and award process to investigate and respond to the protest. The review shall consider the protest material submitted by the protestor and all other facts known to the College.

The College will render a written decision to the bidder within ten (10) business days after receipt of the protest, unless more time is needed. The protesting bidder shall be notified if additional time is necessary. The college protest decision is final and no appeal process will be available. If the protesting bidder does not accept the colleges protest response, the bidder may try to seek relief from superior court. The College President and the Director of DES will be provided a copy of the original protest and the college’s response.

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

8. SAVE HARMLESS

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

9. PERSONAL LIABILITY

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

10. 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.

11. ADVERTISING

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

12. SUBCONTRACTS/ASSIGNMENT

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

13. TAXES, FEES AND LICENSES

- **Taxes:** Where required by state statute or regulation, contractor shall pay for and maintain in current status and all taxes that are necessary for contract performance. Unless otherwise indicated, the purchaser agrees to pay State of Washington sales or use taxes on all applicable consumer services and materials purchased. No charge by contractor shall be made for federal excise taxes and the purchaser agrees to furnish contractor with an exemption certificate where appropriate.
- **Collection of Retail Sales Tax:** In state suppliers: In general, in state suppliers engaged in retail sales activities within Washington State are required to collect and remit sales tax to Department of Revenue.
- **Out-of-state suppliers:** In general, out-of-state suppliers must collect and remit "use tax" to Department of Revenue if the activity carried on by the seller in Washington State is significantly associated with supplier's ability to establish or maintain a market for its products in Washington State. Examples of such activity include where the supplier either directly or by an agent or other representative:
 - Maintains an in-state office, distribution house, sales house, warehouse, service enterprise, or any other in-state place of business; or
 - Maintains an in-state inventory or stock of goods for sale; or
 - Regularly solicits orders from customers located within state via sales representatives entering the state; or
 - Sends other staff into the state (e.g. product safety engineers, etc.) to interact with customers in an attempt to establish or maintain market(s); or
 - Other factors identified in WAC chapter 458-20

Out-of-state suppliers meeting one of the above criteria must register and establish an account with the Department of Revenue (DOR). Call Department of Revenue at (800) 647-7706. When out-of-state suppliers are not required to collect and remit "use tax", the agency is responsible for paying this tax, if applicable, directly to DOR.

- **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.
- **Customs/Brokerage Fees:** To be considered responsive, bid must include ALL customs duties, brokerage or import fees where applicable. Contractor shall take all-necessary actions to ensure that materials or

equipment purchased are expedited through customs. Failure to do so may subject contractor to liquidated damages as identified in this document and/or to other administrative actions considered appropriate. Supplier is to calculate and enter the appropriate Washington State and local sales tax on the invoice. Tax is to be computed on new items after deduction of any trade-in in accordance with WAC 458-20-247.

14. 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.
Date Compliance: Contractor warrants fault free performance in the processing of date and date related data including, but not limited to calculation, comparing, and sequencing by all Equipment and Software provided pursuant to this Contract, individually and in combination, when used in accordance with the product documentation provided by the Contractor. Fault free performance shall include the manipulation of this data when dates are in the 20th or 21st centuries and shall be transparent to the user.

15. 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.

16. DELIVERY

- **Time:** Delivery must be made during normal work hours and within time frames proposed by Bidder herein and subsequently accepted by the college. Failure to comply may subject Contractor to non-delivery assessment charges and/or liquidated damages as appropriate. The college reserves the right to refuse shipment when delivered after normal working hours or as specified in the ordering document. Contractor shall verify specific working hours of college 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 will refuse COD shipments unless agreed to in advance with the Director of Purchasing.
- **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.

17. 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

18. 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.

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 Contractor.

20. 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.

21. 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.

22. INVOICING

Contractor shall provide an original invoice. Each invoice shall be submitted as required by the contract and shall reference the contract and purchase order number. Invoices shall be properly annotated with applicable prompt payment discount(s). All invoices are to be sent to Accounts Payable at the college address.

23. PAYMENT

Payment Terms, Tax: **Advance payment(s) cannot be made.** Successful vendor must be willing to accept State of Washington Purchase Order with payment terms of credit card, or Olympic College check with NET 30 terms after contract completion and acceptance, and receipt of invoice. Washington State Sales Tax is to be identified as a separate line item. Sales tax rate in Bremerton WA is 9%. **Freight Collect delivery terms will not be accepted.**

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. Qualifying prompt payment discount will be considered in determining the apparent lowest responsible and responsive bid. Invoices will not be processed for payment nor will the period of cash discount commence until receipt of a properly completed invoice and until all invoiced items are received and satisfactory performance of Contractor has been attained. If an adjustment in payment is necessary due to damage or dispute, the cash discount period shall commence on the date final approval for payment is authorized. Under "Chapter 39.76 RCW," if purchaser fails to make timely

payment(s), Contractor may invoice for 1% per month on the amount overdue or a minimum of \$1.00. Payment will not be considered late if a check or warrant is mailed within the time specified. If no terms are specified, net 30 days will automatically apply. Payment(s) made in accordance with contract terms shall fully compensate the Contractor for all risk, loss, damages or expense of whatever nature and acceptance of payment shall constitute a waiver of all claims submitted by Contractor.

Payment for materials or equipment received or for services rendered shall be made by Check, ACH or Credit Card. Any bank or transaction fees or similar costs associated with currency exchange procedures shall be fully assumed by the contractor.

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

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

24. QUALITY STANDARDS

Product or service specifications herein are intended solely to clearly describe type and quality and not to be restrictive. Trade reference specifications describe the type product thus far found to best meet agency functional requirements and provide the most economical use life under agency use situations. So as not to misrepresent the requirements herein, brands other than those specified will therefore be considered on the basis of whether at least equal in quality/performance. Failure to submit with bid complete documentation sufficient to establish products bid as at least equal may be grounds for rejection. By submitting bid, bidder expressly warrants product bid as at least equal in quality and performance. The 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 non-responsive.

25. PCBS PURPOSE STATEMENT

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 incentive its vendors to sell products and products in packaging without them.

26. DETERMINATION OF RESPONSIBILITY

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

During the contract term, should the contractor be determined to be in violation of federal, state, 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.

27. AWARD FACTORS

- **Criteria:** College contracts shall be awarded to the lowest responsible and responsive bidder subject to the preferences provided by law. Award criteria shall include all factors identified in RCW 39.26.160 and the contractual requirements provided herein.
- **Rights Reserved subject to the provisions of RCW 39.26.160, the state reserves the right to:**
 - Reject all bids, and rebid or cancel the solicitation;
 - Request best and final offers from responsive and responsible bidders; or
 - Award the purchase or contract to the lowest responsive and responsible bidder
 - To award one or more contracts from a competitive solicitation

28. SUPPLIER REGISTRATION

Prior to award of a contract, any unregistered bidder may be required to complete a W9 and be registered with the Department of Revenue.

29. CHANGES

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

30. ADDITIONS OR DELETIONS

The college reserves the right to add or delete items as determined to be in the best interest of the college. Added items 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 Director of Purchasing.

31. CONTRACT SUSPENSION

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

32. BREACH, DEFAULT, TERMINATION

- **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.
- **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.
- **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.

- **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.
- **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 day's written notice from one party to the other.
- **Sanctions:** Any violations of the mandatory provisions of this contract shall be a material breach of contract for which the contractor may be subject to a requirement of specific performance, or damages and sanctions provided by contract, or by applicable laws.

33. OPPORTUNITY TO CURE DEFAULT

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

34. 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.

35. 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.

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

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

37. U.S. SMALL BUSINESS PARTICIPATION

Participation in contracts for goods and services is encouraged by firms which qualify under definitions by the U.S. Small Business Administration as small business (SB), or small disadvantaged business (SDB), or small women owned business (WOB) or Veterans owned business. Participation in College contracts may be either direct as the Bidder in response to this solicitation, or as a subcontractor to a Bidder.

38. ESTABLISHED BUSINESS

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

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

39. PROPRIETARY INFORMATION

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

40. OSHA AND WISHA REQUIREMENTS

OSHA and WISHA requirements: Supplier agrees to comply with conditions of the Federal Occupational Safety and Health Act of 1970 (OSHA) and, if manufactured or stored in the State of Washington, the Washington

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

41. TRAINING

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

42. DEFAULT CHARGES

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

43. INSURANCE REQUIREMENTS

- **Insurance Obligation:** During the Term of this Contract, Contractor obtain and maintain in full force and effect, at Contractor's sole expense, the following insurance coverages:
 1. **Commercial General Liability Insurance:** (and, if necessary, commercial umbrella liability insurance) covering Bodily Injury and Property Damage on an 'occurrence form' in the amount of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. This coverage shall include Contractual Liability insurance for the indemnity provided under this Contract.
 2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, covering hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
 3. **Contractors Pollution Liability and/or Errors & Omissions:** applicable to the work being performed, with a limit no less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one year.

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

A cross-liability clause or separation of insured condition shall be included in all general liability, professional liability, pollution, and errors and omissions policies required by this Contract.
- **Insurance Carrier Rating:** Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable to the State of Washington's Office of Risk Management. Insurance coverage shall be provided by companies authorized to do business within the State of Washington and rated A- Class VII or better in the most recently published edition of Best's Insurance Rating. Olympic College reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
- **Additional Insured:** Except for Works' Compensation, Professional Liability, Personal Automobile Liability, and Pollution Liability Insurance, all required insurance shall include the State of Washington and all authorized Purchasers (and their agents, officers, and employees) as an Additional Insureds evidenced by copy of the Additional Insured Endorsement attached to the Certificate of Insurance on such insurance policies.

- **Certificate of Insurance:** Upon request by Olympic College, the Contractor shall furnish to the College, as evidence of the insurance coverage required by this Contract, a certificate of insurance satisfactory to Olympic College that insurance, in the above-stated kinds and minimum amounts, has been secured. A renewal certificate shall be delivered to the College no less than ten (10) days prior to coverage expiration. Failure to provide proof of insurance, as required, will result in contract cancellation. All policies and certificates of insurance shall include the Contract number stated on the cover of this Contract.
- **Primary Coverage:** Contractor's insurance shall apply as primary and shall not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above including, at a minimum, the State of Washington and/or Olympic College and/or any Purchaser. All insurance or self-insurance of the State of Washington, Olympic College, and/or Purchasers shall be excess of any insurance provided by Contractor or subcontractors.
- **Subcontractors:** Contractor shall include all subcontractors as insureds under all required insurance policies, or shall furnish separate Certificates of Insurance and endorsements for each subcontractor. Each subcontractor must comply fully with all insurance requirements stated herein. Failure of any subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.
- **Waiver of Subrogation:** Contractor waives all rights of subrogation against the State of Washington, Olympic College and any Purchaser for the recovery of damages to the extent such damages are or would be covered by the insurance specified herein.
- **Notice of Change or Cancellation:** There shall be no cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage, either in whole or in part, without at least sixty (60) days prior written Legal Notice by Contractor to the College. Failure to provide such notice, as required, shall constitute default by Contractor. Any such written notice shall include the Contract number stated on the cover of this Contract.