

# Bellingham Technical College

## Terms and Conditions

The terms and conditions in this section apply to all purchase orders, invitations to bid and 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 Bellingham Technical 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 the State of Washington, County of Whatcom. The college reserves the right to reject RFQs 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, creed, religion, national origin, sex, age, honorably discharged veteran or military status, sexual orientation, gender identity, marital status, genetic information, pregnancy, the presence of any sensory, mental or physical disability or the use of a trained guide dog or service animal by a person with a disability 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, Contractor shall not discriminate on the basis of race, color, religion, national origin, sex (including pregnancy and parenting status),

disability, age, veteran status, sexual orientation, gender identity or expression, marital status or genetic information in programs or activities including employment, admissions, and educational programs.

Nondiscrimination Requirement. During the term of this Contract, Contractor, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, Contractor, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which Contractor, or subcontractor, has a collective bargaining or other agreement.

## **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 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.

## **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 requests for quotation's)**

Pursuant to RCW 43.19.700-704 and WAC 236-48-085 the Department of General Administration has established a schedule of penalties applicable against firms submitting RFQs from states which grant a preference to their own in-state businesses. The appropriate percentage penalty will be added to each RFQ bearing the address from a state with in-state preferences rather than subtracting a like amount from Washington State bidders. This action will be used only for quote analysis and award. In no instances shall the increase be paid to a supplier whose quote is accepted.

## **9. COMPLAINT AND PROTESTS PROCEDURES per RCW 39.26.170**

The complaint process occurs early in the solicitation, after the question/answer period, to catch mistakes and errors before bidders submit a response. The complaint process helps the college insure an open/transparent process. The purpose is to settle unresolved bidder issues before RFQs are submitted.

### **Grounds for Complaint:**

A bidder may file a complaint relative to this RFQ based on the following:

- The solicitation unnecessarily restricts competition;
- The evaluation/scoring process is unfair or flawed; or
- The solicitation requirements are inadequate or insufficient to prepare a response

Bidder Complaints:

- Must be in writing (email is acceptable)
- Must be sent to the Purchasing Department no later than 5 business days prior to RFQ deadline
- Should clearly articulate the basis for the complaint
- Should include a proposed remedy

The Purchasing Department will:

- Review the complaint
- Respond to complaint in writing
- Post the complaint and solution, if any, to WEBS, the state procurement website
- Notify the College President of all complaints and provide a copy of the College's response

The college may extend the bid submission deadline in order to allow sufficient time for response and review of complaints submitted. The college complaint process does not include an appeal process. The complaint may not be raised again during the protest period.

### **Protest:**

#### **A. Procedure**

This protest procedure is available to Bidders who submitted a Response to this solicitation and have received a debriefing conference. The debriefing conference must be requested within three (3) business days of the announcement of the Apparent Successful Bidder (ASB). Protests are made to BTC after BTC has announced the ASB. Bidder protests shall be received, in writing, by BTC no later than five (5) business days after the Bidder debriefing conference. Email is

acceptable but should be followed by the original. All protests should be submitted to the college's Protest Officer, a neutral party who had no involvement in the evaluation or award process.

**B. Grounds for protest are:**

1. Arithmetic errors were made in computing the score;
  2. The college failed to follow procedures established in the solicitation document or applicable state or federal laws or regulations; or
  3. There was bias, discrimination or conflict of interest on the part of an evaluator.
- Protests not based on these criteria will not be considered.

**C. Format and Content**

Bidders making a protest shall include in their written protest to BTC all facts and arguments upon which the Bidder relies. Bidders shall, at a minimum, provide:

1. Information about the protesting bidder such as name of firm, mailing address, phone number and name of individual responsible for submission of the protest. The protest letter must be submitted by an authorized agent of the bidder.
2. The facts and arguments that are relied on as the basis for the protest
3. Any relevant exhibits or evidence supporting the protest
4. Specific reference to the grounds for the protest
5. Description of the relief or corrective action requested

**D. Review Process**

Upon receipt of a Bidder's protest, the college will postpone signing a Contract with the ASB until the Bidder protest has been resolved.

The college's Protest Officer will perform an objective review of the protest. The review shall be based on the written protest material submitted by the Bidder and all other relevant facts known to the college.

The Protest Officer will render a written decision to the Bidder within ten (10) business days after receipt of the Bidder protest, unless more time is needed. The protesting Bidder shall be notified if additional time is necessary.

**E. Determination**

The final determination shall:

1. Find the protest lacking in merit and uphold the college's action;
2. Find only technical or harmless errors in the college's acquisition process conduct, determine the college to be in substantial compliance, and reject the protest;
3. Find merit in the protest and provide the college with options that may include:
  - a) Correct errors and reevaluate all proposals; or
  - b) Reissue the solicitation document; or
  - c) Make other findings and determine other courses of action as appropriate.
4. If a new ASB results from the protest process, the debrief and protest periods will begin again after the announcement of the new ASB.

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.

#### **10. SAVE HARMLESS**

***Each party shall be responsible for the actions and inactions of itself and its own officers, employees, and agents acting within the scope of their authority. Each party shall indemnify, defend, and hold harmless the other party, its officers, employees, and agents from any claims, losses, or suits, including attorney's fees, arising out of injuries and damages caused by each party's own negligent actions or failures to perform its obligations under this contract. In the case of fault or negligence of both parties, any damages allowed shall be levied in proportion to the percentage of the fault or negligence attributable to each party. Each party waives its immunity under Title 51 RCW only to the extent it is required to indemnify, defend, and hold harmless the other party and its agencies, officers, employees, and agents. No party to this agreement shall be responsible for the acts and/or omissions of entities or individuals not a party to this agreement.***

#### **11. PERSONAL LIABILITY**

It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of Bellingham Technical 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.

#### **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 Purchasing Department.

#### 14. 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.

#### 15. 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. Sales tax shall not be included in bid pricing submitted.

**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). Refer to WAC 458-20-193 (7 through 9) or 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 RFQ 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, RFQ 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.

Orders for tangible personal property which become a component part of ferry vessels of the State of Washington or local government units in the State of Washington are exempt from use tax under RCW 82.12.0279.

## **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.

**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.

## **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 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 payment for shipping has been made.

The purchaser will refuse COD shipments unless agreed to in advance with the VP of Administrative Services. 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

**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 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 or emailed to [AcctsPay@btc.edu](mailto:AcctsPay@btc.edu).

#### **25. 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 Bellingham Technical 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 Bellingham, WA is 8.8%. Freight Collect delivery terms will not be accepted.

Payment will be made by the state agency or political subdivision indicated on ordering document. Any RFQ 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 RFQ.

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 warrant issued from the Washington State Treasury and redeemable in U.S. dollars. Unless otherwise indicated, the state's sole responsibility shall be to issue this warrant. Any bank or transaction fees or similar costs associated with currency exchange procedures shall be fully assumed by the contractor.

Payment term discounts effective for less than a 30-day period unless otherwise identified in bid/quote, will not be considered in the award of this RFQ.

Bidders are encouraged to offer a discount for prompt payment of invoice, which will be utilized in determining lowest responsive/responsible bidder. To be considered in the state's evaluation, period of entitlement must be 30 calendar days or greater. If bidder indicates no discount, the state will evaluate as net 30 days.

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

## **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 quote complete documentation sufficient to establish products bid as at least equal may be grounds for rejection. By submitting quote, 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.

## **27. 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.

## **28. 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 43.19.1911 and the contractual requirements provided herein. No MWBE preference will be included in the evaluation of quotes/proposals, no minimum level of MWBE participation shall be required as a condition for receiving an award, and quotes/proposals will not be rejected or considered non-responsive on that basis.

**Rights Reserved:** Subject to the provisions of RCW 43.19.1911, the state reserves the right to:

- Waive any informality.
- Reject any or all quotes, or portions thereof. WAC 236-48-20134 allows the college to "accept any portion of the items quote" unless the vendor stipulates all or nothing on the quote.
- Reissue an RFQ, RFQQ, or RFP, or negotiate under provisions outlined therein.
- Award on an all or none consolidated basis taking into consideration reduction in administrative costs as well as unit quote prices.

## **29. 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.

## **30. CHANGES**

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

## **31. 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 quote price margins, and will be evidenced by issuance of a written contract change notice from the Purchasing Department.

### **32. 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.

### **33. 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.

### **34. 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.

### **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, pandemics, 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. PROCUREMENT EVALUATION FOR EXECUTIVE ORDER 18-03 (FIRMS WITHOUT MANDATORY INDIVIDUAL ARBITRATION FOR EMPLOYEES).**

Pursuant to RCW 39.26.160(3) (best value criteria) and consistent with Executive Order 18-03 – Supporting Workers’ Rights to Effectively Address Workplace Violations (dated June 12, 2018), BTC will evaluate bids for best value and provide a bid preference in the form of point(s) to any bidder who certifies, pursuant to the certification attached as Exhibit E – Contractor Certification for Executive Order 18-03 – Workers’ Rights, that their firm does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waiver.

**38. 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.

**39. 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.

**40. 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.

**41. 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.

**42. 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.

**43. 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.

**44. 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.

**45. INSURANCE**

**General Requirements:** Contractor shall, at their own expense, obtain and keep in force insurance as follows until completion of the contract. Within fifteen (15) calendar days of receipt of notice of award, the Contractor shall furnish evidence in the form of a Certificate of Insurance satisfactory to the state that insurance, in the following kinds and minimum amounts has been secured. Failure to provide proof of insurance, as required, will result in contract cancellation.

Contractor shall include all subcontractors as insureds under all required insurance policies, or shall furnish separate Certificates of Insurance and endorsements for each subcontractor. Subcontractor(s) must comply fully with all insurance requirements stated herein. Failure of subcontractor(s) to comply with insurance requirements does not limit Contractor’s liability or responsibility.

All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by State.

**Specific Requirements:** Employers Liability (Stop Gap): The Contractor will at all times comply with all applicable workers’ compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable and will maintain Employers Liability insurance with a limit of no less than \$1,000,000.00. The state will not be held responsible in any way for claims filed by the Contractor or their employees for services performed under the terms of this contract.

**Commercial General Liability Insurance:** The Contractor shall at all times during the term of this contract, carry and maintain commercial general liability insurance and if necessary, commercial umbrella insurance for bodily injury and property damage arising out of services provided under this contract. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns, or servants. The insurance shall also cover bodily injury, including disease, illness, and death and property damage arising out of the Contractor’s premises/operations, independent contractors, products/completed operations, personal injury and advertising injury, and contractual liability (including the tort liability of another assumed in a business contract), and contain separation of insured’s (cross liability) conditions. Contractor waives all rights against the State for the recovery of damages to the extent they are covered by general liability or umbrella insurance.

The limits of liability insurance shall not be less than as follows:

General Aggregate Limits (other than products-completed operations)	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury Aggregate	\$1,000,000

Each Occurrence (applies to all of the above)	\$1,000,000
Fire Damage Limit (per occurrence)	\$ 50,000
Medical Expense Limit (any one person)	\$ 5,000

**Business Auto Policy (BAP):** In the event that services delivered pursuant to this contract involve the use of vehicles, or the transportation of clients, automobile liability insurance shall be required. The coverage provided shall protect against claims for bodily injury, including illness, disease and death; and property damage caused by an occurrence arising out of or in consequence of the performance of this service by the Contractor, subcontractor, or anyone employed by either.

Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a combined single limit not less than \$1,000,000 per occurrence. The business auto liability shall include Hired and Non-Owned coverage.

Contractor waives all rights against the State for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

**Additional Provisions:** Above insurance policies shall include the following provisions:

- **Additional Insured:** Bellingham Technical College and all authorized contract users shall be named as an additional insured on all general liability, umbrella, excess, and property insurance policies. All policies shall be primary over any other valid and collectable insurance.
- **Notice of policy(is) cancellation/non-renewal:** For insurers subject to RCW 48.18 (Admitted and regulated by the Washington State Insurance Commissioner) a written notice shall be given to the State forty-five (45) calendar days prior to cancellation or any material change to the policy(is) as it relates to this contract.

For insurers subject to RCW 48.15 (Surplus Lines) a written notice shall be given to the State twenty (20) calendar days prior to cancellation or any material change to the policy(ies) as it relates to this contract.

If cancellation on any policy is due to non-payment of premium, the State shall be given a written notice ten (10) calendar days prior to cancellation.

- **Identification:** Policy(ies) and Certificates of Insurance must reference the state’s bid/contract number.
- **Insurance Carrier Rating:** The insurance required above shall be issued by an insurance company authorized to do business within the State of Washington. Insurance is to be placed with a carrier that has a rating of A- Class VII or better in the most recently published edition of Best’s Reports. Any exception must be reviewed and approved by the Risk Manager for the State of Washington, by submitting a copy of the contract and evidence of insurance before contract commencement. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with RCW 48.15 and WAC 284-15.
- **Excess Coverage:** The limits of all insurance required to be provided by the Contractor shall be no less than the minimum amounts specified. However, coverage in the amounts of these

minimum limits shall not be construed to relieve the Contractor from liability in excess of such limits.

*Updated 1/3/2024*