



Appendix 1

Instructions to Bidders - MWBE Participation

It is the agency's policy that small businesses, minority and women's business enterprises (MWBE) have the opportunity to participate in the performance of agency contracts. Bidders, and their vendors of goods and services in fulfillment of this contract, should afford equal opportunity in employment while providing goods and services to the agency; and should take the necessary steps to ensure that small businesses and MWBEs have the opportunity to participate in the performance of contracts and agreements with the agency.

No preferences for MWBE participation will be included in scoring proposals, no minimum level of MWBE participation shall be required as a condition for receiving an award, and proposals will not be rejected for not including MWBE participation.

Bidders shall not discriminate on the basis of race, creed, color, national origin, religion, age, gender, marital or veteran status, or the presence of any sensory, mental or physical handicap in the award and performance of contracts and subcontract agreements.



Appendix 2

Standard Portion of Puget Sound Clean Air Agency Contract

4. **Changes.** The agency may, from time to time, require changes in the scope of services performed under this contract. The parties shall mutually agree to the changes by written amendment to the contract.

5. **Termination** Either party may terminate this Agreement at any time with or without cause by giving a thirty day (30) written notice to the other party of such termination and by specifying the effective date of the termination; provided, that the termination shall be preceded by a face-to-face meeting between the Consultant and the Agency. Upon termination of this Agreement, the Agency, in addition to any other rights provided in this Agreement, may require the Consultant to deliver to the Agency any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated.

The Agency shall pay to the Consultant the amount agreed upon by the Consultant and the Agency for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services which are accepted by the Agency, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Agency shall determine the extent of the liability of the Agency. The Agency may withhold from any amounts due the Consultant such sums as the Agency determines to be necessary to protect the Agency against potential loss or liability.

6. **Agency Access to Data.** The Consultant shall provide the agency, at no additional charge, access to all data generated under this Agreement. "Data" includes all information that supports the findings, conclusions and recommendations of the Consultant's reports, including computer models and the methodology for those models.

7. **Copyright Provisions.** Unless otherwise provided, all materials produced under this Agreement shall be considered "works for hire" as defined by the U.S. Copyright Act

and shall be owned by the Agency. The Agency shall be considered the author of such materials. In the event the materials are not considered “works for hire” under the U.S. Copyright laws, the Consultant hereby irrevocably assigns all right, title, and interest in materials, including all intellectual property rights, to the Agency, effective from the moment of creation of such materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For materials that are delivered under the Agreement, but that incorporate pre-existing materials not produced under the Agreement, the Consultant hereby grants to the Agency a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Consultant warrants and represents that the Consultant has all rights and permissions, including intellectual property rights, moral rights, and rights of publicity, necessary to grant such a license to the Agency.

The Consultant shall exert all reasonable effort to advise the Agency, at the time of delivery of materials furnished under this Agreement, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Agreement. The Agency shall receive prompt written notice of each notice or claim of copyright infringement received by the Consultant with respect to any data delivered under this Agreement. The Agency shall have the right to modify or remove any restrictive markings placed upon the data by the Consultant.

8. **Consultant Not An Employee of the Agency.** The Consultant and his or her employees or agents, shall at all times be an independent contractor and not an employee of the agency and shall not be entitled to compensation or benefits of any kind other than as specifically provided herein. The Consultant will not hold himself/herself out as nor claim to be an officer or an employee of the agency or of the State of Washington by reason hereof, nor will the Consultant make any claim of right, privilege or benefit which would accrue to an employee under Chapter 41.06 RCW.

9. **Indemnification.** The Consultant shall release, indemnify, defend and hold harmless the agency, its Board of Directors, officers, employees and agents from and against any and all liability, loss, damage, expense, actions, or claims, including costs and attorney's fees which the agency, its Board of Directors, officers, employees and agents may hereafter sustain, incur, or be required to pay asserting or arising directly or indirectly due to any act or omission of the Consultant, its agents, employees or

subcontractors, in the execution, performance or failure to adequately perform the Consultant's obligations pursuant to this contract; Provided, however, this paragraph does not purport to indemnify the agency against liability for damages arising out of bodily injuries to persons or damages caused by or resulting from the sole negligence of the agency, its Board of Directors, its officers, employees and agents in the execution, performance or failure to adequately perform its obligations pursuant to this contract.

10. **Subcontracting.** Neither the Consultant nor a subcontractor of the Consultant (*this phrase should be deleted when there is no subcontractor involved*) shall enter into subcontracts for any of the services or work contemplated under this contract without obtaining prior written approval of the Project Manager.

11. **Payroll and Taxes.** The Consultant assumes full responsibility for the payment of all wages, payroll taxes, use, sales, income or other form of taxes, fees and licenses.

12. **Licensing, Accreditation, and Registration.** The Consultant shall comply with all applicable local, state, and federal licensing, accreditation, and registration requirements/standards, necessary for the performance of this contract.

13. **Industrial Insurance Coverage.** The Consultant shall provide or purchase industrial insurance coverage prior to performing work under this contract and shall maintain full compliance with Chapter 51.12 RCW during the term of this contract. If a Consultant is exempt from the requirements of Chapter 51.12 RCW, he/she must carry appropriate liability insurance equivalent to the coverage provided under that chapter. The agency will not be responsible for the payment of industrial or liability insurance premiums or for any other claim or benefit for this Consultant, or any subcontractor or employee of the Consultant, which might arise under the industrial insurance laws during the performance of duties and services under this contract. If the Department of Labor and Industries, upon audit, determines that industrial insurance payments are due and owing as a result of work performed under this contract, those payments shall be made by the Consultant; the Consultant shall indemnify the agency and guarantee payment of such amounts.

14. **Limitation of Authority.** Only the agency's Project Manager shall have the express, implied or apparent authority to alter, amend, modify or waive any clause or condition of this contract except for clauses or conditions required by law. Furthermore, any alteration, amendment, modification or waiver of any clause or condition of the contract is not effective or binding unless made in writing and signed by the agency's Project Manager.

15. **Governing Law.** This contract shall be governed by the laws of the state of Washington. The Consultant, by execution of the contract, acknowledges the jurisdiction of the courts of the state of Washington in this matter.

16. **Severability.** The provisions of this contract are severable. If any provision is illegal or invalid for any reason whatsoever, that illegality or invalidity shall not affect the validity of the rest of the contract.

17. **Nondiscrimination.** During the performance of this contract, the Consultant shall comply with all federal and state nondiscrimination laws, regulations and policies.

18. **Noncompliance with Nondiscrimination Laws.** In the event of the Consultant's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Consultant may be declared ineligible for further contracts with the agency. The Consultant shall, however, be given a reasonable time in which to remedy this noncompliance.

19. **Utilization of Minority and Women-Owned Business Enterprises (MWBE).** To the extent practicable, when performing the services agreed to under this contract, the Consultant should utilize MWBEs certified by the Office of Minority and Women's Business Enterprises under the state of Washington certification program.

20. **Assignment.** The work provided under this agreement, and any claim arising thereunder, is not assignable or delegable by either party, in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

21. **Attorneys' Fees.** In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorneys' fees and costs.

22. **Content and Understanding.** This contract contains a complete and integrated understanding and agreement between the parties.

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