

PURCHASE ORDER

WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES (DNR) 1111 WASHINGTON STREET SE MS 47041 OLYMPIA, WA 98504-7041														(1) PO #: ENTER PO NUMBER																							
AGENCY NUMBER: 490														(2) DATE: ENTER DATE																							
(3) VENDOR: ENTER VENDOR NAME enter authorized person name enter vendor address enter vendor address enter city, state, zip enter phone number enter e-mail														(4) SHIP TO: DEPARTMENT OF NATURAL RESOURCES enter region or division enter name of person delivered to enter delivery address enter delivery mail stop enter city, state, zip enter phone number enter e-mail														(5) COMPTAX CODE: WA DEPARTMENT OF REVENUE enter comptax code									
(7) PREPARED BY: DEPARTMENT OF NATURAL RESOURCES enter region or division enter name of person delivered to enter delivery address enter delivery mail stop enter city, state, zip enter phone number enter e-mail														(8) ORIGINAL INVOICE DELIVERED TO: DEPARTMENT OF NATURAL RESOURCES enter region or division enter name of person delivered to enter delivery address enter delivery mail stop enter city, state, zip enter phone number enter e-mail														(9) PROCUREMENT METHOD enter procurement method (10) FUNDING SOURCE select one									
(11) SHIPPING METHOD: enter shipping method				(12) SHIPPING TERMS: enter shipping terms				(13) EXPECTED DELIVERY DATE: enter expected delivery date				(14) STATE CONTRACT NUMBER: enter state contract number				(15) CONTRACT NUMBER enter contract number																					
(15) ITEM #		(16) ITEM		(17) DESCRIPTION										(18) QUANTITY		(19) UNIT		(20) UNIT PRICE		(21) AMOUNT																	
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(22) SPECIAL INSTRUCTIONS: enter special instructions														(23) SUB-TOTAL:				\$																			
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BY ACCEPTING THIS PURCHASE ORDER, VENDOR AGREES TO COMPLY WITH ALL TERMS AND CONDITIONS WITHIN THIS CONTRACT INCLUDING BUT NOT LIMITED TO THE SOLICITATION, THE BID, QUOTATION, AND/OR PROPOSAL, ALL APPENDICES, ALL EXHIBITS, ASSOCIATED STATEMENTS OF WORK, ALL AMENDMENTS AWARDED, PURCHASE ORDER, THE WA STATE DEPARTMENT OF NATURAL RESOURCES CONTRACTING FOR GOODS - GENERAL TERMS AND CONDITIONS ATTACHED AND/OR LOCATED AT THE DNR WEBSITE: HTTPS://WWW.DNR.WA.GOV/NODE/635 , AND ACKNOWLEDGES RECEIPT OF THE AGENCY POLICY ON HARASSMENT PREVENTION LOCATED ON THE DNR WEBSITE AT THE FOLLOWING LINK: HTTPS://WWW.DNR.WA.GOV/NODE/635 .																																					
(27) PRINTED NAME OF AUTHORIZED PERSON														(28) SIGNATURE OF AUTHORIZED PERSON										(29) DATE													
(30) ACCOUNTING CLASSIFICATION																																					
ITEM,	TRANS CODE	MD	RV	FUND	APPN	PI/MI	SUB OBJ	SS OBJ	ORG	TRUST	CO	PROJ	FACIL	MAJ GRP	MAJ SRC	SUB SRC	GL ACCT	SUBS DR	SUBS CR	AMOUNT																	
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WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES GENERAL TERMS AND CONDITIONS

1. ACCESS TO DATA

CONTRACTOR shall provide access to data generated under this contract to DNR, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of CONTRACTOR's reports, including computer models and methodology for those models.

2. ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by DNR.

3. AMENDMENTS

This contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

4. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

CONTRACTOR must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

5. ANTITRUST

CONTRACTOR hereby assigns to DNR any and all of its claims for price fixing or overcharges, which arise under federal or state law relating to the goods, products, or services purchased under this contract.

6. ASSIGNMENT

Neither this contract, nor any claim arising under this contract, shall be transferred or assigned by CONTRACTOR without prior written consent of DNR, and DNR may consider any attempted assignment without such consent to be void. However, if CONTRACTOR provides written notice to DNR within thirty (30) calendar days, CONTRACTOR may assign its rights under this agreement in full to any parent, subsidiary, or affiliate of CONTRACTOR that controls or is controlled by or under common control with CONTRACTOR, is merged or consolidated with CONTRACTOR, or purchases a majority or controlling interest in the ownership or assets of CONTRACTOR. Unless otherwise agreed, CONTRACTOR guarantees prompt performance of all obligations under this agreement notwithstanding any prior assignment of its rights.

7. 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.

8. COMPLIANCE WITH APPLICABLE LAW

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At all times during the term of the contract, CONTRACTOR shall comply with all applicable laws.

9. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

CONTRACTOR shall not use or disclose any information concerning DNR, or information that may be classified as confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of DNR, or as may be required by law.

10. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, DNR may, in its sole discretion, by written notice to CONTRACTOR, terminate this contract if it is found after due notice and examination by the Agent that there is a violation of the Ethics in Public Service Act, [Chapter 42.52 RCW](#); or any similar statute involving CONTRACTOR in the procurement of, or performance under, this contract.

In the event this contract is terminated as provided above, DNR shall be entitled to pursue the same remedies against CONTRACTOR as it could pursue in the event of a breach of the contract by CONTRACTOR. The rights and remedies of DNR provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the agent makes any determination under this clause shall be an issue and may be reviewed as provided in the “Disputes” clause of this contract.

11. COPYRIGHT PROVISIONS

Unless otherwise provided, all materials produced under this contract shall be considered "works for hire" as defined by the [U.S. Copyright Act](#) and shall be owned by DNR. DNR 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, CONTRACTOR hereby irrevocably assigns all right, title, and interest in materials, including all intellectual property rights, to DNR 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, and, register, and the ability to transfer these rights.

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

CONTRACTOR shall exert all reasonable effort to advise DNR, at the time of delivery of materials furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this contract.

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DNR shall receive prompt written notice of each notice or claim of infringement received by CONTRACTOR with respect to any data delivered under this contract. DNR shall have the right to modify or remove any restrictive markings placed upon the data by CONTRACTOR.

12. COVENANT AGAINST CONTINGENT FEES

CONTRACTOR warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established agents maintained by CONTRACTOR for securing business.

DNR shall have the right, in the event of breach of this clause by CONTRACTOR, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage, or contingent fee.

13. DEFAULT

CONTRACTOR shall be in default if it is in material breach of any term or condition of the contract. The time of default shall begin when the material breach occurs or after any applicable opportunity to cure period lapses, whichever is later.

14. DELIVERY, INSPECTION, REJECTION, AND CURE:

1. **TIME OF THE ESSENCE:** Time is of the essence in the performance of the contract.
2. **SHIPPING AND RISK OF LOSS:** All goods subject to the contract shall be shipped F.O.B. destination. Risk of loss of the goods shall pass to DNR at the time the goods are accepted by DNR.
3. **INSPECTION:** DNR's inspection of all goods upon delivery is for the sole purpose of identification. Such inspection shall not be construed as acceptance of the goods.
4. **REJECTION:** DNR may reject any nonconforming Deliverables by reasonably notifying CONTRACTOR in writing.
5. **OPPORTUNITY TO CURE:** CONTRACTOR shall have the right to cure the materiality of any breach prior to the time for performance under the contract. This right to cure terminates upon the time for performance.

15. DEFINITIONS

Definitions for the purposes of these Terms and Conditions include:

AGENCY – Any state office or activity of the executive and judicial branches of state government, including state agencies, departments, offices, divisions, boards, commissions, institutions of higher education as defined in [RCW 28B.10.016](#), and correctional and other types of institutions.

AGENT – Personnel authorized to act on behalf of DNR for matters contained within.

APPARENT SUCCESSFUL BIDDER – Bidder whose bid, quotation, and/or proposal provides the best value in meeting DNR's needs and is selected to contract with DNR for the proposed solution, subject to completion of contract negotiations and execution of contract.

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AWARD DATE – The announcement date of the Apparent Successful Bidder.

BID, QUOTATION, and/or PROPOSAL – A formal offer, submitted by an individual or entity, in response to a solicitation issued for goods and/or services by DNR.

BIDDER – An individual or entity who submits a bid, quotation, and/or proposal in response to a solicitation issued for goods and/or services by DNR.

BUSINESS DAYS – Monday through Friday, 8AM to 5PM, Pacific Standard Time, or, Pacific Daylight Time, Olympia, Washington, USA.

CALENDAR DAY – Midnight to midnight, any day of the week.

CONTRACT – An agreement between DNR and CONTRACTOR that includes terms and conditions, all appendices, and exhibits, associated Scope(s) of Work (e.g. Services Contract or Purchase Order), and all amendments to the document.

CONTRACTOR – An individual or entity who is awarded a contract with DNR, and who is solely responsible to provide a good or perform a service.

DNR – Washington State Department of Natural Resources, an agency of the State of Washington, and any division, section, office, unit, or other entity thereof, and any of the officers or other officials lawfully representing the department.

GOODS – Products, materials, supplies, or equipment provided by a contractor.

PRIME CONTRACTOR – A contractor that signs a contract with DNR, but also subcontracts a portion of the work to another business and is ultimately responsible for the performance of the subcontracted work.

PURCHASE – The acquisition of goods or services, including the leasing or renting of goods.

SERVICES – Labor, work, analysis, or similar activities provided by a contractor to accomplish a specific scope of work.

SOLICITATION – A documented formal process providing an equal and open opportunity to Bidders and with the intent of selecting one or more Apparent Successful Bidders based on predetermined criteria.

STATE – Washington State.

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SUBCONTRACTOR – A person or entity not in the employment of CONTRACTOR who is performing all or part of the work for a contract between DNR and CONTRACTOR through a subcontract with CONTRACTOR.

VENDOR – Individual, firm, organization, company, or other entity offering products and/or services.

WASHINGTON STATE CERTIFIED MINORITY-OWNED BUSINESS – Limited to firms certified by the Washington State Office of Minority and Women’s Business Enterprises (OMWBE) as a minority-owned business (MBE). See, [RCW 39.19.120](#) and [WAC 326-20](#).

WASHINGTON STATE CERTIFIED SMALL BUSINESS – An in-state business, including a sole proprietorship, corporation, partnership, or other legal entity, that certify location, size, and WEBS certification. See [RCW 39.26.010](#).

WASHINGTON STATE CERTIFIED VETERAN-OWNED BUSINESS – Limited to firms certified by the Washington State Department of Veterans Affairs (WDVA) as a Certified Veteran-Owned Business. See [RCW 43.60A.010\(7\)](#) and [RCW 43.60A.190](#).

WASHINGTON STATE CERTIFIED WOMAN-OWNED BUSINESS – Limited to firms certified by the Washington State Office of Minority and Women’s Business Enterprises (OMWBE) as a woman-owned business (WBE). See [RCW 39.19.120](#) and [WAC 326-20](#).

WEBS – Washington Electronic Business Solution System.

WORKING DAYS – Midnight to midnight, Monday through Friday, excluding Saturday, Sunday, and state legal holidays.

16. DISALLOWED COSTS

CONTRACTOR is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

17. DISPUTES

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Agent.

1. The request for a dispute hearing must:
 - a. Be in writing;
 - b. State the disputed issue(s);
 - c. State the relative positions of the parties;
 - d. State CONTRACTOR’s name, address, and contract number; and
 - e. Be mailed to the Agent and the other party’s (respondent’s) Contract Manager within three (3) working days after the parties agree that they cannot resolve the dispute.
2. The respondent shall send a written answer to the requester’s statement to both the agent and the requester within five (5) working days.

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3. The Agent shall review the written statements and reply in writing to both parties within ten (10) working days. The Agent may extend this period if necessary by notifying the parties.
4. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution method in addition to the dispute resolution procedure outlined above.

18. DUPLICATE PAYMENT

DNR shall not pay CONTRACTOR, if CONTRACTOR has charged or will charge the State of Washington or any other party under any other contract or agreement, for the same goods delivered or services rendered.

19. ENVIRONMENTAL CONSIDERATIONS

ELECTRONIC PRODUCTS

The State of Washington encourages the purchase of products that meet environmental performance standards relating to the reduction and elimination of hazardous materials. The database of all products that currently meet EPEAT criteria are viewable at www.greenelectronicscouncil.org. Only products listed as Active in the online EPEAT Registry are considered to have met the EPEAT criteria.

CONTRACTOR represents and warrants that, during the term of this contract, for any product(s) for which CONTRACTOR sought and was awarded an environmental purchasing preference pursuant to [RCW 39.26.265](#) and Washington State Procurement Policy [POL-DES-265-00](#), such product(s) shall have achieved EPEAT Silver or Gold registration that enabled CONTRACTOR to be awarded such preference.

NON-HYDROFLUOROCARBONS (HFCs)

Hydrofluorocarbons (HFCs) contribute to climate change and so have an adverse effect on human health and the environment. Accordingly, Washington State, through its procurement of goods is trying to minimize the purchase of products that contain HFCs or contain HFCs with a comparatively low global warming potential and to incentivize its vendors to sell products without HFCs.

CONTRACTOR represents and warrants that, during the term of this contract, for any product(s) for which CONTRACTOR sought and was awarded a purchasing preference pursuant to [RCW 39.26.310](#) and Washington State Procurement Policy [DES-POL-310-00](#), such product(s) shall meet or have less than the HFC level(s) that enabled CONTRACTOR to be awarded such preference.

MERCURY FREE ENVIRONMENTAL WARRANTY

Option 1: Product(s) Do Not Contain Mercury. CONTRACTOR represents and warrants that, during the term of this contract, for any product(s) for which CONTRACTOR sought and was awarded a purchasing priority pursuant to [RCW 70.95M.060](#) and Washington State Procurement Policy [DES-POL70.95M.060-00](#), such product(s) shall continue to be mercury free for the life of the contract.

Option 2: Product(s) Containing the Least Amount of Mercury. CONTRACTOR represents and warrants that, during the term of this contract, for any product(s) for which CONTRACTOR sought and was awarded a

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purchasing preference pursuant to [RCW 70.95M.060](#) and Washington State Procurement Policy [DES-POL-70.95M.060-00](#), such product(s) shall meet or exceed the lowest amount of mercury that enabled CONTRACTOR to be awarded such preference. Notwithstanding any provision to the contrary, upon breach of warranty and CONTRACTOR's failure to provide satisfactory evidence of compliance within thirty (30) days, DNR may suspend or terminate this contract. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

POLYCHLORINATED BIPHENYLS (PCBs)

Polychlorinated biphenyls, commonly known as PCBs, have adverse effects on human health and the environment. Accordingly, Washington State, through its procurements of goods, is trying to minimize the purchase of products with PCBs and to incentivize its vendors to sell products in packaging without them.

CONTRACTOR represents and warrants that, during the term of this contract, for any product(s) and/or product packaging for which CONTRACTOR sought and was awarded a purchasing preference pursuant to [RCW 39.26.280](#) and Washington State Procurement Policy [POL-DES-280-00](#), such product(s) and/or packaging shall meet or exceed the testing limitations that enabled CONTRACTOR to be awarded such preference.

RECYCLED CONTENT PRODUCTS

Buying products made from recycled content creates markets for materials collected in residential and business recycling programs. Recycling does not work without end-markets. In addition buying recycled products supports the development of green technologies, creates jobs and strengthens the local economy, and promotes and supports a more sustainable lifestyle. When manufacturers use recycled material vs. virgin materials to make new products, air and water pollution is reduced, natural resources are conserved, energy is saved, less water is used, and emissions of greenhouse gases that contribute to global climate change are reduced. Accordingly, the State of Washington through its procurements of goods is trying to maximize the purchase of products made from recycled content and to incentivize its vendors to sell products and products in packaging made with recycled content.

CONTRACTOR represents and warrants that, during the term of this contract, for any product(s) for which CONTRACTOR sought and was awarded an environmental purchasing preference pursuant to [RCW 39.26.255](#) and Washington State Procurement Policy [POL-DES-255-00](#), such product(s) shall exceed the minimum post-consumer or total recycled content that enabled CONTRACTOR to be awarded such preference.

Notwithstanding any provision to the contrary, upon breach of warranty and CONTRACTOR's failure to provide satisfactory evidence of compliance within thirty (30) days, DNR may suspend or terminate this contract. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under law, to a prevailing party, reasonable attorneys' fees and costs.

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20. EXECUTIVE ORDER 18-03 – WORKERS’ RIGHTS

MANDATORY INDIVIDUAL ARBITRATION. If a Bidder returned Bidder’s Certifications and Assurances Form, pursuant to [Executive Order 18-03 Worker’s Rights](#) representing and warranting that the Bidder does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers, the Bidder (now CONTRACTOR) further represents and warrants that, during the term of this contract, CONTRACTOR shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

21. FUNDING SOURCE

At all times during the course of this contract, CONTRACTOR must comply with applicable laws, rules, policies, and regulations required by the source of funding for the contract. If this contract is funded by a grant, the the complete grant document/agreement as provided by the granting entity is attached as Exhibit **Enter exhibit letter**.

22. GOVERNING LAW

This contract shall be construed and interpreted in accordance with the laws of Washington State, and the venue of any legal action brought hereunder shall be in the Superior Court for Thurston County.

23. HARASSMENT

CONTRACTOR hereby has access to the following DNR’s policies:

Per [RCW 43.01.135](#), DNR Policy PO01-052, Sexual Harassment, linked below, outlines DNR’s commitment and expectations for contractors:

https://www.dnr.wa.gov/publications/em_harassment_prevention_policy.pdf

DNR Policy PO01-051, Safe and Respectful Workplace, linked below, outlines DNR’s commitment and the expectations for contractors:

www.dnr.wa.gov/publications/em_safe_respectful_workplace_policy.pdf

DNR Policy PO01-037, Harassment Prevention, linked below, outlines DNR’s commitment and expectations for contractors: www.dnr.wa.gov/publications/em_harassment_prevention_policy_037.pdf

24. INDEMNIFICATION

To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend, and hold harmless the State, agencies of the State and all officials, agents, and employees of the State, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. “Claim,” as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including, but not limited to, attorneys’ fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property, including loss of use resulting therefrom.

CONTRACTOR’s obligations to indemnify, defend, and hold harmless includes any claim by CONTRACTOR’s agents, employees, representatives, or any subcontractor or its employees.

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CONTRACTOR expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incidental to CONTRACTOR's or any subcontractor's performance or failure to perform the contract. CONTRACTOR's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of the State or its agents, agencies, employees, and officials.

CONTRACTOR waives its immunity under [Title 51 RCW](#) to the extent it is required to indemnify, defend, and hold harmless the State and its agencies, officials, agents, or employees.

25. INDEPENDENT CAPACITY OF CONTRACTOR

The parties intend that an independent contractor relationship will be created by this contract. CONTRACTOR and CONTRACTOR's employees or agents performing under this contract are not employees or agents of DNR. CONTRACTOR will neither hold themselves out as or claim to be an officer or employee of DNR or The State of Washington by reason hereof, nor will CONTRACTOR make any claim of right, privilege, or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with CONTRACTOR.

26. INTEGRATION

The contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of the contract shall be deemed to exist or to bind any of the parties hereto.

27. LICENSING, ACCREDITATION, AND REGISTRATION

CONTRACTOR shall comply with all applicable local, state, and federal licensing, accreditation, and registration requirements/standards necessary for the performance of this contract.

28. LIMITATION OF AUTHORITY

Only the DNR signatory to the contract or the signatory's agent (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the agent.

29. NONDISCRIMINATION

During the performance of this contract, CONTRACTOR shall comply with all federal and state nondiscrimination laws, regulations, and policies.

30. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

1. 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.
2. Obligation to Cooperate. CONTRACTOR, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that CONTRACTOR, including any subcontractor, has engaged in discrimination prohibited by this contract pursuant to [RCW 49.60.530\(3\)](#).

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3. Default. Notwithstanding any provision to the contrary, DNR may suspend CONTRACTOR, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this contract, pursuant to [RCW 49.60.530\(3\)](#). Any such suspension will remain in place until DNR receives notification that CONTRACTOR, including any subcontractor, is cooperating with the investigating state agency. In the event CONTRACTOR, or subcontractor, is determined to have engaged in discrimination identified at [RCW 49.60.530\(3\)](#), DNR may terminate this contract in whole or in part, and CONTRACTOR, subcontractor, or both, may be referred for debarment as provided in [RCW 39.26.200](#). CONTRACTOR or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.
4. Remedies for Breach. Notwithstanding any provision to the contrary, in the event of contract termination or suspension for engaging in discrimination, CONTRACTOR, subcontractor, or both, shall be liable for contract damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, which damages are distinct from any penalties imposed under [Chapter 49.60, RCW](#). DNR shall have the right to deduct from any monies due to CONTRACTOR or subcontractor, or that thereafter become due, an amount for damages CONTRACTOR or subcontractor will owe DNR for default under this provision.

31. PRIVACY

Personal information including, but not limited to, “Protected Health Information,” collected, used, or acquired in connection with this contract shall be protected against unauthorized use, disclosure, modification, or loss. CONTRACTOR shall ensure its directors, officers, employees, subcontractors, and agents use personal information solely for the purposes of accomplishing the delivery of goods or rendering of services as set forth herein. CONTRACTOR and its subcontractors agree not to release, divulge, publish, transfer, sell, or otherwise make known to unauthorized persons personal information without the express written consent of DNR or as otherwise required by law in compliance with [RCW 42.56.590](#) and [RCW 19.255.010](#), and Washington State Technology Solutions [DATA-03 Privacy and Data Protection Policy](#), as applicable.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. CONTRACTOR agrees to indemnify and hold harmless DNR for any damages related to CONTRACTOR’s unauthorized use of personal information.

32. PUBLICITY

CONTRACTOR agrees to submit to DNR all advertising and publicity matters relating to this contract wherein DNR’s name is mentioned or language used from which the connection of DNR’s name may, in DNR’s judgment, be inferred or implied. CONTRACTOR agrees not to publish or use such advertising and publicity matters without the prior written consent of DNR.

33. RECORDS MAINTENANCE

CONTRACTOR shall maintain books, records, documents, data, and other evidence relating to this contract and performance of services rendered and/or delivery of goods as described herein, including, but not limited to,

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accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

CONTRACTOR shall retain such records for a period of six (6) years following the date of contract expiration. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review, or audit by DNR, personnel duly authorized by DNR, the Office of the State Auditor, and federal and state officials so authorized by law, regulation, or agreement.

If any litigation, claim, or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

All contracts issued by DNR are subject to the provisions of the Washington State Public Records Act, [RCW 42.56](#). Any contracts issued with federal dollars are also subject to the US Freedom of Information Act, [5 U.S.C. § 552](#).

34. REGISTRATION WITH DEPARTMENT OF REVENUE

CONTRACTOR shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this contract.

35. REMEDIES:

1. With respect to any nonconforming deliverables, DNR may elect to do one or more of the following:
 - a. **SPECIFIC PERFORMANCE:** If the deliverables are unique, sole sourced, or otherwise deemed by DNR to be unavailable elsewhere, DNR may demand specific performance.
 - b. **COVER:** DNR may obtain substitute deliverables and charge CONTRACTOR the difference between the cost of the substitute deliverables and the contracted for price.
 - c. **PRICE REDUCTION:** DNR may retain nonconforming deliverables and equitably reduce the price of the contract based on the difference between the contracted for price and the fair market value of the nonconforming deliverables.
 - d. **RETURN:** DNR may return or set aside for pickup by CONTRACTOR any nonconforming goods and terminate the contract for cause.
2. CONTRACTOR shall be liable for all compensatory, incidental, and consequential damages caused by any breach of the contract. At the sole option of DNR, such damages may be recovered, in whole or in part, by price reduction or credit against any amounts that may be owed to CONTRACTOR under the contract.
3. DNR's total liability for all damages arising out of or related to the contract shall in no event exceed the purchase price of the contract. Furthermore, in the event of a termination of the contract, DNR's total liability for all damages arising out of or related to the contract shall not exceed the purchase price of goods delivered or services rendered prior to the effective date of the termination.
4. The rights and remedies provided by the contract are cumulative and are not exclusive of any other or additional rights or remedies available at law and in equity.

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CONTRACTOR shall provide right of access to its facilities to DNR, and any of its officers, and to any other authorized agent or official of the State of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

37. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, DNR may terminate the contract under the "Termination for Convenience" clause, without the ten (10) day notice requirement, subject to renegotiation at DNR's discretion under those new funding limitations and conditions.

38. SEVERABILITY

The provisions of this contract are intended to be severable. If any term or provision is found to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction or another legally binding authority, such illegality or invalidity shall not affect the validity of the remainder of the contract.

39. SITE SECURITY

While on DNR premises, CONTRACTOR, its agents, employees, or subcontractors shall conform in all respects with physical, fire, and other security policies or regulations.

40. SMALL AND DIVERSE BUSINESS PARTICIPATION

DNR encourages CONTRACTOR, to obtain Washington State Office of Minority and Women's Business Enterprises (OMWBE), Veteran's Owned Business Certification, or self certify as a small business in WEBS (if qualified). See <https://omwbe.wa.gov/>, <https://www.dva.wa.gov/> or <https://pr-webs-customer.des.wa.gov/> for instructions on how to register. CONTRACTOR may also encourage any subcontractors (if applicable) to also register at the links provided above.

41. SUBCONTRACTING

Neither CONTRACTOR nor any subcontractor shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of DNR.

In no event shall the existence of the subcontract operate to release or reduce the liability of CONTRACTOR to DNR for any breach in the performance of CONTRACTOR's duties. This clause does not include contracts of employment between CONTRACTOR and personnel assigned to work under this contract.

Additionally, CONTRACTOR is responsible for ensuring that all terms, conditions, assurances, and certifications set forth in this agreement are carried forward to any subcontracts.

SUBCONTRACTOR PAYMENTS REPORTING REQUIREMENTS

If subcontractors are used, this contract is subject to compliance tracking using the State's business diversity management system, Access Equity (B2Gnow). Access Equity is web-based and can be accessed at the Office of Minority and Women's Business Enterprises at <https://omwbe.diversitycompliance.com/>.

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CONTRACTOR and all subcontractors shall report and confirm receipt of payments made to CONTRACTOR and each subcontractor through Access Equity. CONTRACTOR may contact the Contract Manager listed in this contract or reach out to DNR's Procurement of Goods and Services Office servicescontracts@dnr.wa.gov for technical assistance in using the Access Equity system. User guides and documentation related to CONTRACTOR and subcontractor access to and use of Access Equity are available online at <https://omwbe.wa.gov/access-equity-help-center>. DNR reserves the right to withhold payments from CONTRACTOR for non-compliance with this section. For purposes of this section, subcontractor means any subcontractor working on the contract, at any tier and regardless of status as a certified WMBE or Non-WMBE.

CONTRACTOR shall:

1. Register and enter all required subcontractor information into Access Equity no later than fifteen (15) days after DNR creates the Contract Record.
2. Complete the required user training (two (2) one-hour online sessions) no later than twenty (20) days after DNR creates the Contract Record.
3. Report the amount and date of all payments (i) received from DNR and (ii) paid to subcontractors, no later than a date mutually agreed to by the parties, issuance of each payment made by DNR to CONTRACTOR, unless otherwise specified in writing by DNR, except that CONTRACTOR shall mark as "Final" and report the final subcontractor payments into Access Equity no later than thirty (30) days after the final payment is due the subcontractor(s) under the contract, with all payment information entered no later than sixty (60) days after end of fiscal year.
4. Monitor contract payments and respond promptly to any requests or instructions from DNR or system-generated messages to check or provide information in Access Equity.
5. Coordinate with subcontractors, or DNR when necessary, to resolve promptly any discrepancies between reported and received payments.
6. Require each subcontractor to: (i) register in Access Equity and complete the required user training; (ii) verify the amount and date of receipt of each payment from CONTRACTOR or a higher tier subcontractor, if applicable, through Access Equity; (iii) report payments made to any lower tier subcontractors, if any, in the same manner as specified herein; (iv) respond promptly to any requests or instructions from CONTRACTOR or system-generated messages to check or provide information in Access Equity; and (v) coordinate with CONTRACTOR, or DNR when necessary, to resolve promptly any discrepancies between reported and received payments.

CONTRACTOR (also called Prime Contractor) is obligated to complete the vendor registration in Access Equity. Access Equity is a secure online vendor management system (B2GNow). Confidential information (Tax ID, etc.) will not be published. Contractors that have previously registered with B2Gnow for any public entity, must verify the system has updated information. Contractors can access the system at <https://omwbe.diversitycompliance.com/> or through a direct link on the Office of Minority and Women's Business Enterprises (OMWBE) website at: <https://omwbe.wa.gov/>.

Each month during the contract, CONTRACTOR will report payments to ALL subcontractors through the Access Equity system. This monthly reporting information includes total payment in dollars made to the subcontractor, payment dates, and any additional information required to verify payment to subcontractors. CONTRACTOR will enter this payment information into the Access Equity system, and the subcontractors will verify this payment

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information in the system. Online training is available through the Access Equity/B2Gnow system. This requirement applies to both contractors and subcontractors.

SUBCONTRACTOR INCLUSION PLAN (SIP)

Any contractor entering into a subcontract shall complete a SIP which will be included as an Exhibit to the contract. Additionally, CONTRACTOR shall ensure that all subcontractors complete a Subcontractor Inclusion Plan, if the subcontractor is subcontracting any of the work.

The State of Washington works towards providing the maximum practicable opportunity for small and diverse businesses in the performance of all State contracts. CONTRACTOR shall use genuine efforts to utilize race- and gender-neutral means to allow opportunities for small and diverse businesses to participate in subcontracts, where participation opportunities are present. CONTRACTOR shall make genuine efforts to ensure all available business enterprises, including small and diverse businesses, have equal opportunity for participation which might be presented under this agreement. Examples of genuine efforts include, but are not limited to, the following:

1. Submit inclusion plans with genuine efforts to meet the aspirational goals on the project;
2. Engage in targeted outreach;
3. Provide training; and
4. Use the OMWBE and DVA certified business directories to locate certified minority, women- and veteran-owned businesses, and WEBS to search for qualified small business.

CONTRACTOR shall include a similar provision in all subcontracts awarded for work to be performed under the contract with the State.

If a SIP is submitted by CONTRACTOR, the DNR Project Manager or Contract Manager shall monitor progress of the SIP periodically, no less than annually, throughout the term of the contract and pursue a cure notice/remedy if the vendor is out of compliance with the SIP.

42. TAXES

All payments accrued because of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for CONTRACTOR or its staff shall be the sole responsibility of CONTRACTOR.

43. TERMINATION FOR CAUSE

In the event DNR determines CONTRACTOR has failed to comply with the conditions of this contract in a timely manner, DNR has the right to suspend or terminate this contract. Before suspending or terminating the contract, DNR shall notify CONTRACTOR in writing (e.g. email) of the need to take corrective action. If corrective action is not taken within thirty (30) calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, CONTRACTOR shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract (e.g., cost of the competitive bidding, mailing, advertising, and staff time).

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DNR reserves the right to suspend all or part of the contract, withhold further payments, or prohibit CONTRACTOR from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by CONTRACTOR or a decision by DNR to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that CONTRACTOR: (i) was not in default or (ii) failure to perform was outside of CONTRACTOR's control, fault or negligence.

The rights and remedies of DNR provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

44. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this contract, DNR may, by 10 (ten) calendar days written notice (e.g. email), beginning on the second calendar day after the notice is sent, terminate this contract, in whole or in part. If this contract is so terminated, DNR shall be liable only for payment required under the terms of this contract for goods delivered or services rendered prior to the effective date of termination.

45. TERMINATION PROCEDURES

Upon termination of this contract, DNR, in addition to any other rights provided in this contract, may require CONTRACTOR to deliver to DNR any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

DNR shall pay to CONTRACTOR the agreed upon price, if separately stated, for goods or services accepted by DNR, and the amount agreed upon by CONTRACTOR and DNR for (i) goods delivered or services rendered for which no separate price is stated, (ii) partially completed goods delivered or services rendered, (iii) other goods delivered or services rendered that are accepted by DNR, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Agent shall determine the extent of the liability of DNR. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. DNR may withhold from any amounts due CONTRACTOR such sum as the Agent determines to be necessary to protect DNR against potential loss or liability.

The rights and remedies of DNR provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Agent, CONTRACTOR shall:

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
3. Assign to DNR, in the manner, at the times, and to the extent directed by the Agent, all of the rights, title, and interest of CONTRACTOR under the orders and subcontracts so terminated, in which case DNR has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

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4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Agent to the extent Agent may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to DNR and deliver in the manner, at the times, and to the extent directed by the Agent any property which, if the contract had been completed, would have been required to be furnished to DNR;
6. Complete performance of such part of the work as shall not have been terminated by the Agent; and
7. Take such action as may be necessary, or as the Agent may direct, for the protection and preservation of the property related to this contract, which is in the possession of CONTRACTOR and in which DNR has or may acquire an interest.

46. TREATMENT OF ASSETS

1. Title to all property furnished by DNR shall remain in DNR. Title to all property furnished by CONTRACTOR, for the cost of which CONTRACTOR is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in DNR upon delivery of such property by CONTRACTOR. Title to other property, the cost of which is reimbursable to CONTRACTOR under this contract, shall pass to and vest in DNR upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by DNR in whole or in part, whichever first occurs.
2. Any property of DNR furnished to CONTRACTOR shall, unless otherwise provided herein or approved by DNR, be used only for the performance of this contract.
3. CONTRACTOR shall be responsible for any loss or damage to property of DNR that results from the negligence of CONTRACTOR or which results from the failure on the part of CONTRACTOR to maintain and administer that property in accordance with sound management practices.
4. If any DNR property is lost, destroyed or damaged, CONTRACTOR shall immediately notify DNR and shall take all reasonable steps to protect the property from further damage.
5. CONTRACTOR shall surrender to DNR all property of DNR prior to settlement upon completion, termination, or cancellation of this contract.
6. All reference to CONTRACTOR under this clause shall also include CONTRACTOR's employees, agents, and subcontractors.

47. U.S. DEPARTMENT OF TREASURY, OFFICE OF FOREIGN ASSETS CONTROL

DNR complies with U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC) payment rules. OFAC prohibits financial transactions with individuals or organizations, which have been placed on the OFAC Specially Designated Nationals (SDN) and Blocked Persons sanctions list located at [U.S. Treasury Specially Designated Nationals And Blocked Persons List](#). Compliance with OFAC payment rules ensures that DNR does not conduct business with individuals or organizations that have been determined to be supporters of terrorism and international drug dealing or that pose other dangers to the United States.

Prior to making payment to individuals or organizations, DNR will download the current OFAC SDN file and compare it to Agency and statewide vendor files. In the event of a positive match, DNR reserves the right to: (i) make a determination of "reasonability" before taking the positive match to a higher authority, (ii) seek assistance from the Washington State Office of the State Treasurer (OST) for advanced assistance in resolving the positive match, (iii) comply with an OFAC investigation, if required, and/or (iv) if the positive match is substantiated, notify

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CONTRACTOR in writing and terminate the contract according to the Termination for Convenience provision without making payment. DNR will not be liable for any late payment fees or missed discounts that are the result of time required to address the issue of an OFAC match.

48. WAIVER

Waiver of any default or breach shall not be deemed a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this contract unless stated to be such in writing and signed by authorized representative of DNR.

49. WARRANTIES

CONTRACTOR warrants that all deliverables provided under this contract shall be fit for the purpose(s) for which intended, are merchantable, and shall conform to the requirements and specifications herein.

50. WEBS REGISTRATION

CONTRACTOR is required to register itself and require all subcontractors in The Department of Enterprise Services, Washington Electronic Business Solution (WEBS) at [WEBS \(wa.gov\)](https://wa.gov) and ensure that all of its information therein is current and accurate and that, throughout the term of this contract, CONTRACTOR and any subcontractors shall maintain an accurate profile in WEBS.