



## RFP APPENDIX 4

### Standard Portion of Puget Sound Clean Air Agency Contract

7. **Changes.** The Agency may, from time to time, require changes to this contract. Only the Agency's Project Manager shall have the authority to negotiate changes on behalf of the Agency. The parties shall mutually agree to all changes by written amendment to the contract.

8. **Termination.** The Agency may terminate this contract at any time with or without cause by giving a thirty day (30) written notice to the Contractor of such termination and by specifying the effective date of the termination. Upon termination of this contract, the Agency, in addition to any other rights provided in this contract, may require the Contractor to deliver to the Agency any property specifically produced or acquired for the performance of such part of this contract as has been terminated.

The Agency shall pay to the Contractor the amount agreed upon by the Contractor and the Agency for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, and (iii) other property or services which are accepted by the Agency, 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 Contractor such sums as the Agency determines to be necessary to protect the Agency against potential loss or liability.

9. **Agency Access to Data and Records.** (a) The Contractor shall provide the Agency, at no additional charge, access to all data generated under this contract. "Data" includes, but is not limited to, all information that supports the findings, conclusions and recommendations of the Contractor's reports and deliverables, including computer models and the methodology for those models. (b) The Contractor shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. The Contractor shall retain such records for a period of six years following the date of final payment. 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 the Agency, personnel duly authorized by the Agency, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

10. **Right of Inspection.** The Contractor shall provide right of access to its facilities to the Agency, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

11. **Funding Contingency.** 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 completion of the work in this contract, the Agency may at its sole option:

- (a) terminate this contract with 30 (thirty) days advance written notice. If this contract is terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this contract prior to the effective date of termination;
- (b) renegotiate the terms of the contact under new funding limitations and conditions;
- (c) suspend work performed under this contract for a temporary period upon written notification of the suspension and the suspension period; or
- (d) after a review of the status of expenditures and deliverables, extend the end date of this contract and postpone deliverables or portions of deliverables.

The Agency may also suggest such other alternative as the parties mutually agree to in writing.

12. **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 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 Contractor 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, communications, 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 contract, but that incorporate pre-existing materials not produced under the contract, the Contractor 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 Contractor warrants and represents that the Contractor 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 Contractor shall exert all reasonable effort to advise the Agency, 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 which was not produced in the performance of this contract. The Agency shall receive prompt written notice of each notice or claim of copyright infringement received by the Contractor with respect to any data delivered under this contract. The Agency shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

13. **Contractor Not An Employee of the Agency.** The Contractor and the Agency intend that an independent contractor relationship will be created under this contract. The Contractor and its employees or agents are not employees of the Agency and shall not be entitled to compensation or benefits of any kind other than as specifically provided herein. The Contractor will not hold itself 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 Contractor make any claim of right, privilege or benefit which would accrue to an employee under the law. Conduct and control of the work will be solely with the Contractor.

14. **Indemnification.** The Contractor 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 Contractor, its agents, employees or subcontractors, in the execution, performance or failure to adequately perform the Contractor'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.

15. **Subcontracting.** The Contractor shall not enter into subcontracts for any of the services or work contemplated under this contract without obtaining prior written approval of the Project Manager. In no event shall the existence of any subcontract operate to release or reduce the liability of the Contractor to the Agency for any breach in the performance of the Contractor's duties.

16. **Assignment.** The work provided under this contract, 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.

17. **Payroll and Taxes.** The Contractor assumes full and sole responsibility for the payment of all wages, unemployment contributions, payroll taxes, use, sales, income or other form of taxes, fees and licenses.

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

19. **Industrial Insurance Coverage.** The Contractor 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 Contractor 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 Contractor, or any subcontractor or employee of the Contractor, 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 Contractor; the Contractor shall indemnify the Agency and guarantee payment of such amounts.

20. **Other Insurance.**

21. **Waiver.** A failure by either party to exercise its rights under this contract shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this contract. Waiver of any default or breach shall not be deemed to be 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 personnel authorized to bind each of the parties.

22. **Governing Law.** This contract shall be governed by the laws of the state of Washington. The Contractor, by execution of the contract, acknowledges the jurisdiction of the courts of the state of Washington in this matter. The venue of any action brought under this contract shall be the superior Court of King County, Washington.

23. **Certification regarding Debarment.** The Contractor, by signature to this contract, certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from participating in transactions (debarred). The Contractor also agrees to include the above requirements regarding debarment in all subcontracts into which it enters. The Contractor shall immediately notify the Agency if, during the term of this contract, the Contractor becomes debarred. If Contractor becomes debarred during the term of this contract, the Agency may, at its sole option, immediately terminate this contract by providing written notice to the Contractor.

24. **Nondiscrimination.** During the performance of this contract, the Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies. In the event of the Contractor'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 Contractor may be declared ineligible for further contracts with the Agency. The Contractor shall, however, be given a reasonable time in which to remedy this noncompliance.

25. **Title VI.** During the performance of this contract, the Contractor, for itself, its assignees and successors in interest agrees as follows:

1. Compliance with Regulations

The Contractor shall comply with the Regulations relative to non-discrimination in federally assisted programs of United States Department of Transportation (USDOT), Title 49, Code of Federal Regulations, part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. Non-discrimination

The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of sub-contractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Sub-contracts, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiations made by the Contractor for work to be performed under a sub-contract, including procurement of materials or leases of equipment, each potential sub-contractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to non-discrimination on the grounds of race, color, sex, or national origin.

4. Information and Reports

The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Agency or the appropriate federal agency to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Agency, the Washington State Department of Transportation (WSDOT) or the United States Department of Transportation (USDOT) as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Non-compliance

In the event of the Contractor's non-compliance with the non-discrimination provisions of this contract, the Agency shall impose such sanctions as it or the USDOT may determine to be appropriate, including, but not limited to: (a) withholding of payments to the Contractor under the contract until the Contractor complies, and/or (b) cancelling, terminating, or suspending of the contract, in whole or in part.

6. Incorporation of Provisions

The Contractor shall include the provisions of paragraphs (1) through (5) in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any sub-contractor or procurement as the Agency or USDOT may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a sub-contractor or supplier as a result of such direction, the Contractor may request WSDOT enter into such litigation to protect the interests of the state and, in addition, the Contractor may request the USDOT enter into such litigation to protect the interests of the United States.

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

27. **Third Party Beneficiary.** The State of Washington is named as an express third party beneficiary of this contract with full rights as such.

28. **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.

29. **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.

30. **Content and Understanding.** This contract contains a complete and integrated understanding and contract between the parties. No other statements or representations, written or oral, shall be deemed a part hereof.