



State of Washington  
DEPARTMENT OF GENERAL ADMINISTRATION  
Office of State Procurement  
210 11th Avenue SW, Rm. 201, • Olympia, Washington 98504-1017 • (360) 902-7400  
<http://www.ga.wa.gov>

Invitation for Bid (IFB) # 01910

**The State of Washington on behalf of  
The Western States Contracting Alliance (WSCA)  
A Multi-State Contract for:  
Breast Pumps and Related Accessories**

Solicitation Number  
**01910**

Pre-bid Conference Date & Time  
**10/20/2010 1:00 PM PDT**

Bid Due Date & Time  
**11/2/2010 2:00 PM PDT**

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To request this information in alternative formats call (360) 902-7400, or TDD (360) 664-3799.  
<http://www.ga.wa.gov/webs/>

**Bids must be received & stamped on or before the Proposal due date and time at this location:**

210 11th Avenue SW, Rm. 201  
General Administration Building  
Olympia WA 98504-1017

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# **1 SUMMARY OF OPPORTUNITY**

## **1.1 PURPOSE**

The purpose of this Solicitation is to establish a replacement Contract(s) for the purchase of Manual & Electric Breast Pumps and related accessories for the Western States Contracting Alliance (WSCA), the State of Washington, and other Participating Entities. The awarded Contract(s) will replace *Contract #10305 Breast Pumps, WSCA/WIC Programs* due to expire on January 17, 2011.

Purchases will be made by authorized, participating members of the Western State Contracting Alliance (WSCA) and their Women, Infants and Children (WIC) programs and other Participating Entities.

## **1.2 CONTRACT SCOPE**

See [Section 1.1](#) of the Model Contract.

## **1.3 PARTICIPATING ENTITIES**

See [Section 1.4](#) of the Model Contract.

## **1.4 ESTIMATED USAGE**

See [Section 1.5](#) of the Model Contract.

## **1.5 CONTRACT TERM**

See [Section 1.6](#) of the Model Contract.

## **1.6 EXPECTED RESULT**

The State of Washington seeks to establish a multi-state Contract(s) for the as-needed purchase of Breast Pumps and related accessories for use by Participating Entities.

## **1.7 AWARD**

On behalf of WSCA, the State intends to award one or more contracts as a result of this solicitation. Award shall be made to the responsive, responsible Bidder(s) receiving the highest evaluation point totals, in accordance with the evaluation criteria set forth in [Section 6](#) *Submittal, Evaluation, and Contract Award*.

Participating Entities may form contracts with any of awarded contractors in conformity with their respective state laws through the execution of a Participating Addendum.

The State reserves the right to contract with any of the Bidders to support the maintenance of existing equipment in use at WIC offices statewide.

## 2 SOLICITATION OVERVIEW

### 2.1 ACQUISITION AUTHORITY

The Washington State Department of General Administration (GA), Office of State Procurement (OSP) issues this Solicitation acting under the authority of its enabling legislation Revised Code of Washington (RCW) [43.19](#) which establishes GA and regulates the manner in which state agencies may acquire general goods and services.

### 2.2 STANDARD DEFINITIONS

See section [Appendix C Standard Definitions](#)

### 2.3 SOLICITATION AND CONTRACT FORMATION

The Bidder by submitting a Bid is making a written firm offer that if awarded by OSP during the allowed time period commits the Proposer, by Contract, to provide materials, supplies, services, and/or equipment in response to this Solicitation.

The terms and conditions of the awarded Contract comprise many documents that are incorporated by reference.

A Model Contract is included in Appendix B. In many instances, the solicitation document references and links to the Model Contract as opposed to duplicating language. This was done to protect against the possibility of language inconsistencies. In addition to the Bidder's Authorized Offer, Proposers must also sign and return the Contract document with their Response, without modification or contingency. Any modifications or contingencies submitted by the Proposer will not be accepted.

For any Solicitation or category within a Solicitation, OSP reserves the right to award by line item, group, aggregately, or all or nothing. For any Solicitation or category within a Solicitation, OSP also reserves the right to make single or multiple awards that may or may not provide the same materials, supplies, services, and/or equipment through the awarded Bidder(s).

The apparent successful Bid(s) is the basis for the Contract(s). Should the State of Washington accept and award the Bid, in part or in full, during the firm offer period, a Contract is formed. It becomes binding only when accepted and subsequently awarded by the State of Washington in writing and by signature.

The State, at its sole discretion, reserves the right to negotiate improvements to the Responsive, Responsible Bidder whose Response received the highest number of points, in accordance with RCW 43.19.1911 (6).

Before accepting and awarding the Bidder's firm offer, OSP may edit the Model Contract and other documents to include but not limited to specific details such as; administrative changes, the Bidders name, and information, etc. from the apparent successful Bid. The edited Contract will be presented to the Apparent Successful Bidder for signature.

The Apparent Successful Bidder is expected to sign the edited Contract or documents within ten (10) business days of its receipt. If the apparent successful Bidder fails to sign the edited Contract within the allotted ten (10) business day time frame, OSP may:

- Enforce the Contract in its initial unedited Model Contract form.
- Consider the successful Bidder to be non-responsive for failure to sign the edited Contract. In this case, the apparent successful Bidder may not Bid on the same commodity or service if the Solicitation is subsequently reissued by the OSP.
- Award the Contract to the next ranked Bidder(s) in succession,
- Cancel the Solicitation, or
- Cancel and reissue this Solicitation.

#### **2.4 NO BEST AND FINAL OFFER**

The OSP reserves the right to make an award without further discussion of the Response submitted; *i.e.*, there will be no best and final offer request, except possibly as a tie breaker. Therefore, the Response should be submitted on the most favorable terms that Bidder intends to offer.

#### **2.5 SOLICITATION AMENDMENTS**

Prior to submittal due date and time, OSP reserves the right to change portions of this IFB. Any changes or corrections will be by one or more written amendment(s), dated, attached to or incorporated in and made a part of this solicitation document.

All changes must be authorized and issued in writing by the Procurement Coordinator. If there is any conflict between amendments, or between an amendment and the IFB, whichever document was issued last in time shall be controlling.

Only Bidders who have properly registered and downloaded the original solicitation directly via WEBS system will receive notification of amendments and other correspondence pertinent to the procurement. Bidders may be required to sign and return Amendments as a Submittal with their Bid. Bidders must carefully read each Amendment to ensure they have met all Submittal requirements of the Solicitation.

#### **2.6 INCORPORATION OF DOCUMENTS INTO CONTRACT**

It is imperative that the Bidder read, understand, and accept all parts of the Solicitation that includes any and all appendices, embedded files, and amending documents, as they become part of the Contract upon award. It is the Bidder's responsibility to read both the Solicitation and the Model Contract in their entirety.

The WSCA Standard Terms and Conditions are attached as [Appendix D](#) and incorporated by this reference. In the event of any inconsistencies, the State of Washington's terms and conditions shall take precedence.

Participating Entities may utilize the resulting Contract(s) by signing a Participating Addendum with the awarded Bidder(s). A Participating Addendum:

- Must be executed by any Participating Entity that decides to adopt a WSCA contract.
- Shall be executed for each contractor by the Participating Entity desiring to use their contract.
- Allows for each Participating Entity to add terms and conditions that may be unique to their State.

The Participating Entity and the Contractor shall negotiate and agree upon any additional terms and conditions prior to the signing and execution of the Participating Addendum. Participating Entities are not mandated to sign a Participating Addendum with all awarded vendors. Additional Participating Entities may be added with the consent of the contractor and the Lead State (on behalf of WSCA) through execution of Participating Addendums.

## **2.7 RIGHT TO CANCEL**

The OSP reserves the right to cancel or reissue all or part of this Solicitation at any time as allowed by law without obligation or liability.

## **2.8 MINORITY AND WOMEN OWNED BUSINESS ENTERPRISES (MWBE)**

In accordance with the legislative findings and policies set forth in [RCW 39.19](#), the State encourages participation in all of its Contracts by Minority and Woman Owned Business Enterprise (MWBE) firms either self-identified or certified by the Office of Minority and Women's Business Enterprises (OMWBE). While the state does not give preferential treatment, it does seek equitable representation from the minority and women's business community.

Participation may be either on a direct basis in response to this Solicitation or as a Subcontractor to a Contractor. However, unless required by federal statutes, regulations, grants, or Contract terms referenced in the original Solicitation, no preference will be included in the evaluation of Bids and Proposals, no minimum level of MWBE participation shall be required as condition for receiving an award, and Bids and Proposals will not be evaluated, rejected or considered non-responsive on that basis.

Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the original Solicitation will apply. Bidders may contact Office of Minority and Woman Owned Business Enterprise (OMWBE) to obtain information on certified firms for potential sub-contracting arrangements.

Nothing in this section is intended to prevent or discourage Bidders from inviting others from participation from non MWBE firms as well as MWBE firms.

Bidders who are MWBE or intend to use MWBE Subcontractors are encouraged to identify the participating firm on the Bidder Profile Submittal located in [Section 6.2.4](#) of the Solicitation. *See also Section 6.5 MINORITY AND WOMEN'S BUSINESS ENTERPRISE (MWBE) PARTICIPATION of the Model Contract*

### 3 TIMELINE

#### 3.1 PROCUREMENT SCHEDULE

The dates listed below represent the projected procurement schedule. OSP reserves the right to change the schedule. Notification of amendments to the procurement schedule prior to Bid opening will be sent electronically to all properly registered users of the WEBS.

Changes to the Procurement Schedule after Bid Opening will be communicated only to Bidders that submitted a Bid.

#### Projected Schedule of Events

Date	Time	Event
October 1, 2010		Issue Solicitation document (Available for download from <a href="http://www.ga.wa.gov/webs">www.ga.wa.gov/webs</a> )
October 20 through November 1, 2010		Question and Answer Period
October 20, 2010	1:00 PM PDT	Optional Pre-Bid Conference (see Section 3.2 below for location/directions, etc.)
October 21, 2010 until Deadline for Bid Submittals		Amendment issued, if applicable (Bidders should begin checking the website for any amendments)
<b>November 2, 2010</b>	<b>2:00 PM PDT</b>	<b>Bid Submittals Due. Bid Submittals received after 2:00 PM PDT (using official bid clock) will be rejected.</b>
December 3, 2010		Notice of Intent to Award
December 10, 2010		Anticipated Award Date

NOTE: Bid information, including price sheets, will not be available for public disclosure until after award of the contract consistent with [RCW 43.19.1911\(8\)](#). At bid due date and time, only the name of the Bidder and time of Bid receipt will be read aloud. After award, information regarding results of the solicitation may be obtained by contacting the Procurement Coordinator.

### 3.2 PRE-BID CONFERENCE

An optional Pre-Bid Conference to address solicitation requirements will be held at the time and location indicated below. While attendance is not mandatory, Vendors are encouraged to attend and actively participate. If interpretations, specifications, or other changes to the solicitation are required as a result of the Pre-Bid Conference, the Procurement Coordinator will make amendments to the solicitation and provide those amendments by posting them on WEBS at [www.ga.wa.gov/webs](http://www.ga.wa.gov/webs).

Assistance for persons with disabilities who wish to attend is available by prior arrangement with the Office of State Procurement (OSP). Contact the Procurement Coordinator identified on the face page of this Solicitation.

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**Pre Bid Date:** October 20, 2010

**Pre Bid Time:** 1:00 PM PDT

**Pre Bid Location:** General Administration Building  
210 11th Avenue SW, Rm. 201  
Olympia WA 98504-1017

For a site map to the Capitol Campus, click <http://www.ga.wa.gov/images/Campus-Map.pdf>

Driving directions and parking information  
<http://www.ga.wa.gov/campus/parking.htm>

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### 3.3 SOLICITATION OPENING PROTOCOL

Only the name of the Bidder and the time of receipt are read aloud at the time of the Bid/Proposal opening. The reading does not determine any award, responsibility of the Bidder, or responsiveness of the Bid. Bidder attendance at the Bid opening is not required.

### 3.4 CONTRACT INFORMATION AVAILABILITY AFTER AWARD

Upon award, written notification will be sent to all Bidders. After award, information regarding results of the solicitation may be obtained by contacting the Procurement Coordinator.

Bidders may submit a public disclosure request to either schedule an appointment to review the procurement file or obtain specific documents.

### 3.5 PROTEST PROCEDURES

Protests shall be filed and resolved in accordance with [Appendix A Protest Procedure](#).

## 4 INSTRUCTIONS TO BIDDERS

This section contains instructions to Bidders regarding the preparation and submission of a Bid.

### 4.1 AUTHORIZED COMMUNICATION

Upon release of this IFB, all Bidder communications concerning this solicitation must be directed to the Procurement Coordinator listed below. Unauthorized contact regarding this solicitation with other state employees involved with the solicitation may result in disqualification. All oral communications will be considered unofficial and non-binding on the State. Bidders should rely only on written statements issued by the Procurement Coordinator.

<b>Procurement Coordinator:</b>	Melissa Cox
<b>Agency Name:</b>	Department of General Administration Office of State Procurement (OSP)
<b>Agency Address:</b>	Department of General Administration 210 11th Avenue SW, Room 201 P. O. Box 41017 Olympia, Washington 98504-1017
<b>E-mail:</b>	<a href="mailto:melissa.cox@ga.wa.gov">melissa.cox@ga.wa.gov</a>
<b>Telephone:</b>	360.902.7439
<b>Fax:</b>	360.586.2426

### 4.2 BIDDER COMMUNICATION RESPONSIBILITIES

Bidders will be responsible for communicating to the Procurement Coordinator any issues, exceptions, additions or omissions concerning the solicitation on or before the Bid due date and time. Where requirements appear to prohibit or restrict your firm's participation, an explanation of the issue with suggested alternative language must be submitted in writing to the Procurement Coordinator by the deadline for Bidder Questions, Comments, and Complaints consistent with section [3.1 Procurement Schedule](#). The solicitation process may continue. If changes result, written amendments will be made by the Procurement Coordinator and provided by posting them on WEBS as indicated above.

#### 4.3 BIDDER AUTHORIZED REPRESENTATIVE

Bidder must designate an Authorized Representative who will be the principal point of contact for the OSP Contract Administrator for the duration of this IFB process. The Bidder may record the name of the representative in the Bidder Profile form provided in the Submittal, Evaluation, and Award Section.

#### 4.4 WASHINGTON ELECTRONIC BUSINESS SOLUTION (WEBS)

Bidders are solely responsible for:

1. Properly registering with the Department of General Administration's WEBS at <http://www.ga.wa.gov/webs> .
2. Maintaining an accurate Vendor profile in WEBS
3. Downloading the solicitation consisting of the IFB with all attachments and exhibits related to the solicitation for which you are interested in bidding; downloading all current and subsequent amendments to the solicitation

To ensure receipt of all solicitation documents, the IFB for this solicitation must be downloaded from WEBS. Notification of amendments to the solicitation will only be provided to those Vendors who have registered with WEBS and have downloaded the IFB from WEBS. Failure to do so may result in a potential Bidder having incomplete, inaccurate, or otherwise inadequate information, or a Bidder submitting an incomplete, inaccurate, or otherwise inadequate Bid or Proposal. Bidders and potential bidders accept full responsibility and liability for failing to receive any amendments resulting from their failure to register with WEBS and download the IFB from WEBS, and hold the State of Washington harmless from all claims of injury or loss resulting from such failure.

#### 4.5 PREPARATION OF BID OR PROPOSAL

Original, signed (in ink), sealed Response must be received at the specified location on or before the specified date and time. Time of receipt will be determined by the official time stamp located at the Purchasing Activity. If a Response is late or received at a location other than that specified, it shall be rejected and returned unopened. In the event the official time clock is unavailable, the Bid clerk may establish the official time and take reasonable steps to ensure the integrity of the Response receipt is preserved.

A. FORMAT:

**In addition to a hard copy submittal, Bidder will also be required to submit an electronic copy.** In the event that the hard copy of the price worksheets and an electronic copy of the price worksheets do not agree, the electronic copy will prevail. Hard copy Responses must be legible and completed in ink or with electronic printer or other similar office equipment, and properly signed by an authorized representative of the Bidder. Electronic Responses must be submitted in the identical format contained in the Solicitation (for example MS Word, MS Excel but not PDF). All changes and/or erasures shall be initialed in ink. Unsigned

Responses will be rejected on opening unless satisfactory evidence was submitted clearly establishing the Bidder's desire and intent to be bound by the Response, such as a signed cover letter. Incomplete or illegible Responses may be rejected.

**Note:** In a joint effort to save costs, reduce waste and produce energy savings, Bidders are encouraged to use double-sided printing and recyclable materials. Bidders are highly encouraged to refrain from submitting Responses in 3-ring binders, spiral bindings, and/or other non-recyclable presentation folders.

**B. IDENTIFICATION AND DELIVERY:**

To facilitate proper delivery and processing, Responses must be delivered in sealed envelopes, boxes or other method of containment. Sealed Responses are to be clearly identified on the outside of the package with the following information to the Purchasing Activity at the address below:

Bidder's Address	OFFICE OF STATE PROCUREMENT 210 11th Avenue SW, Rm. 201 Olympia WA 98504-1017
Solicitation Number	Attn: Melissa Cox, Contracts Specialist
Opening date and time	

**4.6 BIDDER RESPONSIVENESS**

Bidder must respond to each question/requirement contained in this IFB. Failure to comply with any applicable item may result in the Response being deemed non-responsive and disqualified.

The State reserves the right to consider the actual level of Bidder's compliance with the requirements specified in this solicitation and to waive informalities in a Bid Submittal. An informality is defined as an immaterial variation from the exact requirements of the competitive solicitation, having no effect or merely a minor or negligible effect on quality, quantity, or delivery of the supplies or performance of the services being procured, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to bidders.

**4.7 WITHDRAWAL OR MODIFICATION OF BID OR PROPOSAL**

Bidders are liable for all errors or omissions contained in their Responses.

- a. **After Response submittal but prior to Bid/Proposal opening:** The Bidder may modify or withdraw his/her Response at any time prior to the due date and time set for Bid/Proposal opening by providing a written request to the Contracts Specialist from an authorized representative of the Bidder.
- b. **After Bid/Proposal opening:** No Response shall be altered or amended. The Contracts Specialist may allow a Response to be withdrawn if the Bidder demonstrates that the prices were miscalculated. A low Bidder, who claims error and fails to enter into a contract with the State of Washington, may not participate

in Bidding on the same commodity or service if the Solicitation is subsequently reissued by the Purchasing Activity.

The Purchasing Activity reserves the right to contact Bidder for clarification of Response contents.

#### **4.8 PROPRIETARY OR CONFIDENTIAL INFORMATION**

All Bids and Proposals submitted become the property of the State of Washington and a matter of public record, after the contract has been executed.

Any information contained in the Response that is proprietary or confidential must be clearly designated. Marking of the entire Response or entire sections of the Response as proprietary or confidential will not be accepted nor honored. The OSP will not honor designations by the Bidder where pricing is marked proprietary or confidential. *See also Section 8.4 PROPRIETARY OR CONFIDENTIAL INFORMATION* of the Model Contract.

### **5 PRICING (COST FACTORS)**

#### **5.1 OVERVIEW**

The purpose of this section is to address *some* matters that may impact the Bidder's pricing offered in the Bid.

The Solicitation is designed to have the Bidder weigh all cost factors and risk factors and roll them into the unit pricing submitted in the Price Sheet Submittal Section [6.2.14](#). The State makes no volume commitment in this Solicitation.

#### **5.2 PRICING**

All pricing shall include the costs of Bid preparation, servicing of accounts, and compliance with all contractual requirements. During the Contract period, pricing shall remain fixed for the period of time indicated in the [Model Contract Submittal](#).

#### **5.3 PRICE SHEET AND PROMPT PAYMENT DISCOUNT**

Bidder must complete the Price Sheet Submittal located as an imbedded file in [Section 6.2.12](#).

If applicable, Bidders shall extend unit pricing as required in the Price Sheet Submittal. In the event of an error in the extension of prices, the unit price shall prevail.

Payment terms, if any, may be recorded on the *Price Sheet Submittal* located in [Section 6.2.12](#) as an embedded file. Bidders are encouraged to propose prompt payment discounts that are 30 days or less. However, only prompt payment discounts that are 30 days or greater will receive consideration in the pricing evaluation. The Bidder must specify on the *Price Sheet Submittal* if Purchase Cards (P-Cards) will be accepted as a method of payment. P-Cards, if offered, shall apply to the Prompt Payment discount.

#### 5.4 ESTIMATE OF QUANTITY AND DESTINATION

Estimates of quantities and delivery destinations are available in [Section 6.2.12 Price Sheet Submittal](#).

#### 5.5 PRICE ADJUSTMENTS

Refer to [Appendix B-The Model Contract](#) for details regarding price adjustments.

#### 5.6 PRICING NOT SPECIFIED

Where there is no charge or rate specified for mandatory line items on the Price Sheet Submittal, Bidder must enter N/C (no charge) or 0 (zero), as applicable. If Bidder fails to provide a price, The State will assume and the Bidder agrees the item is free for the life of the Contract.

#### 5.7 SALES TAX

Pricing specified in the *Price Sheet Submittal* is before tax. **Do not roll tax into the unit price.**

#### 5.8 SHIPPING TERMS

Reference the [Shipping and Risk of Loss Section](#) of the Model Contract.

#### 5.9 CONTRACT ADMINISTRATOR FEE

The Contract(s) will be subject to a WSCA Administration Fee. Bidder(s) will include this fee in its Bid pricing and not as a separate line item to Participating Entities. The Contractor(s) will collect the fees and distribute the fees to WSCA as outlined below:

##### WSCA Administration Fee

The WSCA Administration Fee will be one half of one percent (0.5%) on all purchases made under authority of the Contract. Purchases are defined as total invoice price less sales tax. No taxes will be assessed against the WSCA Administration Fee.

The WSCA Administrative fee shall be paid within thirty (30) days after the end of the calendar quarter. Contractor shall indicate the Contract Number #01910 and include with the remittance, a quarterly sales report by WSCA contract participant. The administrative fee shall be paid to:

WSCA/NASPO  
NASPO PROGRAM MANAGER  
201 EAST MAIN STREET, SUITE 1450  
LEXINGTON, KY 40507

In addition to the WSCA Administration Fee as stated above, some Participating Entities may also require an administrative fee, and will be incorporated into the Participating Entity's Participating Addendum. Participating Entity Administrative Fees may be added to the price of each item.

## **5.10 PRICES IN USA DOLLARS AND EXCHANGE RATES**

The prices recorded in U.S. dollars are fixed regardless of market or international exchange rate changes. The State does not consider changes in the international exchange rate in favor of the State as sufficient justification to adjust pricing after Contract award.

## **5.11 RECIPROCITY PENALTY**

Pursuant to [RCW 43.19.700](#), [RCW 43.19.702](#), [RCW 43.19.704](#) and [WAC 236-48-085](#), the State has established a schedule of percentage increases to be added to Bids from Bidders in states that grant a preference to Bidders located in their state or for goods manufactured in their state. The percentages related to each respective state are provided in the Reciprocity List located at <http://www.ga.wa.gov/pca/recip.htm> and apply only to Bids received from those states listed. In determining whether to assess a percentage increase against a Bidder, and the amount of that increase, the purchasing activity will consider only the business address from which the Bid was submitted.

The appropriate percentage will be added to each Bid 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 analysis and award purposes. In no instances shall the increase be paid to a Bidder whose Bid is accepted and who is awarded a Contract.

## **6 SUBMITTAL, EVALUATION, AND CONTRACT AWARD**

### **6.1 BID OVERVIEW**

The Bid must be signed, sealed, delivered before the deadline, and in the format required. Refer to [Section 4.5 Preparation of Bids or Proposals](#) for expanded details.

At a minimum, the State must have a complete Bid that meets all material legal requirements and that can be evaluated in conformity with the evaluation methodology.

No rejection notice will be sent to unsuccessful Bidders. Bidders whose solicitations are determined to be non-responsive/responsible will be rejected and will be notified of the reasons for such rejection.

Subject to the provisions of [RCW 43.19.1911](#) and [Chapter 236-48 WAC](#), the State reserves the right to: (1) Waive any informality or administrative concern; (2) Reject any or all solicitations, or portions thereof; (3) Accept any portion of the solicitation unless the Bidder stipulates all or nothing in their solicitation; (4) Cancel a solicitation and re-solicit solicitation; (5) Negotiate with the lowest Responsive and Responsible Bidder to determine if the solicitation can be improved for the Purchasers; (6) Award on an all or none consolidated basis taking into consideration "lifecycle costs"; and (7)

Award in aggregate, by groups, line item, or all or nothing when in the best interest of the state.

## **6.2 SUBMITTALS**

A checklist is provided in the Matrix Summary section below. It is provided as a courtesy only and does not supersede any requirement contained in other parts of the Solicitation.

This Solicitation requires the Bidder to provide Submittals as part of the bid response. As the Submittals are integral to the Bid, a late Submittal, or one received at a location other than that specified shall be rejected, rendering the Bid non-responsive.

The evaluation of some Submittals within your Bid will be pass/fail while others will be scored. Each Submittal has a responsiveness component and a responsibility component. The failure to submit the Submittal(s) may cause your Bid to be rejected for lack of responsiveness. Failure to meet the material requirements of the Submittal may cause your Bid to be rejected for lack of responsibility. It is important that you submit all Submittals in the form requested by the Solicitation or Amendment.

Submittals will be one of two types, self-authored or on a form provided by the State within the Solicitation document in MS Word, MS Excel, or Adobe PDF that can be printed for your use. Bidder may need the latest MS Office software to open the file.

Please identify all pages of your Submittal, including supplemental material with your company name or some other easily identifiable mark or initials.

### **6.2.1 SOLICITATION SUBMITTAL**

Bidders must print and return this Solicitation document in its entirety. Subject to [WAC 236-48-071](#), this includes a signed BIDDER'S AUTHORIZED FIRM OFFER - Certifications and Assurances located at the end of Section 7 below. The State prefers blue ink when signing this document.

### **6.2.2 AMENDMENT(S) SUBMITTAL**

Bidders must print and return any required Solicitation Amendments that are posted after the release of the Solicitation. Subject to [WAC 236-48-071](#), the Amendment will include any signature pages, forms intended by the State, or other instructions to be completed by the Bidder as a Submittal. Any Amendment is provided to your company via WEBS and may or may not require its return as a Submittal. When in doubt, sign and include with your Bid Response. Bidder must also review and comply with the instructions detailed within any Solicitation Amendment.

### **6.2.3 MODEL CONTRACT**

Bidders must print, sign, and return the Model Contract document attached as Appendix B. Legible completion by hand is acceptable.

#### 6.2.4 BIDDER PROFILE

The Bidder Profile Form Submittal must be completed and returned with the Bid. The form is provided as an imbedded file below.

This Submittal is NOT scored. Failure to include this Submittal as part of your Bid will not disqualify the Bid. However, should the State request the Submittal as part of a responsibility analysis or if your company is named an apparent successful Bidder, no award will be made and your company may be disqualified unless your company provides the completed document within ten (10) days of the state's request.



#### 6.2.5 DEALER AUTHORIZATION

The Bidder, if other than the manufacturer, shall provide a current, dated, and signed authorization from the manufacturer stating that the Bidder is an authorized distributor, dealer or service representative and is authorized to sell the manufacturer's products to all US States and Territories of the United States. Failure to comply with this requirement may result in Bid rejection. See [Section 4.3 DEALER AUTHORIZATION](#) of the Model Contract.

Bidder must maintain its reseller status for the term and any renewals of the resulting Contract.

#### 6.2.6 COMPANY EXPERIENCE/CAPACITY

No form is provided for this Submittal. Bidder must describe their company's experience with the manufacturing and/or distribution of Manual and Electric Breast Pumps, Double Pumping Kits, and Related Accessories to governmental entities of similar size and scope to this Solicitation. Length of Company Experience Submittal shall be no more than **two (2) pages** in length. While the State is not limited in what it can consider, the primary focus is detailed below:

- Describe your company's 2009 gross sales for the United States, the number of state and local governments your company serves, experience with the design, manufacture, marketing, and distribution of Manual and Electric Breast Pumps, Double Pumping Kits, and related accessories, and provide details on your company's capacity to support a contract of this size and scope.
- Describe any changes that your company will need to implement in order to meet the state's requirements if awarded the Contract, to include expansion of manufacturing/warehousing capacity and hiring of additional personnel.

- If proposing subcontractors as part of your response, please describe the scope and percentage of work that will be performed by subcontractors in fulfillment of this multi-state Contract. Describe your relationship with the proposed subcontractors, i.e., strength and length of the relationship and contingencies to maintain uninterrupted service should the relationship fail.

#### **6.2.7 CONTRACT IMPLEMENTATION PLAN**

No form is provided for this Submittal. Bidder must fully describe a proposed implementation and contract transition plan to include: product training; staffing; product distribution; timelines; and dates relative to tentative contract startup. Length of Contract Implementation Plan Submittal must be no longer than **one (1) page**.

#### **6.2.8 CUSTOMER SERVICE**

No form is provided for this Submittal. Length of Customer Service Submittal must be no longer than **one (1) page**. Bidder must provide a detailed description of their customer service strategy to support this Contract, to include:

- Description of telephone support (to include a toll free number)
- Hours of availability
- Types of services available
- Number of inside/outside sales reps per each WSCA state that will support the contract
- Number of employees who will be dedicated to the service of this contract to ensure that each WSCA state's needs are met
- Standard response time for customer inquiries

#### **6.2.9 VALUE-ADDED SERVICE PROPOSAL**

No form is provided for this Submittal. Length of Value-Added Service Proposal must be no longer than **one (1) page**. Bidder must describe any services that may add more value to this acquisition such as reconditioned product offerings or trade-in programs. If offering additional services/products, please be specific with regards to pricing, warranty options, or program details.

#### **6.2.10 REFERENCES SUBMITTAL**

No form is provided for this Submittal. Bidder must provide a minimum of **five (5)** references with their Bid Submittal. Reference information should include company, address, phone number, and point of contract. Do not use Participating State Entities as references for this Solicitation.

NOTE: The five customer references are for evaluation purposes. Washington law allows the State to demand additional references and other information as part of a responsibility analysis during or after Bid evaluation. If the State determines that

additional references are needed, the Bidder must return them within ten (10) days of the State's request or face disqualification (the State reserves the right to extend the time).

#### 6.2.11 TECHNICAL SPECIFICATIONS AND REQUIREMENTS

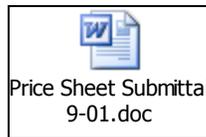
Bidders must print and return the completed Technical Specification and any additional documents or materials described within the Technical Specification. The corresponding Technical Specification Submittal form is provided as an embedded file immediately below.



#### 6.2.12 PRICE SHEET SUBMITTAL

Also refer to Section 5 Pricing (Cost Factors) above for other pricing considerations.

Bidders must print, complete, and return the completed Price Sheet as part of their Bid Submittal. The Bidder should also complete any prompt payment and credit card acceptance information in the space provided on the Price Sheet Submittal.



Scoring: To determine the lowest price evaluation cost, the Procurement Coordinator will apply any preferences or penalties to the Bidder's Price Sheet Submittal. The Procurement Coordinator will use the revised total to determine the lowest evaluated pricing and corresponding score for pricing submitted in Section One of the Price Sheet Submittal. Pricing submitted in *Section Two Optional Pricing Submittal* will not be used as part of the cost evaluation. The Bidder with the lowest total evaluation price will receive 65 points. Those Bids with a higher evaluation price will receive a proportionately fewer number of evaluation points based upon the lowest Bid, using the following formula:

- Lowest total Bid evaluation cost divided by a higher total Bid evaluation cost (Bid that is being evaluated) multiplied by number of available points equals the cost factor evaluation points. Points will be rounded to three places to the right of the decimal point using standard rounding method.
- Sample Calculation using Bidder A = \$100,000 and Bidder B = \$110,000

- $\$100,000 / \$110,000 = 0.909 \times 65$  (max points available) = 59.091 (rounded to three places to the right of the decimal point using standard rounding).
- Bidder A is the lowest total Bid evaluation cost, so it would be assigned the 65 points. Bidder B would be assigned 59.091 points based on the formula above.

### 6.2.13 MATRIX SUMMARY

<ul style="list-style-type: none"> <li>• Complete and return each Submittal <u>in its entirety</u> and any other information, document or form required by and as instructed by the Submittal.</li> <li>• When a signature line is provided, sign/date in ink (preferably in blue ink).</li> <li>• <u>Your Bid to the State</u>: Provide a COMPLETED and SIGNED hard copy and an identical scanned electronic Adobe PDF copy of the COMPLETED and SIGNED hard copy on CD.</li> </ul>			
NAME OF SUBMITTAL	Page Limit	Form Provided OR Self Authored	CHECKLIST
<b>Solicitation (S) (provide full copy):</b> <i>Also Sign / Date</i> <ul style="list-style-type: none"> <li>• <a href="#">Bidder's Authorized Offer</a> – located at the end of the solicitation document</li> </ul>	n/a	Form Provided	
<b>Amendment(s):</b> <i>Complete Information as instructed and sign/date (If applicable)</i>	n/a	Form Provided	
<b>Model Contract (provide full copy):</b> <ul style="list-style-type: none"> <li>• <a href="#">Signatures – Sec. 12.7</a></li> </ul>	n/a	Form Provided	
<a href="#">Bidder Profile</a>	n/a	Form Provided	
<a href="#">Dealer Authorization</a>	n/a	Self Authored	
<a href="#">Company Experience/Capacity</a>	2 Pages	Self Authored	
<a href="#">Contract Implementation Plan</a>	1 Page	Self Authored	
<a href="#">Customer Service</a>	1 Page	Self Authored	
<a href="#">Value-Added Service Proposal</a>	1 Page	Self Authored	
<b>References:</b> Five (5) References required	n/a	Self Authored	
<a href="#">Technical Specifications and Requirements:</a>	n/a	Form Provided	
<b>Price Sheet Submittal:</b> All Bidders must complete Section One. Completion of Section Two is optional.	n/a	Form Provided	

### **6.3 PASS/FAIL SUBMITTALS EVALUATION**

The State will perform the pass/fail Submittal evaluation. If a Pass/Fail Submittal is determined to be a Fail, the Bid is disqualified.

All Submittals, whether they are scored using points, price sheets or non-point pass/fail scored, have a pass/fail component. The State seeks competition to the fullest extent *reasonable* and reserves the right and has the discretion to avoid non-material rejection if it is practical; however, rejection avoidance efforts are not required.

The failure by the Bidder to provide required Submittal(s) may cause your Bid to be rejected as non-responsive or non-responsible. Failure to meet the material requirements of the Submittal may cause your Bid to be rejected for lack of responsibility. It is important that you submit all Submittals in the form requested and complete the Submittals as instructed by the Solicitation or Amendment.

### **6.4 NON-COSTS SUBMITTALS (POINT SCORED) EVALUATION**

The State may assemble and preside over an evaluation committee. The evaluation committee will be responsible for reviewing and scoring *applicable* non-cost Submittals. If identified in the Allocation of Points below, some Submittals *may* have a minimum point threshold. Failure to achieve the minimum points in any non-cost Submittal as stated will lead to a Bid rejection.

If deemed necessary by the State, committee members may be substituted and/or the evaluation committee may be disbanded and reconstituted.

In addition to presiding over the evaluation committee, the State may review the non-cost Submittals, provide input, assemble evaluation aids, or perform other functions helpful to the evaluation committee. The committee may engage in a free flow of discussion with other committee members and the Administrator prior to, during, and after the evaluation.

The scoring of Submittals may be performed in isolation, together as a group, or a combination of both. Each committee member will give a particular Submittal a score. All of the committee members' scores for that Submittal will be added together and then divided by the number of members to arrive at a total score for the Submittal. If a minimum total score is required but is not achieved, the Bid is disqualified. This process will repeat for the other point scored non-cost Submittals.

When all Submittals have been scored, these scores will be added together to form a total score for all of the non-costs Submittals.

### **6.5 ALLOCATION OF POINTS**

The Non-Cost Submittals will be totaled to arrive at a total score in conformity with Section 6.4 above. This non-cost Submittal score will be added to the price sheet score to form an evaluation total score. The relative importance for each section is as follows:

<b>SUBMITTAL NAME</b> Subject to WAC 236-48-071	SCORING:	Bidder 1	Bidder 2	Bidder 3
<b>PASS / FAIL SUBMITTALS:</b>				
<b>Solicitation (full copy):</b> <i>Also Sign / Date</i> <a href="#">Bidder's Authorized Offer</a>	Pass / Fail			
<b>Amendments (if any):</b> Refer to and comply with any additional instructions as required in the amendment.	Pass / Fail			
<b>Model Contract (full copy):</b> <i>Also Complete</i> <a href="#">Signature Page – Sec. 12.7</a>	Pass / Fail			
<b>Bidder Profile</b>	Required Prior to Award			
<b>Dealer Authorization</b>	Pass/Fail			
<b>References</b>	Pass/Fail			
<b>Technical Specifications:</b> <i>Did the Bidder fulfill all the requirements of the Technical Specification</i>	Pass / Fail			
Bidder moves forward? Yes or No				
<b>NON-COST SUBMITTALS (Point Scored)</b>				
Company Experience	10 max			
Customer Service	10 max			
Contract Implementation	5 max			
Value- Added Service Proposal	10 max			
Non-Cost Points Total:	<b>35 max</b>			
<b>PRICE SHEET SCORED SUBMITTAL</b>				
Price Sheet Total: (determined by formula)	<b>65 max</b>			
Points Scored Non-Cost Total:	<b>35 max</b>			
<b>EVALUATION TOTAL:</b>	<b>100 max</b>			

## **6.6 EQUIPMENT/PRODUCT DEMONSTRATION**

Other sections of the solicitation may already require a scheduled equipment or product demonstration as part of your Bid response to the State. Failure on the part of the Bidder to provide the equipment/product demonstration may cause your Bid to be rejected for lack of responsiveness. Where the solicitation does not require a scheduled equipment/product demonstration as part of your Bid, the State reserves the right to require the demonstration prior to award or after award, all at the Bidder's expense. Failure to provide requested demonstration within ten (10) business days after request can result in Bid rejection or contract termination.

Demonstration(s) are conducted within Thurston County, Washington unless another Washington location is declared by the State. The Bidder is responsible for any costs associated with the demonstration(s) and will NOT be reimbursed.

The Bidder(s) will coordinate with the State to establish the location, date and time of the performance demonstration(s).

In the event the equipment demonstrated does not meet performance and/or capability requirements, the Bidder may be rejected as non-responsive/non-responsible.

## **6.7 SAMPLES**

As part of the evaluation process, Bidders may be required to submit samples of the following items listed in [Section 6.2.13](#) *Technical Specifications and Requirements*.

All samples provided shall be identical to products quoted by Bidder and shall be labeled with Bidder's name, stock number, Bid number, Bid line item number. All samples are an express warranty, which shall also apply to all products provided under this Contract. Bidders failing to comply with this requirement risk Bid rejection or Contract termination.

Failure on the part of the Bidder to provide a required sample may cause your Bid to be rejected for lack of responsiveness. Where the solicitation does not require samples as part of your Bid, the State reserves the right to require samples prior to award or after award, all at the Bidder's expense. Failure to provide requested samples within ten (10) business days after request can result in Bid rejection or Contract termination.

If not destroyed in testing or required for quality control, the Bidders may request return of samples at their expense. The Bidder must provide desired method of returning and exact postage or a call tag for samples to be returned. Each sample must be labeled with return address. If Bidder does not request return within thirty (30) calendar days of contract award, samples will be considered property of the state.

## **6.8 DESCRIPTIVE LITERATURE AND WARRANTY**

Other sections of the solicitation may already require descriptive literature and warranty information as part of your Bid response to the State. Failure on the part of

the Bidder to provide the required documents may cause your Bid to be rejected for lack of responsiveness. Where the solicitation does not require descriptive literature and warranty information as part of your Bid, the State reserves the right to require these documents prior to award or after award, all at the Bidder's expense. Failure to provide requested documents within ten (10) business days after request can result in Bid rejection or Contract termination.

Descriptive literature may include but is not limited to catalogs, latest dated published manufacturer's price list, cut sheets, or other literature with the Bid. Descriptive literature shall clearly describe the Bid product's quality, function, and performance. Failure to do so may cause your Bid to be rejected or contract terminated.

Warranty will cover items delivered under this Contract. Unless otherwise specified in this Solicitation, the default product warranty period will be for a minimum period of one year after acceptance of materials by the purchaser. All materials provided shall be new, unused, of the latest model or design and of recent manufacture. Any qualified Contract Purchaser may avail itself of the Bidder's standard warranty if deemed more beneficial to the Purchaser.

In the event of conflict between Contract Terms and Conditions and the Bidder's literature or warranty, the Contract Terms and Conditions shall prevail. Award of the Bid by the State, which includes conflicting literature or warranties, is neither a waiver nor an acceptance of the conflicting literature or warranties by OSP, whether known or unknown.

#### **6.9 SELECTION OF APPARENT SUCCESSFUL BIDDER(S)**

The responsive, responsible Bidder with the highest point total will be declared the Apparent Successful Bidder for the State of Washington. Acting as the Agent for WSCA, the State reserves the right to award Contracts to a ranked pool of Bidders for use by WSCA Participating Entities, in conformity with their applicable state laws. See Section 6.12 below for award methodology.

To aid in the Bid evaluation process, after Bid due date and time, the State may require individual Bidders to appear at a date, time and place determined by the State for the purpose of conducting discussions to determine whether both parties have a full and complete understanding of the nature and scope of contractual requirements. In no manner shall such action be construed as negotiations or an indication of the State's intention to award.

#### **6.10 NOTIFICATION OF APPARENTLY SUCCESSFUL BIDDER**

All Bidders responding to this Solicitation will be notified through an Intent to Award when the State has determined the Apparent Successful Bidder(s). The date of announcement of the Apparent Successful Bidder(s) will be the date of the notification from the State. As a Bidder's Bid is a firm offer for the State's review and acceptance, no further negotiation is required to complete the award. However, the State *may* at this time enter into Contract negotiations with the Apparent Successful Bidder(s) to complete the award.

Designation as an Apparent Successful Bidder does not imply that the State will issue an award to your firm. It merely suggests that at this moment in time the State believes your bid to be responsive. This designation allows the State to perform a responsibility analysis and ask for additional documentation. The State is also at liberty to re-review and determine whether the bid is truly responsive as initially believed. The Bidder must not construe this as a notification of award, impending award, an attempt to negotiate, etc. If you act or fail to act in reliance of this notification, you do so at your own risk and expense.

#### **6.11 AWARD CRITERIA**

Contract award(s) shall be offered to the responsive and responsible Bidder(s) with the highest evaluation score(s), based on the criteria established in this Solicitation and subject to all factors identified in [RCW 43.19.1911](#).

An award is only a *conditional award* until it is clear that any follow-on protest or litigation does not reveal an evaluation or award error on the part of OSP. Further, an award may be cancelled for other reasons as stated in RCW 43.19.1911. The awarded Contractor(s) shall hold the State harmless should the award be cancelled.

Acting as the Agent for WSCA through Interlocal Agreement under [RCW 39.34](#), the State intends to establish a pool of ranked Bidders to provide Breast Pumps and Related Accessories to Participating Entities, using the following methodology:

- (1) The State shall offer a Contract Award to the responsive, responsible Bidders with the two highest evaluation scores. If other Bidders' evaluation scores fall within 20% of the highest evaluation score, the State of Washington will consider, at its sole discretion, whether it is in the best interest of Participating Entities to also award Contracts to those Bidders.

Participating Entities may choose to enter into a Contract(s) with any or all of the awarded ranked pool of Bidders through the execution of a Participating Addendum, in conformity with their respective state laws. Contract award does not guarantee any minimum purchase volume.

- (2) As required by RCW 43.19, State of Washington Cooperative Members will only utilize the Contract for new equipment and supplies with the responsive, responsible Bidder receiving the highest evaluation score, after all preferences and penalties have been applied. The State of Washington reserves the right to enter into a Contract with any of the ranked pool of Bidders for the maintenance of existing equipment in use at WIC offices statewide

The State reserves the right to award by line item, group, aggregate, or all-or-nothing. Should the Bidder be awarded a contract, the Bidder understands and agrees that this shall not be seen as the State's acceptance of the Bidder's conflicting documentation, term, or conditions, nor is it a waiver of the State's terms and conditions in favor of the Bidder. The Bidder understands and agrees that the State's terms and conditions shall prevail and be enforced.

**BIDDER'S AUTHORIZED OFFER**  
**(*BID SIGNATURE PAGE*)**  
**WIC Breast Pumps and Related Accessories # 01910**  
Issued by the State of Washington

**Certifications and Assurances**

We make the following certifications and assurances as a required element of the Response, to which it is attached, affirming the truthfulness of the facts declared here and acknowledging that the continuing compliance with these statements and all requirements of the IFB are conditions precedent to the award or continuation of the resulting Contract.

1. The prices in this Response have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered. The prices in this Response have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before Contract award unless otherwise required by law. No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition. However, we may freely join with other persons or organizations for the purpose of presenting a single Bid or Proposal.
2. The attached Response is a firm offer for a period of **90** days following the Response Due Date specified in the IFB, and it may be accepted by the State without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the **90** day period. In the case of protest, our Response will remain valid for **120** days or until the protest and any related court action is resolved, whichever is later.
3. In preparing this Response, we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to the State's solicitation, or prospective Contract, and who was assisting in other than his or her official, public capacity. Neither does such a person nor any member of his or her immediate family have any financial interest in the outcome of this Response. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)
4. We understand that the State will not reimburse us for any costs incurred in the preparation of this Response. All Responses become the property of the State, and we claim no proprietary right to the ideas, writings, items or samples unless so stated in the Response. Submission of the attached Response constitutes an acceptance of the evaluation criteria and an agreement to abide by the procedures and all other administrative requirements described in the solicitation document.

5. We understand that any Contract awarded, as a result of this Response will incorporate all the solicitation requirements. Submission of a Response and execution of this Certifications and Assurances document certify our willingness to comply with the Contract terms and conditions appearing in [Appendix B- The Model Contract](#), if selected as a contractor. It is further understood that our standard contract will not be considered as a replacement for the terms and conditions appearing in [Appendix B- The Model Contract](#) of this solicitation.
6. Contractor certifies that under the requirements of Lobbying Disclosure Act, 2 U.S.C., Section 1601 et seq., no Federal appropriated funds have been paid or will be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

+++++

7. The authorized signatory below acknowledges having read and understood the entire solicitation and agrees to comply with the terms and conditions of the solicitation in submitting and fulfilling the offer made in its Bid.
8. By submitting this Bid, Bidder hereby offers to furnish materials, supplies, services and/or equipment in compliance with all terms, conditions, and specifications contained in this solicitation.

The signatory below represents that he/she has the authority to bind the company named below to the Bid submitted and any contract awarded as a result of this solicitation.

\_\_\_\_\_  
Bidder Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## **APPENDIX A PROTEST PROCEDURE**

### **PROTEST PRIOR TO AWARD:**

#### **PROTEST PRIOR TO AWARD CRITERIA:**

Protests prior to Award will be considered only if the protest concerns:

1. the bid of another Bidder,
2. the specifications or
3. the manner in which the solicitation process has been conducted.

#### **INITIATING THE PROTEST PROCESS:**

The protesting Bidder must notify the State Procurement Coordinator in charge of the solicitation of his/her intent to file a protest as soon as possible after he/she becomes aware of the reason(s) for the protest. The protest(s) must be received in writing by the State Procurement Coordinator not later than five (5) business days after the Bidder's notification to the State Procurement Coordinator of the intent to protest.

If an Intent to Award is announced, any protest must be received in writing by the State Procurement Coordinator not later than five (5) business days after the announcement or as otherwise specified in the Solicitation document.

If a protest is not received within these time frames it will be untimely and the State Procurement Coordinator may proceed with the award without further obligation.

The Procurement Coordinator will consider all the facts available and issue a decision in writing within ten (10) business days after receipt of the protest, unless more time is needed.

If additional time is necessary the State Procurement Coordinator will notify the protesting Bidder and, where applicable, the Bidder(s) against whom the protest is made.

#### **APPEAL OF PROTEST PRIOR TO AWARD DECISION:**

The protesting Bidder or the Bidder against whom the protest is made has the right to appeal the decision of the State Procurement Coordinator to the GA Assistant Director in charge of the Office of State Procurement.

The appeal must be received by the GA Assistant Director within five (5) business days after notification of the State Procurement Coordinator's decision.

The GA Assistant Director will consider all of the facts available and issue a decision in writing within ten (10) business days after receipt of the appeal, unless more time is

needed. The appealing Bidder will be notified if additional time is necessary.

Award of the contract will be postponed until after the GA Assistant Director has issued a decision unless an emergency exists necessitating the award of the contract as determined by the GA Assistant Director.

The decision of the GA Assistant Director on the protest appeal is final. The GA Assistant Director may issue further clarifications if determined necessary.

**PROTEST AFTER AWARD:**

**PROTEST AFTER AWARD CRITERIA:**

Protests after Award will be considered only if the protest concerns:

1. A matter which arises after the Award or
2. Could not reasonably have been known or discovered prior to Award.

**INITIATING THE PROTEST PROCESS AFTER AWARD:**

The protesting Bidder must notify both the State Procurement Coordinator in charge of the solicitation process and the Bidder that has received the Award that a protest of the Award is being made. This notification must be made as soon as possible after the Notice of Award is issued by an immediate communication method such as telephone or e-mail. The protesting Bidder must provide documentation demonstrating that they have notified the Bidder that has received the Award of their protest.

In addition to the above notification requirement, the written protest must be received by the GA Assistant Director in charge of the Office of State Procurement not later than five (5) business days after Notice of Award is issued by the Office of State Procurement.

The GA Assistant Director will:

Issue a decision on the protest within ten (10) business days after the protest was received, unless more time is needed.

The protesting Bidder and the Bidder who has received the Award shall be notified of any delay in issuing the GA Assistant Director's decision if more time is needed.

The decision of the GA Assistant Director is final if the award is upheld. The GA Assistant Director may subsequently issue further clarifications, if necessary.

If the GA Assistant Director finds that the protest should be upheld and the Award

canceled, all Bidders, including the protesting Bidder and the Bidder who received the Award, will be notified of the intent to cancel the Award and the reasons therefore.

#### AWARDED BIDDER APPEAL PROCESS

The Bidder who has received the Award has five (5) business days after receipt of notification of the intent to cancel the award in which to appeal the decision to the Director of General Administration. Copies of the Bidder's appeal must also be sent to the GA Assistant Director and the State Procurement Coordinator responsible for the solicitation.

The Director of General Administration or designee will:

Issue a decision

- a. to both the appealing Bidder and the original protesting Bidder
- b. within ten (10) business days after receipt of the appeal, unless more time is needed
  - i. If more time is needed to issue a decision, all Bidders, including the appealing Bidder and the original protesting Bidder, will be notified.

#### DECISION FINAL

The appeal decision of the Director of General Administration is final. The Director of General Administration may subsequently issue further clarifications if necessary,

#### APPEAL UPHELD AND CONTRACT AWARD UPHELD

If the Director of General Administration upholds the appeal and upholds the contract as awarded, the State Procurement Coordinator will notify all Bidders of the decision.

#### APPEAL DENIED AND AWARD CANCELED

If the Director of General Administration upholds the decision of the GA Assistant Director the Office of State Procurement will proceed with cancellation of the award.

If the award is cancelled, the Assistant director of GA may reject all bids, quotes or proposals pursuant to [RCW 43.1911\(4\)](#) and solicit new bids, quotes or proposals.

If the Assistant director of GA does not decide to reject all bids, an award will be made to the next lowest responsive and responsible Bidder.

#### PROTEST AND APPEALS – FORM AND SUBSTANCE

All protests and appeals must:

1. be in writing,
2. signed by the protesting or appealing Bidder or an authorized agent
3. delivered within the time frame(s) outlined herein
4. addressed to that individual within the Office of State Procurement or General Administration assigned review responsibilities as specified above

The protesting or appealing Bidder must:

1. state all facts and arguments on which the protesting or appealing Bidder is relying as the basis for its action
2. attach any relevant exhibits related, or referred to in the written protest or appeal
3. mail, fax or deliver copies of all protests, appeals, and exhibits to the Bidder or Bidders against whom the protest is made at the same time such protest, appeal, and exhibits are submitted to the Office of State Procurement or General Administration.

#### COMMUNICATION DURING PROTESTS AND APPEALS

All communications relative to a solicitation that is being protested or appealed must be coordinated through that person conducting the official review for the Office of State Procurement or General Administration.

## Appendix B

### THE MODEL CONTRACT

State of Washington  
Department of General Administration  
Office of State Procurement (OSP)



Contract # 01910  
For Purchases of Breast Pumps and Related Accessories  
Under the Authority of  
[Chapter 43.19 RCW](#)

# 1 OVERVIEW

## 1.1 CONTRACT SCOPE

The purpose of this Contract is to facilitate the as-needed purchase of Manual and Electric Breast Pumps, Double Pumping Kits, and related accessories for participating members of the Western States Contracting Alliance (WSCA). The balance of the 50 states, the District of Columbia, US Territories and other public entities may also use WSCA contracts.

Specific to the State of Washington, all Washington Purchasing Cooperative members are eligible to use this Contract. See Section 1.4 *Participating Entities* for more specific information regarding eligibility requirements for Contract utilization.

This Contract was bid under the statutory authority of [RCW 43.19](#) for the purchase of goods and services as stated herein.

## 1.2 CONTRACT SCOPE AND MODIFICATIONS

The State reserves the right to modify this Contract by mutual agreement between the State and the Contractor, so long as such modification is substantially within the scope of the original Contract. The state reserves the right to add products as the market conditions and Purchasers' needs change. Such modifications will be evidenced by issuance of a written authorized amendment by the Contract Administrator.

## 1.3 RECITALS

The state of Washington, acting by and through the Department of General Administration (GA), Office of State Procurement (OSP) issued an Invitation for Bid (IFB) for the purpose of purchasing goods and services in accordance with its authority under [Chapter 43.19 RCW](#).

The **Awarded Contractor** submitted a timely Response to OSP's SOLICITATION # 01910.

OSP evaluated all properly submitted Responses to the above-referenced SOLICITATION and has identified the **Awarded Contractor** as the apparently successful Contractor.

OSP has determined that entering into a Contract with **Awarded Contractor** will meet Purchaser's needs and will be in Purchaser's best interest.

NOW THEREFORE, OSP awards to the **Awarded Contractor** this Contract, the terms and conditions of which shall govern Contractor's furnishing to Purchasers the goods and services as described herein. This Contract is not for personal use.

IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

#### 1.4 PARTICIPATING ENTITIES

Potential Participating Entities include members of the Western States Contracting Alliance. The Western States Contracting Alliance (WSCA) is a cooperative group-contracting consortium for state government departments, institutions, institutions of higher education, agencies and political subdivisions (e.g., school districts, counties, cities, etc.) for the States of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming. WSCA is a cooperative purchasing arm of the National Association of State Procurement Officials (NASPO). The balance of the 50 states, the District of Columbia, US Territories and other public entities may also use WSCA contracts.

In addition to the State of Washington, the following entities have signified their intent to participate in this contract: Alaska; Arizona; California; Commonwealth of the Northern Mariana Islands; District of Columbia; Guam; Hawaii; Idaho; Inter-Tribal Council of Arizona; Kansas; Louisiana; Missouri; Nebraska; Nevada; New Jersey; New Mexico; Oregon; South Dakota; Utah; Vermont; Wisconsin; and Wyoming.

This Intent to Participate is not binding. Other states and public entities may use awards based on this solicitation at any time during the contract period.

All members of the Washington State Purchasing Cooperative (WSPC) including where applicable: State Agencies, Institutions of Higher Education, Political Subdivisions, and Non-Profit Corporations are eligible to use this Contract. Upon execution of a Participating Addendum with the State of Oregon, Department of Administrative Services, this Contract will also be available for use by Oregon's Department of Administrative Services Cooperative Purchasing Program (ORCPP).

While use of the Contract by Political Subdivisions and Non-Profit Corporations that are members of the WSPC is optional, the Office of State Procurement encourages them to use state contracts. Their use of the contracts may significantly increase the purchase volume. Their orders are subject to the same contract terms, conditions and pricing as state agencies. The Office of State Procurement accepts no responsibility for orders or payment by WSPC members.

A list of WSPC members is available at <http://www.ga.wa.gov/PCA/SPC.htm>.

A list of current authorized ORCPP members is available at:

<http://www.oregon.gov/DAS/PFSS/SPO/docs/orcpp-member-list.pdf> or

<http://www.oregon.gov/DAS/PFSS/SPO/docs/orcpp-member-list.xls>

## **Purchases by Nonprofit Corporations**

Legislation allows nonprofit corporations to participate in State Contracts for purchases administered by the Office of State Procurement (OSP). By mutual agreement with OSP, the contractor may sell goods or services at contract pricing awarded under this SOLICITATION and resulting contract to self certified nonprofit corporations. Such organizations purchasing under the State Contract shall do so only to the extent they retain eligibility and comply with other contract and statutory provisions. The contractor may make reasonable inquiry of credit worthiness prior to accepting orders or delivering goods or services on contract. The State accepts no responsibility for payments by nonprofit corporations. Their use of the contracts may significantly increase the purchase volume. Their orders are subject to the same contract terms, conditions and pricing as state agencies.

### **1.5 ESTIMATED USAGE**

Based on past and/or projected usage, it is estimated that purchases over the initial two (2) year term of the Contract will approximate **\$ 15,000,000**. This estimate is provided solely for the purpose of assisting Bidders in preparing their Response. Orders will be placed only on an as needed basis. **The State of Washington does not represent or guarantee any minimum purchase.**

### **1.6 CONTRACT TERM**

The initial term of this contract is two (2) years from date of award with the option to extend for additional term one (1) year terms or portions thereof. Extension for each additional term shall be offered at the sole discretion of the OSP and are subject to written notice to Contractor(s). The total contract term, including the initial term and all subsequent extensions, shall not exceed six (6) years, unless an emergency exists and/or special circumstances require a partial term extension. The state reserves the right to extend with all or some of the contractors, solely determined by the state.

### **1.7 BEST BUY PROGRAM (DIRECT PURCHASES)**

This section is for informational purposes only and is not a Contract term. Contracts based under the authority of RCW 43.19.1906 and 1911 notwithstanding, Washington law allows authorized Agencies to purchase off-contract "PROVIDED, That any agency may purchase material, supplies, services, and equipment for which the agency has notified the purchasing and material control director that it is more cost-effective for the agency to make the purchase directly from the vendor." Authority: See [RCW 43.19.190](#) (2), second Proviso. The concept is identified in the [Washington Purchasing Manual \(WPM\)](#) as the Best Buy Program. The WPM is a policy giving direction to Purchasers and may be changed at anytime and with no notice. At a glance (abridged):

- Contractor provided the opportunity to meet the non-contract supplier's offer.

- Agency must consider all cost factors, such as, warranty, shipping, quality, trade-in, cancellation, delivery, installation, and prompt payment/volume discounts.
- Acceptance by the non-contract supplier of all other terms, conditions, and requirements of the state contract.
- Agencies must notify General Administration at the time of purchase when making a cost effective direct purchase. To meet the notification requirements of [RCW 43.19.1905\(g\)](#) use the on line [Best Buy Calculator and Reporter](#).

## **2 CONTRACT ADMINISTRATION**

### **2.1 OSP CONTRACT ADMINISTRATOR**

The OSP shall appoint a single point of contact that will be the Contract Administrator for this Contract and will provide oversight of the activities conducted hereunder. The Contract Administrator will be the principal contact for Contractor concerning business activities under this Contract.

### **2.2 ADMINISTRATION OF CONTRACT**

OSP will maintain Contract information and pricing and make it available on the Department of General Administration web site. The Contract prices are the maximum price Contractor can charge. After coordination with OSP, the Contractor may also offer volume and voluntary discounts to Purchasers in any amount, period of time, and for any set of products or services of the Contractor's choosing.

A Contractor may propose a revision to its offerings to reflect changed products appropriate to the scope of the Contract, and may propose such new products with associated prices to the OSP Contract Administrator for approval. The Contract Administrator has sole discretion to approve additions of revised offerings and pricing. New or changed products proposed by Contractor must meet the requirements established in this solicitation document or subsequent revisions. If approved by OSP, the new products or services will be added to the Contract by written amendment.

For the initial 365 days of the Contract term, pricing for all products will be no greater than the prices quoted in the Bidder's Response. If, however, during any term of the Contract lower prices and rates become effective for like quantities of products under similar terms and conditions, through a reduction in Manufacturer's list prices, promotional discounts, or other circumstances, Purchasers must be given immediate benefit of such lower prices and rates.

### **2.3 CONTRACTOR SUPERVISION AND COORDINATION**

Contractor shall:

1. Competently and efficiently, supervise and coordinate the implementation and completion of all Contract requirements specified herein;
2. Identify the Contractor's Representative, who will be the principal point of contact for the OSP Contract Administrator concerning Contractor's performance under this Contract.
3. Immediately notify the Contract Administrator in writing of any change of the designated Contractor's Representative assigned to this Contract; and
4. Be bound by all written communications given to or received from the Contractor's Representative.

Violation of any provision of this paragraph may be considered a material breach establishing grounds for Contract termination.

#### **2.4 POST AWARD CONFERENCE**

The contractor may be required to attend a post award conference scheduled by the Procurement Coordinator to discuss contract performance requirements. The time and place of this conference will be scheduled following contract award.

#### **2.5 CONTRACT MANAGEMENT**

Upon award of this contract, the contractor shall:

1. Review the impact of the award and take the necessary steps to ensure that contractual obligations will be fulfilled.
2. Promote and market the use of this contract to all authorized contract Purchasers.
3. Ensure that those who endeavor to utilize this contract are authorized Purchasers under this Contract.
4. At no additional charge, assist Purchasers in the following manner to make the most cost effective, value based, purchases including, but not limited to:
  - a) Visiting the Purchaser site and providing Purchaser with materials/supplies/equipment recommendations.
  - b) Providing Purchasers with a detailed list of contract items including current contract pricing and part numbers.
5. The contractor shall designate a customer service representative who will be responsible for addressing Purchaser issues including, but not limited to:
  - a) Logging requests for service, ensuring repairs are completed in a timely manner, dispatching service technicians, and processing warranty claim documentation.
  - b) Providing Purchasers with regular and timely status updates in the event of an order or repair fulfillment delay.
6. Acting as the lead and liaison between the manufacturer and Purchaser in resolving warranty claims for contract items purchased.

## **2.6 UNITED NATIONS GLOBAL COMPACT STANDARDS**

The Contractor agrees to adhere to the Ten Principles of the United Nations Global Compact standards. These standards protect human rights and the environment, promote fair labor practices, and guard against corruption.

## **2.7 CHANGES**

Alterations to any of the terms, conditions, or requirements of this Contract shall only be effective upon written issuance of a mutually agreed Contract Amendment by the Contract Administrator. However, changes to point of contact information may be updated without the issuance of a mutually agreed Contract Amendment.

To accommodate Purchaser requirements and manufacturer discontinuations, Contractor may propose a revision to its offerings which reflects product changes appropriate to the scope of the Contract to the Contract Administrator for approval. Proposed pricing shall remain consistent with Bid pricing. Contract Administrator has the sole discretion in approval of revised offerings and pricing. New products proposed by Contractor must meet the requirements established in this Solicitation document or subsequent revisions. Upon OSP approval, product additions will be implemented by written amendment.

Purchasers may request pricing for products not included in the award. Contractor may submit a proposal for satisfaction of the request to the Contract Administrator for consideration. If the Contractor is unable to provide a reasonable solution, the Contractor will notify the Purchaser. If the Contract Administrator concludes the pricing offered is in the best interest of the state, considering the cost of alternatives, he/she will by written notification accept the offer of solution and record it in the file.

## **2.8 CONTRACT ADMINISTRATION FEE**

The Contract(s) will be subject to a WSCA Administration Fee. Contractor(s) will include this fee in its Bid pricing and not as a separate line item to Purchasers. The Contractor(s) will collect the fees and distribute the fees to WSCA.

The WSCA Administration Fee will be one half of one percent (0.5%) on all purchases made under authority of the Contract. Purchases are defined as total invoice price less sales tax. No taxes will be assessed against the WSCA Administration Fee.

The WSCA Administrative fee shall be paid within thirty (30) days after the end of the calendar quarter. Contractor shall indicate the Contract Number #01910 and include with the remittance, a quarterly sales report by WSCA contract participant. The administrative fee shall be paid to:

WSCA/NASPO  
NASPO PROGRAM MANAGER  
201 EAST MAIN STREET, SUITE 1450  
LEXINGTON, KY 40507

In addition to the WSCA Administration Fee as stated above, some Participating Entities may also require an administrative fee, and will be incorporated into the Participating Entity's Participating Addendum. Participating Entity Administrative Fees may be added to the price of each item.

## **2.9 STATEWIDE VENDOR PAYMENT REGISTRATION**

Contractors are required to be registered in the Statewide Vendor Payment system, prior to submitting a request for payment under this Contract. Purchasers who are Washington state agencies require registration to be completed prior to payment.

The Washington State Office of Financial Management (OFM) maintains a central contractor registration file for Washington State agencies to process contractor payments.

To obtain registration materials go to <http://www.ofm.wa.gov/accounting/vendors.asp> the form has two parts; Part 1 is the information required to meet the above registration condition. Part 2 allows the state to pay invoices electronically with direct deposit and is the state's most efficient method of payment and you are encouraged to sign up for this form of payment.

## **2.10 SALES & SUBCONTRACTOR REPORTS**

The Contractor shall provide a Sales and Subcontractor Report to the Office of State Procurement on a quarterly basis in the electronic format provided by the Office of State Procurement at: <https://fortress.wa.gov/ga/apps/CSR/Login.aspx>.

Reports must be submitted electronically within thirty (30) days after the end of the calendar quarter, i.e., no later than April 30th, July 31st, October 31st and January 31st.

## **2.10 OTHER REQUIRED REPORTS**

All reports required under this Contract must be delivered to the Contract Administrator. Contractor may be required to provide a detailed annual contract sales history report that may include but is not limited to products description, part number, per unit quantities sold, contract price in an electronic format that can be read by MS Excel. Other required reports will be designed and approved by the parties by mutual agreement.

## **2.11 WASHINGTON'S ELECTRONIC BUSINESS SOLUTION (WEBS)**

Contractor shall be registered in the Contractor registration system, Washington's Electronic Business Solution (WEBS) [www.ga.wa.gov/webs](http://www.ga.wa.gov/webs), maintained by the Washington State Department of General Administration. Contractors already registered need not re-register. It is the sole responsibility of Contractor to properly register with WEBS and maintain an accurate Contractor profile in WEBS.

### **3 PRICING**

#### **3.1 PRICE PROTECTION**

Contractor agrees all the Prices, terms, warranties, and benefits provided in this Contract are comparable to or better than the terms presently being offered by Contractor to any other governmental entity purchasing the same quantity under similar terms. If during the term of this Contract, the Contractor shall enter into contracts with any other governmental entity providing greater benefits or more favorable terms than those provided by this Contract, Contractor shall be obligated to provide the same to Purchaser for subsequent purchases and OSP shall be notified of changes in Contract pricing.

During any term of the Contract, if lower prices and rates become effective for like quantities of products under similar terms and conditions, through reduction in Manufacturer's or Contractor's list prices, promotional discounts, or other circumstances, Purchasers must be given immediate benefit of such lower prices and rates, and the state shall be notified of changes in Contract pricing.

The Contract prices are the maximum price Contractor can charge. The Contractor may also offer volume and promotional discounts to Purchasers.

#### **3.2 NO ADDITIONAL CHARGES**

Unless otherwise specified in the Solicitation, no additional charges by the Contractor will be allowed including, but not limited to: handling charges such as packing, wrapping, bags, containers, reels; or the processing fees associated with the use of credit cards. Notwithstanding the foregoing, in the event that market conditions, laws, regulations or other unforeseen factors dictate, at the Contract Administrators sole discretion, additional charges may be allowed.

#### **3.3 PRICE ADJUSTMENTS**

Unless modified by mutual agreement, Contractor requests for adjustments in pricing will be considered at the sole discretion of OSP. Pricing shall remain firm and fixed for the initial two (2) year term of the Contract. Thereafter, price adjustments will only be on a pass through basis and shall not produce a higher profit margin for the Contractor than that established by the original Contract pricing. Contractor shall not make extensions contingent on price adjustments.

Price increases will not be considered without supporting documentation sufficient to justify the requested increase. Documentation must be based on published indices such as the Producer Price Index or other acceptable indices, and/or the result of increases at the manufacturer's level, other supportable pricing increases, and incurred after Contract commencement date. Contractor shall provide a detailed breakdown of their costs upon request. A minimum of 120 calendar days advance written notice of price increase is required.

The granting of any price adjustment will be at the sole discretion of OSP. The Contractor shall be notified in writing by the Contract Administrator of any price adjustment granted by OSP, and such price adjustment shall be set forth in a written amendment to the Contract. Price adjustments granted by OSP shall remain unchanged for at least 365 calendar days thereafter, and no request for adjustments in price will be considered during that time period.

## **4 CONTRACTOR QUALIFICATIONS AND REQUIREMENTS**

### **4.1 ESTABLISHED BUSINESS**

Prior to commencing performance, or prior to that time if required by the OSP, law or regulation, Contractor must be an established business firm with all required licenses, fees, bonding, facilities, equipment and trained personnel necessary to meet all requirements and perform the work as specified in the Solicitation. Contractor shall maintain compliance with these requirements throughout the life of this contract.

The OSP reserves the right to require receipt of proof of compliance with said requirements within ten (10) calendar days from the date of request, and to terminate this Contract as a material breach for noncompliance with any requirement of this paragraph.

### **4.2 CONTRACTOR CERTIFICATIONS**

Contractor must provide evidence as directed in the original solicitation, of its status as an authorized product reseller of all items listed in Bidder's Response to Solicitation 01910. If this reseller status is discontinued, this Contract may be terminated as set forth elsewhere herein. Contractor shall maintain its reseller status for the initial term and any renewals of the resulting Contract.

### **4.3 DEALER AUTHORIZATION**

Throughout the contract life, the Contractor shall maintain authorization from the manufacturer consistent with the requirements outlined in the original Solicitation.

### **4.4 STAFF QUALIFICATIONS**

If at Contract award or any time thereafter, any specifically named individual(s) identified in the Response to work on this engagement are not available, OSP has the right to approve or reject any change in Contractor's personnel. Specific restrictions apply to contracting with current or former state employees pursuant to [Chapter 42.52 RCW](#).

### **4.5 USE OF SUBCONTRACTORS**

In accordance with solicitation requirements, Contractor agrees to take complete responsibility for all actions of such Subcontractors as related to work performed within the scope of this Contract.

Prior to performance, Contractor shall identify all subcontractors who will perform services in fulfillment of contract requirements, including their name, the nature of services to be performed, address, telephone, facsimile, email, federal tax identification number (TIN), MWBE status, and anticipated dollar value of each subcontract:

OSP reserves the right to approve or reject any and all Subcontractors that are identified or used by the Contractor for performance under this Contract.

Specific restrictions apply to contracting with current or former state employees pursuant to [Chapter 42.52 RCW](#).

#### **4.6 SUBCONTRACTS AND ASSIGNMENT**

Contractor shall not Subcontract, assign, or otherwise transfer its obligations under this Contract without the prior written consent of the Contract Administrator. Contractor shall provide a minimum of thirty (30) calendar days advance notification of intent to Subcontract, assign, or otherwise transfer its obligations under this Contract. Violation of this condition may be considered a material breach establishing grounds for Contract termination. The Contractor shall be responsible to ensure that all requirements of the Contract shall flow down to any and all Subcontractors. In no event shall the existence of a Subcontract operate to release or reduce the liability of Contractor to the state for any breach in the performance of the Contractor's duties.

#### **4.7 CONTRACTOR AUTHORITY AND INFRINGEMENT**

Contractor is authorized to sell under this Contract, only those materials, supplies, services and/or equipment as stated herein and allowed for by the provisions of this Contract. Contractor shall not represent to any Purchasers that they have the contract authority to sell any other materials, supplies, services and/or equipment. Further, Contractor may not intentionally infringe on other established State Contracts.

#### **4.8 MATERIALS AND WORKMANSHIP**

The Contractor shall be required to furnish all materials, supplies, equipment and/or services necessary to perform Contractual requirements. Materials, supplies and workmanship used in the construction of equipment for this Contract shall conform to all applicable federal, state, and local codes, regulations and requirements for such equipment, specifications contained herein, and the normal uses for which intended. Materials, supplies and equipment shall be manufactured in accordance with the best commercial practices and standards for this type of materials, supplies, and equipment.

#### **4.9 MERCURY CONTENT AND PREFERENCE**

Contractor shall provide mercury-free products when available. Should mercury-free products not exist, contractors shall provide products with the lowest mercury content available. Contractor shall disclose products that contain added mercury

and provide an explanation that includes the amount or concentration of mercury, and justification as to why added mercury is necessary for the function or performance of the product.

The Contractor is to provide any existing technical data pertaining to the addition of mercury or a mercury compound intentionally added to the product. If the product does not contain mercury or a mercury compound, Contractor shall submit a written statement to that effect. Contractor shall maintain compliance with these requirements throughout the life of this contract.

The OSP reserves the right to require receipt of proof of compliance with said requirements within ten (10) calendar days from the date of request, and to terminate this Contract as a material breach for noncompliance with any requirement of this paragraph.

## **5 DELIVERY REQUIREMENTS**

### **5.1 ORDER FULFILLMENT REQUIREMENTS**

Authorized Purchasers may place orders against this Contract either in person, electronically, facsimile or by phone. Once an order is issued, the following shall apply:

1. For purposes of price verification and auditing, upon receipt of a purchase order the contractor shall send the Purchaser an order confirmation that includes Contract pricing.
2. Upon the request of the Purchaser, the Contractor shall supply Purchaser with manufacturer's list pricing or other documentation needed to verify Contract pricing compliance.
3. Product damaged prior to acceptance will either be replaced or repaired in an expedited manner at contractor's expense. Alternatively, at the Purchaser's option, any possible damage to the product can be noted on the receiving report and the cost deducted from final payment.

The Contractor is responsible to verify delivery conditions/requirements with the Purchaser prior to the delivery.

### **5.2 STANDARD OF QUALITY/CONSISTENCY OVER TERM OF CONTRACT**

If, in the sole judgment of the OSP or the Purchaser, any item is determined not to be an equal, the Purchaser may take any or all of the following actions:

1. The product may be returned at Contractor's expense
2. The purchase/field order may be terminated without any liability to the State of Washington or Purchaser

### **5.3 SHIPPING AND RISK OF LOSS**

Contractor shall ship all Products purchased pursuant to this Contract, freight prepaid, FOB Purchaser's destination. The method of shipment shall be consistent with the nature of the Products and hazards of transportation. Regardless of FOB point, Contractor agrees to bear all risks of loss, damage, or destruction of the Products ordered hereunder that occurs prior to Delivery Date, except loss or damage attributable to Purchaser's fault or negligence; and such loss, damage, or destruction shall not release Contractor from any obligation hereunder. After Delivery Date, the risk of loss or damage shall be borne by Purchaser, except loss or damage attributable to Contractor's fault or negligence.

### **5.4 DELIVERY**

Delivery must be made during Purchaser's normal work hours and within time frames either:

1. required in the Solicitation; or
2. if requested in the Solicitation, proposed by Contractor in its Bid or Proposal and subsequently accepted by the OSP; or
3. as otherwise mutually agreed in writing between the Purchaser and Contractor at the time of order placement.

Failure to comply with agreed upon delivery schedule may subject Contractor to damages, including but not limited to Contractor's return of goods at no charge to Purchaser, if Purchaser determines Contractor's failure to deliver as agreed causes the need for cancellation.

The Purchaser may refuse shipment when delivered after normal working hours. The Contractor shall verify specific working hours of individual Purchasers and 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 OSP or Purchaser from pursuing any other remedy provided herein, including termination, nor shall such acceptance of late performance constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Contractor.

All deliveries are to be made to the applicable delivery location as indicated in the Order Document. When applicable, the Contractor shall take all necessary actions to safeguard items during inclement weather. In no case shall the Contractor initiate performance prior to receipt of written or verbal authorization from authorized Purchasers. Expenses incurred otherwise shall be borne solely by the Contractor.

## **5.5 SITE SECURITY**

While on Purchaser's premises, Contractor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations.

## **5.6 INSPECTION AND REJECTION**

The Purchaser's inspection of all materials, supplies and equipment upon delivery is for the purpose of forming a judgment as to whether such delivered items are what was ordered, were properly delivered and ready for Acceptance. Such inspection shall not be construed as final acceptance, or as acceptance of the materials, supplies or equipment, if the materials, supplies or equipment does not conform to contractual requirements. If there are any apparent defects in the materials, supplies, or equipment at the time of delivery, the Purchaser will promptly notify the Contractor. Without limiting any other rights, the Purchaser may require the Contractor to: (1) repair or replace, at Contractor's expense, any or all of the damaged goods; (2) refund the price of any or all of the damaged goods; or (3) accept the return of any or all of the damaged goods.

The state reserves the right to independently test, at supplier's expense, any product of questionable freshness, quality, or origin delivered against this Contract.

## **5.7 TREATMENT OF ASSETS**

1. Title to all property furnished by the OSP and/or Purchaser shall remain in the OSP and/or Purchaser, as appropriate. Title to all property furnished by the Contractor, the cost for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Purchaser upon delivery of such property by the Contractor and Acceptance by the Purchaser. Title to other property, the cost of which is reimbursable to the Contractor under this Contract, shall pass to and vest in the Purchaser 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 the Purchaser in whole or in part, whichever first occurs.
2. Any property of the OSP and/or Purchaser furnished to the Contractor shall, unless otherwise provided herein or approved by the OSP and/or Purchaser, be used only for the performance of this Contract.
3. The Contractor shall be responsible for damages as a result of any loss or damage to property of the OSP and/or Purchaser which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain, administer and protect that property in a reasonable manner and to the extent practicable in all instances.

4. If any OSP and/or Purchaser property is lost, destroyed, or damaged, the Contractor shall immediately notify the OSP and/or Purchaser and shall take all reasonable steps to protect the property from further damage.
5. The Contractor shall surrender to the OSP and/or Purchaser all property of the OSP and/or Purchaser prior to settlement upon completion, termination, or cancellation of this contract.
6. All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

### **5.8 LABELING**

Individual shipping cartons shall be labeled with the name of the ordering agency, order number, contractor, item number, and where applicable, date of manufacture, batch number, storage requirements, conditions, and recommended shelf life. Contractors are encouraged to offer product packaging with recycled content.

## **6 PAYMENT**

### **6.1 ADVANCE PAYMENT PROHIBITED**

No advance payment shall be made for the Products and Services furnished by Contractor pursuant to this Contract.

### **6.2 IDENTIFICATION**

All invoices, packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written materials associated with this Contract shall be identified by the Contract number and the applicable Purchaser's order number. Packing lists shall be enclosed with each shipment and clearly identify all contents and any backorders.

### **6.3 PAYMENT, INVOICING AND DISCOUNTS**

Payment is the sole responsibility of, and will be made by, the Purchaser.

Contractor shall provide a properly completed invoice to Purchaser. All invoices are to be delivered to the address indicated in the purchase order.

Each invoice shall be identified by the associated Contract Number; the Contractor's Statewide Vendor registration number assigned by Washington State Office of Financial Management (OFM), the applicable Purchaser's order number, and shall be in U.S. dollars. Invoices shall be prominently annotated by the Contractor with all applicable prompt payment and/or volume discount(s) and shipping charges unless otherwise specified in the Solicitation. Hard copy credit memos are to be issued when the state has been overcharged.

Invoices for payment will accurately reflect all discounts due the Purchaser. Invoices will not be processed for payment, nor will the period of prompt payment discount commence, until receipt of a properly completed invoice denominated in

U.S. dollars and until all invoiced items are received and satisfactory performance of Contractor has been accepted by the Purchaser. If an adjustment in payment is necessary due to damage or dispute, any prompt payment 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. If the Contractor fails to make timely payment(s) or issuance of credit memos, the Purchaser may impose a 1% per month on the amount overdue.

Payment for materials, supplies and/or equipment received and for services rendered shall be made by Purchaser and be redeemable in U.S. dollars. Unless otherwise specified, the Purchaser's sole responsibility shall be to issue this payment. Any bank or transaction fees or similar costs associated with currency exchange procedures or the use of purchasing/credit cards shall be fully assumed by the Contractor.

#### **6.4 TAXES, FEES AND LICENSES**

##### **Taxes:**

Where required by statute or regulation, the Contractor shall pay for and maintain in current status all taxes that are necessary for Contract performance. Unless otherwise indicated, the Purchaser agrees to pay State of Washington taxes on all applicable materials, supplies, services and/or equipment purchased. No charge by the Contractor shall be made for federal excise taxes and the Purchaser agrees to furnish Contractor with an exemption certificate where appropriate.

##### **Collection of Retail Sales and Use Taxes:**

In general, Contractors engaged in retail sales activities within the State of Washington are required to collect and remit sales tax to Department of Revenue (DOR). In general, out-of-state Contractors must collect and remit "use tax" to Department of Revenue if the activity carried on by the seller in the State of Washington is significantly associated with Contractor's ability to establish or maintain a market for its products in Washington State. Examples of such activity include where the Contractor either directly or by an agent or other representative:

1. Maintains an in-state office, distribution house, sales house, warehouse, service enterprise, or any other in-state place of business;
2. Maintains an in-state inventory or stock of goods for sale;
3. Regularly solicits orders from Purchasers located within the State of Washington via sales representatives entering the State of Washington;

4. Sends other staff into the State of Washington (e.g. product safety engineers, etc.) to interact with Purchasers in an attempt to establish or maintain market(s); or
5. Other factors identified in [WAC 458-20](#).

**Department of Revenue Registration for Out-of-State Contractors:**

Out-of-state Contractors meeting any of the above criteria must register and establish an account with the Department of Revenue. Refer to [WAC 458-20-193](#), and call the Department of Revenue at 800-647-7706 for additional information. When out-of-state Contractors are not required to collect and remit “use tax,” Purchasers located in the State of Washington are responsible for paying this tax, if applicable, directly to the Department of Revenue.

**Fees/Licenses:**

After award of Contract, and prior to commencing performance under the Contract, the Contractor shall pay for and maintain in a current status any licenses, fees, assessments, permit charges, etc., which are necessary for Contract performance. It is the Contractor's sole responsibility to maintain licenses and 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:**

Contractor shall take all necessary actions, including, but not limited to, paying all customs, duties, brokerage, and/or import fees, to ensure that materials, supplies, and/or equipment purchased under the Contract are expedited through customs. Failure to do so may subject Contractor to liquidated damages as identified herein and/or to other remedies available by law or Contract. Neither the OSP nor the Purchaser will incur additional costs related to Contractor’s payment of such fees.

**Taxes on Invoice:**

Contractor shall calculate and enter the appropriate Washington State and local sales tax on all invoices. Tax is to be computed on new items after deduction of any trade-in in accordance with [WAC 458-20-247](#).

**6.5 MINORITY AND WOMEN’S BUSINESS ENTERPRISE (MWBE) PARTICIPATION**

If minority or woman owned business participation was identified in Bidder’s Response to SOLICITATION # 01910, Contractor shall provide Purchaser an *Affidavit of Amounts Paid* with each invoice for payment and within thirty (30) days of Purchasers request. The *Affidavit of Amounts Paid* shall either state that Contractor still maintains its MWBE certification, or state that its Subcontractor(s) still maintain(s) its/their MWBE certification(s) and specify the amounts paid to each certified MWBE Subcontractor under this Contract. Contractor shall maintain records supporting the *Affidavit of Amounts Paid* in accordance with this Contract’s **Retention of Records** section.

## **6.6 OVERPAYMENTS TO CONTRACTOR**

Contractor shall refund to Purchaser the full amount of any erroneous payment or overpayment under this Contract within thirty (30) days' written notice. If Contractor fails to make timely refund, Purchaser may charge Contractor one percent (1%) per month on the amount due, until paid in full.

## **6.7 AUDITS**

The state reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing may be considered complete cause for contract termination.

# **7 QUALITY ASSURANCE**

## **7.1 RIGHT OF INSPECTION**

Contractor shall provide right of access to its facilities to OSP, or any of OSP's officers, or 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.

## **7.2 CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS**

Any written commitment by Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in its Response or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Response or used to effect the sale to Purchaser.

## **7.3 PRODUCT WARRANTY**

The factory and/or manufacturer's warranty, which shall cover 100% parts and labor for the entire unit. This warranty must be honored by all authorized factory and/or manufacturer's dealerships.

Contractor shall be liable for all costs associated with warranty repair(s), including, but not limited to, materials, parts, labor, and transport of equipment that are disabled due to the failure of the equipment during the warranty period.

Warranty period shall be for a minimum of one (1) year after equipment is issued to the End User, or as specified in the solicitation document.

Participating WIC agencies are required to keep a record of such issuance on file for reference.

The Contractor must be capable of and will be liable for providing repair parts and supply support for a period of ten (10) years after the delivery date of the equipment.

In the event of conflict between Contract terms and conditions and Contractor's submitted warranty, the Contract terms and conditions shall prevail; except, to afford the State maximum benefits, the OSP may avail itself of the Contractor's warranty if deemed more beneficial to the State.

#### **7.4 WARRANTIES**

Contractor warrants that all materials, supplies, services and/or equipment 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 materials, supplies, service and/or equipment, and inspection incidental thereto, by the Purchaser shall not alter or affect the obligations of the Contractor or the rights of the Purchaser.

#### **7.5 COST OF REMEDY**

Cost of Remedying Defects: All defects, indirect and consequential costs of correcting, removing or replacing any or all of the defective materials or equipment will be charged against the Contractor.

#### **7.6 TRAINING**

Upon request by a Participating Entity, Contractor shall provide a minimum of 1 hour training for local agency WIC staff on assembly, use and cleaning of equipment and handling and storage of pumped milk. Locations and times will be designated by each WSCA/WIC office. Regional training may be permitted if the Participating Entity agrees. Any costs for training shall be paid by the Contractor. Training materials shall be provided by the Contractor. Such assistance shall be available within 60 calendar days after delivery of product upon request. Contractor shall provide appropriate training documentation or operating documentation covering all functionalities and required operator maintenance issues. A training video may replace the in-person training for locations that are outside of the continental US. Participating Entities may also request specific training as an as needed basis at no cost to the Participating Entity.

## **8 INFORMATION AND COMMUNICATIONS**

### **8.1 ADVERTISING**

Contractor shall not publish or use any information concerning this Contract in any format or media for advertising or publicity without prior written consent from the Contract Administrator.

### **8.2 BREAST MILK SUBSTITUTES**

WIC is federally mandated to promote and support breastfeeding. Research indicates that the addition of breast milk substitutes (infant formula) to the diet of breastfeeding infants harms breastfeeding and shortens its duration.

Contractor agrees that they are not a subsidiary or wholly-owned by a company that manufactures infant formula. If any change in this status occurs, Contractor will be required to notify the Contract Administrator within 60 days of this change. All Participating Entities will be notified of this change and may, at their own discretion, choose to terminate their Participating Addendum with 30 days written notice to the Contractor.

### **8.3 RETENTION OF RECORDS**

The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and the provision of materials, supplies, services and/or equipment described herein, including, but not limited to, accounting procedures and practices which 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 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 OSP, personnel duly authorized by the OSP, the Washington State Auditor's Office, 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 final resolution of all litigation, claims, or audit findings involving the records.

### **8.4 PROPRIETARY OR CONFIDENTIAL INFORMATION**

To the extent consistent with [Chapter 42.56 RCW](#), the Public Disclosure Act, the OSP shall maintain the confidentiality of Contractor's information marked confidential or proprietary. If a request is made to view Contractor's proprietary information, the OSP will notify Contractor of the request and of the date that the records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, the OSP will release the requested information on the date specified.

The State's sole responsibility shall be limited to maintaining the above data in a secure area and to notify Contractor of any request(s) for disclosure for so long as the OSP retains Contractor's information in the OSP records. Failure to so label such materials or failure to timely respond after notice of request for public disclosure has been given shall be deemed a waiver by Contractor of any claim that such materials are exempt from disclosure.

#### **8.5 NON-ENDORSEMENT AND PUBLICITY**

Neither the OSP nor the Purchasers are endorsing the Contractor's Products or Services, nor suggesting that they are the best or only solution to their needs. Contractor agrees to make no reference to the OSP, any Purchaser or the state of Washington in any literature, promotional material, brochures, sales presentation or the like, regardless of method of distribution, without the prior review and express written consent of the OSP.

Material that is delivered under this Contract, but that does not originate there from ("Preexisting Material"), shall be transferred to Purchaser with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so except that such license shall be limited to the extent to which Contractor has a right to grant such a license. Contractor shall exert all reasonable effort to advise Purchaser at the time of delivery of Preexisting Material furnished under this Contract, of all known or potential infringements of publicity, privacy or of intellectual property contained therein and of any portion of such document which was not produced in the performance of this Contract. Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. Purchaser shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Contractor with respect to any Preexisting Material delivered under this Contract. Purchaser shall have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Contractor.

#### **8.6 PROTECTION OF CONFIDENTIAL AND PERSONAL INFORMATION**

Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either [Chapter 42.17 RCW](#) or other state or federal statutes ("Confidential Information"). Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, agency security data, or information identifiable to an individual that relates to any of these types of information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential

Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser's express written consent or as provided by law. Contractor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by Purchaser. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

"Personal information" including, but not limited to, "Protected Health Information" (PHI) under Health Insurance Portability And Accountability Act (HIPAA), individuals' names, addresses, phone numbers, birth dates, and social security numbers collected, used, or acquired in connection with this Contract shall be protected against unauthorized use, disclosure, modification or loss.

HIPAA establishes national minimum standards for the use and disclosure of certain health information. The Contractor must comply with all HIPAA requirements and rules when determined applicable by the Purchaser. If Purchaser determines that (1) Purchaser is a "covered entity" under HIPAA, and that (2) Contractor will perform "business associate" services and activities covered under HIPAA, then at Purchaser's request, Contractor agrees to execute Purchaser's business associate Contract in compliance with HIPAA.

Contractor shall ensure its directors, officers, employees, Subcontractors or agents use personal information solely for the purposes of accomplishing the services 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 the Agency or as otherwise required by law.

Any breach of this provision may result in termination of the Contract and demand for return of all personal information. The Contractor agrees to indemnify and hold harmless the State of Washington and the Purchaser for any damages related to both: (1) the Contractor's unauthorized use of personal information and (2) the unauthorized use of personal information by unauthorized persons as a result of Contractor's failure to sufficiently protect against unauthorized use, disclosure, modification, or loss.

Contractor shall maintain a log documenting the following: the Confidential Information received in the performance of this Contract; the purpose(s) for which the Confidential Information was received; who received, maintained and used the Confidential Information; and the final disposition of the Confidential Information. Contractor's records shall be subject to inspection, review or audit in accordance with Retention of Records.

Purchaser reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

Violation of this section by Contractor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

Immediately upon expiration or termination of this Contract, Contractor shall, at Purchaser's option: (i) certify to Purchaser that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser requires of Contractor to protect Purchaser's Confidential Information.

## **9 GENERAL PROVISIONS**

### **9.1 GOVERNING LAW/VENUE**

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

### **9.2 SEVERABILITY**

Severability: If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract that can be given effect without the invalid provision, and to this end the provisions of this Contract are declared to be severable.

### **9.3 SURVIVORSHIP**

All transactions executed for Products and Services provided pursuant to the authority of this Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled Overpayments to Contractor; Ownership/Rights in Data; Contractor's Commitments, Warranties and Representations; Protection of Purchaser's Confidential Information; Section Headings, Incorporated Documents and Order of Precedence; Publicity; Retention of Records; Patent and Copyright Indemnification; Contractor's Proprietary Information; Disputes; and Limitation of Liability shall survive the termination of this Contract.

#### **9.4 INDEPENDENT STATUS OF CONTRACTOR**

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under [Chapter 41.06 RCW](#), or [Title 51 RCW](#).

#### **9.5 GIFTS AND GRATUITIES**

Contractor shall comply with all state laws regarding gifts and gratuities, including but not limited to: [RCW 43.19.1937](#), [RCW 43.19.1939](#), [RCW 42.52.150](#), [RCW 42.52.160](#), and [RCW 42.52.170](#) under which 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 or contract activities.

Under [RCW 43.19.1937](#) and the Ethics in Public Service Law, [Chapter 42.52 RCW](#) state officers and employees are prohibited 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.

#### **9.6 IMMUNITY AND HOLD HARMLESS**

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless State, agencies of State and all officials, agents and employees of State, from and against all claims for injuries, death or damage to property arising out of or resulting from the performance of the contract. Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractors' agents, employees, representatives, or any subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the contract. Contractor shall be required to indemnify, defend, and hold harmless the State only to the extent claim is caused in whole or in part by negligent acts or omissions of Contractor.

Contractor waives its immunity under Title 51 to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

#### **9.7 PERSONAL LIABILITY**

It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of the State of Washington when executing their official duties in good faith, be in any way personally liable or responsible for any

agreement herein contained whether expressed or implied, nor for any statement or representation made herein or in any connection with this agreement.

## **9.8 INSURANCE**

### **General Requirements:**

Contractor shall, at their own expense, obtain and keep in force insurance as follows until completion of the Contract. Upon request, Contractor shall furnish evidence in the form of a certificate of insurance satisfactory to the State of Washington 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 the 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 of Washington 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 of Washington 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 of Washington for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

**Additional Insurance Provisions:**

All above insurance policies shall include, but not be limited to, the following provisions:

**Additional Insured:**

The State of Washington and all authorized Purchasers 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(s) Cancellation/Non-renewal:**

For insurers subject to [Chapter 48.18 RCW](#) (Admitted and regulated by the Washington State Insurance Commissioner) a written notice shall be given to the director of purchasing or designee forty-five (45) calendar days prior to cancellation or any material change to the policy(s) as it relates to this Contract. Written notice shall include the affected Contract reference number.

**Surplus Lines:**

For insurers subject to [Chapter 48.15 RCW](#) (Surplus Lines) a written notice shall be given to the director of purchasing or designee twenty (20) calendar days prior to

cancellation or any material change to the policy(s) as it relates to this Contract. Written notice shall include the affected Contract reference number.

**Cancellation for Non-payment to Premium:**

If cancellation on any policy is due to non-payment of premium, a written notice shall be given the director of purchasing or designee ten (10) calendar days prior to cancellation. Written notice shall include the affected Contract reference number.

**Identification:**

Policy(s) and Certificates of Insurance shall include the affected Contract reference 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 [Chapter 48.15 RCW](#) and [Chapter 284-15 WAC](#) .

**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.

**Limit Adjustments:**

The state reserves the right to increase or decrease limits as appropriate.

## **9.9 INDUSTRIAL INSURANCE COVERAGE**

The Contractor shall comply with the provisions of [Title 51 RCW](#) Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, the OSP may terminate this Contract. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from the Contractor.

## **9.10 NONDISCRIMINATION**

During the performance of this Contract, the Contractor shall comply with all applicable federal and state nondiscrimination laws, regulations and policies, including, but not limited to, Title VII of the Civil Rights Act, 42 U.S.C. section 12101 et. seq.; the Americans with Disabilities Act (ADA); and, [Chapter 49.60 RCW](#), Discrimination – Human Rights Commission.

### **9.11 OSHA AND WISHA REQUIREMENTS**

Contractor agrees to comply with conditions of the Federal Occupational Safety and Health Administration (OSHA) and, if manufactured or stored in the State of Washington, the Washington Industrial Safety and Health Act (WISHA) and the standards and regulations issued there under, and certifies that all items furnished and purchased will conform to and comply with said laws, standards and regulations. Contractor further agrees to indemnify and hold harmless OSP and Purchaser from all damages assessed against Purchaser as a result of Contractor's failure to comply with those laws, standards and regulations, and for the failure of the items furnished under the Contract to so comply.

### **9.12 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 of Washington any and all of the Contractor's claims for such price fixing or overcharges which arise under federal or state antitrust laws, relating to the materials, supplies, services and/or equipment purchased under this Contract.

### **9.13 WAIVER**

Failure or delay of the OSP or Purchaser to insist upon the strict performance of any term or condition of the Contract or to exercise any right or remedy provided in the Contract or by law; or the OSP's or Purchaser's acceptance of or payment for materials, supplies, services and/or equipment, 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 OSP or Purchaser to insist upon the strict performance of the entire agreement by the Contractor. In the event of any claim for breach of Contract against the Contractor, no provision of this Contract shall be construed, expressly or by implication, as a waiver by the OSP or Purchaser of any existing or future right and/or remedy available by law.

## **10 DISPUTES AND REMEDIES**

### **10.1 PROBLEM RESOLUTION AND DISPUTES**

Problems arising out of the performance of this Contract shall be resolved in a timely manner at the lowest possible level with authority to resolve such problem. If a problem persists and cannot be resolved, it may be escalated within each organization.

In the event a bona fide dispute concerning a question of fact arises between OSP or the Purchaser and Contractor and it cannot be resolved between the parties through the normal escalation processes, either party may initiate the dispute resolution procedure provided herein.

The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days. The initiating party shall have three (3) Business Days to

review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.

If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute Resolution Panel within the next three (3) Business Days.

The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.

Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

Both parties agree to be bound by the determination of the Dispute Resolution Panel.

Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible.

OSP, the Purchaser and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.

If the subject of the dispute is the amount due and payable by Purchaser for materials, supplies, services and/or equipment being provided by Contractor, Contractor shall continue providing materials, supplies, services and/or equipment pending resolution of the dispute provided Purchaser pays Contractor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

## **10.2 ADMINISTRATIVE SUSPENSION**

When it is in the best interest of the state, the OSP 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 per event by written notice from the Contract Administrator to the Contractor's Representative. Contractor shall resume performance on the next business day following the 30<sup>th</sup> day of suspension unless an earlier resumption date is specified in the notice of suspension. If no resumption date was specified in the notice of suspension, the Contractor can be demanded and required to resume performance within the 30 day suspension period by the Contract Administrator providing the Contractor's Representative with written notice of such demand.

### **10.3 FORCE MAJEURE**

The term “force majeure” means an occurrence that causes a delay that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences.

Exceptions: Except for payment of sums due, neither party shall be liable to the other or deemed in breach under this Contract if, and to the extent that, such party's performance of this Contract is prevented by reason of force majeure.

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 likewise be provided. So far as consistent with the Rights Reserved below, the time of completion shall be extended by Contract amendment 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 OSP reserves the right to authorize an amendment to this Contract, terminate the Contract, and/or purchase materials, supplies, equipment and/or services from the best available source during the time of force majeure, and Contractor shall have no recourse against the State.

### **10.4 ALTERNATIVE DISPUTE RESOLUTION FEES AND COSTS**

In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

### **10.5 NON-EXCLUSIVE REMEDIES**

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

### **10.6 LIMITATION OF LIABILITY**

The parties agree that neither Contractor, OSP nor Purchaser shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding liquidated damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled Termination for Default and Retention of

Records are not consequential, incidental, indirect, or special damages as that term is used in this section.

Neither the Contractor, the OSP nor Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of the Contractor, the OSP or Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than the OSP or the Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of the Contractor, the OSP or the Purchaser, or their respective Subcontractors.

If delays are caused by a Subcontractor without its fault or negligence, Contractor shall not be liable for damages for such delays, unless the Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Contractor to meet its required performance schedule.

Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

#### **10.7 FEDERAL FUNDING**

In the event that a federally funded acquisition results from this procurement, the contractor may be required to provide additional information (free of charge) at the request of the OSP or purchaser: Further, the contractor may be subject to those federal requirements specific to the commodity.

#### **10.8 FEDERAL RESTRICTIONS ON LOBBYING**

Contractor certifies that under the requirements of Lobbying Disclosure Act, 2 U.S.C., Section 1601 et seq., no Federal appropriated funds have been paid or will be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

#### **10.9 FEDERAL DEBARMENT AND SUSPENSION**

The contractor certifies, that neither it nor its "principals" (as defined in 49 CFR. 29.105 (p)) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

## **11 CONTRACT TERMINATION**

### **11.1 MATERIAL BREACH**

A Contractor may be Terminated for Cause by the OSP, at the sole discretion of the Contract Administrator, for failing to perform a contractual requirement or for a material breach of any term or condition. Material breach of a term or condition of the Contract may include but is not limited to:

1. Contractor failure to perform services or deliver materials, supplies, or equipment by the date required or by an alternate date as mutually agreed in a written amendment to the Contract;
2. Contractor failure to carry out any warranty or fails to perform or comply with any mandatory provision of the contract;
3. Contractor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder;
4. Contractor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors that endangers the Contractor's proper performance hereunder;
5. Appointment of any receiver, trustee, or similar official for Contractor or any of the Contractor's property and such appointment endangers the Contractor's proper performance hereunder;
6. A determination that the Contractor is in violation of federal, state, or local laws or regulations and that such determination renders the Contractor unable to perform any aspect of the Contract.

### **11.2 OPPORTUNITY TO CURE**

In the event that Contractor fails to perform a contractual requirement or materially breaches any term or condition, the OSP may issue a written cure notice. The Contractor may have a period of time in which to cure. The OSP is not required to allow the Contractor to cure defects if the opportunity for cure is not feasible as determined solely within the discretion of the OSP. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages, or otherwise affects any other remedies available against Contractor under the Contract or by law.

If the breach remains after Contractor has been provided the opportunity to cure, the OSP may do any one or more of the following:

1. Exercise any remedy provided by law;
2. Terminate this Contract and any related Contracts or portions thereof;
3. Procure replacements and impose damages as set forth elsewhere in this Contract;
4. Impose actual or liquidated damages;

5. Suspend or bar Contractor from receiving future Solicitations or other opportunities;
6. Require Contractor to reimburse the state for any loss or additional expense incurred as a result of default or failure to satisfactorily perform the terms of the Contract.

### **11.3 TERMINATION FOR CAUSE**

In the event the Contract Administrator, in its sole discretion, determines that the Contractor has failed to comply with the conditions of this Contract in a timely manner or is in material breach, the Contract Administrator has the right to suspend or terminate this Contract, in part or in whole. The Contract Administrator shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within thirty (30) calendar days or as otherwise specified by the Contract Administrator, or if such corrective action is deemed by the Contract Administrator to be insufficient, the Contract may be terminated. The Contract Administrator reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged breach and pending corrective action by the Contractor or a decision by the Contract Administrator to terminate the Contract.

In the event of termination, the OSP shall have the right to procure for all Purchasers any replacement materials, supplies, services and/or equipment that are the subject of this Contract on the open market. In addition, the Contractor shall be liable for damages as authorized by law including, but not limited to, any price 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.

If it is determined that: (1) the Contractor was not in material breach; or (2) failure to perform was outside of Contractor's or its Subcontractor's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience". The rights and remedies of the OSP and/or the Purchaser provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

### **11.4 TERMINATION FOR CONVENIENCE**

Except as otherwise provided in this Contract, OSP, at the sole discretion of the Contract Administrator, may terminate this Contract, in whole or in part by giving thirty (30) calendar days written notice beginning on the second day after mailing to the Contractor. If this Contract is so terminated, Purchasers shall be liable only for payment required under this Contract for properly authorized services rendered, or materials, supplies and/or equipment delivered to and Accepted by the Purchaser prior to the effective date of Contract termination. Neither the OSP nor the Purchaser shall have any other obligation whatsoever to the Contractor

for such termination. This Termination for Convenience clause may be invoked by the OSP when it is in the best interest of the State of Washington.

#### **11.5 TERMINATION FOR WITHDRAWAL OF AUTHORITY**

In the event that the OSP and/or Purchaser's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, the OSP may terminate this Contract, in whole or in part, by seven (7) calendar days written notice to Contractor.

#### **11.6 TERMINATION FOR CONFLICT OF INTEREST**

OSP may terminate this Contract by written notice to Contractor if it is determined, after due notice and examination, that any party to this Contract has violated [Chapter 42.52RCW](#), Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, the OSP and /or Purchaser shall be entitled to pursue the same remedies against Contractor as it could pursue in the event that the Contractor breaches this Contract.

#### **11.7 TERMINATION BY MUTUAL AGREEMENT**

The OSP and the Contractor may terminate this Contract in whole or in part, at any time, by mutual agreement.

#### **11.8 TERMINATION PROCEDURE**

In addition to the procedures set forth below, if the OSP terminates this Contract, Contractor shall follow any procedures the Contract Administrator specifies in the termination notice.

Upon termination of this Contract and in addition to any other rights provided in this Contract, Contract Administrator may require the Contractor to deliver to the Purchaser 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.

The Purchaser shall pay to the Contractor the agreed upon price, if separately stated, for completed work and service(s) Accepted by the Purchaser, and the amount agreed upon by the Contractor and the Purchaser for (i) completed materials, supplies, services rendered and/or equipment for which no separate price is stated, (ii) partially completed materials, supplies, services rendered and/or equipment, (iii) other materials, supplies, services rendered and/or equipment which are Accepted by the Purchaser, and (iv) the protection and preservation of property, unless the termination is for cause, in which case the OSP and the Purchaser shall determine the extent of the liability of the Purchaser. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The Purchaser may withhold from any amounts due the Contractor such sum as the Contract Administrator and

Purchaser determine to be necessary to protect the Purchaser against potential loss or liability.

The rights and remedies of the OSP and/or the Purchaser 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 termination notice, and except as otherwise expressly directed in writing by the Contract Administrator, the Contractor shall:

1. Stop all work, order fulfillment, shipments, and deliveries under the Contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, supplies, equipment and/or facilities in relation to the Contract except as is necessary to complete or fulfill such portion of the Contract that is not terminated;
3. Complete or fulfill such portion of the Contract that is not terminated in compliance with all contractual requirements;
4. Assign to the Purchaser, in the manner, at the times, and to the extent directed by the Contract Administrator on behalf of the Purchaser, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Purchaser has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contract Administrator and/or the Purchaser to the extent Contract Administrator and/or the Purchaser may require, which approval or ratification shall be final for all the purposes of this clause;
6. Transfer title to the Purchaser and deliver in the manner, at the times, and to the extent directed by the Contract Administrator on behalf of the Purchaser any property which, if the contract had been completed, would have been required to be furnished to the Purchaser;
7. Take such action as may be necessary, or as the Contract Administrator and/or the Purchaser may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the OSP and/or the Purchaser has or may acquire an interest.

## **12 CONTRACT EXECUTION**

### **12.1 PARTIES**

This Contract ("Contract") is entered into by and between the State of Washington, acting by and through OSP, an agency of Washington state

government located at 210 11<sup>th</sup> Ave SW Olympia, WA 98504, and the Awarded Contractor, a corporation/sole proprietor or other business form licensed to conduct business in the state of Washington, for the purpose of providing Manual and Electric Breast Pumps, Double Pump Kits, and related accessories.

## **12.2 ENTIRE AGREEMENT**

This Contract document and all subsequently issued amendments comprise the entire agreement between the OSP and the Contractor. No other statements or representations, written or oral, shall be deemed a part of the Contract.

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled **Contractor Commitments, Warranties and Representations**, understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, Price, quality, or Specifications of this Contract will be effective without the written consent of both parties.

## **12.3 ORDER OF PRECEDENCE, INCORPORATED DOCUMENTS, CONFLICT AND CONFORMITY**

### **Incorporated Documents**

Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein:

1. The OSP's Solicitation document 01910 with all attachments and exhibits, and all amendments thereto;
2. Contractor's response to the Solicitation 01910 dated [date];
3. The terms and conditions contained on Purchaser's Order Documents, if used;
4. Award Letter; and
5. All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to Purchaser and used to affect the sale of the Product to the Purchaser.

### **Order of Precedence**

In the event of a conflict in such terms, or between the terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable Federal and State of Washington statutes and regulations
2. Mutually agreed written amendments to this Contract

3. Award Letter describing the extent of the award or open administrative matters
4. This Contract
5. The OSP's Solicitation document (IFB) with all attachments and exhibits, and all amendments thereto
6. Western States Contracting Alliance (WSCA) Standard Terms and Conditions
7. Contractor's response to the Solicitation
8. Any other provision, term, or materials incorporated into the Contract by reference.

Conflict: To the extent possible, the terms of this Contract shall be read consistently.

Conformity: If any provision of this Contract violates any Federal or State of Washington statute or rule of law, it is considered modified to conform to that statute or rule of law.

**12.4 LEGAL NOTICES**

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service mail, or by electronic mail, to the parties at the addresses, fax numbers, or e-mail addresses provided in this section. For purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Equipment or Services provided pursuant to this Contract is served upon Contractor or OSP, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and OSP further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

**LEGAL NOTICE CONTACT INFORMATION:**

<u>To Contractor at:</u>	<u>To the State of Washington at:</u>
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<p>[Contractor]</p> <p>Attn:</p> <p>[Contractor address and contact information]</p>	<p>State of Washington  Department of General Administration  Office of State Procurement</p> <p>Attn: Melissa Cox – Legal Notice</p> <p>210 11<sup>th</sup> Ave SW, Room 201 - GA Bldg  Olympia, WA 98504-1017  Phone: 360-902-7400/Fax: 360-586-2426  melissa.cox@ga.wa.gov</p>
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**12.5 LIENS, CLAIMS AND ENCUMBRANCES**

All materials, equipment, supplies and/or services shall be free of all liens, claims, or encumbrances of any kind, and if the OSP or the Purchaser requests, a formal release of same shall be delivered to the respective requestor.

**12.6 AUTHORITY TO BIND**

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

**12.7 COUNTERPARTS**

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

\*\*\*\*\*

**CONTRACT SIGNATURES**

*In Witness Whereof*, the parties hereto, having read this Contract in its entirety, including all appendices and attachments, do agree in each and every particular and have thus set their hands hereunto.

This Contract is effective this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
Date completed by OSP only

**Approved – Contractor**  
Business Name  
  
  
  
  
  
  
  
  
Signature

**Approved - State**  
State of Washington, Department of General Administration, Office of State Procurement  
  
  
  
  
  
  
  
  
Signature

Print or Type Name	Date
Title	

Print or Type Name	Date
Title	

Additional OSP Approval (if necessary): \_\_\_\_\_

## APPENDIX C STANDARD DEFINITIONS

This section contains definitions of terms commonly used in Solicitations conducted by the State of Washington, Office of State Procurement. Additional definitions may also be found in [Chapter 43.19 RCW](#) and [WAC 236-48-003](#), and all terms contained herein will be read consistently with those definitions.

<b>Acceptance</b>	The materials, supplies, services, and/or equipment have passed appropriate Inspection. In the event that there is a formal Acceptance Testing period required in the Solicitation document then acceptance is formalized in writing. If there is no Acceptance Testing, acceptance may occur when the Products are delivered and inspected.
<b>Acceptance Testing</b>	The process for ascertaining that the materials, supplies, services, and/or equipment meets the standards set forth in the Solicitation, prior to Acceptance by the Purchaser.
<b>Agency</b>	Includes State of Washington institutions, the offices of the elective state officers, the Supreme Court, the court of appeals, the administrative and other departments of state government, and the offices of all appointive officers of the state. In addition, colleges, community colleges, and universities who choose to participate in State Contract(s) are included. "Agency" does not include the legislature.
<b>All or Nothing</b>	<p>The result of a competitive Solicitation that requires that a Contract be executed with a single Bidder for delivery of goods and/or services. In the event that suppliers are unable to deliver the entirety of the goods and/or services required, no Contract is executed. No partial fulfillment opportunities are available as a result of the Solicitation</p> <p>A method of award resulting from a competitive Solicitation by which the OSP will award the resulting Contract to a single Bidder.</p> <p>Also, a designation the Bidder may use in its Bid or Response to indicate its offer is contingent upon full award and it will not accept a partial award.</p>

<b>Alternate</b>	A substitute offer of materials, supplies, services and/or equipment that is not at least a functional Equal in features, performance and use and which materially deviates from one or more of the specifications in a competitive Solicitation.
<b>Amendment</b>	A change to a legal document. For the purposes of a Solicitation document, an amendment shall be a unilateral change issued by the OSP, at its sole discretion.
<b>Authorized Representative</b>	An individual designated by the Bidder or Contractor to act on its behalf and with the authority to legally bind the Bidder or Contractor concerning the terms and conditions set forth in Solicitation, Bid and Contract documents.
<b>Bid</b>	A sealed written offer to perform a Contract to provide materials, supplies, services, and/or equipment in reply to an Invitation For Bid (IFB).
<b>Bidder</b>	A Vendor who submits a Bid or Proposal in reply to a Solicitation.
<b>Business Days</b>	Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.
<b>Calendar Days</b>	Consecutive days of the year including weekends and holidays, each of which commence at 12:00:01 a.m. and end at Midnight, Pacific Time. When “days” are not specified, Calendar Days shall prevail.
<b>Contract</b>	An agreement, or mutual assent, between two or more competent parties with the elements of the agreement being offer, acceptance, and consideration.
<b>Contract Administrator</b>	The person designated to manage the resultant Contract for the OSP. The primary contact for the OSP with Purchasers and Contractor on a specific Contract.
<b>Contractor</b>	Individual, company, corporation, firm, or combination thereof with whom the OSP develops a Contract for the procurement of materials, supplies, services, and/or equipment. It shall also include any Subcontractor retained by Contractor as permitted under the terms of the Contract.
<b>End-User</b>	A person enrolled in a WIC program who is the recipient of equipment issued by a WIC clinic.
<b>Equal</b>	An offer of materials, supplies, services and/or equipment that meets or exceeds the quality, performance and use of the specifications identified in a Solicitation.

<b>Estimated Useful Life</b>	The estimated time from the date of acquisition to the date of replacement or disposal, determined in any reasonable manner.
<b>Inspection</b>	An examination of delivered material, supplies, services, and/or equipment prior to Acceptance aimed at forming a judgment as to whether such delivered items are what was ordered, were properly delivered and ready for Acceptance. Inspection may include a high level visual examination or a more thorough detailed examination as is customary to the type of purchase, as set forth in the solicitation document and/or as agreed between the parties. Inspection shall be acknowledged by an authorized signature of the Purchaser.
<b>Invitation For Bid (IFB)</b>	The form utilized to solicit Bids in the formal, sealed Bid procedure and any amendments thereto issued in writing by the OSP. Specifications and qualifications are clearly defined.
<b>Lead Time/After Receipt Of Order (ARO)</b>	The period of time between when the Contractor receives the order and the Purchaser receives the materials, supplies, equipment, or services order.
<b>Life Cycle Cost</b>	The total cost of an item to the state over its Estimated Useful Life, including costs of selection, acquisition, operation, maintenance, and where applicable, disposal, as far as these costs can reasonably be determined, minus the salvage value at the end of its estimated useful life.
<b>Multi-User Breast Pump</b>	A multi-user breast pump is defined as a unit that operates on a “closed system”, meaning that it is impossible for milk to reach the motor. Multi-user pumps have special barriers and filters to prohibit milk from entering the pump motor, which prevents cross-contamination.
<b>Office Of State Procurement</b>	The OSP within the Washington Department of General Administration, Services Division authorized under Chapter 43.19 RCW to develop and administer contracts for goods and services on behalf of state agencies, colleges and universities, non-profit organizations and local governments.
<b>Order Document</b>	A written communication, submitted by a Purchaser to the Contractor, which details the specific transactional elements required by the Purchaser within the scope of the Contract such as delivery date, size, color, capacity, etc. An Order Document may include, but is not limited to field orders, purchase orders, work order or other writings as may be designated by the parties hereto. No additional or alternate terms and conditions on such written

communication shall apply unless authorized by the Contract and expressly agreed between the Purchaser and the Contractor.

<b>Personal-Use Breast Pump</b>	A Personal-Use breast pump is defined as a unit that operates on an “open system”, meaning the pump has internal parts that cannot be removed, replaced, or fully sterilized. These pumps are meant for a single user because of the risk of cross-contamination associated with re-using a previously owned pump.
<b>Procurement Coordinator</b>	The individual authorized by the OSP who is responsible for conducting a specific Solicitation.
<b>Product</b>	Materials, supplies, services, and/or equipment provided under the terms and conditions of this Contract.
<b>Proposal</b>	A sealed written offer to perform a Contract to supply materials, supplies, services, and/or equipment in reply to a Request For Proposal (RFP).
<b>Purchaser</b>	The authorized user of the Contract, as identified in the Solicitation, who may or actually does make purchases of material, supplies, services, and/or equipment under the resulting Contract.
<b>OSP</b>	The Office of State Procurement or an Agency authorized by law to conduct acquisition of materials, supplies, services, and/or equipment or delegated that authority by the Office of State Procurement.
<b>Recycled Material</b>	Waste materials and by-products that have been recovered or diverted from solid waste and that can be utilized in place of a raw or virgin material in manufacturing a product and consists of materials derived from post-consumer waste, manufacturing waste, industrial scrap, agricultural wastes and other items, all of which can be used in the manufacture of new or recycled products.
<b>Recycled Content Product</b>	A product containing recycled material.
<b>Request For Proposal (RFP)</b>	The form utilized to solicit Proposals in the formal, sealed Bid procedure and any amendments thereto issued in writing by the OSP. The specifications and qualification requirements are written in an outcome based form allowing for consideration of a broad range of different solutions to meet the procurement need.

<b>Responsible</b>	The ability, capacity, and skill to perform the Contract or provide the service required , including, but not limited to the character, integrity, reputation, judgment, experience, and efficiency of the Bidder; Further considerations may include, but are not limited to whether the Bidder can perform the contract within the time specified, the quality of performance of previous contracts or services, the previous and existing compliance by the Bidder with laws relating to the contract or services and such other information as may be secured having a bearing on the decision to award the contract:
<b>Responsive</b>	A Bid or Proposal that meets all material terms of the Solicitation document.
<b>Response</b>	A Bid or Proposal
<b>Solicitation</b>	The process of notifying prospective Bidders that the OSP desires to receive competitive Bids or Proposals for furnishing specified materials, supplies, services, and/or equipment. Also includes reference to the actual documents used for that process, including: the Invitation For Bids (IFB) or Request For Proposals (RFP), along with all attachments and exhibits thereto.
<b>State</b>	The State of Washington acting by and through the OSP.
<b>State Contract</b>	<p>The written document memorializing the agreement between the successful Bidder and the OSP for materials, supplies, services, and/or equipment and/or administered by the Office of State Procurement on behalf of the State of Washington.</p> <p>“State Contract” does not include the following:</p> <ul style="list-style-type: none"> <li>• Colleges and universities that choose to purchase under <a href="#">RCW 28B.10.029</a></li> <li>• Purchases made in accordance with state purchasing policy under <a href="#">Washington Purchasing Manual Part 6.11 Best Buy Program</a>;</li> <li>• Purchases made pursuant to authority granted or delegated under <a href="#">RCW 43.19.190(2) or (3)</a></li> <li>• Purchases authorized as an emergency purchase under <a href="#">RCW 43.19.200(2)</a>; or</li> <li>• Purchases made pursuant to other statutes granting the Agency authority to independently conduct purchases of materials, supplies, services, or equipment.</li> </ul>
<b>Subcontractor</b>	A person or business that is, or will be, providing or performing an essential aspect of the Contract under the direction and responsibility of the Contractor and with the agreement of the OSP.

<b>Vendor</b>	A provider of materials, supplies, services, and/or equipment.
<b>Washington's Electronic Business Solution (WEBS)</b>	The Vendor registration and Bidder notification system maintained by the Washington State Department of General Administration located at: <a href="http://www.ga.wa.gov/webs">www.ga.wa.gov/webs</a> .

## Appendix D

### Western States Contracting Alliance Standard Contract Terms and Conditions

**PARTICIPANTS:** The Western States Contracting Alliance (herein WSCA) is a cooperative group contracting consortium for state government departments, institutions, agencies and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington and Wyoming. Other states and their political subdivisions are also eligible to participate in WSCA contracts. Obligations under this contract are limited to those Participating States who have signed a Participating Addendum where contemplated by the solicitation. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Unless otherwise specified in the solicitation, the resulting award(s) will be permissive.

**QUALITY ESTIMATES:** WSCA does not guarantee to purchase any amount under the contract to be awarded. Estimated quantities are for the purposes of submitting proposals only and are not to be construed as a guarantee to purchase any amount.

**SPECIFICATIONS:** Any deviation from specifications must be clearly indicated by offeror, otherwise, it will be considered that the proposal is in strict compliance. When BRAND NAMES or manufacturers' numbers are stated in the specifications they are intended to establish a standard only and are not restrictive unless the IFB states "No substitute". Proposals will be considered on other makes, models or brands having comparable quality, style, workmanship and performance characteristics. Alternate proposals offering lower quality or inferior performance will not be considered.

**ACCEPTANCE OR REJECTION OF PROPOSALS:** WSCA reserves the right to accept or reject any or all proposals or parts of proposals, and to waive informalities therein.

**SAMPLES:** Generally, when required, samples will be specifically requested in the Solicitation. Samples, when required, are to be furnished free of charge. Except for those samples destroyed or mutilated in testing, samples will be returned at offeror's request, transportation collect.

**CASH DISCOUNT TERMS:** Offeror may quote a cash discount based upon early payment; however, discounts offered for less than 30 days will not be considered in making the award. The date from which discount time is calculated shall be the date a correct invoice is received

or receipt of shipment, whichever is later; except that if testing is performed, the date shall be the date of acceptance of the merchandise.

**TAXES:** Proposal prices shall be exclusive of state sales and federal excise taxes. Where the state government entities are not exempt from sales taxes on sales within their state, the contractor shall add the sales taxes on the billing invoice as a separate entry.

**PATENTS, COPYRIGHTS, ETC.:** The Contractor shall release, indemnify and hold the Buyer, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract.

**AWARD:** WSCA may award multiple contracts as the result of this solicitation. Awards shall be made to the responsible offeror(s) whose proposal is determined to be the most advantageous to WSCA, taking into consideration price and the other evaluation factors set forth in the IFB.

**NON-COLLUSION:** By signing the proposal the offeror certifies that the proposal submitted, has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the Request for Proposal, designed to limit independent bidding or competition.

**CANCELLATION:** Unless otherwise stated in the special terms and conditions, any contract entered into as a result of this bid may be canceled by either party upon 60 days notice, in writing, prior to the effective date of the cancellation. Further, any Participating State may cancel its participation upon 30 days written notice, unless otherwise limited or stated in the special terms and conditions of this solicitation. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of and Purchasing Entity to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any order. Cancellation of the contract due to Contractor default may be immediate.

**DEFAULT AND REMEDIES:** Any of the following events shall constitute cause for WSCA to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract WSCA shall issue a written notice of default providing a period in which Contractor shall have an opportunity to cure. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages. If the default remains, after Contractor has been provided the opportunity to cure, WSCA may do one or more of the following: 1. Exercise any remedy provided by law;

2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages; 4. Suspend contractor from receiving future proposal solicitations.

**LAWS AND REGULATIONS:** Any and all supplies, services and equipment offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

**CONFLICT OF TERMS:** In the event of any conflict between these standard terms and conditions and any special terms and conditions contained in the Solicitation, the special terms and conditions shall govern.

**REPORTS:** The contractor shall submit quarterly reports to the WSCA Contract Administrator showing the quantities and dollar volume of purchases by each agency.

**HOLD HARMLESS:** The contractor shall release, protect, indemnify and hold WSCA and the respective states and their officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the contractor, his employees or subcontractors or volunteers.

**ORDER NUMBERS:** Contract order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

**GOVERNING LAW:** This procurement and the resulting agreement shall be governed by and construed in accordance with the laws of the state sponsoring and administering the procurement. The construction and effect of any Participating Addendum or order against the contract(s) shall be governed by and construed in accordance with the laws of the Participating Entity's State. Venue for any claim, dispute or action concerning an order placed against the contract(s) or the effect of an Participating Addendum shall be in the Purchasing Entity's State.

**DELIVERY:** The prices offered shall be the delivered price to any Participating State agency or political subdivision. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the contractor. Responsibility and liability for loss or damage shall remain the Contractor until final inspection and acceptance when responsibility shall pass to the Buyer except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered shall be shipped without charge.

**WARRANTY:** As used herein "Buyer" refers to any Participating State agency or political subdivision. The contractor acknowledges that the Uniform Commercial Code applies to this contract. In general, the contractor warrants that: (a) the product will do what the

salesperson said it would do, (b) the product will live up to all specific claims that the manufacturer makes in their advertisements, (c) the product will be suitable for the ordinary purposes for which such product is used, (d) the product will be suitable for any *special purposes* that the Buyer has relied on the contractor's skill or judgment to consider.

**AMENDMENTS:** The terms of this contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the WSCA Contract Administrator.

**ASSIGNMENT/SUBCONTRACT:** Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the WSCA Contract Administrator.

**NONDISCRIMINATION:** The offeror agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. The offeror further agrees to furnish information and reports to requesting State(s), upon request, for the purpose of determining compliance with these statutes. Offeror agrees to comply with each individual state's certification requirements, if any, as stated in the special terms and conditions. This contract may be canceled if the offeror fails to comply with the provisions of these laws and regulations. The offeror must include this provision in every subcontract relating to purchases by the States to insure that subcontractors and vendors are bound by this provision.

**SEVERABILITY:** If any provision of this contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

**INSPECTIONS:** Goods furnished under this contract shall be subject to inspection and test by the Buyer at times and places determined by the Buyer. If the Buyer finds goods furnished to be incomplete or in compliance with proposal specifications, the Buyer may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price, which is equitable under the circumstances. If Contractor is unable or refuses to correct such goods within a time deemed reasonable by the Buyer, the Buyer may cancel the order in whole or in part. Nothing in this paragraph shall adversely affect the Buyer's rights including the rights and remedies associated with revocation of acceptance under the Uniform Commercial Code.

**FORCE MAJEURE:** Neither party to this contract shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. WSCA may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

**HAZARDOUS CHEMICAL INFORMATION:** The contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to the user agency. All safety data sheets and labels will be in accordance with each participating state's requirements.

**FIRM PRICE:** Unless otherwise stated in the special terms and conditions, for the purpose of award, offers made in accordance with this solicitation must be good and firm for a period of ninety (90) days from the date of proposal opening. Prices must remain firm for the full term of the contract.

**EXTENSION OF PRICES:** In the case of error in the extension of prices in the proposal, the unit prices will govern.

**PROPOSAL PREPARATION COSTS:** WSCA is not liable for any costs incurred by the offeror in proposal preparation.

**CONFLICT OF INTEREST:** The contractor certifies that it has not offered or given any gift or compensation prohibited by the state laws of any WSCA participants to any officer or employee of WSCA or participating states to secure favorable treatment with respect to being awarded this contract.

**INDEPENDENT CONTRACTOR:** The contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind WSCA or the respective states to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for WSCA or the states, except as expressly set forth herein.

**POLITICAL SUBDIVISION PARTICIPATION:** Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cities, etc.,) of the Participating States shall be voluntarily determined by the political subdivision. The contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

**DEBARMENT:** The contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by WSCA.

**AUDIT OF RECORDS:** The contractor agrees to allow WSCA, State and Federal auditors, and state agency staff access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

**ENTITY PARTICIPATION:** Use of specific WSCA cooperative contracts by state agencies, political subdivisions and other entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

**Appendix E**  
**Participating Addendum**



Participating  
Addendum 01910.doc

**APPENDIX F  
STATE SPECIFIC TERMS AND CONDITIONS**

**State of New Jersey Specific Terms and Conditions**

**State of Arizona Specific Terms and Conditions**

**State of South Dakota Specific Terms and Conditions**

**State of Utah Specific Terms and Conditions**



**INTENT TO PARTICIPATE**  
**Cooperative Contract(s) for Breast Pumps and Accessories**

**I. PURPOSE:**

The purpose of this Agreement is to provide the members of the Western States Contracting Alliance (WSCA) and other interested NASPO states with the opportunity to participate in multi-state cooperative contract(s) for Breast Pumps and Accessories.

**II. SCOPE OF THE CONTRACT(S)**

The State of Washington is authorized by agreement of the participants to act as the procurement officer in developing multi-state cooperative contract(s) for Breast Pumps and Accessories. The resulting contracts will be permissive contracts.

Administrative Fee

A WSCA administrative fee of one-half of one percent (.5%) will be assessed centrally for purchases under the contract. Individual states may optionally add their administrative fee (if any) when the state executes its Participating Addendum.

**III. TERM OF THE CONTRACT**

The initial contract will be established for two (2) years from date of award, with annual renewal contract extension options for a total potential contract of six (6) years.

**IV. SOLICITATION AND CONTRACT DEVELOPMENT/ADDITIONAL INFORMATION**

The solicitation and contract development shall be accomplished in compliance with the WSCA and NASPO Agreement of Understanding, incorporated herein by reference.

Solicitation Publication Period

Bidders/offerors will be given over 21 days after publication to submit proposals.

Solicitation Type and Evaluation Criteria

This IFB will be issued and evaluated in concert with the procurement laws and rules of the State of Washington by a sourcing team composed of members from several states.

Award(s): The solicitation will permit multiple awards.

Additional Requested Information

*State Specific Terms and Conditions:* If the participating state wishes to include any State specific terms and conditions with the release of this RFP, please attach those with this Intent to Participate.

*Annual Estimated Volume:* Please indicate your estimated annual volume of potential purchase under this proposed contract. \$\_\_\_\_\_

SIGNATURE

State of \_\_\_\_\_

\_\_\_\_\_  
**Printed Name and Title**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

Please scan and email the signed "Intent to Participate" document by:  
**Tuesday, Sept. 28, 2010** to:

Douglas Richins  
WSCA Cooperative Development Director  
[DRichins@AMRms.com](mailto:DRichins@AMRms.com)