



**Emergency Public Works Invitation for Quotes  
 “RED PACKAGE”**

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**INSTRUCTIONS**

**EMERGENCY CONTRACTING PROCESS**

Please read the Emergency Contracting Policy and then proceed as follows:

- A. Once the **Detailed Damage Assessment Form (DDAF)** is entirely complete, fill out a Risk Management (RM) Checklist to obtain Insurance Requirements.
- B. Contact Purchasing and Contracting Services for a Review Appointment.
- C. For the Review Appointment bring the DDAF and RM Checklist
- D. PCSDs Review will include the following:
  - a. Review DDAF and obtain the Director’s signature
  - b. Assign PW#
  - c. Review Insurance Requirements and attach the project specific insurance requirements to the “Red Package”
  - d. Review the required contents to be returned and distribute the “Red Package” (PCSD may assist in gathering required documentation upon request and availability.)
- E. After you have obtained the “Red Package,” consistent with the requirements outlined in the DDAF, if appropriate, the Project Manager shall contact multiple contractors to determine availability and expertise and request quotes. *(If multiple quotes are obtained, PM is to collect all quotes received and attach to the “Red Package.”)*
- F. The Administering Department may determine the most appropriate contractor and best quote.
- G. The PM will then will research the Bidder Responsibility criteria in Attachment B for the preferred contractor and insert the printouts to the “Red Package.”

- H. The PM will complete the Emergency Contract by filling out the Scope of Work and Quote Form with either agreed unit prices or a lump sum, and have the preferred contractor complete the Declaration and Agreement Form. The Contractor will then fill out the Declaration, Agreement Form and Social Equity attachments and provide the required insurance documents as stated in Section 1 below and a Payment and Performance Bond for the agreed amount. (PCSD may assist with gathering required documentation upon request and availability.)
- I. The PM completes the "Red Package" by gathering the completed contract, the completed Quote, Declaration and Agreement Form, the insurance documents, Payment and Performance Bond, and the responsible bidder documentation and route entire "Red Package" to PCSD for signature.
- J. PCSD will review the documentation for completeness, route the Payment and Performance Bond to Law for approval and then execute the Emergency Contract.

#### **TO COMPLETE THE RED PACKAGE**

- A. Insert information by hand as indicated throughout the Contract. Print legibly.
- B. Attach Quote Form/Pricing filled out by the preferred contractor, may attach additional sheets if necessary. Indicate additional sheets as attachments. (also keep and include all Quotes collected)
- C. Have the preferred contractor fill out the Declaration page and the Agreement Form and insert in order.
- D. Run the responsible bidder check by attaching the print outs behind Attachment B and attach current prevailing wage sheets. (PCSD may assist with gathering required documentation upon request and availability.)
- E. Once they pass the responsibility check, have the preferred contractor provide the appropriate insurance documentation and Payment and Performance Bond.
- F. Attach all documentation collected to the Red Package and return to PCSD for review and execution.

#### **END OF INSTRUCTIONS**



**Emergency Public Works Quote Form**

**Public Emergency works #:** \_\_\_\_\_

**Contract Title:** \_\_\_\_\_

**1. INSTRUCTIONS TO BIDDERS**

1. Do not alter the Quote Form *(If requested to provide additional sheets you may do so)*.
2. Review Contract Requirements and Provide the OWNER with a Quote to complete the Work and all incidental work along with Attachment D, Social Equity Statement.
3. Once notified you are the preferred CONTRACTOR, Complete Section 4 Declaration and the Agreement Form.
4. Provide the Applicable Insurance Documents and Payment and Performance Bond.

**Responsible Bidder requirements**

Before award of the Contract, and Firm providing a quote must meet the following responsibility criteria to be considered responsible (see Attachment B). The Firm must:

1. At the time of quote submittal, have a certificate of registration in compliance with Chapter 18.27 RCW;
2. Have a current State unified business identifier number and a City of Seattle business license; etc.
3. have industrial insurance coverage for the Bidders employees emergency working in Washington as required in Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW; and
4. not be disqualified from bidding on any public emergency works contract under RCW 39.06.010 or 39.12.065
5. meet any supplemental criteria requirements, if applicable.

If the OWNER determines a Firm to be not responsible, the OWNER will not award to that Firm.

Additionally, the selected Firm must verify responsibility criteria, as applicable, for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in items (1) through (4) above (see Attachment B), and possess an electrical CONTRACTOR license, if required by Chapter 19.28 RCW, or an elevator CONTRACTOR license, if required by Chapter 70.87 RCW. This verification requirement, as well as the responsibility criteria, must be included in every public emergency works Contract and subcontract of every tier.





**4. DECLARATION**

I declare, under penalty of perjury under the Laws of the State of Washington, as follows:

- A.** Quote: I agree to perform the Emergency work in compliance with the Emergency Contract Documents, for the prices stated in this Quote.
- B.** Non Collusion: I have not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free, competitive bidding in the preparation and submission of a Quote to the OWNER for consideration in the award of a contract on the improvement described in the Bid Documents.
- C.** I agree to comply with the requirements regarding subcontracting, and the purchase of supplies or materials from firms that are not disqualified or otherwise debarred from doing business with the City under the provisions of SMC Ch. 20.42 or SMC Ch. 20.70.
- D.** Responsible Bidder Requirements: My Quote acknowledges that I am in compliance with all of the responsible bidder requirements under RCW 39.04.350, including: having a certificate of registration under RCW 18.27 prior to bidding; a UBI number; industrial insurance coverage if required under Title 51 RCW; an employment security number under Title 50; and a state excise tax registration number under Title 82. I affirm I am not disqualified from bidding on any public emergency works contract under RCW 39.06 or RCW 39.12.065(3). I will provide proof of these requirements if requested.

<b>BUSINESS NAME OF BIDDER:</b>			
<b>BUSINESS ADDRESS:</b>			<b>9</b>
	Street or PO Box	City	State Zip
<b>CONTACT INFO:</b>			
	Telephone	Fax	E-mail Primary Contact
<b>STATE OF WA UBI #</b>	<b>STATE OF WA CONTRACTOR REGISTRATION #:</b>		
<b>EMPLOYMENT SECURITY DEPT. #:</b>	<b>CITY OF SEATTLE BUSINESS LICENSE #:</b>		

**OFFICIAL AUTHORIZED TO SIGN FOR BIDDER:**

"I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct":

<b>City, State executed</b>	<b>Printed Name and Title</b>
<b>Date</b>	<b>Signature</b>

**EMERGENCY PUBLIC WORKS CONTRACT**

**Public Works #:** \_\_\_\_\_

**Contract Title:** \_\_\_\_\_

This Contract is entered into upon execution by and between the **City of Seattle, Washington** (“OWNER”) and \_\_\_\_\_ (“CONTRACTOR”).

**1. EMERGENCY WORK BY CONTRACTOR**

The CONTRACTOR shall perform the emergency work described in the contract which may include the CONTRACTOR’S Quote, Plans, Specifications and any other related Contract documents which is attached hereto and incorporated herein. Emergency Work is to repair or replace facilities, utilities or infrastructure damaged, by unforeseen conditions, which have caused a real and imminent threat to person, property or environment. Emergency work will be repair-in-kind or replacement to current standards.

**2. CONTRACT MANAGEMENT**

\_\_\_\_\_ (*Department*) shall have primary responsibility for the OWNER under this Contract and shall oversee and approve all emergency work to be performed, coordinate communications, and review and approve all invoices under this Contract.

**2.1 COORDINATION OF THE CONTRACT**

All parts of this contract, including attachments, are essential and complementary. A requirement occurring in one part is binding as though occurring in all. Work or materials that have been omitted from the description or scope, but clearly implied, shall be furnished by the CONTRACTOR as though it had been specifically stated. The CONTRACTOR shall immediately notify, in writing, the OWNER if the CONTRACTOR finds a discrepancy in different parts or attachments of the contract. The CONTRACTOR shall not proceed with any work affected by such discrepancy until directed, in writing, by the OWNER.

**3. NOTICE TO PROCEED/TIME OF COMPLETION**

- A. No emergency work is to be performed prior to issuance of *Notice to Proceed* by the OWNER.
- B. All emergency work under this Contract is to be completed:

**SELECT APPROPRIATE CONTRACT TIME:**

\_\_\_ [working/calendar] days from the Notice to Proceed.

**OR**

By this date: \_\_\_\_\_.

#### 4. PAYMENT

- A. The OWNER shall pay the CONTRACTOR for the emergency work performed under this Contract as follows:

**SELECT CONTRACT TYPE:**

Lump Sum Amount, or  Unit Prices set forth in CONTRACTOR'S Quote.

The CONTRACTOR shall do all emergency work and furnish all labor, tools, materials, equipment, in accordance with and as described in the Quote Form and the **2011 City of Seattle Standard Plans and Specifications** (*standards, codes, etc. which should be followed*) which are incorporated herein.

The CONTRACTOR shall provide and bear the expense of all equipment, emergency work and labor of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the emergency work provided for in this Contract and every part thereof; except as mentioned in the Quote Form to be furnished by the OWNER.

- B. The CONTRACTOR shall maintain time and expense records, which may be requested by the OWNER. The CONTRACTOR shall submit invoices to the OWNER for payment for emergency work performed. All invoices must reference the public emergency works number (PW#) and shall be in a format acceptable to the OWNER.
- C. The OWNER shall pay all CONTRACTOR invoices within thirty (30) days of receipt of an approved invoice. Payment for emergency work performed shall not be evidence of acceptable performance or an admission by the OWNER that any emergency work has been satisfactorily completed.
- D. All records and accounts pertaining to this Contract shall be available for inspection upon request by the OWNER for a period of six (6) years after final payment.
- E. If during the course of the Contract, the emergency work rendered does not meet the requirements set forth in the Contract, the CONTRACTOR shall correct or modify the emergency work to comply with the requirements of this Contract at the CONTRACTOR's sole expense, and without delaying the time of completion. The OWNER shall have the right to withhold payment for such emergency work until it meets the requirements of the Contract documents.

#### 5. RESPONSIBILITY OF THE CONTRACTOR

- A. Examination of the project site: The Bidder shall carefully examine the project site and damage. Submittal of a quote shall be conclusive evidence that the Bidder has made the necessary examinations and understands all the requirements for completion of the Emergency work. The Bidder further warrants, agrees and acknowledges by submitting a quote that:
- i. The Bidder has taken all necessary steps to ascertain the full scope and need of the repair/replacement, the nature and location of the Emergency work.
  - ii. The Bidder has investigated and is satisfied as to the general and location conditions which can affect the Emergency work and its cost, including, but not limited to:
    - a. Conditions bearing upon acquisition, transportation, disposal, handling and storage of materials;
    - b. The availability of labor, materials, water, electricity and roads;

- c. Uncertainties of weather, river stages, tides, or similar physical conditions at the project site;
  - d. The conformation and condition of the ground;
  - e. The character of equipment and facilities needed preliminarily and during Emergency work performance;
  - f. Site and environmental conditions which by statute, law or regulations require specific training and certifications for employees.
- iii. Is satisfied as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Project Site.
- B. Safety. The CONTRACTOR shall take all necessary precautions for the safety of all persons on the emergency work site and shall comply with all applicable provisions of federal, state and local regulations, ordinances and codes. The CONTRACTOR shall erect and properly maintain at all time, as required by the conditions and progress of the emergency work, all necessary safeguards for the protection of emergency workers and the public and shall post danger signs warning against known or unusual hazards. The CONTRACTOR is responsible for complying with Section 1-07.23 PUBLIC CONVENIENCE AND SAFETY of the City of Seattle Standard Specifications for Road, Bridge and Municipal Construction (current edition).
- C. Correction of Defects. CONTRACTOR shall be responsible for correcting all defects in emergency workmanship or materials discovered within one (1) year after acceptance of this emergency work. If corrections are required, CONTRACTOR is responsible for defects in emergency workmanship and materials for one year after acceptance of those corrections. Within seven (7) days of receiving notice, the CONTRACTOR shall start emergency work to remedy such defects and complete emergency work within a reasonable time. In emergencies where damage may result from delay or where loss of service may result, the OWNER may choose to complete such corrections by contract or any other means. The costs associated with completing this emergency work and any damages resulting from the defects shall be borne by the CONTRACTOR.
- D. Warranty. The CONTRACTOR shall be liable for any costs, losses, expenses, additional damages including consequential damages suffered by the OWNER resulting from defects in the CONTRACTOR'S emergency work including, but not limited to, cost of materials and labor expended by the OWNER in making additional emergency repairs and cost of engineering, inspection and supervision by the OWNER.
- E. Nondiscrimination and Affirmative Efforts. The CONTRACTOR agrees not to discriminate against any employee or applicant or any other persons in the performance of this Contract because of race, religion, sex, creed, color, national origin, ancestry, marital status, gender identity, sexual orientation, age, the presence of any sensory, mental, or physical handicap, or other circumstances as may be defined by federal, state or local law or ordinance. The OWNER will not enter into contracts with CONTRACTORS that do not agree to use Affirmative Efforts to employ women and minority group members as required under SMC 20.42 or who violate any provisions of that chapter. The CONTRACTOR shall comply with the provisions of RCW 35.22.650. The CONTRACTOR shall comply with the City's Fair Contracting Practices Ordinances law (SMC Ch. 14.10 as amended), which prohibits discrimination in contracting practices.

F. Employment. The CONTRACTOR, while engaged in the performance of any emergency work or services required under this Contract, shall not be considered an employee of the OWNER. Any and all claims that may arise under the Emergency workers Compensation Act and any and all claims made by a third party as a consequence of any act or omission on the part of the CONTRACTOR while so engaged in any of the emergency work or services provided for or rendered herein, shall not be the obligation of the OWNER.

## 6. COMPLIANCE WITH LAWS

- A. The CONTRACTOR shall comply with all federal, state and local laws and regulations applicable to the emergency work to be completed under this Contract.
- B. Any violation of the provisions of this section shall be considered a violation of a material provision of this Contract and shall be grounds for rescission, termination, or suspension of the Contract by the OWNER, in whole or in part, and may result in ineligibility for further emergency work for the OWNER.
- C. Equal Employment Opportunity. The CONTRACTOR, by executing this Contract, is affirming that the CONTRACTOR complies with all applicable federal, state, and local non-discrimination laws, including but not limited to Chapter 14.04 SMC, Chapter 14.10 SMC, and Chapter 20.42 SMC.
- D. Women and Minority Business Enterprises Non-Discrimination Requirements. The CONTRACTOR shall comply with the provisions of RCW 35.22.650 as follows:

*“CONTRACTOR agrees that the CONTRACTOR shall actively solicit the employment of minority group members. CONTRACTOR further agrees that he shall actively solicit bids for the subcontracting of goods or services from qualified minority businesses. CONTRACTOR shall furnish evidence of his compliance with these requirements of minority employment and solicitation. CONTRACTOR further agrees to consider the grant of subcontracts to said minority Bidders on the basis of substantially equal proposals in the light most favorable to said minority businesses. The CONTRACTOR shall be required to submit evidence of compliance with this section as part of the bid.”*

*“As used in this section, the term ‘minority business’ means a business at least 51% of which is owned by minority group members. Minority group members include but are not limited to blacks, women, Native Americans, Asians, Eskimos, Aleuts, and Hispanics.”*

## 7. CHANGES

- A. As the work proceeds, the OWNER may, at any time without notice to the Surety, or sureties, change the Emergency Work within the general scope of this Contract to successfully complete the repair. Change may include, but not limited to:
  - 1. Deleting Work that is not necessary,
  - 2. Increasing or decreasing quantities,
  - 3. Revising the way the Work is to be done,
  - 4. Adding additional work necessary to successfully complete the repair,
  - 5. Ordering the CONTRACTOR to speed up or delay the Work.

- B. The CONTRACTOR shall obtain written consent of the Surety, or sureties, if changed Work increases the Awarded Contract Price by more than 25%, or the OWNER specifically requests the Surety's consent.
- C. Changes to the Emergency Work will be incorporated into the Contract by Change Order. The CONTRACTOR accepts all terms and requirements of the Change Order by signature of the Change Order.
- D. Other changes may be made, if necessary, in accordance to the provisions of Section 1-04.4 of the City's Standard Specifications (most recent addition).

**7.1 DIFFERING SITE CONDITIONS or CHANGED CONDITIONS**

A. If the CONTRACTOR encounters:

- 1. Pre-existing subsurface or latent physical conditions at the Project Site differing materially from those indicated in the Contract and information available to bidders; or
- 2. Pre-existing unknown physical conditions at the Project Site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract and information available to bidders, the CONTRACTOR shall provide written notice to the OWNER before the conditions are disturbed on the date of discovery or promptly the next Working Day. The CONTRACTOR shall not proceed with that portion of the Work until ordered to do so.

B. Upon notification by the CONTRACTOR, or when the OWNER suspects a differing site condition, the OWNER will promptly investigate the alleged changed condition, and:

- 1. If the OWNER determines that differing site conditions do not exist, the CONTRACTOR will be so notified by written notice. Should the Contractor disagree with such determination, the Contractor may file a written claim pursuant to the requirements of Section 9; or
- 2. If the OWNER finds that conditions are materially different and cause an increase or decrease in the CONTRACTOR'S cost of, or the time required for, performing all or any part of the Work, the OWNER will make an equitable adjustment in the payment for the performance of the Work or the time for performance.

No equitable adjustment will be allowed unless the CONTRACTOR has given the written notice required in subsection A above; provided, however, the time for giving the written notice may be extended by the OWNER for good cause. The time for giving written notice will not be extended beyond the time the Contractor knew, or should have known, of the existence of the differing site condition.

If there is a decrease in the cost or time required to perform the Work, failure of the CONTRACTOR to notify the OWNER of the differing site condition shall not affect the OWNER'S right to make an adjustment in cost or time.

## **8. TERMINATION OF CONTRACT**

- A. The OWNER may terminate the Contract for default and take possession of the premises and all materials thereon and finish the emergency work by whatever methods it may choose, by giving ten (10) days written notice to the CONTRACTOR, upon the occurrence of any one or more of the events hereafter specified:
1. The CONTRACTOR makes a general assignment for the benefit of its creditors, or a receiver is appointed as a result of the insolvency of the CONTRACTOR.
  2. The CONTRACTOR refuses or fails to complete the emergency work required herein.
  3. The CONTRACTOR fails to make prompt payment to subcontractors for material or labor.
  4. The CONTRACTOR fails to comply with any applicable federal, state, or local law or regulation.
  5. The CONTRACTOR fails to comply with instructions of the Project Manager, or breaches a material provision of this Contract.
- B. In the event this Contract is terminated by the OWNER for default, the CONTRACTOR shall not be entitled to receive any further amounts under this Contract for emergency work that has not been accepted as of the date of termination. The CONTRACTOR shall bear all costs and liabilities incurred by the OWNER and caused by, or relating to, the CONTRACTOR'S breach, including, but not limited to, increased costs in completing the emergency work.
- C. Termination for Public Convenience. The OWNER may terminate the Contract in whole or in part if the OWNER determines that termination is in the best interests of the public.

## **9. OWNERSHIP OF DOCUMENTS**

- A. Upon completion or termination of this Contract, all finished or unfinished documents or other materials prepared by the CONTRACTOR pursuant to this Contract shall become the sole physical and intellectual property of the OWNER, and shall be promptly forwarded to the OWNER.
- B. Any records, reports, information, data, or other documents or materials provided to or prepared or assembled by the CONTRACTOR under this Contract will be kept confidential and shall not be made available to any individual or organization by the CONTRACTOR without prior written approval of the OWNER or by court order.

## **10. CLAIMS**

Any claim against the OWNER for damages, expenses, costs or extras arising out of the performance of this Contract must be made in writing to the OWNER within thirty (30) days after the discovery of such damage, expense, cost, or extra, and in no event later than the time of making application to the OWNER for final payment. The CONTRACTOR, upon making application for final payment, shall be deemed to have waived its right to claim for any other damages for which a claim has not been made,

unless such application for final payment includes notice of additional claim and fully describes such claim.

## **11. INDEMNIFICATION**

The CONTRACTOR shall defend, indemnify and save harmless the OWNER and its officers, employees and agents from every claim, risk, loss, damage, demand, suit, judgment and attorney's fee, and any other kind of expense on account of injury to or death of any and all persons, or on account of property damage of any kind, whether tangible or intangible, or loss of use resulting there from arising out of or in any manner connected with the Emergency work performed under this Contract, or caused or occasioned by reason of the presence of the property, or an officer, employee or agent of either the CONTRACTOR or a Subcontractor upon or in proximity to the property of the OWNER, at any time before the Completion Date.

If the claim, suit, or action for injuries, death, or damage is caused by or results from the concurrent negligence of (a) the CONTRACTOR or its officer, agent, or employee and (b) the OWNER or its officer, agent or employee, these indemnity provisions shall be valid and enforceable only to the extent of the CONTRACTOR's negligence.

The CONTRACTOR shall also indemnify, defend, and save harmless any county, city or district and the officers and employees of said county, city or district connected with the Emergency work within the limits of which county, city or district the Emergency work is being performed hereunder all in the same manner and to the same extent as provided above for the protection of the OWNER and the OWNER's officers, employees and agents provided that no retention of money due the CONTRACTOR will be made by the OWNER except as provided in RCW 60.28, pending disposition of suits or claims for damages brought against the county, city or district.

CONTRACTOR hereby assumes all risk of damage to its property, or injury to its officers, directors, agents, CONTRACTORS, or invitees, in or about the Project from any cause, and hereby waives all claims against the OWNER. The CONTRACTOR further waives, with respect to the OWNER only, its immunity under RCW Title 51, Industrial Insurance.

## **12. INSURANCE**

The CONTRACTOR shall (1) not begin Work the OWNER is named as additionally insured, and (2) keep required insurance in force at all times during the term of the Contract. The term "insurance" herein shall include but not be limited to self-insurance, alternative risk transfer techniques, capital market solutions or any other form of risk financing.

The limits of liability specified herein are minimum limits only. Such minimum limits of liability requirements shall not be construed to limit the liability of the CONTRACTOR, that of any subcontractor of any tier or of any of their respective insurers. Any provision in any Contractor or subcontractor insurance policy that limits available limits of liability to those specified in a written agreement or contract shall not apply and all insurance policies, with the exception of Professional Liability and Workers Compensation, shall include the City of Seattle as an additional insured for primary and non-contributory limits of liability for the full valid and collectible limits of liability maintained by the CONTRACTOR or subcontractor, whether such limits are primary, excess, contingent or otherwise. This

provision shall apply regardless of whether limits maintained by the CONTRACTOR are greater than those required by this Contract, and regardless of whether the certification of insurance provided by a subcontractor of any tier lower minimum limits than those specified for or maintained by the CONTRACTOR.

The insurance shall provide the minimum coverages and limits of liability and meet all other requirements as set forth herein. Providing evidence of coverage for these stated minimum limits of liability shall not relieve the CONTRACTOR, any subcontractor of any tier or any of their respective insurers from liability for claims in excess of such stated minimum limits of liability should higher limits of liability be placed. If Work is subcontracted, applicable minimum coverages and limits of liability may be evidenced by any subcontractor provided that such insurance fully meets the applicable requirements set forth herein.

**Commercial General Liability (CGL) insurance**

CGL insurance shall include coverage for:

1. Premises/Operations
2. Products/Completed Operations
3. Personal/Advertising Injury
4. Contractual
5. Independent Contractors
6. Stop Gap (unless insured as Employers Liability under Part B. of a Workers Compensation Insurance Policy)
7. Per project aggregate per ISO CG 25 03 (Aggregate Limits of Insurance per Project) or Equivalent
8. Blasting (if explosives are used in the performance of the Work)

Such insurance must provide a minimum limit of liability of \$1,000,000 each Occurrence Combined Single Limit Bodily Injury and Property Damage (CSL) except \$1,000,000 each Offense Personal/Advertising Injury and \$1,000,000 each Accident/ Disease - Policy Limit/ Disease - each Employee Stop Gap or Employers Liability.

**Automobile Liability Insurance**

Automobile Liability for owned, non-owned, hired, and leased vehicles, as applicable, with a minimum limit of liability of \$1,000,000 CSL. If pollutants are to be transported, MCS 90 and CA 99 48 endorsements are required on the Automobile Liability insurance policy unless in-transit pollution risk is covered under a Pollution Liability insurance policy.

**State of Washington Statutory Workers' Compensation Insurance**

The Contractor shall comply with Workers' Compensation coverage as required by Title 51 RCW (Industrial Insurance). In addition, the Contractor shall maintain insurance coverage under the U.S. Longshore and Harbor Workers' Compensation Act ("Act") administered by the U.S. Department of Labor for any "employee" as defined in § 902. (Definitions) of the Act with a minimum limit of liability of \$1,000,000 unless such employee is covered by Industrial Insurance afforded under Title 51 RCW.

Project Specific Insurance requirements are provided in *Attachment C*.

## **12.1 EVIDENCE OF INSURANCE**

*(DOES NOT APPLY TO STATE OF WASHINGTON STATUTORY WORKERS' COMPENSATION)*

The CONTRACTOR shall deliver to the OWNER, as soon as practicable, certification of insurance meeting the requirements set forth herein. The certification of insurance must include the following:

1. An ACORD certificate or equivalent form fully disclosing all coverages and limits of liability maintained.
2. A copy of the additional insured endorsement or blanket additional insured language to the Commercial General Liability and (if required) Pollution Liability insurance documenting that the City of Seattle is an additional insured for primary and non-contributory limits of liability and (if required) Products and Completed Operations Additional Insured; A statement of additional insured status on an ACORD or other form of certificate of insurance will not satisfy this requirement.
3. A copy of each policy's declarations page and schedule of forms and endorsements.
4. Any other policy language or endorsements that documents compliance with the requirements herein, including CA 99 48 and MCS-90 endorsements.
5. Should any insurance policy neither be issued nor delivered to the named insured Contractor at the time it delivers the signed Contract for the work, the Contractor shall deliver and maintain on file with the City binders of insurance evidencing compliance with the requirements herein. As soon as practicable after delivery of the policy(ies), the Contractor shall deliver the certification specified in paragraphs 2., 3. and 4. above.

At any time upon the Owner's request, the Contractor shall forward to the Owner a true and certified copy of any insurance policy(s).

## **12.2 SUBCONTRACTOR INSURANCE**

CONTRACTOR shall contractually require that each subcontractor of every tier maintain at a minimum the insurance coverages specified above and include the City of Seattle as an additional insured for primary and non-contributory limits of liability.

This paragraph 12 shall survive the expiration or earlier termination of this Contract.

## **13. PREVAILING WAGES**

This Contract is subject to the prevailing wage requirements of Chapter 39.12 RCW (as amended). NO WORKER, LABORER OR MECHANIC EMPLOYED IN THE PERFORMANCE OF ANY PART OF THIS CONTRACT SHALL BE PAID LESS THAN THE PREVAILING RATE OF WAGE as determined by the Industrial Statistician of the Department of Labor and Industries for the State of Washington. The schedule of prevailing wage rates for the Contract is made a part of this contract as set forth in Attachment A to this contract. Prior to making any payment under this Contract, the OWNER must receive an approved copy of the "Statement of Intent to Pay Prevailing Wages on Public Works Contracts" from the Department of Labor & Industries.

It is the CONTRACTOR'S responsibility to obtain and file the "Statement of Intent to Pay Prevailing Wage". The CONTRACTOR shall be responsible for all filing fees. Each invoice shall include a signed statement that prevailing wages have been paid by the CONTRACTOR and all subcontractors. Following

the final acceptance of services rendered, the CONTRACTOR shall submit an "Affidavit of Wages Paid" to PCSD.

#### **14. CONTRACT DOCUMENTS AND MODIFICATION**

This Contract, together with the Attachments and **2011 City of Seattle Standard Plans and Specifications** (applicable standards/codes), represents the entire and integrated Contract between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This contract may be amended only by written instrument properly signed by both parties hereto.

#### **15. LIQUIDATED DAMAGES**

Liquidated Damages do not apply to Emergency Work.

#### **16. PAYMENT AND PERFORMANCE BOND (08-18-08)**

The successful Firm shall provide an executed Payment and Performance Bond for the Awarded Contract Price. The Payment and Performance Bond shall:

1. Be on a form provided by the OWNER;
2. Be signed by an approved Surety (or Sureties) that:
  - a. Is registered with the Washington State Insurance Commissioner,
  - b. Appears on the current Authorized Insurance List in the State of Washington published by the Office of the Insurance Commissioner;
  - c. Has a current rating of at least A-VII in A.M. Best's Key Rating Guide or is included in the U.S. Department of the Treasury's Listing of Approved Sureties (Circular 570).
3. The OWNER may require the Surety (or Sureties) named on the Payment and Performance Bond to appear and qualify itself whenever the OWNER deems the Surety (or Sureties) to be inadequate. In such case, the OWNER may require upon written demand that the CONTRACTOR furnish additional Surety to cover any remaining emergency work. Until the added Surety is furnished, payment on the Contract will stop.

#### **17. RETAINAGE (6-9-08)**

A. Pursuant to Chapter 60.28 RCW there will be reserved and retained from monies earned by the CONTRACTOR on progress estimates during the progress of the Work, a sum not to exceed five percent (5%) of the monies earned by the CONTRACTOR. Such retainage shall be used as a trust fund for the protection and payment of:

1. Claims by the State with respect to taxes imposed pursuant to Title 82 RCW that may be due from such CONTRACTOR; and
2. The claims of any person or persons, mechanic, Subcontractor or Materialperson who shall perform any labor under such Contract or the doing of said Work, and all persons who shall supply such person or persons or Subcontractors with provisions or Supplies for carrying on such Work.

B. Monies reserved under provisions of Chapter 60.28 RCW shall, at the option of the CONTRACTOR, be:

1. Retained in a non-interest bearing fund by the OWNER; or

2. Deposited by the OWNER in an interest bearing account in a bank, mutual savings bank, or savings and loan association. Interest on moneys reserved by the OWNER under the provisions of a public improvement contract shall be paid to the CONTRACTOR; or
3. Placed in escrow with a bank or trust company by the OWNER. When the monies reserved are to be placed in escrow the OWNER will issue a check representing the sum of the monies reserved payable to the bank or trust company and the CONTRACTOR jointly. Such check shall be converted into bonds and securities chosen by the CONTRACTOR and approved by the OWNER and the bonds and securities held in escrow. Interest on the bonds and securities may be paid to the CONTRACTOR as the interest accrues.
4. CONTRACTOR may opt to submit a bond in lieu of retained funds.

C. Retainage will not be reduced for any reason below the minimum limit provided by law.

D. The CONTRACTOR shall designate the option desired on the Agreement Form at the time the CONTRACTOR executes the Contract with the OWNER. The option selected shall be considered part of the Contract. If the CONTRACTOR chooses option 2 or 3, the CONTRACTOR shall assume full responsibility to pay all costs that may accrue from escrow services, brokerage charges or both, and further assumes all risks in connection with the investment of the retained percentages in securities.

E. Release of retained percentage will be made 60 days following the Completion Date pursuant to the provisions of Chapters 39.12 RCW, 39.76 RCW, and 60.28 RCW provided the following conditions are met:

1. On Contracts totaling more than \$35,000.00 (excluding tax), a release has been obtained from the Washington State Department of Revenue (RCW 60.28.051).
2. No claims, as provided by law, have been filed against the retained percentage (RCW 60.28.021).
3. Affidavit of Wages Paid is on file with PCSD for the CONTRACTOR, each Subcontractor regardless of tier, and for any other individual or firm covered under Chapter 39.12 RCW.
4. In the event one or more claims are filed, the CONTRACTOR will be paid such retained percentage less an amount sufficient to pay such claims together with a sum determined by the Engineer sufficient to pay the cost of foreclosing on claims and to cover attorney's fees.

## **18. COMPLETION**

The CONTRACTOR must perform all the obligations under the Contract before the Completion Date can be established. A Certificate of Completion for the Emergency Work issued by the OWNER will establish the Completion Date and certify the Emergency work as complete. The following must occur before the Completion Date can be established, and the final Contract price calculated:

1. The physical Emergency work on the Project site must be complete; and
2. The CONTRACTOR must furnish all documentation required by the Contract or required by law, necessary to allow the OWNER to certify the Contract as complete.
3. The CONTRACTOR must submit the final Subcontractor Payment Report to PCSD.

The issuance of a Certificate of Completion will not constitute acceptance of unauthorized Emergency work or defective Emergency work or Material.

The CONTRACTOR agrees that establishment of the Completion Date shall not relieve the CONTRACTOR of the responsibility to indemnify, defend, and protect the OWNER against any claim of loss resulting from the failure of the CONTRACTOR, a Subcontractor of any tier, or any other person who provides labor, Supplies, or provisions for carrying out the Emergency work or for any payments required for unemployment compensation under Title 50 RCW or for industrial insurance and medical aid required under Title 51 RCW.

Failure of the CONTRACTOR to perform any or all of the CONTRACTOR's obligations under the Contract shall not bar the OWNER from unilaterally certifying the Contract complete so the Engineer may calculate a Final Contract Price.

## **19. CONTRACTOR/SUBCONTRACTOR PERFORMANCE EVALUATION PROGRAM**

To assist the OWNER in evaluating a Contractor's or Subcontractor's responsibility, as well as its performance on City contracts, the Contractor Performance Evaluation Program has been developed. The program is a mandatory, standardized system of evaluating Contractors' and Subcontractors' performance. Every CONTRACTOR is subject to the evaluation program. For further information please contact, the Department of Finance and Administrative Services, Purchasing and Contracting Services at [contracting@seattle.gov](mailto:contracting@seattle.gov).

## **20. GENERAL PROVISIONS**

- A. **Governing Law; Forum.** The Agreement will be governed by the laws of Washington. The CONTRACTOR irrevocably consents to the exclusive personal jurisdiction and venue of the Superior Court of King County, Washington, with respect to any dispute arising out of or in connection with the Agreement, and agrees not to commence or prosecute any action or proceeding arising out of or in connection with the Agreement other than in the aforementioned court.
- B. **Severability.** If any provision of the Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The OWNER and the CONTRACTOR agree to replace any invalid or unenforceable provision with a valid and enforceable provision that most closely approximates the intent and effect of the invalid or unenforceable provision.
- C. **Non-waiver.** Any failure by the OWNER to enforce strict performance of any provision of the Agreement will not constitute a waiver of the OWNER'S right to subsequently enforce such provision or any other provision of the Agreement.
- D. **No Assignment.** Neither the Agreement nor any of the rights or obligations of the CONTRACTOR arising under the Agreement may be assigned without the OWNER'S prior written consent. Subject to the foregoing, the Agreement will be binding upon, enforceable by, and inure to the benefit of, the parties and their successors and assigns.
- E. **Notices.** All notices and other communications under the Agreement must be in writing, and must be given by registered or certified mail, postage prepaid, or delivered by hand to the party to whom the communication is to be given, at its address set forth in the Quote Form.

**AGREEMENT FORM**

In witness whereof, the parties have executed this Agreement and it shall become effective upon execution by the OWNER.

CONTRACTOR shall declare option for management of statutory retained percentage of this Contract by checking applicable box.

- CONTRACTOR elects to submit a bond in lieu of retained funds
- CONTRACTOR hereby elects to have the retained percentage of this Contract held in a non-interest bearing fund by The City of Seattle until sixty (60) days following the Completion Date.
- CONTRACTOR hereby elects to have The City of Seattle invest the retained percentage of the Contract from time to time as such retained percentage accrues and in accordance with RCW 60.28.011, .021 and .051. CONTRACTOR hereby designates:

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Name of Financial Institution

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Address including City, State and Zip Code

as the repository for the escrow of said funds. CONTRACTOR hereby further agrees to be fully responsible for payment of all costs or fees incurred as a result of placing said retained percentage in escrow and investing it as authorized by statute. The City of Seattle shall not be liable in any way for any cost or fees in connection therewith.

**CONTRACTOR:**

**CITY OF SEATTLE:**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: **Nancy Locke**

Title: **Director, Purchasing and Contracting Services**

Date: \_\_\_\_\_

**ATTACHMENT A**

**PREVAILING WAGES**

***King County*** Wage rates dated **8/31/2011** apply to this project and are attached.

## ATTACHMENT B

### RESPONSIBLE BIDDER REQUIREMENTS

**Under the provisions of the Revised Code of Washington any firm performing public emergency works must meet the following minimum requirements.**

1. At the time of bid submittal, have a certificate of registration in compliance with Chapter 18.27 RCW;
2. Have a current State unified business identifier number and a City of Seattle business license;
3. Have industrial insurance coverage for the Bidders employees emergency working in Washington as required in Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW; and
4. Not be disqualified from bidding on any public emergency works contract under RCW 39.06.010 or 39.12.065

*Instructions: To check compliance, please look-up and print out status of the preferred CONTRACTOR with the following agencies and attach to contract. If a CONTRACTOR does not have all matters of licensing current, etc. the Firm will be declared not responsible.*

- State of Washington Department of Licensing (State Business License) (License status should be "Active")  
<https://fortress.wa.gov/dol/dolprod/bpdLicenseQuery/Default.aspx>
- State of Washington Labor and Industry (CONTRACTORs License) (Account should show "Active")  
<https://fortress.wa.gov/lni/bbip/Search.aspx>
- Washington State Department of Revenue (Account should show "Open")  
<http://dor.wa.gov/Content/DoingBusiness/RegisterMyBusiness/brd/>
- City of Seattle InWeb licensing (Account should show "Current" and "Open")  
<http://deawinw509/DEA/SLIMBusinessInfo/Search/search.aspx>
- Federal Excluded Parties List System (Search should show "No Results")  
<https://www.epls.gov/epls/search.do>
- Print the Department of Labor and Industry Debar List (confirm CONTRACTOR is not listed)  
<http://www.lni.wa.gov/TradesLicensing/PrevWage/AwardingAgencies/DebarredContractors/default.asp>

**Additionally, due to the nature of the emergency, the additional SUPPLEMENTAL BIDDER RESPONSIBILITY CRITERIA apply as follows.**

1. Any firm providing a quote for this emergency work must be experienced in the nature of repair/replacement and will provide documentation, as requested by the OWNER, attesting to such competencies.
2. For a firm to be considered responsible *they must demonstrate that they are available to start emergency work within 1 week of being issued a Notice to Proceed*; and must be able to complete the required emergency work within **90 days** of start date.

**3. OTHER SUPPLEMENTAL RESPONSIBILITY CRITERIA MAY BE ADDED DEPENDING ON PROJECT NEED**

a. \_\_\_\_\_

b. \_\_\_\_\_

c. \_\_\_\_\_

**ATTACHMENT C  
PROJECT SPECIFIC INSURANCE REQUIREMENTS**

*Given the nature and scope of the Emergency Work, all insurance coverages checked below are project specific and required for this contract.*

**In-Transit Pollution Liability Insured**

CA 99 48 and MCS 90 endorsements are required on the Automobile Liability insurance policy unless in-transit pollution risk is covered under a Pollution Liability insurance policy

**XCU and Subsidence Perils Not Excluded**

The Contractor's CGL insurance shall not exclude perils generally known as XCU (Explosion, Collapse and Underground Property Damage), Subsidence, Absolute Earth Movement (except as respects earthquake peril only) or any equivalent peril.

**Products and Completed Operations Additional Insured**

The Contractor's CGL insurance shall include the Owner as an additional insured for Products and Completed Operations by providing additional insured status on the ISO CG 20 10 11 85 or CG 20 37 endorsement, or by an equivalent policy or endorsement provision. The Products and Completed Operations additional insured status for the Owner shall remain in effect for not less than three (3) years following the Physical Completion Date or Final Acceptance of the Work (as applicable) by the Owner.

**Contractor's Pollution Liability Insurance**

The Contractor shall provide a Pollution Liability policy for claims, including investigation, defense, or settlement costs and expenses that involve bodily injury and property damage (including natural resources damages and loss of use of tangible property that has not been physically injured) covering:

1. Pollution conditions caused or made worse by the Contractor, including clean-up costs for a newly caused condition or a historical condition that is made worse.
2. The vicarious liability of subcontractors of any tier.

Such Pollution Liability insurance shall provide a minimum limit of liability of \$\_\_\_\_\_ each claim with a minimum aggregate limit of 200% of the each claim limit. There shall be no requirement for a dedicated project aggregate limit provided that the Contractor shall (1) cause to be submitted to the City prior to the Notice to Proceed date with its insurance certification a written statement from its authorized insurance representative that the full minimum aggregate limit is available and has not been impaired by any claims reserved on another project, and (2) thereafter, until the completion of the Work, the Contractor shall provide notice in writing to the City within ten (10) days of Contractor's constructive knowledge of any pending or actual impairment of the aggregate limit.

**Umbrella or Excess Liability Insurance**

The Contractor shall provide minimum Excess or Umbrella Liability coverage limits of \$\_\_\_\_\_ each occurrence in excess of the primary CGL and Automobile liability insurance limits specified in section 1-07.18(5)A and 1-07.18(5)B. The minimum total limits requirement of \$\_\_\_\_\_ may also be satisfied with primary CGL and/or Automobile liability insurance limits or any combination of primary and excess/umbrella limits.

**United States Longshore and Harborworkers (U.S.L.&H.) Act Workers Compensation Insurance**

The Contractor shall maintain insurance coverage in compliance with the statutory requirements of the U.S. Longshore and Harbor Workers' Compensation Act administered by the U.S. Department of Labor with a minimum limit of liability of \$\_\_\_\_\_.

**Jones Act Insurance**

The Contractor shall maintain, or cause to be maintained, evidence of insurance in compliance with the statutory requirements of the Merchant Marine Act of 1920 (the "Jones Act") with a minimum limit of liability of \$\_\_\_\_\_.

**Contractor's Professional Liability**

The Contractor shall provide evidence of Professional Liability insurance covering professional errors and omissions for construction management, value engineering, or any other non-construction professional services. Such insurance must provide a minimum limit of liability of \$\_\_\_\_\_ each claim and may be evidenced as an extension of a CGL policy or by a separate Professional Liability policy. If insurance is on a claims made form, its retroactive date, and that of all subsequent renewals, shall be no later than the Notice to Proceed Date.

**Environmental Professional Liability Insurance**

The Contractor's and/or its design/environmental consultant shall provide evidence of Professional Liability insurance covering environmental professional errors and omissions. Such insurance must provide a minimum limit of liability of \$\_\_\_\_\_ each claim. If insurance is on a claims made form, its retroactive date, and that of all subsequent renewals, shall be no later than the Notice to Proceed Date.

**Owner-provided Builders Risk Property Insurance**

1. The Owner shall, at its sole expense, maintain Builders Risk Property insurance ("Builder's Risk") covering interests in the Work of the Owner by the Contractor and any subcontractor of any tier ("Subcontractor"). Builders Risk shall insure against all risks of physical loss or damage, including earthquake and flood, except as are excluded. The Builders Risk shall:

- (a) Attach upon notification to the Owner's Builder's Risk property insurance underwriter of the Notice to Proceed Date and shall terminate upon such notification of the Physical Completion date.
- (b) Be written with an amount of insurance equivalent to the completed value of the project plus "soft costs," including design costs, licensing fees, architect fees and engineer fees.
- (c) Include coverage for temporary buildings, debris removal, and building materials in transit or stored on or off-site, but not for Contractor's or Subcontractor's owned, hired, or leased property or tools, equipment, or supplies used for construction and not intended to form a permanent part of the Work .
- (d) Have a deductible of \$100,000. Payment of deductibles shall be the responsibility of the Contractor except for (i) earthquake or flood claims, or (ii) all risks claims to the extent damage is not caused by the negligent acts of the Contractor or any Subcontractor.
- (e) Include the Contractor as an additional named insured as its interest may appear.

2. Within three (3) business days of binding Builder's Risk coverage, the Owner shall cause to be provided to the Contractor a certificate of Builder's Risk Property insurance that includes coverage information, amounts of insurance, deductibles and provisions for thirty (30) day notice of cancellation and additional insured status; evidence of renewal of such insurance shall thereafter be delivered until the earliest of the

Substantial Completion Date or occupancy of the Work by the Owner. Upon written request of Contractor by email to keith.ayling@seattle.gov or by fax to (206) 470-1280, Owner shall, in addition, provide an electronic copy by email in Portable Document Format (PDF) of the current original Builder's Risk Property insurance policy or, or if the policy has not been issued and received by Owner, an electronic copy of the current Builder's Risk Property insurance binder.

3. In the event of any claim or potential claim against the Owner-provided Builder's Risk, the Contractor shall, as soon as practicable, provide electronic written notice by email to keith.ayling@seattle.gov or by fax to (206) 470-1280.

4. Builder's Risk shall cover all materials, supplies, and equipment that are intended for specific installation in the project while such materials, supplies and equipment are located at the project site, in transit or while temporarily located away from the project site. However, Builder's Risk insurance does not cover Contractor's or Subcontractor's owned, hired, or leased property or tools, equipment, or supplies used for construction and not intended to form a permanent part of the Work, for which Contractor and Subcontractor shall be responsible and at their sole option may insure.

5. The Contractor and the Owner mutually waive all rights of subrogation against the other and any of their Subcontractors, and their respective agents and employees, each of the other, for damage caused by insured perils to the extent covered by Builders Risk or other property insurance applicable to the work. The applicable property insurance policies shall provide automatic blanket provisions for such waivers.

**Watercraft Liability or Protection & Indemnity Insurance**

The Contractor shall maintain, or cause to be maintained, watercraft liability or Protection and Indemnity (P&I) insurance for any watercraft, including barges, whether owned or non-owned, with a minimum limit of liability of \$\_\_\_\_\_. Such insurance shall include the City of Seattle as an additional insured for primary and noncontributory limits of liability.

