



Invitation to Bid

VEHICLE FUEL (RETAIL & DELIVERED BULK) Due Date: November 5, 2015

Bids will be received by the City Supervisor until **2:00 p.m. on November 5, 2015** from fuel suppliers that include both retail fuel stations within a three mile radius of Sedro-Woolley City Hall, to provide premium and regular unleaded fuel, diesel and provide bulk delivered diesel. Stations must be continuously open 24 hours a day. Bids may be mailed to the City of Sedro-Woolley (325 Metcalf Street, Sedro-Woolley, WA 98284), or hand-delivered to Sedro-Woolley City Hall at the same address.

Pre-Bid Conference: There is no pre-bid conference.

The City of Sedro-Woolley reserves the right to reject any or all Bids, waive technicalities or irregularities, and to accept any Proposal if such action is believed to be in the best interest of the City.

Scope and Intent:

The City of Sedro-Woolley seeks a contract with a fuel supplier that provides both a retail fuel station in the vicinity of Sedro-Woolley City Hall, to provide fuel for City passenger vehicles, public works vehicles and fire trucks, as well as bulk delivered fuel. The City seeks low-grade unleaded regular (87 octane), mid-grade regular unleaded (89 octane), unleaded premium grade (octane 92), clear diesel and dyed diesel. The City anticipates use of this station by approximately 50 vehicles and as much as 25,000 gallons of fuel annually. An estimated 90% of the purchased fuel is at the lowest 87 grade octane with most of the other fuel diesel and dyed diesel. Occasionally, specialty vehicles will require the higher grades, but the bulk of regular fuel is at the lower octane (87).

The City requires an easy-to-use credit card system (*a corporate fuel credit card*) with an automatic card read system available at the pump, so that drivers will not need to approach the sales clerk. Should there be add-on charges for the use of the corporate fuel card that shall be considered when calculating the low-bid award.

The selected station will be the supplier for certain City emergency vehicles, so an emergency back-up solution is desirable in the event of a power outage. This may be a portable generator or an alternative fueling location. Because this supplier will be the City's primary fuel supplier, an emergency strategic reserve of fuel is required on site, along with the capacity to access that fuel during a power outage. The minimum strategic reserve shall be 2000 gallons of diesel (dyed or clear) and 1000 gallons of gasoline (any grade).

MINIMUM QUALIFICATIONS: Bidders must be licensed to do business in the State of Washington and the City of Sedro-Woolley. The primary station must be open 24 hours a day, continuously. The primary station must be located within a 3-mile radius of Sedro-Woolley City Hall.

Bid Submittal: Bids must be received by the City Supervisor or his designee at City of Sedro-Woolley City Hall on or before **2:00 p.m. on November 5, 2015**. Bids may be mailed or delivered to the following address. The risks associated with the transmission method chosen, are borne by the bidder.

Mail to: City Supervisor Eron Berg, 325 Metcalf Street, Sedro-Woolley WA, 98284

Hand Delivery: same address

Contract Term: The City seeks a 5-year contract for these services. The City may renew with the consent of Council for another 5-year period.

Communications with the City: All communications regarding this Proposal must be directed to the City Supervisor or his designee:

Eron Berg

Phone: 360-855-9922

E-Mail: eberg@ci.sedro-woolley.wa.us

Address: 325 Metcalf Street, Sedro-Woolley WA 98284

Unless authorized by the City Supervisor, no other City official or employee can speak for the City regarding this Request. The City is not bound by information, clarification, or interpretations from other City officials or employees. Bidders should not contact City officials or employees, other than the City Supervisor or designee. Failure to observe this requirement may be grounds for rejection of the firm's Proposal.

Once bids are received, the City will not allow further communications from bidders regarding the selection process. The City will not accept additional information or inquiries regarding the bid evaluation, unless specifically solicited by the City. Contact with the City following submittal of bid could disqualify the bid, should such efforts by a bidder result in attempts to submit undue information or unduly influence the selection process.

Estimated Award Schedule:

Bids Due: November 5, 2015

Service Start-Up Date: December 1, 2015

Responsible Company Criteria: The City shall consider only responsible Proposers, who have, in the sole judgment of the City, the financial ability, experience, resources, skills, capability, reliability and business integrity necessary to perform the requirements of the contract. The City may also consider references, and financial stability in determining a responsible Proposer, and any other additional information that will assist the City in determining responsibility, whether specifically provided by the Bidder or otherwise. No contract will be awarded to any owner convicted within the past ten years of a crime that impugns honesty or integrity, or if the Proposer has unsatisfied tax or judgment liens.

Low Bid Evaluation: the City shall award to the low bid that materially meets the specifications in this bid. The low bid shall be determined through a calculation conducted by the City after the bid opening date. This calculation shall consider the discount as applied to historical pricing models for low-grade regular unleaded octane (87), clear diesel and dyed diesel, and any mandatory additional fees (such as credit card use charges which are not avoidable by selecting an alternative card). The calculated result shall determine the apparent low bid award. This shall be then posted by the City on the City web site following City Council

award.

In the bid offer, dealers may indicate fuel prices by offering either discount below retail pump-price, or may specify a wholesale mark-up. Since fuel pricing is variable over time, the City will apply this pricing to historical retail prices as part of the low bid calculation. The City will request and compare the price that would have been offered to the City at various historical points in time (with proposed rebates or wholesale mark-ups inclusive) in order to establish comparisons of competitive pricing trends.

Specifications

- 1. Fuel Requirements:** The City has about 50 vehicles that are likely to use this location, and has historically consumed as much as 25,000 gallons of fuel annually. Almost all use is low-grade (87) regular unleaded octane and diesel (clear and dyed). There is some limited need for mid-grade (89) regular unleaded octane and for premium fuel, although this need is not a significant quantity and is for specialty uses and situations only. Delivered fuel is both clear and dyed diesel and the City has used as much as 20,000 gallons annually. **Supplier must provide an approved 1100 gallon double walled fire proof OEM/UL/DOT certified fuel tank at no additional charge for the duration of this agreement (Fueling devices which includes a meter will also be included)**. Additional fuel will be delivered to other city owned tanks including approximately 10 tanks at various generators located at pump stations throughout the city.
- 2. Locations:** The City desires at least one fueling station within a three (3) mile radius of City Hall.
- 3. Fuel Availability:** The City requires 24 hours a day, every day of the year at the pump and delivered fuel within 24 hours of the City's order.
- 4. Credit Cards:** The City requires that the station accepts a credit card to make for easy payment at an automated card reader system at the pump. Data from credit card must be available in an electronic format. The bidder can accept any or all of the following in order to comply with this requirement:
 - a Fuel card that carries a fuel-dealer logo
 - a Fleet Management card that carries a fuel-dealer logo

It is not necessary to accept/offer both card types. It is only necessary to accept at least one of them. The City will discuss the details of the particular card options with the winning vendor upon award. At least one card choice must allow provision of data to the City in an electronic format. In any event, the City will maintain a separate card for each vehicle, and will utilize those cards to purchase fuel and other services as required.
- 5. Rebate Calculations (if any):** If a rebate is offered to provide competitive pricing, the rebate must be automatically calculated so that it is clearly reflected each month on the monthly statement, and is automatically deducted from the total balance due. The City will not consider programs that require manual processing, invoice handling, or calculations by the City.
- 6. Excise Tax:** The City does not pay federal excise tax on fuel.
- 7. Monthly Billings:** The City expects monthly statements that include the following:
 - (1) a total monthly statement for the entire City total due reflecting any rebate value, and
 - (2) an accompanying itemized statement for each card (i.e. each vehicle), which should detail the gallons purchased, date purchased, cost per gallon, monthly total, rebate deduction (if any), and total due each month, and possibly the odometer reading, and the details of any bulk fuel purchased.

INSTRUCTIONS TO BIDDERS

1. ACCEPTANCE OF ALL TERMS AND CONTRACT CONDITIONS: Submission of a signed offer also is agreement to all Terms and Conditions, contract requirements and specifications, and all conditions named within these documents. Any exceptions must be noted on the exception sheet.
2. Acceptance of Offer Constitutes a Contract: This ITB including all attachments and addenda, and all promises, warranties, commitments and representations in the quotation of the Bidder who is determined to be the lowest and best, shall be binding on and shall become contractual obligations of the named lowest responsible and responsive Bidder. **An Offer becomes a contract upon the City co-signing the Offer Sheet, with all named specifications, conditions, terms, contract clauses and all related materials included herein and named on the Offer.**
3. OFFER SHEET: Submit bids on the OFFER SHEETS (see pages **8, 9, 10, and 11**). No other information is necessary with your bid. Failure to submit the four required pages could eliminate the Bid. The Offer shall constitute all the included specifications, terms and conditions, and all requirements named herein, in addition to the price and terms named on the Offer Sheet itself. Acceptance of the lowest responsive and responsible offer by the City shall constitute a contract, once the Offer has been accepted, awarded and signed by the Mayor.
4. RESPONSIBLE BIDDER: The following will be used to evaluate bidder responsibility. The City will accept only responsible bids. Bidders must have the specified insurance by the time of bid, must have a Contractors license if appropriate to the work, must indicate satisfactory business experience. Safety experience, bankruptcy, judgments, references and other issues of integrity shall also be considered. Other factors such as delivery, materials, quality, equipment, and other factors not named, may also be considered to determine responsibility, in accordance with City ordinance.
5. SIGNATURE: the Bidder with the Bidder's usual signature must sign Each Bid in longhand, by an authorized representative of the company submitting the bid. Below the signature, type the name of each person signing. NOTE: If erasures or other changes appear on the Bid forms as submitted each erasure or change must have the initials of the person signing the Bid.
6. INCURRED COSTS: The City of Sedro-Woolley will not be liable in any way for any costs incurred by respondents in replying to this Bid.
7. WITHDRAWAL OF BIDS: Any Bidder may withdraw their Bid, either personally or by written request, at any time prior to the time set for the Bid Opening.
8. ALTERATION OF BIDS: A Bid that is in the possession of the City may be altered by a fax or mail request if it is received prior to the time and date of the Bid opening. Such alterations need to be signed by the person authorized to Bid on behalf of the firm.
9. BUSINESS LICENSE: Vendors who are awarded a City of Sedro-Woolley contract must comply with SWMC 5.04 regarding possession of a City of Sedro-Woolley business license. Vendors may contact the City at 360-855-1661 for additional information and assistance about City business licensing, requirements and forms.

10. **ADDENDA:** Bidders are responsible for insuring that they have all published addenda prior to bid submittal. The City shall assume that you have received, considered and bid with all addenda known; or the City may reject the bid, at the choice of the City. It is the responsibility of the bidder to assure that they have considered all addenda. Any addendum issued shall be posted on the City Web Site (<http://www.ci.sedro-woolley.wa.us/BidsAwards/main.htm>) and may also be mailed separately to those known firms. However, it remains the responsibility of the bidder to obtain any addendum issued and to consider the addendum accordingly.
11. **NONRESPONSIVE BIDS:** Any Bid that does not comply with the Bid schedule or instructions, is not properly signed, supplements or deviates from its Bid requirements or has an incomplete Bid or Proposal Offer sheet when required, may be considered nonresponsive, at the discretion of the City Supervisor.
12. **REJECTION OF BIDS:** The City of Sedro-Woolley reserves the right to reject any and all Bids and to waive any informalities in the Bids received. The City reserves the right to consider all information, whether submitted or otherwise, to determine responsibility and to reject bids accordingly.
13. **ALL OR NONE BIDS:** "All or none" Bids will be accepted so long as the item or group of items are clearly identified. Bidders who elect to Bid in this manner thereby represent that they are Bidding solely for the purpose of offering the best possible price to the City and are not trying to prohibit or eliminate competition.
14. **BID AWARD:** The **City may award partial, multiple and/or a complete award**, in a manner that attains the best and lowest responsive and responsible award(s) for the City. The City may award parts of the bid to various firms, depending upon whether partial awards will result in the best and lowest award(s). The City will consider the quality of the Bid, compliance to desired specifications, bidding regulations, and advertisement for Bids, and other factors to determine the best price offer. The City reserves the right to utilize various factors to determine the best and lowest responsible Bid, and will consider such factors as the ability to meet all specifications, product quality, the ability to meet City delivery requirements, the experience and qualifications of the Bidders, and any other elements that are identified herein, or otherwise, by the City. A decision to make a **partial award** or a multiple award of this Bid however, are options reserved by the City based on the needs of the City. Such decisions may be made by the City at any point during the Bid process, based on the needs of the City.
15. **RESPONSIBLE BIDDER:** The City shall consider only responsible Bids. Responsible Bids are those that have, in the sole judgment of the City, the financial ability, experience, resources, skills, capability, reliability and business integrity necessary to perform the requirements of the contract. The City may also consider references and quality to determine the responsibility of the Bid. No contract will be awarded to a Bidder if any owner for any Bid has been convicted within the past ten years of a crime that impugns honesty or integrity, or if the Bidder has unsatisfied tax or judgment liens. The City reserves the right to use any information, whether supplied through the bid or otherwise obtained, in determining responsibility.
16. **INTERPRETATION OF BID AND CONTRACT DOCUMENTS:** No oral interpretations will be made to any Bidder as to the meaning of the Bid or contract documents; and any oral communication is not binding upon the City of Sedro-Woolley. Requests for an interpretation shall be made in writing to the City Supervisor (325 Metcalf Street, Sedro-Woolley, WA 98284) at least ten (10) days before the date announced for Bid opening. Any interpretation deemed necessary by the City will be in the form of an addendum to the Bid documents and when issued will be sent as promptly as is practical to all parties to whom the Bid documents have been issued. All such addenda shall become part of the Bid package.

- 17. EXAMINATION OF BID AND CONTRACT DOCUMENTS:** The submission of a Bid shall constitute an acknowledgment upon which the City of Sedro-Woolley may rely that the Bidder has thoroughly examined and is familiar with the Bid and contract documents (and any work site identified in such documents), reviewed and inspected all applicable statutes, regulations, ordinances, and resolutions dealing with or related to the work and services to be provided herein, and received and considered all Addenda. Failure or neglect of a Bidder to examine such documents, work site(s), statutes, regulations, ordinances, or resolutions shall in no way relieve the Bidder from any obligations with respect to the Bidder's Bid or to the contract. No claim for additional compensation will be allowed which is based upon a lack of knowledge of any contract documents, work site(s), statutes, regulations, ordinances, or resolutions. A signed purchase order or contract furnished to the successful Bidder results in a binding contract without further action by either party.
- 18. BID PRICE:** The Bid prices provided on the Offer Sheet shall include everything necessary for the prosecution and completion of the contract including, but not limited to, furnishing all materials, equipment, tools, plant, and other facilities and all management, superintendent's, labor and service, except as may be provided otherwise in the contract documents. In the event of a discrepancy between the unit price and the total price, the unit price will govern and the total price will be adjusted accordingly. Prospective Bidders should indicate in their Bid the address to which payment should be mailed, if such address is different from that shown for the Bidder.
- 19. ERRORS AND OMISSIONS:** The City will not consider a claim of an error in a Bid unless the claim is presented in writing within 24 hours after the Bids are opened. Additionally, the Bidder claiming error must present supporting evidence, including but not limited to cost breakdown sheets, no later than 48 hours after the Bids are opened.
- 20. MOST FAVORABLE TERMS:** The City reserves the right to make an award without further discussion of the Bid submitted. An exception is that the City may contact Bidders for clarification and to note deficiencies of a portion of the Bid. The City reserves the right to request correction of deficiencies. Therefore, the Bid should be submitted initially on the most favorable terms, which the Bidder can propose. There will be no best and final offer process. The Bidder should be prepared to accept this ITB into a contract resulting from this ITB.
- 21. CLARIFICATIONS:** The City may provide each Bidder with a list of desired clarifications, to assist the City in understanding the Bid. Such actions will be solely and entirely to ensure that the best possible offer is appropriately determined by the City, and to insure the best possible consideration afforded to all concerned.
- 22. PUBLIC INFORMATION:** Bids will be considered public information once the bid is opened.
- 23. PROPRIETARY MATERIAL:** Bidders shall clearly mark any proprietary information with the words "Proprietary Information." Bid Offer Forms and any other Bid Forms cannot be declared proprietary. Marking all or nearly all of the Bid materials as proprietary will result in rejection of the Bid.
- 24. NON-COLLUSION:** Submittal of an offer swears that the offer is genuine and not a sham or collusive, and not made in the interest of any person not named, and that the Offeror has not induced or solicited others to submit a sham offer, or to refrain from proposing.
- 25. NON-SEGREGATED FACILITIES:** Offers agree that the company does not maintain or provide for employees any segregated facilities, and that the Offeror does not allow employees to perform services at any such facility. Offerors agree that a breach of this shall constitute a contract violation.

26. CORPORATE PRINCIPAL: Offers shall be signed by an individual who is named in the business to have such authority, according to the business governing body and by-laws.

27. PROTESTS: This procedure is available to Bidders who submitted a response to the solicitation document. Interested Bidders may submit a protest to conditions that are stated in this ITB, if protest no later than 3 complete business days prior to Bid submission deadline. Following that date, Bidders that have not indicated a formal protest to the ITB conditions will waive their right to protest such issues. Following notice of the apparent successful Bidder, Bidders are allowed three (3) business days to file a protest of the acquisition with the City Supervisor. Such protests may be regarding issues of award, but all issues regarding the structure of the ITB or anything described within the ITB, must have been previously filed as described above. After the three (3) business day period, Bidders waive the right to protest, and the City will proceed immediately to award. Bidders protesting this procurement must provide a written and signed statement by the protesting party. The protest must state the grounds for the protest with the specific and complete statements of the action(s) being protested. A description of the relief or corrective action being requested must also be stated. Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A matter of bias, discrimination, or conflict of interest on the part of the evaluator;
- Errors in computing the score;
- Non-compliance with procedures described in the ITB or City policy.

Upon receipt of protest, the City will hold a protest review. All available facts will be considered and the City will issue a decision within five (5) business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event that protest may affect the interest of another Bidder who submitted a Bid, such Bidder will be given an opportunity to submit its view and any relevant information on the protest to the City Supervisor.

The final determination of the protest shall either:

- Find the protest lacking in merit and uphold the City's action; or
- Find only technical or harmless errors in the City acquisition process and determine the City to be in substantial compliance and therefore reject the protest; or
- Find merit in the protest and provide the City options for correction including correcting the errors and re-evaluating the Bids, and/or reissuing the ITB to begin a new process; or make other findings and determine other courses of action as appropriate.

If the City determines that the Protest is without merit, the City will enter into a contract with the apparently successful contractor. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

OFFER SHEET (page 1 of 4)

Statement of Business Responsibility

Name of Business: _____

Business Address: _____

Station Location: (primary) _____

Is this station located within 3 miles of the Sedro-Woolley City Hall? Yes: ____ No: ____

Is this station open 24 hours a day, 365 days a year? Yes: _____ No: _____

Other station locations:

Business Classification (check all that apply):

____ Individual ____ Partnership ____ Corporation ____ Women or Minority Owned:

FID/SSN:

Name of Owner: _____

Licensing: Is the company licensed for doing business in Washington? Yes: ____ No: ____ Does bidder

maintain insurance in amounts specified by the City contract:

Yes: ____ No: _____

**General Liability insurance of at least \$1,000,000 per occurrence;
\$1,000,000 aggregate, Combined Single Limit (CSL);
Automobile liability of at least \$1,000,000 per accident CSL**

If no, describe differences:

Insurance Broker Name: _____

Insurance Broker Phone: _____

Insurance Broker Fax: _____

Are there claims that are pending against this insurance policy? Yes: ____ No: _____

If yes, describe: _____

During the past five years, has the contractor been involved in any bond forfeiture, litigation or claims that exceed 10% of the project value? Yes: ____ No: _____

If yes, please attach an explanation.

Has company been in bankruptcy, reorganization or receivership in the last five years?

Yes: ____ No: _____

Has company been disqualified by any public agency from participation in public contracts?

Yes: ____ No: _____

OFFER SHEET (page 2 of 4)

Do you accept: 1) Brand-name issued gas card:
2) Brand Name Fleet Card:

Are there additional charges for any of these credit cards? If so, specify:

Card Type	Additional Charges (if any) for use of that card
City-Issued Bank Card	
Brand Name Gas Card	
Brand Name Fleet Card	

Does your monthly invoice show the rebate automatically, or is a separate annual rebate calculation required? Please Specify.

Card Type	Monthly Invoice Adjustment	Separate Annual Rebate Check
City Bank Card		
Brand-Name Gas Card		
Brand-Name Fleet Card		

Can the activity on the account be viewed electronically in some manner (whether through a disk or on-line viewing)? Specify Yes or No.

	Specify Yes or No
City-issued Bank Card	
Brand-Name Gas Card	
Brand-Name Fleet Card	

Do you have an automatic card reader system for the credit cards that you accept, so that the driver can utilize the credit card at the pump? Yes_____ No: _____

Does your primary station have some type of a back-up system for emergency? Yes_____ No_____

Do you agree to maintain the required strategic reserve of gasoline and diesel at this station for the exclusive use of the City in the event of a City declared emergency? Yes_____ No_____

OFFER SHEET (page 3 of 4)

Exclude Federal Excise Tax Specify the Rebate or discount pricing structure you are offering the City: **This is your formal offer:**

87 Regular Unleaded	
89 Midgrade Unleaded	
Dyed Diesel	
Clear Diesel	

In order to calculate the low bid offer, the City will analyze the pricing structure you offer as applied to a historical pricing index. Provide a listing of your pricing history for regular unleaded (87), clear diesel fuel and delivered diesel fuel using the proposed rebate/deductions applied to this historical pricing. Because the significant and substantial fuel consumption is 87 unleaded octane and diesel, that 87 unleaded octane and diesel are used as the basis for this calculation. After determining what the price would have been on the specified dates, please total the different prices for the various dates onto the bottom of the form. The City will verify that total. Should the total not match the individual prices, the individual prices will prevail and the City will adjust the calculated total accordingly. The City will utilize those totals to determine the low bid.

	Regular Unleaded (87)	Clear Diesel	Delivered Diesel
January 1, 2015			
February 1, 2015			
March 1, 2015			
April 1, 2015			
May 1, 2015			
June 1, 2015			
July 1, 2015			
Total of all prices:			
	Regular (87)	Clear Diesel	Delivered Diesel

OFFER SHEET (page 4 of 4)

Having carefully examined the documents of the solicitation, the instructions, the Contract and General Terms and Conditions, and all related documents, the undersigned proposes to perform all work in strict compliance with the above-named documents, as well as in compliance with any submitted Bid information, for the amount set forth below.

Contractual Commitment of Offer: Submission of this signed offer is signed agreement by the Offeror to all Terms and Conditions, contract requirements, specifications, and all conditions named within these documents. Submission shall be binding on and shall become contractual obligations upon acceptance and signature of the Mayor. Quotations become a contract with all documents a part of that contract, upon the City's co-signing the Offer and the City returning an Accepted Offer to the Bidder.

FIRM NAME: _____ FID #: _____

FIRM ADDRESS: _____

CITY/STATE/ZIP: _____

TELEPHONE: _____ FAX #: _____

E-MAIL ADDRESS: _____

SIGNATURE: _____

PLEASE PRINT NAME: _____

PLEASE PRINT YOUR TITLE: _____

Offers shall be good and remain valid until the City completes award or rejections of quotes. Any exceptions to this must be noted on the Exception Sheet.

YOUR SIGNATURE CONFIRMS THAT YOUR OFFER CONSIDERS ANY ADDENDUM

Herein contains the signature of the City, accepting and awarding the offer on behalf of the City, constituting a contractual agreement to this offer. The City shall not sign this until the City has accepted this as the winning offer and has made award.

Mayor or Designee: _____
Date

Printed Name: _____

Date of Council Award Action (if applicable): _____

Finance Director Signature: _____
Date

Date of Award and Acceptance (this date is same as last signature date on this block): _____

EQUIPMENT PURCHASE ORDER & GENERAL CONTRACT TERMS AND CONDITIONS

These terms and conditions are hereby a part of the conditions agreed to by the Consultant upon Offer.

- 1. Gifts and Gratuities:** Businesses must not offer, nor City employees accept, gifts, gratuities, loans, trips, favors, special discounts, services, or anything of economic value in conjunction with city business practices. It is also unlawful for anyone to offer another, to influence or cause them to refrain from submitting a bid. Contractors and City employees must strictly adhere to the statutes and ordinances for ethics in contracting and purchasing, including the City Ethics Code, RCW 42.23 (Code of Ethics for Municipal Officers) and RCW 42.52 (Ethics in Public Service). This is applicable to any business practice, whether a contract condition, bid practice, or at any activity related to City business.
- 2. Applicable Law And Forum:** Except as hereinafter specifically provided, this Contract shall be governed by and construed according to the laws of the State of Washington. Any suit arising here from shall be brought in Skagit County Superior Court, which forum shall have sole and exclusive jurisdiction and venue.
- 3. Alteration/Extra Work:** No alteration in any of the terms, conditions, delivery, price, quality, quantities or specifications of any order will be effective without prior written consent of City Supervisor. Any extra work (furnishing of materials or equipment and/or the doing of unforeseen work whenever it is deemed necessary or desirable in order to complete fully the work contemplated) shall be performed as directed or agreed upon and will be paid for at unit prices, approved rates or upon a mutually agreed upon lump sum stipulated in the written order authorizing the work. Performance of extra work without prior expressed written consent of the City Supervisor or her designee shall be at the Contractor's sole expense.
- 4. Contract Documents:** The Contract, Special Provisions, Offer, Addendum and General Terms and Conditions shall be a part of and constitute the contract entered into by the City, and the successful Bidder. In the event there is discrepancy between any of the foregoing contract documents, the above order of documents governs so that the former prevails over the latter.
- 5. Notice Of Award:** Notice of award shall have been given when the Council authorizes award. If no such authorization is required, the notice of award shall be when the Contract, addressed to the successful Bidder at the address shown in the bid, is deposited in the Post Office in Sedro-Woolley, Washington, unless otherwise noted. The City will also post an award notice on the Web site or provide a written notice to unsuccessful bidders.
- 6. Acceptance of Award:** If any purchase by the City is accepted, or the awarded vendor otherwise begins work, the winning vendor is deemed to have agreed to all these Terms and Conditions. If such work is accepted by the awarded vendor prior to the City receiving a signed contract, the City shall still regard the contract terms and related documents to be in force.
- 7. Licenses, Permits, And Taxes:** The Contractor shall procure all permits and licenses, pay all charges, fees and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the work.
- 8. Change Orders:** Except as hereafter specifically provided, change orders for material or services effective if issued and authorized in writing by the City Supervisor or his designee. The City reserves the right to add or delete items, agencies or locations, as determined to be in the best interest of the City. Added items, agencies or locations will be related to those on contract, and additions or deletions will be by mutual agreement, and with prices consistent with the original bid price margins, and will be evidenced by issuance of a written contract change notice from the City Supervisor or Buyer. Change orders for material or services will be without effect unless issued and authorized in writing by the City Supervisor.

9. Pricing: Prices shall remain firm as stated in the bid offer for the duration of the Contract. Pricing changes beyond those stated in the bid offer and contract, will require extensive cause including (1) a direct result of pricing increases at the manufacturer's level incurred after contract commencement date; b) can not produce a higher profit margin than that on the original contract; c) clearly identify the items impacted by the increase; d) must be requested at least 60 calendar days in advance of the proposed effective date; e) documentation must be based on United States published indices such as the Producer Price index; (f) be accompanied by documentation acceptable to City sufficient to warrant the increase; g) approved price adjustments shall remain unchanged for at least 12 months thereafter.

During the contract period, any price declines at the manufacture's level or cost reductions to Contractor shall be reflected in a reduction of the contract price retroactive to Contractor's effective date.

10. Freight: Prices include freight prepaid and allowed. The Contractor assumes the risk of every increase, and receives the benefit of every decrease, in delivery rates and charges.

11. Title: Prices are F.O.B. destination. Title to items and risk of loss remain with Contractor until City receives items at the delivery point.

12. Assignment: Neither party to a Contract/Purchase Order may assign any portion of the agreement without the prior consent of the other party.

13. Force Majeure: Except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract, if and to the extent that such party's performance of this contract is prevented by reason or force majeure, as determined by the City. The term "force majeure" means an occurrence beyond the control of the affected party and not avoidable by reasonable diligence. Force majeure includes acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences. If either party is delayed by force majeure, said party shall provide written notification to the other within 48 hours. Delays shall cease as soon as practicable and written notification of same provided. The time of contract completion may be extended by contract modification, for a period of time equal to that delay caused under this condition. The City reserves the right to cancel the contract and/or purchase materials, equipment or services from the best available source during the time of force majeure, and Contractor shall have no recourse against the City.

14. Termination For Convenience: Either party may terminate this Contract, in whole or in part, by a 90-day written notice to the remaining party.

15. Failure To Perform: Failure of a Bidder to furnish the equipment, supplies, materials, and/or services from a bid which results in a contract award, may eliminate the Bidder from the active bidder's mailing list for the products or services concerned, at the discretion of the City.

16. Indemnification: To the maximum extent permitted by law, the Contractor shall be liable for and shall hold the City harmless from all damages and injuries caused to persons or property arising out of the performance of this Contract. The Contractor agrees to assume the defense of the City and its officers and employees in all legal proceedings or claims with third parties connected with the Contractor's performance under this Contract, to pay all expenses, including reasonable attorney's fees, incurred by the City directly or indirectly on account of such legal proceedings, and to satisfy any judgment rendered in connection therewith or to pay or reimburse the payment of any sums reasonable to settle such proceedings or claims.

17. Personal Liability: It is agreed by and between the parties hereto that in no event shall any official, officer, employee, or agent of the City of Sedro-Woolley be in any way liable or responsible for any covenant or agreement herein contained whether express or implied, nor for any statement of representation made herein or in any connection with this agreement.

- 18. Cooperative Purchase:** The City of Sedro-Woolley has entered into intergovernmental (Interlocal) purchasing agreements pursuant to RCW 39.34 with other Washington agencies under which either party may make purchases at the other party's accepted bid price. By submitting this offer to City of Sedro-Woolley, the Contractor agrees to make the same bid terms and price, exclusive of freight, available to other Washington governmental agencies. The City of Sedro-Woolley will in no way whatsoever incur any liability in relation to specifications, delivery, payment, or any other aspect of these purchases.
- 19. Patents, Trademarks And Copyrights:** The Vendor warrants that the items to be furnished do not infringe upon any patent, registered trademark or copyright, and agrees to hold Purchaser harmless in the event of any infringement or claim thereof.
- 20. Liens/Title:** The Vendor warrants that the items to be furnished are free and clear of all liens and encumbrances and that the Vendor has good and marketable title to same.
- 21. Compliance With Laws:** The Vendor shall comply with all applicable federal, state and local laws, rules, and regulations affecting its performance and hold the Purchaser harmless against any claims arising from the violation thereof. No extension of time or additional payment will be made for loss of time or disruption of work caused by any actions against the Contractor for any of the above reasons.
- 22. Warranties:** The Vendor warrants that items furnished conform to its description and any applicable specifications, shall be of good quality and fit for the known purpose for which sold. This warranty is in addition to any standard warranty or service guarantee by Vendor to the Purchaser. The Bidder will submit in writing and detail, the warrantee covering said item(s).
- 23. Uniform Commercial Code:** The Uniform Commercial Code, as effective in Washington State, RCW Title 62A, shall determine the rights and duties of the Vendor and the Purchaser.
- 24. Payments:** The Contractor shall be paid, upon submission of proper invoices, prices stipulated herein for supplies or services that are delivered and accepted (less deductions, if any), as herein provided. Unless otherwise specified, payment will be made on partial deliveries accepted by the City when the amount due on such deliveries so warrants; or if requested by the Contractor. Payment for partial deliveries shall only be made upon receipt of an accurate and adjusted invoice, or a certified receiving report, and/or final installed acceptance. All accounts are paid according to RCW 39.76.020, Section 4C, and payment procedures as follows: The City Council approves payments on the second & fourth Wednesday of each month. Payments will be mailed no more than twice a month, according to the current City of Sedro-Woolley payable schedule.
- 25. Invoices:** Invoices must be submitted in two copies, supported by a delivery ticket/receipt, and contain the following minimum information: (1) purchase order/contract number; (2) item number, quantity and description; (3) unit and extended prices; and (4) shipping charges when applicable. Mail invoices to: Accounts Payable, 325 Metcalf St., Sedro-Woolley, WA 98284.
- 26. Discounts:** The cash discount period on invoices shall commence on the latter of the date on which the correctly completed vouchers or shipments are received/accepted by the City of Sedro-Woolley. If an adjustment or damage occurs on a shipment subject to cash discount, a discount will be taken effective on the date final approval for payment is authorized.
- 27. Approvals:** Materials purchased are subject to the approval of the City of Sedro-Woolley and if rejected are held subject to the Vendor's risk and expenses incurred for its return as approved by the City Supervisor.
- 28. Bond Requirement:** Payment and Performance Bonds, when required, will be made in accordance with the forms prepared by the City and incorporated herein.
- 29. Nondiscrimination:** The City of Sedro-Woolley, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary,

Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award.

- 30. Equal Opportunity:** “The Equal Opportunity Clause” in Section 301 of Executive Order 10925 as amended, and the implementing Rules and Regulations, are herein incorporated by reference.
- 31. OSHA/WISHA:** The Contractor agrees to comply with the conditions of the Federal Occupational Safety and Health Act of 1970, the Washington Industrial Safety and Health Act of 1970, and the standards and regulations issued thereunder, and certifies that all items furnished and purchased under the order will conform to and comply with said standards and regulations. Contractor further agrees to indemnify and hold harmless Purchaser from damages assessed against Purchaser as a result of Contractor’s failure to comply with the Acts and the standards issued thereunder and for the failure of the items furnished under this order to so comply.
- 32. Shipping Instructions:** Unless otherwise specified, please ship, prepaid via cheapest common carrier f.o.b., destination. Unit cost of items f.o.b., Sedro-Woolley, shall not include sales tax or cost of freight. Freight charges will be added as a separate item but shall not include sales tax in the freight charge. Sales tax shall be added to the invoice as a separate charge.
- 33. Taxes:** Prices quoted shall show as a separate entry the total Bid amount before WASHINGTON STATE SALES TAX is applied. City of Sedro-Woolley reserves the right to remit sales tax at the Sedro-Woolley rate directly to Washington State Department of Revenue. EXCLUDE Federal Excise Tax and supply exemption certificate when necessary.
- 34. Hazardous Chemicals:** The City of Sedro-Woolley in compliance with WAC 296-62-054 through WAC 296-62-05425, requires each shipment of hazardous chemicals to be accompanied by a material safety data sheet.
- 35. Debarment:** Vendor warrants and represents that it is not on any state or federal debarment list.
- 36. Hold Harmless:** The Contractor shall hold the City and its officers, agents and employees harmless from all costs, claims or liabilities of any nature including attorneys; fees, costs and expenses for or on account of injuries or damages sustained by any persons or property resulting from the negligent activities or omissions of the Contractor, its agents or employees pursuant to the Agreement, or on account of any unpaid wages or other remuneration for services; and if a suit as described above be filed, the Contractor shall appear and defend the same at its own cost and expense, and if judgment be rendered or settlement made requiring payment by the City, the Contractor shall pay the same.
- 37. Ownership Of Documents:** All documents, data, drawings, specifications, software applications and other products or materials produced by the Contractor in connection with this Agreement shall be the property of the City whether the project for which they are made is executed or not. All such documents, products and materials shall be forwarded to the City at its request and may be used by the City as it sees fit. The City agrees that if the documents, products and materials prepared by the Contractor are used for purposes other than those intended by the Agreement, the City does so at its sole risk and agrees to hold the Contractor harmless for such use. All services performed under this Agreement will be conducted solely for the benefit of the City and will not be used for any other purpose without written consent of the City. Any information relating to the

services will not be released without the written permission of the City. The Contractor shall preserve the confidentiality of all City documents and data accessed for use in Contractor's work product.

- 38. Emergency Work:** The Contractor will not be allowed added compensation for any emergency work performed on Sundays or legal holidays, unless such work is ordered and approved by the City Supervisor or Mayor or is otherwise required under condition #41, below.
- 39. Guarantee:** The Contractor hereby guarantees that all of the work, materials or equipment furnished by him/her under this agreement will fully meet all requirements for quality of workmanship, materials, strength and any and all other requirements of the specifications.
- 40. Workers Right to Know:** The Department of Labor and Industries are required by law to establish a program to make employers and employees more aware of the hazardous substances in their work environment. WAC 296-62-054 requires (among other things) that all manufacturers/distributors of hazardous substances, including any of the items so listed on this RFP, RFQ, ITB or contract bid and subsequent award, must include with each delivery completed MSDS (Material Safety Data Sheets) for each hazardous material. Additionally, each container of hazardous material must be appropriately labeled with: (1) The identity of the hazardous material; (2) appropriate hazardous warnings; and (3) Name and address of the chemical manufacturer, importer or responsible party. Labor and Industries may levy appropriate fines against employers for noncompliance and agencies may withhold payment pending receipt of a legible copy of the MSDS. It should be noted that OSHA Form 20 is not acceptable in lieu of this requirement, unless it is modified to include appropriate information relative to "carcinogenic ingredients" and "routes of entry" of the product(s) in question.
- 41. Emergency and Disasters:** The following shall be in effect during major emergencies or disasters when the City activates its Emergency Operations Center or otherwise provides verbal notice. Seller acknowledges that the City is procuring such goods/services for the benefit of the public. Seller agrees, in support of public good purposes, to consider the City as the customer of first priority and shall make its best effort to provide the City requested goods/services in as timely a manner as practicable. Seller and the City agree that a major emergency or disaster includes, but is not limited to: storms, high winds, earthquakes, floods, hazardous material releases, transportation mishaps, loss of utilities, fires, terrorist activities or combinations of above. The seller understands and agrees to provide the City, upon City request, such goods/services at such time as the City determines. In the event the Seller is unable to meet the delivery requirements due to circumstances beyond the reasonable control of the Seller, Seller agrees to make such delivery as soon as practicable. If Seller is prevented from making delivery to the requested location due to circumstance beyond its reasonable control, Seller shall immediately assist the City in whatever reasonable manner to gain access to such goods/services. In the event Seller is unable to provide goods/services as requested by the City, the Seller may offer limited substitutions for City consideration and shall provide substitutions with prior approval from the City. Seller agrees to charge the City the price determined in this contract. If no price has been determined, it shall charge the City a price that is normally charged for such goods/services. In the event that the City request results in the Seller incurring unavoidable additional costs that cause the Seller to increase prices in order to obtain a fair rate of return, seller shall charge the City a price not to exceed the cost/profit formula found in the contract.
- 42. Scope of Work:** Contractor shall provide all supplies, equipment and services described in the text of this instrument, including all attachments, which are incorporated herein by this reference. These attachments include: Contract, General Terms and Conditions, Scope of Work/Specifications, Offer, and ITB. These documents specify the working relationship between the City and the Contractor, and specific obligations of both parties.

- 43. Compensation:** The City promises and agrees to employ, and does employ, the Contractor to provide the Supplies or equipment provided for in this Agreement, according to the attachments contained herein. The City agrees to pay the Contractor according to the payment schedule attached herein; said payment schedule includes any applicable sales or use tax.
- 44. Relationship between City and Contractor:** Contractor shall at all times be an independent contractor and not an agent or representative of Sedro-Woolley with regard to performance of this Agreement. Contractor shall not represent that it is, or hold itself out as, an agent or representative of Sedro-Woolley. In no event shall Contractor be authorized to enter into any agreement or undertaking for or on behalf of Sedro-Woolley.
- 45. Release, Indemnities, and Hold Harmless:** Subject to the limitations set forth below, Contractor releases and shall defend, indemnify, and hold harmless the City from and against all claims, cost liabilities, damages and expenses, (including but not limited to, reasonable attorney fees) arising directly out of or in connection with any fault, negligence, strict liability or product liability of Contractor in connection with this Agreement; any lien asserted upon any property of Sedro-Woolley in connection with the Agreement; any failure of Contractor, or the Agreement to comply with any applicable law, ordinance, rule, regulation, order, license, permit or other requirement, now or hereafter in effect; any breach or default under this Agreement by the Contractor. As permitted by applicable law, this section shall apply. However, this section shall not require Contractor to indemnify Sedro-Woolley against any liability for damages arising out of bodily injury or property damages caused by or resulting from negligence of the City. Further, in the case of concurrent negligence of Contractor on the one hand and Sedro-Woolley on the other hand, Contractor shall be required to indemnify the City only to the extent of the negligence of the Contractor. Contractor releases and shall defend, indemnify, and hold harmless Sedro-Woolley from and against all claims, cost, liabilities, damages, expenses (including but not limited to reasonable attorney fees) and royalties based upon any actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or other intellectual property right, Contractor shall either (a) procure for Sedro-Woolley the right to such, or (b) modify the agreement so that they no longer infringe or misappropriate any such right.
- 46. Attorney's Fees:** The prevailing party in any action shall be entitled to reasonable attorney's fees and court costs.
- 47. Performance By Contractor:** Contractor shall not delegate or subcontract performance of any portion of this Contract to any other person or entity without the prior written consent of Sedro-Woolley.
- 48. Inspection: Examination of Records:** The Agreement shall, at all times, be subject to inspection by and with the approval of Sedro-Woolley, but the making of (or failure or delay in making) such inspection or approval shall not relieve Contractor of responsibility for performance of the Agreement, notwithstanding the City's knowledge of defective or noncomplying performance, its substantiality or the ease of its discovery. Contractor shall promptly furnish Sedro-Woolley with such information related in the Agreement as may be requested by the City. Until the expiration of three (3) years after final payment of the compensation payable under this Agreement, Contractor shall provide the City access to all of Contractor's books, documents, papers and records that are related to the Agreement.

49. Proprietary and Confidential Information: Contractor shall not, without the prior written consent of Sedro-Woolley, disclose to third parties any information received in connection with the Agreement unless: (a) the information is known to Contractor prior to receiving the same directly or indirectly in connection with the Services; the information is in the public domain at the time of disclosure by Contractor; or (c) the information is received by Contractor from a third party who does not have an obligation to keep the same confidential.

50. Insurance: Upon Sedro-Woolley's request, Contractor shall furnish Sedro-Woolley with evidence of insurance.

51. Liability & Property Damage Insurance: the Contractor shall procure and maintain during the life of this Contract and during performance of these services, Commercial General Liability, and Automobile Liability Insurance, to protect the City and the Consultant from and against all claims, damages, losses and expenses arising out or resulting from the performance of these services, as detailed herein, with insurance companies or through sources approved by the State Insurance Commissioner pursuant to RCW Chapter 48. The City reserves the right to require higher limits should it deem it necessary in the best interest of the public.

1. The insurance policies shall include the City as **Additional Named Insured** on a Primary Basis without limitation, and shall include others if required by the Contract documents.
2. A Certificate of Insurance and a separate page showing the Additional Named Insured Endorsement, shall be filed with the City upon request by the City after award but prior to execution of the contract, for a primary policy of commercial general liability insurance, meeting the requirements set forth herein. This Certificate shall be subject to approval by the City as to company, terms and coverage. Failure of the contractor to fully comply with the requirements set forth herein regarding insurance shall be considered a material breach of contract and shall be cause of immediate termination of the Contract and of any and all obligations regarding the same.
3. Should the documents be requested by the City, the Certificate of Insurance and accompanying Additional Named Insured Endorsement, shall have the following typed under the description field:

Contract Title
Contract Number

4. The Contractor shall not begin work under this Contract until all required insurance has been obtained, nor shall any subcontractor to commence work until insurance requirements have been complied with. Said insurance shall provide coverage to the Contractor, any subcontractor performing work provided by this Contract, and the City. The coverage so provided shall protect against claims for personal injuries, including accidental death, as well as claims for property damages which may arise from any act or omission of the Consultant or the subcontract, or by anyone directly or indirectly involved or employed by either of them.
5. Approval of the insurance by the City shall not relieve or decrease the liability of the Consultant for any damages arising from Consultant's performance of the Work.

6. Insurance shall provide, at a minimum, the types of insurance coverage, liability limits and endorsements as set forth below and shall be included in all applicable policies and on the Certificate of Insurance. The insurance coverage's listed below shall protect the Consultant and the City from claims for damages of bodily injury, including death resulting therefrom, as well as claims for property damage, which may arise from operations under this Contract, whether such operation be by itself or by any subcontractor or by anyone directly employed by either of them, it being understood that it is the Consultant's obligation to enforce the requirements of this section in respect to any subcontractor employed for this project:

Commercial General Bodily injury and Property Damage Insurance and shall include:

- Premises & Operations;
- Owners and Contractors Protective;
- Products Liability including completed Operations Coverage; Contractual Liability;
- Broad Form Property Damage;
- Commercial Form (to include Extended Bodily Injury)
- Employees as Additional Insured;
- Explosion, Collapse & Underground Hazard;
- Independent Contractors;
- Personal Injury;
- Stop Gap;
- Cross Liability Clause.

Umbrella Liability Insurance in the amounts specified.

Automobile Bodily Injury and Property Damage Insurance sufficient to cover any driving that is directly required for the performance of the stated work.

7. Liability Limits:

General Liability (Commercial General Liability Insurance) shall be written with limits of liability of no less than \$1,000,000 combined single limits, per occurrence and \$2,000,000 in aggregate;

Umbrella Liability Insurance shall be written on a following form basis with limits of, in no case less than, \$2,000,000.

Automobile Insurance shall be written with limits of liability of no less than \$1,000,000 combined single limits, per occurrence and \$2,000,000 in aggregate.

8. Nothing contained in these insurance requirements is to be construed as limiting the extent of the Consultant's responsibility for payment of damages resulting from operations under this Contract.
9. The coverage's provided by the General Liability and the Automobile Liability are primary to any insurance maintained by the City.
10. The inclusion of more than one insured under this policy shall not affect the rights of any insured as respects to any claims, suit or judgement made or brought by or for any other Insured or by or for any employee of any other Insured. This policy shall protect each Insured in the same manner as though a separate policy had been issued to each, except that nothing herein shall operate to increase the company's liability beyond the amount or amounts for which the company would have been liable had only one Insured been named.

11. The Certificate of Insurance (ACCORD Form 25-S) cancellation clause shall be amended as follows:
Should any of the above described policies be cancelled, changed or reduced in coverage before the expiration date, the issue company will mail 30 day written notice through certified mail, to the certificate holder named at the left.
12. There shall be included in the general liability insurance contractual coverage sufficiently broad to insure the provisions of that Section herein entitled "Hold Harmless Clause."
13. Such insurance shall be maintained as required above, and any additional coverage's and limits as the City may from time to time specify to protect the City, its successor and assigns from any claims, losses harm, costs, liabilities, damages, and expenses (including but not limited to reasonable attorney's fees) that may arise out of any property damage, bodily injury (including death) or professional liability elated to the services performed.
14. Failure to comply with provisions contained herein shall not waive the responsibility of the Consultant to provide the required protection.