

SMALL WORKS / PREVAILING WAGE / CONSTRUCTION PROJECTS

GENERAL CONDITIONS

ARTICLE 1 - CONTRACTOR'S SERVICES AND RESPONSIBILITIES

1.1 Notice of Award. Notice of award occurs when the Seattle School District No. 1 (District) or (Owner) provides Contractor written notice consisting of the following documents:

- A. Award Letter
- B. Contract and/or Purchase Order
- C. Fingerprinting Information
- D. Insurance Information

1.1.1 Notice to Proceed. Contractor will receive a Notice to Proceed after the District required Insurance Certification, Proof of Fingerprinting (cleared through OSPI) and Fully Executed Contract, where specified, have been received and approved by the District. Contractor should do no work at any site until authorized in writing by the Seattle School District No. 1.

1.2 Services. Contractor shall furnish all personnel, equipment and materials for the performance of all services under this Agreement. Such services, together with all drawings, specifications, materials, information, property, and other items provided or to be provided to District under this Agreement, are sometimes collectively referred to herein as the "Services."

1.3 Manner of Performance. Contractor's Services shall be performed with the degree of care and diligence ordinarily exercised under similar circumstances in the applicable disciplines and as expeditiously as is consistent with such standards of professional skill and care and the orderly progress of the Services. At the time of performance, Contractor shall be properly licensed, equipped, organized and financed to perform the Services.

1.4 District's Representatives. District may designate one or more individuals or firms as its representative for administration of this contract. If a representative is assigned by District, it shall not have authority to assign additional Services or to reduce the Services to be performed by the Contractor under this contract.

1.5 Correction of Noncompliance's. Contractor shall, at no cost to District, promptly and satisfactorily correct any Services found to be defective or not in compliance with the requirements of this Agreement or the requirements of any governmental authority, law, regulations or ordinances.

1.6 Contractor's Personnel. All personnel employed by Contractor engaged in the Services and Services shall be fully qualified and shall be authorized under applicable federal, state, and local law to perform such Services and Services. Contractor shall, if so requested by District, remove from the performance of the Services any person District reasonably deems incompetent. Failure of District to so object shall not relieve Contractor of responsibility for such person. If any personnel are reassigned or replaced by Contractor upon District's request, Contractor shall replace them with personnel approved by District.

1.7 Contractor Employee Background. Pursuant to RCW 28A.400.330, Contractor shall prohibit from providing Services at a public school where there may be contact with children, any employee of Contractor who has pled guilty to or been convicted of any felony crime involving the physical neglect of a child under Chapter 9A.42 RCW, the physical injury or death of a child under Chapter 9A.32 or 9A.36 RCW (except motor vehicle violations under Chapter 46.61 RCW), sexual exploitation of a child under Chapter 9.68A RCW, sexual offenses under Chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under Chapter 9A.88 RCW, the sale or purchase of a minor child under

RCW 9A.64.030, or violation of similar laws of another jurisdiction. Failure to comply with this section shall be grounds for District to immediately terminate the contract.

1.8 Compliance with Laws.

1.8.1 General. Contractor shall comply, and be certain that its Services comply, with all applicable laws, ordinances, regulations, resolutions, licenses of record, permits of record, and other requirements applicable to the Services, in effect at the time of performance of the Services and as interpreted by cognizant authorities. Contractor shall furnish such documents as may be required to effect or evidence such compliance. All laws, ordinances, regulations, and resolutions required to be incorporated in agreements of this character are incorporated in this Agreement by this reference.

1.8.2 Nondiscrimination.

A. Applicable state laws concerning prevailing wages, hours, workers' compensation and other conditions of employment are called to the attention of bidders for their compliance. Bidder shall include in the bid any filing fees required to comply with applicable labor laws.

B. During the term of this Agreement, Contractor shall comply with applicable local, state and federal laws prohibiting discrimination with regard to race, creed, color, national origin, sex, sexual orientation, marital status, age or the presence of any sensory, mental or physical handicap.

C. Any contractor who is in violation of these requirements, or an applicable nondiscrimination program shall be barred forthwith from receiving awards of any purchase order from Seattle School District No. 1 or shall be subject to other legal action or contract cancellation unless satisfactory showing is made that discriminatory practices have terminated, and that reoccurrence of such acts is unlikely. This includes compliance with Section 503 and 504 of the Vocational Rehabilitation Act of 1973 and Sections 2012 and 2014 of the Vietnam Era Veterans Readjustment Act of 1974.

ARTICLE 2 - PAYMENTS TO CONTRACTOR

The compensation shall be made no more frequently than monthly and if paid on a lump sum basis shall be in proportion to the Services performed. Each of Contractor's invoices shall set forth in a detailed and clear manner a complete description of the Services covered thereby, on a form substantially similar to that customarily used by District and shall be supported by such receipts, documents, and other information as District may reasonably request. The invoice shall include separate listings of Services for particular schools or programs, if requested by the District. The District shall pay each of Contractor's invoices within 30 days after District's receipt, provided that all required documentation is included and accurate.

The District may not make any payments until contractors have submitted an Intent form that has been approved by the Industrial Statistician. The Affidavit form is not filed by the Contractor until after all the work is completed. The District may not release final retainage until all contractors have submitted an Affidavit form that has been certified by the Industrial Statistician.

Information on obtaining and submitting information/forms/documents can be accessed thru the following link for "on-line" applications. Note: The District does not support L & I's "Alternative Filing Options" for Combined Intent/Affidavit. Please be aware that L & I will charge contractors a filing fee(s) for both the intent and affidavit portion of the process. These fees are to be the responsibility of the Contractor.

<http://www.Ini.wa.gov/TradesLicensing/PrevWage/IntentAffidavits/File/default.asp>

"L & I" Seattle local office 206-515-2800

Or, call 360-902-5335 to reach the State of Washington's main L & I office.

Retainage and Bond Claim Rights. Chapters 39.08 and 60.28 RCW, concerning the rights and responsibilities of Contractor and Owner with regard to the performance and payment bonds and retainage, are made a part of the Contract Documents by reference as though fully set forth herein.

ARTICLE 3 - REIMBURSABLE EXPENSES

Not Applicable.

ARTICLE 4 - CONTRACTOR'S ACCOUNTING RECORDS

The Contractor's records of performance of Services shall at all times be subject to review by and the approval of District, but the making of (or failure or delay in making) such review or approval shall not relieve Contractor of responsibility for performance of the Services in accordance with this Agreement. Records of Reimbursable Expenses shall be kept in accordance with generally accepted accounting principles.

Contractor shall promptly furnish District with such information related to the Services as may be requested by District. Until the expiration of three years after final payment of the compensation payable under this Agreement, Contractor shall provide District access to (and District shall have the right to examine, audit and copy) all of Contractor's books, documents, papers and records which are related to the Services or this Agreement.

ARTICLE 5 - DISTRICT OWNERSHIP AND USE OF DOCUMENTS

5.1 District Ownership. All drawings, specifications, materials, information, property and other items obtained or developed in connection with the Services or the cost of which is included in the Reimbursable Expenses (including, but not limited to, documents, designs, drawings, plans, specifications, calculations, maps, sketches, notes, reports, data, estimates, reproductions, renderings, models, mock-ups, completed Services and Services in progress), together with all rights associated with District ship of such items (such as copyright, patent, trade secret and other proprietary rights), shall become the property of District when so obtained or developed or when such expense is incurred, as the case may be, whether or not delivered to District. Contractor shall deliver such items, together with all materials, information, property and other items furnished by District or the cost of which is included in the Reimbursable Expenses, to District upon request and in any event upon the completion, termination or cancellation of this Agreement. However, Contractor may at its own expense retain copies of any such items for its own records or for use in the furtherance of its professional knowledge.

5.2 License. District shall have a permanent, assignable, nonexclusive, royalty-free license and right to use all concepts, methods, processes, products, writings and other items (whether or not copyrightable or patentable) developed or first reduced to practice in the performance of the Services or otherwise whether by Contractor, any of its subcontractors, or any employee(s) of Contractor in connection with this Agreement. District shall hold Contractor or its subcontractors harmless for District's reuse of documents on a project other than this Project.

5.3 Nondisclosure. Contractor shall not, without the prior written consent of District, disclose to third parties any information obtained in connection with the Services unless: (a) the information is known to Contractor prior to obtaining the same directly or indirectly from District or in connection with the Services; (b) the information is in the public domain at the time of disclosure by Contractor; or (c) the information is obtained by Contractor from a third party who did not obtain the same directly or indirectly from District or in connection with the Services. If so requested by District, Contractor shall obtain from its employees, subcontractors and their respective employees nondisclosure agreements in the form and content satisfactory to District. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the activity for which the Services were rendered is not to be construed as publication in derogation of District's or Contractor's rights.

ARTICLE 6 - RELEASE, INDEMNIFICATION AND HOLD HARMLESS

6.1 **Release and Indemnification.** Contractor releases and shall indemnify and hold harmless District, its successors and assigns, and the directors, officers, employees and agents of District and their successors and assigns (collectively, the "**Indemnities**") from all claims, losses, harm, costs, liabilities, damages and expenses (including, but not limited to, reasonable attorneys' fees) relating to the services arising (whether before or after completion of the Services) out of any act, error or omission of any of the following: Contractor; Contractor's subcontractors or subcontractors; the directors, officers, employees or agents of Contractor or any of its subcontractors or subcontractors; or anyone acting on Contractor's behalf in connection with the Services or this Agreement. However, Contractor shall not be required to so indemnify any of the Indemnities against liability or damages to the extent caused by or resulting from the negligence of such Indemnities. The indemnification obligation under this paragraph shall not be affected by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor under any worker's compensation act, including Title 51, RCW, any disability benefit acts, or any other employee benefit acts. Contractor and any subcontractor hereby waive, for themselves and their successors, any right to claim such limitation as a defense, set off, or other reduction of rights to indemnification under this paragraph. **Contractor further agrees that this waiver has been mutually negotiated by the parties.**

6.2 **Workers' Compensation.** Contractor expressly waives any immunity or limitations (e.g., on the type or amount of damages, compensation, benefits or liability payable by Contractor) that might otherwise be afforded under any industrial insurance, workers' compensation, disability benefit or similar law, rule, regulation or order of any governmental authority having jurisdiction (including, but not limited to, the Washington Industrial Act, Title 51 of the Revised Code of Washington). By executing this Agreement, Contractor acknowledges that the foregoing waiver has been mutually negotiated by the parties.

6.3 **Maintain Safe Work Site(s) and Work Practices.** Contractor certifies that it is in compliance with the conditions of the Federal Occupational Safety and Health Act (OSHA), the Washington Industrial Safety and Health Act (WISHA), and the standards and regulations issued there under, and certifies that all work will conform to and comply with said standards and regulations. Contractor further agrees to indemnify and hold harmless the District from damages assessed against the District as a result of the Contractor's failure to comply with the Acts and the standards issued there under and for the failure of the work under this Agreement to so comply.

6.4 **Patent; Copyright.** Contractor releases and shall defend, indemnify and hold harmless the Indemnities from all claims, losses, harm, costs, liabilities, damages, expenses (including, but not limited to, reasonable attorneys' fees) and royalties arising (whether before or after completion of the Services) out of or in connection with any claim, action, suit or proceeding based upon infringement of any patent, copyright, trade secret or other proprietary right or upon the wrongful use of any confidential or proprietary concept, method, process, product, writing, information or other item and arising out of or in connection with performance of the Services or the use or intended use of any of the Services. Further, if any of the Services or any use or intended use of the Services constitutes an infringement of any patent, copyright, trade secret or other proprietary right or the wrongful use of any confidential or proprietary concept, method, process, product, writing, information or other item, Contractor shall at its expense either procure for the Indemnities the right to use the infringing item, replace the infringing item with a substantially equal but noninfringing item or modify the infringing item so that it becomes noninfringing; provided, however, that this paragraph 6.3 does not apply to any claim, action, suit or proceeding based upon infringement which is related to any materials or equipment designated solely by District for use by the District.

ARTICLE 7 – INSURANCE AND BONDS

7.1 General Provisions.

A. Contractor shall, at its sole cost and expense, with respect to Contractor, its subcontractors of

any tier, and their employees, officers, representatives and agents, ensure that Contractor and its subcontractors maintain in effect at all times during the performance of the Work coverage or insurance in accordance with the applicable laws relating to workers' compensation and employer's liability insurance (including, but not limited to, the Washington Industrial Insurance Act), regardless of whether such coverage or insurance is mandatory or merely elective under the law. Prior to commencing the Work, Contractor shall furnish to Owner assurance and evidence acceptable to Owner of coverage or insurance with respect to all persons performing the Work in accordance with the applicable laws relating to workers' compensation and employer's liability insurance (including, but not limited to, Certificate(s) of Compliance as issued by the Washington State Department of Labor and Industries).

- B. Without limiting the generality of paragraph (a) above, Contractor shall purchase and maintain insurance as set forth below for all its employees, officers, representatives and agents engaged in Work on this Project under this Contract. In case any such Work is subcontracted, Contractor shall require the subcontractor to provide the same insurance coverage for all of the latter's employees, officers, representatives and agents engaged in such Work. In case any class of employees engaged in hazardous work under this Contract and the site of the Project is not protected under the above Washington State Industrial Insurance Act, or "stop-gap" insurance, Contractor shall provide and shall cause each subcontractor to provide compensation insurance and employer's liability insurance with a private insurance company.
- C. Prior to the commencement of performance of the Work, Contractor shall, at its sole cost and expense, secure such liability insurance as will protect Contractor, its employees, officers, representatives and agents, Owner and Owner's Representative, from and against any and all claims and liabilities arising out of bodily or personal injury (including death) or property damage that may result from Contractor's operations or performance of Contractor's obligations under this Contract, whether such performance is by Contractor or any of its Support. All such insurance shall be placed with such insurers and under such forms of policies as may be acceptable to Owner.

7.2 Contractor's Liability Insurance. Contractor shall, at its own expense, secure and maintain Commercial General Liability Insurance including Products and Completed Operations; Broad Form Property Damage; Stop Gap; Contractual Liability (and Collapse, Explosion and Underground). Without limiting the generality of the foregoing, such insurance shall protect Owner, Owner's Representatives, Construction Manager, Architect/Engineer and Contractor from the following claims which may arise out of, result from or relate to Contractor's operation or performance under the Contract:

- A. claims under workers' or workmen's compensation, disability benefit and other similar employee benefit act;
- B. claims for damages because of bodily injury, occupational sickness or disease, or death of its employees;
- C. claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees;
- D. claims for damages, insured by usual personal and advertising injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or (2) by any other person;
- E. claims for damages, other than to work itself, because of injury to or destruction of tangible property, including loss of use resulting there from (including, but not limited to, the usual Broad Form Property Damage Liability coverage); and

F. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

All required liability policies shall be written on an “occurrence” and not “claims-made” form.

The insurance required by 7.2 shall include contractual liability insurance applicable to Contractor’s indemnification obligations under this Agreement.

All required liability policies shall be specifically endorsed as primary insurance, and not contributory to any other insurance or self-insurance available to Owner.

7.3 Limits of Liability. The liability insurance required herein shall be written for not less than that stated in these Contract Documents; or one million dollars (\$1,000,000), whichever is greater. Except for workers’ compensation, limits shall be project specific and dedicated to work performed under this Contract, unless otherwise agreed to by Owner. The amounts of insurance shall not be less than:

commercial general liability	
each occurrence damage to	\$1,000,000
rented premises personal and	\$ 100,000
advertising injury general	\$1,000,000
aggregate	\$2,000,000
products – completed operations	
aggregate	\$2,000,000
automobile liability (owned,	\$1,000,000 per occurrence
nonowned, leased or hired)	
excess/umbrella liability coverage	\$2,000,000 per occurrence
workers’ compensation	Statutory (or provide evidence of coverage in L&I State Fund)
employer’s liability (stop gap)	\$1,000,000 each accident \$1,000,000 disease – each employee \$1,000,000 disease – policy limit
Builder’s Risk Insurance	Equal to Contract Value Amount (for projects valued over \$35,000.00 excluding tax)

7.4 Builder’s Risk Insurance. Unless otherwise provided, Contractor shall purchase and maintain property insurance upon the entire Work in an amount equal to the initial Contract Sum as well as subsequent modifications thereto at the replacement value thereof. Such property insurance shall be maintained, until final payment has been made or until no person or entity other than Owner has an insurable interest in the property required by this paragraph to be covered, whichever is earlier. This insurance shall include the interests of Owner, Contractors, and subcontractors regardless of tier.

7.5 Coverage Period. Contractor or its Subcontractors shall maintain the foregoing insurance and coverage’s in full force and effect at all times; (a) until all of Contractor’s obligations under this Contract have been fully performed, all of the Work has been fully accepted by Owner and all operations of Contractor and its employees, officers, representatives, agents and subcontractors (including, but not limited to, removal of equipment and other property) on or about the site of the Work have been concluded; and (b) in the case of completed

operations and products liability insurance, until the expiration of one (1) year after all of Contractor's obligations under this Contract have been fully performed.

7.6 Certificates of Insurance. Prior to the execution of the Contract (or within such further time as Owner may allow in writing), Contractor shall deliver to Owner Certificates of Insurance in a form acceptable to Owner as evidence that policies providing insurance with such provisions, coverage's and limits are in full force and effect. Such Certificates shall evidence the Owner and Owner's Representatives, if any, as insureds or additional insureds. These certificates shall contain a provision that coverage's afforded by the policies will not be canceled until at least 45 days prior written notice has been given to Owner and additional insureds. Contractor shall also furnish Owner with such additional assurance and evidence of such insurance (such as copies of all insurance policies, certified by an authorized representative of the insurer) as Owner may from time to time request. The certificate shall also evidence that the policies are issued as primary insurance and noncontributory to any insurance or self-insurance applicable to Owner.

7.7 Renewal, Termination, Cancellation, Expiration, and Alteration. In the event of any renewal, termination, cancellation, expiration or alteration in any policy of insurance required under this Contract, Contractor shall deliver to Owner a Certificate of Insurance with respect to any such renewal, termination, cancellation, expiration or alteration, as the case may be prior to inception of any such coverage.

7.8 Additional Insureds; Right of Subrogation. Contractor shall ensure that any policies of insurance that Contractor or any of its subcontractors are required to carry, provide or have provided as insurance against loss of or damage to property or bodily harm that may occur in connection with the Work or this Contract shall name Owner and Owner's Representatives as additional insureds and include a waiver of the insurer's right of subrogation against Owner, the Construction Manager, the Architect/Engineer and Owner's Representative. To the extent permitted by its insurance policies, Contractor hereby waives its rights of subrogation against Owner, the Construction Manager, the Architect/Engineer and Owner's Representative.

7.9 No Limitation. The requirements of this Contract as to insurance and acceptability to Owner of insurers and insurance to be maintained by Contractor and its Support are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor under this Contract.

7.10 Owner's Right to Maintain Insurance. If Contractor or any of its subcontractors fails to maintain the insurance coverage as required by this Part 2, Owner may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as set forth above, and Owner may charge to or otherwise recover from Contractor (e.g., by offset against any amounts due or which may become due Contractor under this Contract), the cost of such insurance.

7.11 Bonds.

A. Bidder shall furnish a bid guarantee in the form of a bid bond in a form acceptable to the District or a certified check or cashier's check payable to the District, in the amount of at least 5 percent of the total bid. The District reserves the right to hold the bid guarantee of all bidders until the successful bidders have entered into the contract and furnished the required insurance certificates, or for a period of thirty (30) days, whichever is the shorter time, the quote/bid is due. If project is over \$35,000, a bid bond or cashier's check is required.

B. Payment and Performance Bond. A Payment and Performance bond, executed by a surety authorized to issue bonds in the State of Washington, in a form acceptable to Owner, shall be furnished for the Work for 100% of the Contract Sum, including all Change Orders and state sales tax. No Performance Bond is required if the Contract Sum is under \$35,000.00 excluding tax.

7.12 Additional Bond Security. Contractor shall promptly furnish additional security required to protect Owner and persons supplying labor or materials required by the Contract Documents if:

- A. Owner has a reasonable objection to the surety; or
- B. Any surety fails to furnish reports on its financial condition if requested by Owner.

ARTICLE 8 - CHANGES

8.1 Notice. District may at any time, by written notice thereof to Contractor, make changes in the Services to be performed under this Agreement (including, but not limited to, additions to or deletions from any Services, suspension of performance, and changes in the schedule and location of performance). Contractor shall, within ten (10) days after receipt of notice of any change which Contractor believes to be outside the scope of Services, give District written notice of such belief, otherwise the change shall be deemed to be within the scope of Services.

8.2 Adjustment. If any change under paragraph 8.1 causes an increase or decrease in the cost of or the time required for performance of the Services, an equitable adjustment in the compensation and/or schedule under this Agreement shall be made to reflect such increase or decrease and this Agreement shall be modified in writing accordingly. Fee (including field and home office overhead and profit) for adjustments shall be per paragraph 8.3. Such equitable adjustment shall constitute full compensation to Contractor for such change.

8.3 Fee. The fee (including field and home office overhead and profit) shall be the sum of the following:

- A. For Contractor, for Work actually performed by its own forces, a maximum of fifteen percent (15%) of Contractor's Craft Labor Costs, Material Costs, and Construction Equipment Usage Costs.
- B. For Contractor, for amounts due to Subcontractors, a maximum of eight percent (8%) of the amount due.
- C. For each Subcontractor (including lower tier subcontractors), for any Work actually performed by its own forces, a maximum of fifteen percent (15%) of the cost of Work actually performed by its own forces.
- D. For each Subcontractor, a maximum of eight percent (8%) of the cost of Work performed by its subcontractors of any lower tier.

If a change in the Work involves both additive and deductive items, the appropriate equitable adjustment for Fee shall be based upon the net difference of the items

ARTICLE 9 - TERMINATION OF THIS AGREEMENT

9.1 Termination of Agreement by District for Cause.

9.1.1 If Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if Contractor shall violate any of the provisions of this Agreement, or if Contractor becomes insolvent or the subject of any proceeding under bankruptcy, insolvency or receivership law or makes an assignment for the benefit of creditors, District shall thereupon have the right to terminate this Agreement by giving written notice of such termination and specifying the effective date thereof as a certain date at least seven (7) days after the notice, during which period Contractor shall have the right to cure the default.

9.1.2 Whether or not this Agreement is so terminated, Contractor shall be liable to District for any damage or loss resulting from such failure or violation by Contractor described in subparagraph 9.1.1, including, but not limited to, costs in addition to those agreed to herein for prosecuting Services to completion and delay damages paid or incurred by District. The rights and remedies of District provided by this paragraph are cumulative with and in addition to any other rights and remedies provided by law or this Agreement.

9.1.3 District shall be liable to Contractor for Contractor's just and equitable compensation for any satisfactory services completed, but in no event shall this compensation exceed the percentage of total services satisfactorily completed at the time of termination times the total compensation payable under this Agreement. District may withhold payments to Contractor equal to any claim made in writing by District for the purpose of setoff until such time as the exact amount of damages due District from Contractor is determined. In no event shall District be liable for any consequential or incidental damages, including, but not limited to, loss of profit on other projects or of reputation incurred by Contractor as a result of such termination. If District purports to terminate all or a part of this Agreement for cause, and it is determined that insufficient cause existed, such termination shall be deemed to have been a termination for convenience of District pursuant to paragraph 10.2, and the rights of the parties shall be determined accordingly.

9.2 Termination for Convenience by District. District may, at its option, terminate all or a portion of the services not then performed under this Agreement at any time by so notifying Contractor in writing. In that event, all finished or unfinished documents and other materials as described above shall, at the option of District, become its property upon compensation therefore in accordance with this Agreement, and District shall indemnify and hold harmless Contractor and its agents and employees from any claims arising from District's subsequent use of such documents and other materials, except to the extent Contractor is solely or concurrently negligent. If the Agreement is terminated by District as provided herein, Contractor's compensation for the Services shall be (i) that portion of the compensation for services performed prior to termination, and (ii) proper compensation for Reimbursable Expenses. District shall not be liable for any consequential or incidental damages, including, but not limited to, loss of profits on other projects or of reputation incurred by Contractor as a result of such termination.

ARTICLE 10 - MISCELLANEOUS

10.1 Time. Time is of the essence with regard to performance of this Agreement.

10.2 Subcontracting. Except for any services to be performed by subcontractors specified in The Scope of Work, Contractor shall not (by contract, operation of law or otherwise) delegate or subcontract performance of any Services to any other person or entity without the prior written consent of the District.

According to the 2010-2013 Collective Bargaining Agreement between Seattle School District No. 1 and Seattle/King County Building and Construction Trades Council, Section B 5, Small Works Process and Procedures:

"The Contractors who receive a contract shall not sub-contract out their work unless the work being subbed out is directly specified as a specialty trade assignment, not to exceed forty (40%) of the project. All requests for subs shall be written and submitted to the HUBS/Small Works Manager for approval. The use of Labor Brokers shall not be permitted."

Please contact the District's Project Manager for any questions.

10.3 Independent Contractor. Contractor shall at all times be an independent contractor and not an agent or representative of District with regard to performance of the Services as authorized by this Agreement. Contractor shall not represent that it is, or hold itself out as, an agent or representative of District.

10.4 Nonwaiver. The failure of either party to insist upon or enforce strict performance by the other party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon any such provisions or rights in that or any other instance.

10.5 Assignment. Neither District nor Contractor shall assign, sublet or transfer any interest in this Agreement without the written consent of the other.

10.6 Entire Agreement. This Agreement represents the entire and integrated agreement between District and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both District and Contractor.

10.7 Applicable Law; Venue. This Agreement shall be interpreted, construed, and enforced in all respects in accordance with the laws of the State of Washington. Venue in any litigation shall be in King County, Washington.

Protest Procedures

1. Any actual or prospective Vendor who is aggrieved in connection with the solicitation or award of this contract may protest to the District in accordance with the procedures set forth herein. Protests based on the terms in this Request for quote/bid, which are apparent prior to the date established for submitting the quote/bid must be received three (3) days prior to the submittal deadline. Protests based on other events must be received within one (1) working day after the aggrieved person knows, or should have

known, of the facts and circumstances upon which the protest is based; provided, however, that in no event shall a protest be considered if all quotes/bids are rejected or if the protest is received after the award for this contract.

2. In order to be considered, a protest shall be in writing and shall include: the name and address of the aggrieved person; the contract title under which the protest is submitted; a detailed description of the specific grounds for protest and any supporting documentation; and the specific ruling or relief requested. The written protest shall be addressed and delivered to:

JoLynn D Berge, Assistant Superintendent for Business Finance
Seattle Public Schools
Mail Stop 33-300
PO Box 34165
Seattle, WA 98124-1165

or delivered to:

JoLynn D Berge, Assistant Superintendent for Business Finance
Seattle Public Schools
2445 Third Avenue South
Seattle, WA 98134

And shall be labeled: "Protest"

3. Upon receipt of a written protest, the District shall promptly consider the protest. The District may give notice of the protest and its basis to other persons, including Vendors involved in or affected by the protest; such other persons may be given an opportunity to submit their views and relevant information. If the protest is not resolved by mutual agreement of the aggrieved person and the District, the District will promptly issue a decision in writing stating the reasons for the action taken. A copy of the decision shall be mailed by certified mail, return receipt requested, or otherwise promptly furnished to the aggrieved person and any other interested parties. The District's decision may be appealed to the Superintendent by written notice together with all supportive evidence, received at the address set forth in paragraph 2, not more than two (2) working days after receipt of the decision. The Superintendent's decision shall be final and conclusive.
4. Strict compliance with the protest procedures set forth herein is essential in furtherance of the public interest. Any aggrieved party that fails to comply strictly with these protest procedures is deemed, by such failure, to have waived and relinquished forever any right or claim with respect to alleged irregularities in connection with the solicitation or award. No person or party may pursue any action in court challenging the solicitation or award of this contract without first exhausting the administrative procedures specified herein and receiving the District's final decision.
5. A Vendor submitting a proposal shall be deemed to have accepted these procedures.

END OF GENERAL CONDITIONS