

The following purchase order is agency specific. For piggy-backing opportunities you must contact the buyer.



KingCounty

**Finance and Business Operations Division  
Procurement and Contracts Services Section  
Department of Executive Services**

CNK-ES-0340      206-263-9400 Ph  
3<sup>rd</sup> Floor      206-296-7676 Fax  
401 5<sup>th</sup> Avenue      TTY Relay: 771  
SEATTLE, WA 98104      [www.kingcounty.gov](http://www.kingcounty.gov)

**CONTRACTOR:  
FUKUYAMA-HIRONAKA  
7019 157TH ST SW**

EDMONDS, WA 98026 United States  
Fax: (425) 7412223

**SHIP TO:**  
KC DES FBOD PCSS GOODS AND SERVICES  
401 5TH AVE, CNK-ES-0340  
SEATTLE, WA 98104

**BILL TO:**  
KC DES FBOD ACCOUNTS PAYABLES  
401 5TH AVE, CNK-ES-0320  
SEATTLE, WA 98104

**CONTRACT**

CONTRACT NO. 466695	REVISION 1	PAGE 1 of 1
CREATION DATE 01-JAN-2012	BUYER PAUL RUSSELL	
DATE OF REVISION 03-AUG-2012	BUYER PAUL RUSSELL	

CONTRACTOR NO	PAYMENT TERMS	FREIGHT TERMS	FOB	SHIP VIA	CONFIRM TO
1254	NET30DAYS	Paid	DESTINATION	Best Way	ALLEN FUKUYAMA Telephone: (425) 745-3349

**DESCRIPTION**

**CONTRACT PURCHASE AGREEMENT**

FURNISH MARINE TAXONOMY AND BIOMASS WET WEIGHT ANALYSIS TO KING COUNTY PERSONNEL AS REQUESTED, DURING THE PERIOD APRIL 1, 2010 THROUGH MARCH 31, 2015, IN ACCORDANCE WITH ITB #1323-09 AND RESPONDING OFFER OF FUKUYAMA-HIRONAKA, BOTH INCORPORATED BY REFERENCE AS IF FULLY SET FORTH HEREIN.

INDIVIDUAL STANDARD PURCHASE ORDERS WITH UNIQUE PURCHASE ORDER NUMBERS REFERENCING THIS CONTRACT PURCHASE AGREEMENT WILL BE ISSUED BY KING COUNTY TO AUTHORIZE THE PURCHASE AND PAYMENT OF GOODS AND SERVICES.

ALL INVOICES MUST REFERENCE THE INDIVIDUAL STANDARD PURCHASE ORDER NUMBER TO AVOID DELAY IN PAYMENTS.

Authorized Signature



King County

Finance and Business Operations Division  
Procurement and Contract Services Section  
Department of Executive Services

CNK-ES-0340  
3rd Floor  
401 5th Avenue  
Seattle, WA 98104

206-263-9400  
206-296-7676 Fax  
TTY Relay: 771  
[www.kingcounty.gov](http://www.kingcounty.gov)

VENDOR:

FUKUYAMA-HIRONAKA  
TAXONOMIC & ENVIRONMENTAL SVCS  
7019 157TH ST S.W.  
EDMONDS, WA 98026

SHIP TO

KC DEPARTMENT OF EXEC SERVICES  
PROCUREMENT-GOODS & SERVICES  
401 5TH AVE, CNK-ES0340  
SEATTLE, WA 98104  
United States

BILL TO

KC DEPT OF EXECUTIVE SERVICES  
ACCOUNTS PAYABLE, 3RD FLOOR  
401 5TH AVE, CNK-ES0320  
SEATTLE, WA 98104  
United States

Purchase Order

PURCHASE ORDER NO.	REVISION	PAGE
466695	0	1

THIS PURCHASE ORDER NUMBER MUST APPEAR ON ALL INVOICES, PACKING LISTS, CARTONS AND CORRESPONDENCES RELATED TO THIS ORDER.

CREATION DATE	BUYER
09-FEB-10	D Williams
DATE OF REVISION	BUYER

CUSTOMER ACCT #	VENDOR NO	PAYMENT TERMS	FREIGHT TERMS	FOB	SHIP VIA
	F01619	Net30days	Paid	Destination	BEST WAY

CONFIRM TO / TELEPHONE	REQUESTOR / DELIVER TO
ALLAN FUKUYAMA (425) 745-3349	

LINE	PART NUMBER / DESCRIPTION	DELIVERY DATE	QUANTITY	UNIT	UNIT PRICE	EXTENSION	T
	<p>FURNISH MARINE TAXONOMY AND BIOMASS WET WEIGHT ANALYTICAL SERVICES AS REQUESTED BY AUTHORIZED KING COUNTY ENVIRONMENTAL LAB PERSONNEL DURING THE PERIOD APRIL 1, 2010 THROUGH MARCH 31, 2011, ACCORDANCE WITH KING COUNTY ITB 1323-09-DMW AND THE RESPONDING BID OF FUKUYAMA-HIRONAKA TAXONOMIC AND ENVIRONMENTAL SERVICES, BOTH INCORPORATED BY REFERENCE AS IF FULLY SET FORTH HEREIN AND IS NOT THE AUTHORITY FOR ORDERING SPECIFIC GOODS AND SERVICES.</p> <p>INDIVIDUAL STANDARD PURCHASE ORDERS, WITH UNIQUE PURCHASE ORDER NUMBERS, REFERENCING THIS CONTRACT, WILL BE ISSUED THAT PROVIDE THE AUTHORITY FOR ORDERING.</p> <p>ALL INVOICES MUST REFERENCE THE INDIVIDUAL STANDARD PURCHASE ORDER NUMBER, AND NOT THE CONTRACT AGREEMENT NUMBER, TO AVOID DELAY IN PAYMENT.</p> <p>Purchase Agreement Effective From: 01-APR-10 To: 31-MAR-11</p>						
		Amount Agreed:					

SEE REVERSE SIDE FOR ADDITIONAL TERMS AND CONDITIONS. THIS ORDER IS SUBJECT TO ALL THE TERMS AND CONDITIONS ON THE FRONT AND BACK HEREOF.

Required invoice information: Ship to Address, Mailstop, Requestor's Name, Purchase Order Number, Contract Number (if applicable), Line Item Number, description and Unit Price as stated on the purchase order. Missing information may result in payment delays.

ACCEPTANCE:

This purchase order expressly limits acceptance to the terms and conditions stated herein.

TOTAL

*DR Leach*  
Authorized signature



## **PURCHASE ORDER GENERAL TERMS AND CONDITIONS**

**Compliance:** By acceptance of this order, the vendor warrants full compliance with all applicable local, state or federal laws and regulations including specific statutory requirements of Federal Agencies. Upon request, the purchasing agent will provide applicable contract terms and conditions.

**Acceptance/Changes:** All goods or materials purchased hereunder are subject to approval by King County. No substitutions or changes of any nature under this purchase order will be accepted unless approved in writing by King County.

**Inspections:** By acceptance of this order, vendor grants the right to Buyer to make periodic visits to the vendor's plant or their subcontractor's for inspection of materials or to determine actual progress of manufacture.

**Change Orders:** Change orders modifying the terms and conditions herein will be without effect unless issued and authorized in writing by King County.

**Cancellation:** The County may cancel any purchase order or any part thereof by written notice at any time, without penalty, if the vendor fails to comply with the terms, specifications, delivery/completion date or to perform the work with diligence.

**Invoices:** Invoices must reference the purchase order number.

All vendors licensed to do business in Washington State must bill King County for applicable tax. Indicate discount terms to the County for prompt payment. Discount period to be extended if the invoice is returned for correction or clarification.

**Shipping Instructions:** All shipments must contain a packing slip. Unless otherwise specified, all goods are to be shipped prepaid, FOB Destination. Where shipping addresses indicate room numbers, the Vendor shall make delivery to that location at no additional charge, including, but not limited to delivery, packing and or crating.

**Warranty:** The Vendor warrants that all products delivered under this purchase order shall be free from defects in material and workmanship, and shall be fit for the intended purpose. This warrantee is in addition to any standard warranty or guarantee give by vendor to the County. All products determined by King County to be defective shall be replaced within 15 days of notice by King County.

All costs of replacement, including shipping charges shall be borne by the Vendor. Vendor warrants that the merchandise is free and clear of all liens and encumbrances and that vendor has a good and marketable title to same. Vendor warrants that the equipment, materials or service on this order do not infringe any patent, registered trademark or copyright and agrees to hold King County harmless in the event of any infringement or claim thereof.

### **Certification Regarding Debarment, Suspension and Other Responsibility**

**Matters:** By providing goods or services under this purchase order, the Contractor agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any Contract that may arise from this Contract. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**Order of Precedence:** When this purchase order is issued subsequent to the results of a request for bid or proposal, the terms and conditions contained in the solicitation or resulting contract shall control.



King County

Department of Executive Services  
 Finance and Business Operations Division  
**Procurement and Contract Services Section**  
 206-263-9400 TTY Relay: 711

**Invitation to Bid**

ADVERTISED DATE: DECEMBER 17, 2009

Invitation to Bid (ITB) Title: **Marine Taxonomy and Biomass Wet-Weight Analytical Services**

ITB Number: **1323-09-DMW**

Due Date: **January 7, 2010 - 2:00 p.m.**

Buyer: **Denise Williams, denise.williams@kingcounty.gov, 206-263-9309**

**Term Supply Requirement**

Furnish marine taxonomy and biomass wet-weight analytical services as requested by authorized King County Water & Land Resources division personnel in accordance with the attached instructions, requirements and specifications.

TOTAL BID PRICE: \$ 88,875.00

**NO PRE-BID CONFERENCE WILL BE HELD FOR THIS PROCUREMENT**

Sealed Bids are hereby solicited and will **only** be received by:  
 King County Procurement Services Section  
 Chinook Building, 3rd Floor  
**401 Fifth Avenue**  
 Seattle, WA 98104  
 Office Hours: 8:00 a.m. – 5:00 p.m.  
 Monday - Friday

**BIDDERS SHALL COMPLETE AND SIGN THE FORM BELOW.**

We acknowledge that **Addenda** numbered 1 to 1 have been examined as part of the Contract documents. The submittal is signed by an authorized representative of the Bidder accepting all terms and conditions contained in the bid and any addenda. We acknowledge that attaching our terms and conditions or modifying the ITB terms and conditions may result in our bid being rejected.

Company Name

Fukuyama-Hironaka Taxonomic and Environmental Services

Address

7019 157th St SW

City/State /Postal Code

Edmonds, WA. 98026

Signature

*Allan Fukuyama*

Print name and title

Allan Fukuyama, co-owner

Email

fhf\_env@hotmail.com

Phone

425 745-3349

Fax

425 745-3349

SCS/DBE Certification Number

Upon request, this Invitation to Bid will be provided in alternative formats such as Braille, large print, audiocassette or computer disk for individuals with disabilities.

## **SECTION 1 Instruction To Bidders**

### **1.1 Introduction**

The purpose of this Invitation to Bid is to establish a contract to provide goods or services on an as-needed basis. Any quantities listed herein are for bidding purposes only and represent King County's estimated annual requirements. The County will be neither obligated nor restricted to the quantities or locations indicated.

### **1.2 Bid Submittal Procedure**

The **original and two (2) copies** of this solicitation document shall be completed, signed and submitted. Failure to return the solicitation document may result in disqualification of the Bidder. The original shall be noted or stamped "original". Bids and modifications thereof shall be enclosed in a sealed envelope, with the "Bid Opening Label" completed and affixed.

Bidders are encouraged to use recycled paper in the preparation of additional documents submitted with this solicitation, and shall use both sides of paper sheets where practicable.

Sealed bids shall contain all required attachments and information and be submitted to King County (hereinafter "County") no later than the date, time and place stated on the front of this ITB or as amended. The bidder shall show the title and number, the due date specified, and the name and address of the bidder on the face of the envelope. Bidders are cautioned that failure to comply may result in non-acceptance of the bid. The Bidder accepts all risks of late delivery of mailed bids or of mis-delivery regardless of fault. Bids properly and timely submitted will be publicly opened.

Bids will only be accepted from Contractors able to complete the delivery of goods or services described in the specifications. Joint ventures shall submit one bid for the team, with accompanying proof of the joint venture agreement.

If a company chooses not to submit a bid, the County requests the company advise the Buyer by email if they desire to remain listed for the subject of this ITB and state reason they did not submit a bid.

### **1.3 Electronic Commerce and Correspondence**

King County is committed to reducing costs and facilitating quicker communication to the community by using electronic means to convey information. As such, most Invitations to Bid, Requests for Proposal, and Requests for Qualifications as well as related exhibits, appendices, and issued addenda can be found on the King County Internet Web Site, located at <http://www.kingcounty.gov/procurement>. Current bidding opportunities and information are available by accessing the "**Solicitations**" tab in the left hand column.

King County Procurement Services features an **Online Vendor Registration (OVR)** program that permits vendors, consultants and contractors to register their business with the County. This OVR system allows interested parties to either directly register their firm by creating a unique User ID, or to visit the website as a guest. Information regarding bid documents will be available to all users; however, site visitors accessing the site as a guest will not be able to document their interest in a project or add their name to the document holder's list. They will receive no automatic notification of issued addenda. As such, the County encourages full registration in order to directly communicate with document holders regarding any issued addenda or other important information concerning the solicitation.

After submittals have been opened in public, the County will post a listing of the businesses submitting proposals, and later, any final award determination.

Full information on vendor registration is available at the website.

#### **1.4 Alterations to Document**

Any addition, limitation or provision made or attached to the bid may render it non-responsive and/or irregular and be cause for its rejection.

Bidders may be required to submit additional documents as part of the bid package. Any alteration of such documents by erasure or interlineations shall be explained or noted and initialed by the Bidder.

#### **1.5 Late Bids**

Bids, modifications of bids, and withdrawal of bids received at the office designated in the solicitation after the exact hour and date specified for receipt will not be considered.

#### **1.6 Cancellation of ITB or Postponement of Bid Opening**

The County reserves the right to cancel the ITB at any time.

The County may change the date and time for submitting bids prior to the date and time established for submittal.

#### **1.7 Addenda**

Bidder shall acknowledge receipt of all "Addenda" issued during the bid process. Failure to acknowledge receipt of all addenda may result in a bid being determined non-responsive.

If at any time, the County changes, revises, deletes, clarifies, increases, or otherwise modifies the ITB, the County will issue a written Addendum to the ITB.

#### **1.8 Questions and Interpretation of the ITB**

No oral interpretations of the ITB will be made to any Bidder. All questions and any explanations must be requested in writing and directed to the Buyer no later than seven (7) days prior to the due date specified in the solicitation. Oral explanations or instructions are not binding. Any information modifying a solicitation will be furnished to all bidders by an addendum.

**Days**, as referenced in this document, are calendar days unless otherwise specified.

Communications concerning this bid, with other than the listed Buyer may cause the Bidder to be disqualified.

#### **1.9 Examination of Bid Documents**

The submission of a bid shall constitute an acknowledgement upon which the County may rely that the Bidder has thoroughly examined and is familiar with the ITB, including any work site identified in the ITB, and has reviewed and inspected all applicable statutes, regulations, ordinances and resolutions addressing or relating to the goods or services to be provided hereunder.

The failure of a Bidder to comply with above requirement shall in no way relieve the Bidder from any obligations with respect to its bid or to any Contract awarded pursuant to this ITB. No claim for additional compensation shall be allowed which is based upon a lack of knowledge or misunderstanding of this ITB.

#### **1.10 Modifications of Bid or Withdrawal of Bid Prior to Bid Due Date**

At any time before the time and date set for submittal of bids, a Bidder may submit a modification of a bid previously submitted to the County. All bid modifications shall be made in writing, executed and submitted in the same form and manner as the original bid.

Bids may be withdrawn by written notice received prior to the exact hour and date specified for receipt of bids. A bid also may be withdrawn in person by a Bidder or authorized representative provided their

identity is made known and they sign a receipt for the bid, but only if the withdrawal is made prior to the exact hour and date set for receipt of bids. All requests for modification or withdrawal of bids, whether in person or written, shall not reveal the amount of the original bid.

#### **1.11 Bid Withdrawal After Public Opening**

Except for claims of error granted by the County, no Bidder may withdraw a bid after the date and time established for submitting bids, or before the award and execution of a Contract pursuant to this ITB, unless the award is delayed for a period exceeding the period for bid effectiveness.

Requests to withdraw a bid due to error must be submitted in writing along with supporting evidence for such claim for review by the county. Evidence must be delivered to the county within two (2) business days after request to withdraw. The County reserves the right to require additional records or information to evaluate the request. Any review by the County of a bid and/or any review of such a claim of error, including supporting evidence, creates no duty or liability on the County to discover any other bid error or mistake, and the sole liability for any bid error or mistake rests with the Bidder.

#### **1.12 Cost of Bid and Samples**

The County is not liable for any costs incurred by Bidder in the preparation and evaluation of bids submitted. Samples of items required must be submitted to the location and by the time specified. Unless otherwise specified, samples shall be submitted with no expense to the County. If not destroyed by testing, samples may be returned at the bidder's request and expense.

#### **1.13 Collusion**

By signing this bid, the Bidder certifies that they have not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding. If the County determines that collusion has occurred among Bidders, none of the bids from the participants of such collusion will be considered. The County's determination will be final.

#### **1.14 Bid Effective Date**

All bids submitted shall be a firm bid for a minimum period of 90 days after the bid opening date, unless otherwise stated in writing in the bid. The County may request a Bidder grant an extension of the bid effective period.

#### **1.15 Bid Price and Tax**

The bid price shall include everything necessary for the prosecution and completion of the Contract, except as may be provided otherwise in this ITB.

Bid Prices shall include all freight charges, FOB to the designated delivery point(s).

Taxes: Sales/use taxes and Federal excise taxes shall not be included in the bid price. The County shall pay any Washington State sales/use taxes applicable to the Contract price or tender an appropriate amount to the Contractor for payment to Washington State. The Bidder is cautioned that taxes may be a factor in evaluating the total cost of bid.

The County is exempt from Federal excise and Transportation taxes. All other government taxes, duties, fees, licenses, permits, royalties, assessments and charges shall be included in the bid price. Said exemption is made pursuant to Chapter 32 of the Internal Revenue Code and Registry No. A-1 02374. When requested, an exemption certificate will be furnished.

## **1.16 Protest Procedures**

King County has a process in place for receiving protests based upon invitation to bid or contract awards. The protest procedures are available at <http://www.kingcounty.gov/procurement/faq>, Suppliers web page.

## **SECTION 2 Bid Evaluation and Contract Award**

### **2.1 Evaluation of Bids**

Bids will be evaluated by the County to determine which bid, if any, may be deemed to be the low responsive bid from a responsible bidder, and should be accepted in the best interest of the County.

The King County Contracting Opportunities Program is incorporated in this ITB. The determination of lowest responsive, responsible bidder will include the application of the five (5) percent incentive factor for Small Contractors and Suppliers (SCS).

King County may use prompt payment discount terms in evaluation of this ITB; however, discounts terms of less the twenty (20) days will not be considered. Minimum acceptable payment terms by the County without benefit of twenty (20) day discount will be net 30 days.

In the event of a discrepancy between the unit price and the extended amount for a bid item, the unit price will govern.

### **2.2 Responsive and Responsible**

#### **Responsive**

The County will consider all the material submitted by the Bidder, and other evidence it may obtain otherwise, to determine whether the Bidder is in compliance with the terms and conditions set forth in this ITB.

#### **Responsible**

In determining the responsibility of the bidder, the County may consider:

- the ability, capacity and skill to perform the Contract or provide the service required (inspection of the bidder's facility may be required prior to award);
- the character, integrity, reputation, judgment and efficiency;
- financial resources to perform the Contract properly and within the times specified;
- the quality and timeliness of performance on previous contracts with the County and other agencies, including, but not limited to, the effort necessarily expended by the County and other agencies in securing satisfactory performance and resolving claims;
- compliance with federal, state and local laws and ordinances relating to public contracts;
- other information having a bearing on the decision to award the Contract.

Failure of a bidder to be deemed responsible or responsive may result in the rejection of a bid.

### **2.3 Financial Resources and Auditing**

If requested by the County, prior to the award of a contract, the bidder shall submit proof of adequate financial resources available to carry out the execution and completion of work required by this contract.

King County reserves the right to audit the Contractor throughout the term of this contract to assure the Contractor's financial fitness to perform and comply with all terms and conditions contained within this contract. King County will be the sole judge in determining the Contractor's financial fitness in carrying out the terms of this contract.

## **2.4 King County Contracting Opportunities Program**

The purpose of the King County Contracting Opportunities Program is to maximize the participation of Small Contractors and Suppliers (SCS) through the use of a five percent (5%) incentive factor in the award of King County contracts for the purchase of goods or services. The Program is open to all SCS firms certified by King County's Business Development and Contract Compliance Office. To learn more about this program, or becoming a Certified Firm, as well as a list of Certified Firms, may be obtained by visiting the King County Contracting Opportunities Program Web-site at <http://www.kingcounty.gov/BDCC> or contacting the Program office at 206-205- 3443.

## **2.5 Substitutions**

When specific brands, materials, design, style or size are named, such specifications may be construed to be shown solely for the purpose of indicating the standard of quality, performance or intended use.

Where indicated, brands of equal quality, performance and use may be considered by the county, provided the bidder submits with their bid the brand, model, product number and other data necessary for comparison. The county retains the sole right to accept or reject substitutions.

## **2.6 Forms Required Before Contract Award**

The Bidder shall submit, within five (5) Days of notification from the County, the applicable documents, insurance, bonds, sworn statements, and other requirements prior to award. Failure by the Bidder to submit required documents may result in rejection of the bid.

- Equal Benefit Worksheet and Declaration Form
- Personnel Inventory Report\*
- Affidavit and Certificate of Compliance Regarding Equal Employment Opportunity\*
- Statement of Compliance – Union or Employee Referral Agency Statement\*
- Internal Revenue Service Form W-9 \*
- 504/ADA Assurance of Compliance
- **Certificate of Insurance and Endorsement \*** – Have Insurance Agent e-mail or Fax to Buyer evidence of insurance from insurer(s) satisfactory to the county certifying to the coverage of insurance set forth in this ITB.

\*If not on file with the County

## **2.7 Rejection of Bids**

The County reserves the right to reject any bid for any reason or to waive informalities and irregularities in bids.

In consideration for the County's review and evaluation of its bid, the Bidder waives and releases any claims against the County arising from any rejection of any or all bids, including any claim for costs incurred by Bidders in the preparation and presentation of bids submitted in response to this ITB. In addition, Bidders waive the costs of providing additional information requested.

## **2.8 Single Bid Receipt**

If the County receives a single responsive, responsible bid, the County may request an extension of the bid acceptance period and/or conduct a price or cost analysis on such bid. The Bidder shall promptly provide all cost or pricing data, documentation and explanation requested by the County to assist in

such analysis. By conducting such analysis, the County shall not be obligated to accept the single bid; the County reserves the right to reject such bid or any portion thereof.

## **2.9 Public Disclosure of Bids**

This Contract shall be considered a public document and will be available for inspection and copying by the public in accordance with the Public Records Act, Chapter 42.56 RCW (the "Act").

If the Contractor considers any portion of any record provided to King County under this Contract, whether in electronic or hard copy form, to be protected under law, the Contractor shall clearly identify each such portion with words such as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET." If a request is made for disclosure of such portion, the County will determine whether the material should be made available under the Act. If the County determines that the material is subject to disclosure, the County will notify the Contractor of the request and allow the Contractor ten (10) business days to take whatever action it deems necessary to protect its interests. If the Contractor fails or neglects to take such action within said period, the County will release the portions of record(s) deemed by the County to be subject to disclosure. King County shall not be liable to the Contractor for inadvertently releasing records pursuant to a disclosure request not clearly identified by the Contractor as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET."

## **2.10 Contract Award**

Contract award, if any, will be made by the County to the low, responsive, responsible Bidder. The County will have no obligations until an award is made and an order placed with the Contractor. The County reserves the right to award one or more contracts as determined to be in the County's best interest. The County may accept any individual item, or group of items, or schedules of any bid, unless otherwise stated herein.

A written award mailed or otherwise furnished to a Contractor within the time for acceptance shall be a binding contract.

## **SECTION 3 Standard Contractual Terms and Conditions**

### **3.1 Administration**

This Contract is between the County and the Contractor who shall be responsible for providing the goods or services described herein. The County is not party to defining the division of work between the Contractor and its Subcontractors. The Contractor represents that it has or shall obtain all duly licensed or qualified personnel, materials and equipment required to perform work hereunder.

The Contractor's performance under this Contract may be monitored and reviewed by a Project Manager appointed by the County. Reports and data required to be provided by the Contractor shall be delivered to the Project Manager or Buyer. Questions by the Contractor regarding interpretation of the terms, provisions and requirements of this Contract shall be addressed to the Buyer or Project Manager for response.

### **3.2 Contract Amendments**

No oral order or conduct by the County shall constitute a Contract Amendment. Contract Amendments shall only be effective upon written notification by the County. The County reserves the right to amend the contract to add or delete goods or services within the intended scope of this contract. This may include, but is not limited to:

- Approval of replacements for discontinued items,
- Add items of like function, or similar in nature or purpose to the originally listed products
- The provision of ancillary services in response to minor changes in County needs
- Extend the contract to include optional terms

Cost or Price Analysis may be required by the County for the evaluation of contract modifications, terminations, revision to contract requirements or other circumstances as determined by the County.

### **3.3 Invoices and Payment**

The Contractor shall submit properly certified invoices to King County. The invoice(s) shall contain the following information: The purchase order/contract number, cost for total number of sampling days (if applicable), cost for staging and layover days (if applicable) cost for total number of samples analyzed, item numbers, description of supplies or services, quantities, unit prices, extended totals, and discounts, if applicable. For services, identify specific deliverables, and/or hourly rates, hours worked, total hours or related fees.

The Contractor shall bill to the address on the purchase order. The County will take advantage of any prompt payment discount terms bid. Discount periods shall be extended if the invoice is returned for credit or correction.

When a purchase order is issued against this Contract that has the potential for multiple or partial deliveries, a separate invoice shall be generated for each completed delivery accepted by the County.

Failure to comply with these requirements or to provide an invoice in conformance with the contract may delay payment.

Upon acceptance of payment, the Contractor waives any claims for the goods or services covered by the Invoice. No advance payment shall be made for the goods or services furnished by Contractor pursuant to this Contract.

King County will not be bound by prices contained in an invoice that are higher than those in the currently approved price list. If a price increase has not been accepted in writing by King County, the invoice may be rejected and returned to the Contractor for a correction.

### **3.4 Rejection of Goods Or Services**

After award, the Buyer or authorized County representative shall have the option of rejecting or refusing delivery of any and all goods or services which are not in strict conformity with the requirements of the specification and the bid. All rejected goods or services shall be promptly replaced or re-performed and be subject to approval by the County. All replacement goods and services shall be provided at the Contractor's own expense.

### **3.5 Re-procurement Costs**

When a Contractor fails to furnish goods or services in accordance with the terms of this Contract, and the County must purchase at a price greater than the contract price, the difference may be charged to the Contractor. The County may exercise this charge as a credit against invoices due the Contractor.

### **3.6 Termination For Convenience/Default/Non-appropriation**

#### **A. Termination for Convenience**

The County for its convenience may terminate this Contract, in whole or in part, at any time by written notice sent certified mail, return receipt requested, to the Contractor. After receipt of a Notice of Termination ("Notice"), and except as directed by the County, the Contractor shall immediately stop work as directed in the Notice, and comply with all other requirements in the Notice. The Contractor will be paid its costs, including necessary and reasonable Contract close-out costs and profit on that portion of the work satisfactorily performed up to the date of termination as specified in the notice. The Contractor shall promptly submit its request for the termination payment, together with detailed supporting documentation. If the Contractor has any property in its possession belonging to the County, the Contractor shall account for the same and dispose of it in the manner the County directs. All termination payment requests may be subject to Cost or Price Analysis to determine reasonableness and compliance with the Contract and applicable laws and regulations.

#### **B. Termination for Default**

If the Contractor does not deliver work in accordance with the Contract, or the Contractor fails to perform in the manner called for in the Contract, or the Contractor fails to comply with any material provisions of the Contract, the County may terminate this Contract, in whole or in part, for default as follows:

A Notice to Cure will be served on the Contractor by certified mail (return receipt requested) or a delivery service capable of providing a receipt. The Contractor shall have ten (10) Days from the date the Notice to Cure was served to cure the default or provide the County with a detailed written plan, which indicates the time and methods needed to bring the work into compliance and cure the default.

If the Contractor has not cured the default or the plan to cure the default is not acceptable to the County, the County may terminate the Contract. Termination shall occur by serving a Notice of Termination by certified mail (return receipt requested) or delivery service capable of providing a receipt on the Contractor setting forth the manner in which the Contractor is in default and the effective date of termination.

The Contractor will only be paid for work delivered and Accepted, or work performed in accordance with the manner of performance set forth in the Contract less any damages to the County caused by or arising from such default. All termination payment requests are subject to Cost or Price Analysis to verify compliance with the Contract and applicable laws and regulations.

The termination of this Contract shall in no way relieve the Contractor from any of its obligations under this Contract nor limit the rights and remedies of the County hereunder in any manner.

#### C. Termination for Non-Appropriation

If expected or actual funding is withdrawn, reduced, or limited in any way prior to the termination date set forth in this Contract or in any amendment hereto, the County may, upon written notice to the Contractor, terminate this Contract in whole or in part.

In accordance with King County Code 4.04.040B.6, payment shall not exceed the appropriation for the year in which termination is effected. If this Contract is terminated for non-appropriation, the County shall be liable only for payment in accordance with the terms of this Contract for performance rendered prior to the effective date of termination; and, the Contractor shall be released from any obligation under this contract or a related Purchase Order to provide further work pursuant to the Contract as are affected by the termination.

Funding under this Contract beyond the current appropriation year is conditional upon the appropriation by the County Council of sufficient funds to support the activities described in this Contract. Should such an appropriation not be approved, the Contract shall terminate at the close of the current appropriation year. The appropriation year ends on December 31 of each year.

### 3.7 Force Majeure

The term force majeure shall include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, fire, accidents shutdowns for purpose of emergency repairs, industrial, civil or public disturbances, causing the inability to perform the requirements of this Contract. If any party is rendered unable, wholly or in part, by a force majeure event or any event cause not within such party's control, to perform or comply with any obligation or condition of this Contract, upon giving notice and reasonably full particulars to the other party, such obligation or condition shall be suspended only for the time and to the extent commercially practicable to restore normal operations. In the event the Contractor ceases to be excused pursuant to this provision, then the County shall be entitled to exercise any remedies otherwise provided for in this Contract, including Termination for Default.

Whenever a force majeure event causes the Contractor to allocate limited resources between or among the Contractor's customers, the County shall receive no less priority in respect to such allocation than any of the Contractor's other customers.

### 3.8 Taxes, Licenses, and Certificate Requirements

This Contract and any of the work provided hereunder is contingent and expressly conditioned upon the ability of the Contractor to provide the specified goods or services consistent with applicable federal, state or local laws and regulations. If, for any reason, the Contractor's required compliances are terminated, suspended, revoked or in any manner modified from their status at the time this Contract becomes effective, the Contractor shall notify the County immediately of such condition in writing.

The Contractor and subcontractor(s) shall maintain and be liable for all taxes (except sales/use taxes), fees, licenses, permits and costs as may be required by applicable federal, state or local laws and regulations as applicable to the work under this Contract.

### **3.9 Assignment**

Neither party shall assign any interest, obligation or benefit under or in this Contract or transfer any interest in the same, whether by assignment or novation, without prior written consent of the other party. If assignment is approved, this Contract shall be binding upon and inure to the benefit of the successors of the assigning party. This provision shall not prevent the Contractor from pledging any proceeds from this Contract as security to a lender so long as King County Policy Fin10-1 (AP), paragraph 6.1.3 is followed. If assignment is approved, it shall be accepted by either party upon the posting of all required bonds, securities and the like by the assignee, and the written agreement by assignee to assume and be responsible for the obligations and liabilities of the Contract, known and unknown, and applicable law.

### **3.10 Indemnification and Hold Harmless**

- A. In providing services under this Contract, the Contractor is an independent contractor, and neither the Contractor nor its officers, agents or employees are employees of the County for any purpose. The Contractor shall be responsible for all federal and/or state tax, industrial insurance and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a County employee under state or local law.

The County assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by or on behalf of the Contractor, its employees and/or others by reason of this Contract. The Contractor shall protect, indemnify, defend and save harmless the County and its officers, agents and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (1) the Contractor's failure to pay any such compensation, wages, benefits or taxes; and/or (2) the supplying to the Contractor work, services, materials, and/or supplies by Contractor employees or other suppliers in connection with or in support of the performance of this Contract.

- B. The Contractor further agrees that it is responsible for and shall repay the County all indicated amounts following an audit exception which occurs due to the negligence, intentional act and/or failure for any reason to comply with the terms of this Contract by the Contractor, its officers, employees, agents, and/or representatives. This duty to repay shall not be diminished or extinguished by the prior termination of the Contract pursuant to the Duration of Contract, or the Termination section.
- C. The Contractor shall protect, defend, indemnify, and save harmless the County, [and the State of Washington or US Government (when any funds for this Contract are provided by them)], their officers, employees, and agents from any and all costs, fees (including attorney fees), claims, actions, lawsuits, judgments, awards of damages or liability of any kind, arising out of or in any way resulting from the negligent acts or omissions of the Contractor, its officers, employees, subcontractors or any tier and/or agents. The Contractor agrees that its obligations under this paragraph extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees, subcontractors of any tier or agents.

In addition to injuries to persons and damage to property, the term "claims," for purposes of this paragraph C, shall include, but not be limited to, assertions that the use or transfer of any software, book, document, report, film, tape, or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in unfair trade practice.

- D. For purposes of paragraphs A and C above, the Contractor, by mutual negotiation, hereby waives, as respects the County only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.
- E. In the event the County incurs attorney fees and/or costs in the defense of claims within the scope of paragraphs A and C above, such attorney fees and costs shall be recoverable from the Contractor. In addition King County shall be entitled to recover from the Contractor its attorney fees, and costs incurred to enforce the provisions of this section.
- F. The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Contract.
- G. Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Contract.

### **3.11 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, including, but not limited to, the Uniform Commercial Code, Title 62A RCW. Any claim or suit concerning this Contract shall only be filed in either the King County Superior Court or U.S. District for the Western District of Washington, in Seattle.

### **3.12 Conflicts of Interest and Non-Competitive Practices**

By entering into this Contract to perform work, the Contractor represents that it has no direct or indirect pecuniary or proprietary interest, and that it shall not require any interest that conflicts in any manner or degree with the work required to be performed under this Contract. The Contractor shall not employ any Person or agent having any conflict of interest. In the event that the Contractor or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such conflict to the County. The County shall require that the Contractor take immediate action to eliminate the conflict up to and including termination for default.

By entering into this Contract to perform work, the Contractor represents that no Persons except as designated by Contractor shall be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and no gratuities, in the form of entertainment, gifts or otherwise, were bided or given by the Contractor or any of its agents; employees or representatives, to any official, member or employee of the County or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.

### **3.13 Disputes, Claims and Appeals**

The Contractor shall address questions or claims regarding the Contract in writing to the Buyer and Project Manager, within ten (10) Days of the date on which the Contractor knows or should know of the question or claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. No claim shall be allowed for any costs incurred more than ten (10) Days before the Contractor gives written notice, as required in this section. The Buyer and Project Manager shall ordinarily respond to the Contractor in writing with a decision, but absent such written response, the question or claim shall be deemed denied upon the tenth (10<sup>th</sup>) Day following receipt by the Buyer and Project Manager.

In the event the Contractor disagrees with the determination of the Buyer and Project Manager, the Contractor shall within five (5) Days of the date of such determination, appeal the determination in writing to the Procurement and Contract Services Section Manager. Such written notice of appeal shall

include all information necessary to substantiate the appeal. The Procurement and Contract Services Section Manager shall review the appeal and make a determination in writing, which shall be final. Appeal to the Procurement and Contract Services Section Manager shall be a condition precedent to alternative dispute resolution or litigation.

Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the direction of the Buyer or Project Manger. Failure to comply precisely with the time deadlines under this subsection as to any claim shall operate as a waiver and release of that claim and an acknowledgement of prejudice to the County.

### **3.14 Maintenance of Records/Audits**

The Contractor shall maintain, and shall require any sub-contractor to maintain, accounts and records, including personnel, property, financial, and programmatic records and such other records as may be deemed necessary by the County to ensure proper accounting for all contract funds and compliance with this Contract. All such records shall sufficiently and properly reflect all direct and indirect costs of any nature expended and services provided in the performance of this Contract. The Contractor shall make such documents available to the County for inspection, copying, and auditing upon request.

All records referenced in subsection (A) shall be maintained for a period of six (6) years after completion of work or termination hereof unless permission to destroy them is granted by the Office of the Archivist in accordance with RCW Chapter 40.14, or unless a longer retention period is required by law.

The Contractor shall provide access to its facilities, including those of any sub-contractor, to the County, the State and/or federal agencies or officials at all reasonable times in order to monitor and evaluate the services provided under this Contract.

The Contractor agrees to cooperate with County or its designee in the evaluation of the services provided under this Contract and to make available all information reasonably required by any such evaluation process. The results and records of said evaluation shall be maintained and disclosed in accordance with RCW Chapter 42.56.

If the Contractor expended a total of \$500,000.00 or more in federal awards during its fiscal year, and is a non-profit organization, and is, under this Contract, carrying out or administering a program or portion of a program, it shall have an independent audit conducted in accordance with OMB Circular A-133, which shall comply with the requirements of GAAS (generally accepted auditing standards), GAO's Government Audit Standards and OMB Circular A-133, as amended and as applicable. Contractors expending federal awards from more than one source shall be responsible for determining if the combined financial awards are equal to or greater than \$500,000.00. The Contractor shall provide one copy of the audit report to each County division providing federal awards to the Contractor no later than nine (9) months subsequent to the end of the Contractor's fiscal year.

### **3.15 Other Public Agency Orders**

The Washington State Interlocal Cooperative Act RCW 39.34 provides that other governmental agencies may purchase goods or services on this solicitation or contract in accordance with the terms and prices indicated therein if all parties agree. The County does not accept any responsibility or involvement in the purchase orders or contracts issued by other public agencies.

### **3.16 Environmental Purchasing Policy**

Bidders able to supply products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals.

The Bidder and Contractor shall use recycled paper for all printed and photocopied documents related to the submission of this solicitation and fulfillment of the contract and shall, whenever practicable, use both sides of the paper. (Reference: KCC 10.16 & King County Executive Policy CON 7-1-2).

### **3.17 Industrial and Hazardous Waste**

The Contractor shall comply with all applicable local ordinances, state and federal statutes, and supporting rules and regulations governing the discharge of industrial waste to public sewer, private sewer, or side sewer tributary to the metropolitan sewer system.

Contractor shall handle and dispose of all hazardous wastes in compliance with all applicable local, state and federal laws and regulations, including the Resource Conservation and Recovery Act, the Washington Hazardous Waste Management Act, and applicable rules and regulations of the Environmental Protection Agency and the Department of Ecology governing the generation, storage, treatment, transportation or disposal of hazardous wastes.

### **3.18 Patents and Royalties**

The Contractor is responsible for paying all license fees, royalties or the costs of defending claims for the infringement of any intellectual property that may be used in performing this Contract.

### **3.19 Supported Employment Program**

The County encourages the creation of supported employment programs for developmentally and/or severely disabled individuals. The County itself has such a program and is actively seeking to do business with those Contractors and Consultants that share this employment approach. If your firm has such a program, or intends to develop such a program during the life of this Contract, please submit Documentation supporting this claim with your bid. If you have questions, or need additional information, please contact the Community and Human Services Division, Developmental Disabilities Division, 206-263-9061.

### **3.20 Nondiscrimination and Equal Employment Program**

During the performance of this contract, neither the Contractor nor any party subcontracting under the authority of this Contract shall discriminate nor tolerate harassment on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability in the employment or application for employment or in the administration or delivery of services or any other benefits under this Contract. King County Code, and all applicable state and federal anti-discrimination laws, rules, regulations and requirements are incorporated herein by reference, and such requirements shall apply to this contract. Ref: KCC 12.16, 12.17, and 12.18

### **3.21 Equal Benefits To Employees With Domestic Partners**

Pursuant to Ordinance 14823, King County's "Equal Benefits" (EB) ordinance, and related administrative rules adopted by the County Executive, as a condition of award of a contract is valued at \$25,000 or more, the Contractor agrees that it shall not discriminate in the provision of employee benefits between employees with spouses, and employees with domestic partners during the performance of this Contract. Failure to comply with this provision shall be considered a material breach of this Contract, and may subject the Contractor to administrative sanctions and remedies for breach.

When the contract is valued at \$25,000 or more, the Contractor shall complete a Worksheet and Declaration form for County review and acceptance prior to Contract execution. The EB Compliance forms, Ordinance 14823 (which is codified at KCC Chapter 12.19) and related administrative rules are

incorporated herein by reference. They are also available online at <http://www.kingcounty.gov/procurement/forms>, Equal Benefits web page.

### **3.22 Non-Waiver of Breach**

No action or failure to act by the County shall constitute a waiver of any right or duty afforded to the County under the Contract; nor shall any such action or failure to act by the County constitute an approval of, or acquiescence in, any breach hereunder, except as may be specifically stated by the County in writing.

### **3.23 Severability**

Whenever possible, each provision of this Contract shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal, or unenforceable, then such provision or portion thereof shall be modified to the extent necessary to render it legal, valid, and enforceable and have the intent and economic effect as close as possible to the invalid, illegal, and unenforceable provision. If it is not possible to modify the provision to render it legal, valid and enforceable, then the provision shall be severed from the rest of this Contract. The invalidity, illegality or unenforceability of any provision shall not affect the validity, legality or enforceability of any other provision of this Contract, which shall remain valid and binding.

### **3.24 Certification Regarding Debarment, Suspension and Other Responsibility Matters**

This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting this Contract, the Contractor certifies as follows:

The certification in this clause is a material representation of fact relied upon by King County. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to King County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any Contract that may arise from this Contract. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## **SECTION 4 Specific Contractual Terms & Conditions**

### **4.1 Contract Value**

The estimated annual value of this contract is approximately **\$50,000.00**. King County will not be limited, restricted or bound by this dollar value, nor shall the County be obligated to purchase any items contained in this ITB.

### **4.2 Contract Term**

The initial term of this Contract will be **one (1) year and may be extended for four (4) additional one-year periods** at the option of the County, subject to the termination clauses contained herein. King County reserves the right to extend the term if determined to be in the best interest of the County.

Contracts or purchase orders will be issued by the County. Contract amendments or change orders issued by the County may reflect modification(s) of contract terms, funding or other matters.

King County reserves the right to purchase the goods or services described herein from other sources. The Contractor does not have the exclusive right to fill all of the County's requirements for the goods or services awarded nor will the County be obligated to purchase the estimated annual quantity, or any quantity contained in this Contract.

### **4.3 Contract Administrative Fee**

This contract is subject to an Administrative Fee (Fee), when used by other political subdivisions outside of King County's Departments, Divisions or Agencies. The Fee of  $\frac{1}{2}$  of 1% (.005) shall be based on total sales made to each governmental entity, less sales/use tax, freight and any credit(s), (if applicable), in accordance with this contract. The Fee shall be paid by the contractor within six (6) weeks of the close of each quarter and remitted to King County Procurement and Contract Services Section and include a reference to this Contract Number. Submitted with the Fee shall be a quarterly sales report for the referenced contract showing the total sales to each governmental entity (excluding King County), for the previous ending quarter. The Fee shall not be invoiced to any contract user as an item on a sales invoice or by any other means.

### **4.4 Price Revisions**

Prices shall remain firm for the duration of the initial Contract period. Reasonable price changes based on market conditions and price/cost analysis may be made after the initial Contract period. The Contractor shall supply documentation satisfactory to King County such as documented changes to the Producers Price Index for the commodity, the Consumer Price Index for the Seattle-Tacoma-Bremerton area, or a manufacturer's published notification of price change(s).

King County will evaluate this information to determine if revising the pricing is considered fair and reasonable to the satisfaction of King County. Requests for any such change are to be made in writing to the Buyer in the Procurement Services Division office. A written change order issued by the County will institute the price adjustment, provide the new prices and establish the effective date for the new prices.

The Contractor shall endeavor to give the King County Procurement Services Section thirty (30) days but not less than fourteen (14) days written notice prior to the effective date of the price increase. The County may cancel the contract if the price increase request is not approved.

All price reductions at the manufacturer's or distributor's level shall be reflected in a reduction of the contract price(s) to King County retroactive to the effective date of the price reductions.

#### **4.5 Use Report**

The Contractor shall, if requested, submit to the Buyer a report of sales made to King County under this Contract. The report, in a format acceptable to King County, shall identify the detail required by the Buyer, which may include but is not limited to, delivery location, the item description, whether it's a Contract or non-Contract item, quantity, price and discount.

#### **4.6 Warranty**

The Contractor warrants that the work performed under this Contract shall be free from defects in material and workmanship, and shall conform to all requirements of this Contract, for a period of at least twelve (12) months from date of acceptance of such work by the County. Any work corrected shall be subject to this subsection to the same extent as the work initially provided.

The bidder shall provide, upon request by the County, their standard warranty. The warranty shall be specific for all components of the equipment regardless of whether these components were built by the original equipment manufacturer or outside suppliers. King County may avail itself of the bidder or manufacturer's standard warranty if more beneficial to the County.

Conducting of tests or inspections, acceptance, or the processing of payment(s) by the County shall not constitute a waiver of any rights under this Contract or in law. The termination of this Contract shall in no way relieve the Contractor from its warranty responsibility.

The Contractor shall ensure that the warranty requirements of this Contract are enforceable through and against the Contractor's suppliers, vendors, distributors and Subcontractors. The Contractor shall cooperate with the County in facilitating warranty related work by such suppliers, vendors, distributors and Subcontractors.

Contractor warrants that the Services shall in all material respects conform to the requirements of this Contract. Contractor warrants that qualified professional personnel with in-depth knowledge shall perform the Services in a timely and professional manner; and that the Services shall conform to the standards generally observed in the industry for similar Services. Contractor warrants that the Services shall be in compliance with all applicable laws, rules and regulations.

#### **4.7 Warranty Remedies**

Whenever possible, the contractor shall provide "on the spot" settlement of warranty claims or disputes, and authorize local representatives to act on the equipment manufacturer's behalf.

If at any time during the twelve (12) Month period immediately following acceptance of any work covered by this Contract, Contractor or the County discovers one or more material defects or errors in the work or any other aspect in which the work materially fails to meet the provisions of the warranty requirements herein Contractor shall, at its own expense and within thirty (30) Days of notification of the defect by the County, correct the defect, error or nonconformity.

The County shall give written notice of any defect to the Contractor. If the Contractor has not corrected defect within thirty (30) Days after receiving the written notice, the County, in its sole discretion, may correct the defect itself. In the case of an emergency where the County believes delay could cause serious injury, loss or damage, the County may waive the written notice and correct the defect. In either case the County shall charge-back the cost for such warranty repair to the Contractor.

The Contractor is responsible for all costs of repair or replacement in order to restore the work to the applicable Contract requirements, including shipping charges, for work found defective within the warranty period, regardless of who actually corrects the defect.

#### **4.8 Disability Assurance Compliance (504/ADA)**

The Contractor shall complete a 504/ADA Self Evaluation Questionnaire for all programs and services offered by the Contractor (including any services not subject to this Contract) and shall evaluate its services, programs and employment practices for compliance with Section 504 of the Rehabilitation Act of 1973, as amended ("504"), and the Americans with Disabilities Act of 1990 (ADA). The Contractor shall complete a 504/ADA Disability Assurance of Compliance prior to execution of a contract.

#### **4.9 Independent Status of Contractor**

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

#### **4.10 Non-Disclosure Obligation**

Data provided by the County either before or after Contract award shall only be used for its intended purpose. Contractors and Subcontractors shall not utilize nor distribute the County data in any form without the express written approval of the County.

While performing the work under this Contract, the Contractor may encounter personal information, licensed technology, Software, Documentation, drawings, schematics, manuals, data and other materials described as "Confidential", "Proprietary" or "Business Secret". The Contractor shall not disclose or publish the information and material received or used in performance of this Contract. This obligation is perpetual. The Contract imposes no obligation upon the Contractor with respect to confidential information which the Contractor can establish that: a) was in the possession of, or was rightfully known by the Contractor without an obligation to maintain its confidentiality prior to receipt from the County or a third (3rd) party; b) is or becomes generally known to the public without violation of this Contract; c) is obtained by the Contractor in good faith from a third (3rd) party having the right to disclose it without an obligation of confidentiality; or, d) is independently developed by the Contractor without the participation of individuals who have had access to the County's or the third (3rd) party's confidential information. If the Contractor is required by law to disclose confidential information the Contractor shall notify the County of such requirement prior to disclosure.

#### **4.11 Insurance Requirements**

Prior to the award of a contract, the Contractor shall obtain and maintain the minimum insurance set forth herein for the duration of this contract for itself and any subcontractor performing work. By requiring such minimum insurance, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Contract. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. The Contractor shall maintain limits and scope of insurance no less than:

General Liability \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit;

Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage;

Professional Liability, errors and Omissions: \$1,000,000 per Claim and in Aggregate;

Workers' Compensation: Statutory requirements of the state of residency;

Employers Liability Stop Gap: \$1,000,000.

Except for Workers Compensation, the county, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Contract. Use the above exact language on the Endorsement Form. **The County requires this Endorsement to complete the Contract.**

## SECTION 5 TECHNICAL SPECIFICATIONS

### 5.1 Introduction of Specifications

The King County Environmental Laboratory (KCEL) requires a Contractor to provide marine taxonomy and biomass wet-weight analytical services on a variety of Puget Sound marine sampling programs over the next several years.

### 5.2 Scope of Work

Currently it is expected that marine taxonomy and biomass wet-weight analysis will need to be performed at several sites in Puget Sound over the next five (5) years. Estimated total number of samples to be collected and analyzed per site are listed below:

Puget Sound Sampling Area	No. of Samples per Event	No. of Events over next 5 Years	Total No. of Samples	Estimated Samples by Year
West Point Outfall	30	1 X	30	2010
South Plant Outfall	15	1 X	15	2011
Brightwater Outfall	12	1 X	12	2013
Brightwater Nearshore	30	2 X	60	2011/2014
Elliott West	24	1 X	24	2010
Denny Way CSO	21	2 X	42	2010/2012

The taxonomy sample totals shown above are estimates only. Additional reference station samples may also be collected at some sites. Present plans call for the collection of three (3) discreet replicate samples at each sampling station (included in the estimated totals shown in the table above). Biomass shall be based according to major taxonomic group.

The Contractor shall assist with the collection of these samples as needed. The Contractor shall have trained sampling personnel available, and shall provide all necessary labor and equipment as listed under Sub-Section 5.6, KCEL and Contractor Field Responsibilities. KCEL personnel will determine if the Contractor will be involved with sampling during specific events.

### 5.3 Sample Collection Methods

All sediment samples shall typically be collected with two (2) 0.1 m<sup>2</sup> Van Veen grabs deployed in tandem. If both grabs contain acceptable sample material, the grab having the highest sample volume shall be used for taxonomy, while the second grab shall supply the chemistry and bioassay samples composited along with two (2) other grabs. Each taxonomy sample that incorporates the entire contents of the grab sampler shall be individually sieved through a 1.0 mm screen.

Previous benthic sampling at the Denny Way CSO, South Plant Outfall, and the Brightwater Outfall sites has shown that fine grain silt/mud/sand depositional sediments can be expected. Resulting grab penetration depths have ranged from eight (8) to 17 cm. At the West Point Outfall site, the primary sediment fraction from past samplings has shown it to be sand, with some coarser material and natural debris present. The average grab penetration depth can be expected to range between six (6) and eight (8) cm.

#### **5.4 Sampling Schedules**

Currently no sampling schedules have been established. The Contractor will be notified immediately upon confirmation of all sample start dates. The primary KCEL contact person will make every effort to keep the Contractor informed in a timely manner of all scheduling changes. The awarded Contractor will be given the name and contact information of the primary KCEL contact after contract award.

#### **5.5 Analytical Standards and Procedures**

The Contractor shall abide by the sampling, preserving, sorting, and QC procedures outlined in the *Recommended Protocols for Sampling and Analyzing Subtidal Benthic Macroinvertebrate Assemblages in Puget Sound*, Puget Sound Estuary Final Report, TC-3991-04, January 1987, unless superseded by a later edition. In general, this shall require sorting the organisms into the following major taxonomic groups:

- A. Polychaeta;
- B. Arthropoda;
- C. Mollusca;
- D. Miscellaneous ((Echinodermata, Nemertea, Sipuncula, etc.)

All organisms in each group shall be counted and identified to the most reasonable taxonomic level. Biomass measurements shall also be performed in accordance with current Puget Sound Estuary Program (PSEP) procedures.

#### **5.6 KCEL and Contractor Field Responsibilities**

##### **A. KCEL**

When the Contractor is participating in the sampling event, the KCEL will provide the sampling vessel, skipper, two (2) sampling personnel, and the equipment as listed below:

- 1. Two (2) stainless 0.1 m<sup>2</sup> Van Veen grabs;
- 2. One (1) sediment table for sample extraction purposes;
- 3. A minimum of two (2) clean hoses for sieving purposes;
- 4. Four (4) sieving boxes utilizing 1.0 mm screens;
- 5. All necessary taxonomy labels identifying each sediment sample by sample number, station, and site information

A KCEL crewmember may be available to assist with sieving duties as time allows.

##### **B. Contractor**

When participating in agreed-upon sampling events, the Contractor shall provide a minimum of two (2) skilled collection, sieving, and sorting personnel, plus all necessary preservation, sorting, and sample containment equipment (e.g., chemicals, jars, vials, tweezers, etc.) If additional support equipment is desired (e.g., extra sieving screens, buckets, brushes, extra labels, etc.), arrangements shall be made between the Contractor and an authorized KCEL representative to provide this equipment. If desired, the Contractor shall use his or her own sieving screens.

Following collection, the Contractor shall be responsible for all stages of benthic sample handling such as, but not limited to, preservation, transportation arrangements and costs, including the packaging of samples for shipment. Samples shall be held under appropriate conditions for a minimum of sixty (60) days after the final report is issued. Prior to final disposal, the Contractor

shall contact the primary KCEL contact person to confirm that sample disposal is appropriate. Unless other arrangements are made between both parties for a specific project, the Contractor shall be responsible for the cost and effort of final disposal of all taxonomy specimens and sediment sample material when no longer needed.

Both the KCEL and the Contractor shall be responsible for implementing and maintaining full chain of custody documentation from sample collection to sample disposal.

#### **5.7 Contractor Liability**

The Contractor shall be solely responsible for the custody and integrity of all taxonomy samples while under the Contractor's care. The Contractor shall operate under an active safety program that meets all applicable federal, state, and local regulations for safe laboratory practices and for the safe handling and analyses of environmental samples. The potential health and safety hazards associated with King County-furnished samples may be unknown and appropriate safety and health guidelines shall be exercised.

#### **5.8 Reporting of Analytical Results**

The Contractor shall complete all benthic analyses, and have all final data and QC results ready for submission to King County within ninety (90) calendar days, to commence immediately upon conclusion of the respective sampling event, unless other arrangements have been agreed to between the two (2) parties. Final data and QC results shall be in accordance with current PSEP protocols. The primary KCEL contact person will direct the Contractor to the appropriate King County representative regarding how and in what format the final data and QC results will be received.

## **SECTION 6 BID RESPONSE**

### **6.1 Rules of Price Evaluation**

Bids meeting all requirements of this ITB will be evaluated on price. Bidders shall submit bids based on analytical price per sample, including biomass wet-weight. Price per sample must include all costs for transport, preservation, analysis, reporting, QC, sample storage, and disposal. Bids stating price in effect at the time of shipment will not be accepted.

The field collection component of the bid shall be based on cost per eight (8)-hour sampling day. Cost per staging and layover/contingency days shall also be included, if appropriate. A staging day is considered to be the time spent to prepare for a sampling project where the Contractor is scheduled to be involved in the field collection. A layover or contingency day will apply when the Contractor is given less than twenty-four (24) hours notice of cancellation of his or her involvement in a scheduled field collection event.

### **6.2 Delivery**

Delivery of all benthic analyses, final data, and QC results is required as soon as possible and not later than **90 calendar days** after verbal placement of an order. Bid prices shall include delivery, FOB destination, to the following location.

King County Environmental Laboratory  
Mail Stop: LAB-NR-0100  
322 West Ewing St  
Seattle, WA 98119

### **6.3 Viewing of Historic Taxonomy Results**

Bidders that wish to review historic taxonomy results from the sites listed in Sub-Section 5.2, Scope of Work shall contact either Scott Mickelson at 206-296-8247 ([scott.mickelson@kingcounty.gov](mailto:scott.mickelson@kingcounty.gov)) or Kim Stark at 206-296-8244 ([kimberle.stark@kingcounty.gov](mailto:kimberle.stark@kingcounty.gov)) to set up an appointment.

### **6.4 Bidder Qualifications and Experience**

King County will consider all of the material submitted by the Bidder and other information obtained otherwise to determine if the Bidder is capable of successfully completing contracts of this type. However, Bidders shall not attach any other items (i.e. terms and conditions) to their bid submittal. Submitting items that conflict with the terms and conditions listed herein will render that Bidder's bid submittal non-responsive and not eligible for contract award.

With regard to the quality of the Bidder's work the following elements will be given consideration by the County in determining whether a Bidder is responsible and capable:

- A. The ability, capacity, and skill of the Bidder to provide the service(s) required within the time periods specified;
- B. The character, integrity, reputation, judgment, and efficiency of the Bidder;
- C. The Bidder's financial resources and experience;
- D. The quality and timeliness of performance by the Bidder on previous Contracts with the County, and with other local governments and state and federal agencies. Including, but not limited to relative costs, burdens, time, and effort expended by the County or other governments and agencies in securing satisfactory performance and resolving claims.

To help insure quality and timeliness of performance by the Bidder, bidders shall furnish with their bid submittal the names and experience of all company personnel and subcontractors who will be performing work under this Contract.

Bidders and his/ her subcontractors shall have a minimum of five (5) of experience within the last ten (10) years conducting taxonomy and biomass wet-weight analyses on marine sediments adjacent to the County's various CSOs and treatment plant outfalls where taxonomy analyses have been conducted in the past, which includes:

- A. Identification of Puget Sound benthic infauna that has been counted and identified to the most reasonable taxonomic level (refer to the 'Analytical Standards and Procedures' section), including those collected from deep-water Puget Sound sediments;
- B. Identification of Puget Sound crustaceans and their various benthic larval stages;
- C. Sufficient experience in the identification of non-native benthic infauna species that have been introduced into Puget Sound waters; and
- D. Bidder shall be flexible enough to be able to adapt to changes in the sampling schedule, or changes in applicable County meeting times within 24 hours of notification of changes.

### 6.5 Prompt Pay Discount

Prompt payment discounts offered by Contractors shall be used to calculate the low bid provided the discount offered allows a minimum of 20 days for payment. The number of days is calculated from the date of acceptance of goods or services or from the date a complete invoice is date stamped as received by King County, whichever event occurs last, and the check/warrant date. The County will take advantage of any prompt payment discount terms bid. Discount periods shall be extended if:

- A. The date printed on the invoice is more than three days earlier than the invoice receipt date;
- B. The delay is caused awaiting a credit memo, invoice correction, adjustment or reissue;
- C. An invoice is received prior to receiving goods ordered.

Prompt pay discount offered \_\_\_\_\_ % - \_\_\_\_\_ Days, Net \_\_\_\_\_

### 6.6 References

List the names and addresses of four (4) customers, for whom the bidder has performed or provided similar goods and/or services, preferably in Washington State, for a period not less than one (1) year. Include dates, contact persons and telephone numbers. Should any reference submitted by a bidder be found unsatisfactory, King County, at its sole option, may reject that bidder's bid. King County shall be the sole judge in determining a satisfactory/unsatisfactory reference response. **References shall be submitted with bid.**

Company Name: King County  
Company Address: 322 West Ewing, Seattle, WA  
Company Phone: 206 684-2384  
Contact Person: John Blaine  
Dates: January 1993 to present

Company Name: NOAA HazMat  
Company Address: 7600 Sand Pt Way, Seattle, WA  
Company Phone: 206 526-6402  
Contact Person: Gary Shigenaka  
Dates: 1991 to present

Company Name: Windward Environmental  
Company Address: 200 W. Mercer Suite 401 Seattle, WA

Company Name: Cook Inlet RCAC  
Company Address: 910 Highland Ave, Kenai, AK

Company Phone: 206 577-1287  
 Contact Person: Helle Anderson  
 Dates: Aug 2004 to July 2005

Company Phone: 907 398-6214  
 Contact Person: Susan Saupe  
 Dates: 2003 to present

**6.7 Pricing**

In the event of a discrepancy between the unit price and the extended price, the unit price will prevail. King County reserves the right to correct obvious mathematical errors on the Schedule and to correct the extended amounts and Total Bid Price accordingly.

Bidders shall bid on all items listed on Schedule One. Failure to do so may render the Bidder's bid non-responsive. Contract award will be made to the Responsive and Responsible Bidder that provides the lowest price

Unit Prices listed on Schedule One shall be fully-burdened (all-inclusive rate that includes direct hourly rates, direct costs, pick-up and delivery, overhead, and profit). No direct or indirect costs shall be paid by King County without prior approval by King County.

\*Estimated quantities are provided for evaluation/information purposes only. King County makes no guarantee as to the actual services to be required under this contract.

<b>Schedule One</b>				
<b>Marine Taxonomy and Biomass Wet-Weight Analytical Services</b>				
Item#	*Estimated Quantity	Description	Unit Price	Extended Price <i>(unit price x estimated quantity)</i>
1.1	12 days	Cost per Sampling Day • Cost per eight (8)-hour sampling day	\$ <u>1500</u>	\$ <u>18,000</u>
1.2	2 days	Cost per Staging and Layover/ Contingency Day	\$ <u>750</u>	\$ <u>1500</u>
1.3	75	Per Sample Collection Rate	\$ <u>925</u>	\$ <u>69,375</u>
			<b>Bid Total</b>	<b>\$ <u>88,875</u></b>

## **Marine Taxonomy and Biomass Wet Weight Analytical Services**

### **Bidder Qualification and Experience**

Fukuyama-Hironaka Taxonomic and Environmental Services (FHT Environmental) and their subcontractors have over 20 years and in most cases over 30 years of experience with taxonomic identification of benthic invertebrates. We have been the primary contractor for King County for benthic taxonomic work for at least the past 12 years and have always delivered the services required within the time frame specified. The following personnel and subcontractors and their expertise will work on this contract:

Allan Fukuyama, principal, FHT Environmental, Mollusk taxonomy >30 years from Japan to southern California, Miscellaneous taxonomy, QA/QC, data management

Valerie Hironaka, FHT Environmental, Echinodermata taxonomy, sorting and QA >30 years in Washington and Oregon

Kathy Welch, subcontractor, Annelida taxonomy >20 years primarily in Puget Sound

Eugene Ruff, subcontractor, Annelida taxonomy >30 years west and east coast US

Jeff Cordell, subcontractor, Crustacea taxonomy >30 years primarily west coast US

Gary Gillingham, subcontractor, Crustacea taxonomy >30 years on west coast US

Scott McEuen, subcontractor, Miscellaneous and Echinodermata taxonomy >25 years on west coast US

Steve Hulsmann, subcontractor, Miscellaneous taxonomy >15 years primarily in Puget Sound

Jeff Cordell, Gary Gillingham, and Allan Fukuyama have identified Puget Sound crustaceans and various benthic larval stages for at least 20 years and Jeff is considered an expert on harpacticoid copepods.

Allan Fukuyama, Jeff Cordell, and Kathy Welch have identified non-indigenous species found in Puget Sound and were members of a survey directed by the Washington State Department of Natural Resources to identify exotics found in marine waters in 2000 and 2001.

FHT has been flexible in the scheduling of sampling events for King County during the previous contracts from changes due to weather or mechanical problems with the vessel. We would continue to be flexible with scheduling of sampling events.