

Pend Oreille County



Request for Bids Pend Oreille County Fuel Delivery Services Bid Deadline: 1:30 P.M., July 11, 2022

*****Faxed or emailed submittals will not be accepted*****

Proposal Documents

Notice to Bidders
Signature Sheet
Proposal Form
Technical Requirements
Bidder Qualifications
Bidder's Checklist
Insurance Requirements
General Provisions

Contact

Brian Eglund, Fleet manager
Pend Oreille County
PO Box 5065
Newport, WA 99156
(509) 447-4513

Notice to Bidders

Notice is hereby given by the undersigned that sealed proposals will be accepted for the project.

Pend Oreille County Fuel Delivery Services

Above per specifications.

Bid Proposals: Available from Pend Oreille County Public Works. Call (509) 447-4513 Monday-Friday 8:00 a.m. to 4:30 p.m.

Bid Submittal Methods:

1. By mail at Board of Commissioners- P.O. Box 5025 Newport, WA 99156
2. Delivery Services at 625 W. 4th St Newport, WA 99156 Monday-Friday 8:00 a.m. to 4:30 p.m. until July 11, 2022 by 1:30 p.m.
3. Bid Opening Day at 625 W. 4th St Newport, WA 99156. Bids must be time stamped prior to opening time.
4. Do not bring bid into the opening room. Submit bids to the Commissioner's office the day of opening.

Outside of closed envelope the project must be clearly marked **Pend Oreille County Fuel Delivery RFB.**

******Faxed or emailed submittals will not be accepted******

Bids Due: 1:30 p.m. Monday, July 11, 2022

Bid Opening Time/Date: 1:30 p.m. Monday, July 11, 2022

Bid Opening Location: Pend Oreille County Board of Commissioner's Room- Located at the Pend Oreille County Courthouse 625 W. 4th St. Newport, WA 99156.

Pend Oreille County Commissioners reserves the right to reject any and all proposals. Dated this 22th day of June 2022.

George Luft
Pend Oreille County
Public Works Director

SIGNATURE SHEET

2022-2024 Fuel Delivery Services

The Proposer is hereby advised that by signing this signature sheet he/she is deemed to have acknowledged all requirements contained herein.

Receipt is hereby acknowledged of addendum(s) No. _____, _____, & _____

SIGNATURE OF AUTHORIZED OFFICIAL(S)

PROPOSAL MUST BE SIGNED

Authorized Signature

Print Name

Firm Name

Address

UBI

EIN

Phone Number

E-mail Address

BID PAGE – UNIT PRICING AND GRAND TOTAL

ITEM	Annual Estimate Gal. per year	Supplier's Margin \$0.0000/Gal	ANNUAL TOTAL
Newport shop Delivery 87 Octane unleaded gasoline	31,000		
Newport Delivery No. 2 Clear Diesel Fuel	46,000		
Usk Delivery 87 Octane unleaded gasoline	19,000		
Usk Delivery No. 2 Clear Diesel Fuel	42,000		
Ione Delivery 87 Octane unleaded gasoline	21,000		
Ione Delivery No. 2 Clear Diesel Fuel	38,000		
Total Annual Supplier's Margin:			

AUTHORIZED SIGNATURE: _____

DATE: _____

Bidder must acknowledge each requirement shown in Technical Requirements Table below as follows:

A. "To Be Supplied" Column

Bidder will initial when the product offered is equal to or better than the individual specification. State your exact capabilities if different from specification stated or a tolerance is given.

B. "Exceptions" Column

Explain all exceptions to specification as stated. NOTE: All equivalents (substitutes) require explanation. (Use additional paper with reference to item number and respective question (number)).

TECHNICAL REQUIREMENTS

MINIMUM REQUIREMENTS CALLED FOR	TO BE SUPPLIED (Initial)	EXCEPTIONS (add explanation)
Supplier Responsibilities		
Provide all fuel, material, labor and equipment to supply gasoline and diesel fuel delivered into County storage tanks at three County fueling stations in Pend Oreille County		☐
Determine necessary delivery schedule and amounts to meets County needs without interruption of service		☐
Perform additional deliveries as requested by the Fleet Manager		☐
Schedule deliveries 24 hours in advance with shop foreman		☐
Normal delivery shall be performed during the following business hours: Summer Monday-Thursday 6:00am to 4:30pm Winter Monday-Friday 6:00am to 2:30pm		☐
The Supplier shall provide the County with pricing information within three (3) business days of delivery		☐
Supply fuel during emergency or disaster response operations		☐

MINIMUM REQUIREMENTS CALLED FOR	TO BE SUPPLIED (Initial)	EXCEPTIONS (add explanation)
Fuel delivery during emergency or disaster operations may be required at non-business hours		☐
Provide and follow a Spill Prevention Control Plan		☐
Fuel Requirements		
Gasoline: 87 octane unleaded		☐
Diesel: ultra-low sulphur, clear No. 2		☐
Winterized diesel shall be supplied during cold weather when there is risk of gelling.		☐
The supplier shall treat the County diesel storage tanks with winterizing additives when there is risk of gelling.		☐
Pend Oreille County Fueling Stations		
County fueling stations operate 24 hours/7 days a week		☐
Newport Shop 9302 Deer Valley Road Newport, WA		☐
Newport Shop 24/7 contact: 509-671-2206		☐
Newport Shop underground 1,500 gal. gasoline tank		☐
Newport Shop 2019 gasoline usage: 31,032 gal.		☐

MINIMUM REQUIREMENTS CALLED FOR	TO BE SUPPLIED (Initial)	EXCEPTIONS (add explanation)
Newport Shop Underground 12,000 gal. diesel tank		☐
Newport Shop 2019 diesel usage: 46,296 gal.		☐
Cusick Shop 721 Jared Road Usk, WA		☐
Cusick Shop 24/7 contact: 509-671-0485		☐
Cusick Shop Above ground 1,500 gal. gasoline Tank		☐
Cusick Shop 2019 gasoline usage: 19,126 gal.		☐
Cusick Shop Above ground 8,000 gal. diesel tank		☐
Cusick Shop 2019 diesel usage: 42,121 gal.		☐
Ione Shop 161 Sullivan lake Road Ione, WA		☐
Ione Shop 24/7 contact: 509-671-0775		☐
Ione Shop Above ground 4,000 gal. gasoline Tank		☐
Ione Shop 2019 gasoline usage: 20,897 gal.		☐
Ione Shop Above ground 8,000 gal. diesel tank		☐

MINIMUM REQUIREMENTS CALLED FOR	TO BE SUPPLIED (Initial)	EXCEPTIONS (add explanation)
Ione Shop 2019 diesel usage: 37,879 gal.		☐
Fuel Delivery Response Requirements		
The County will notify the supplier by e-mail of the current fuel levels at the beginning of each work week		☐
The County may notify the supplier by e-mail of the current fuel levels at other times as needed		☐
The Fleet Manager may request special deliveries including request to “top off” for any or all tanks at any time		☐
Response time for special requests is three (3) days or as directed at the time		☐
Newport shop: three (3) business day response required Gasoline between 401 gal. and 800 gal.		☐
Newport shop: next calendar day response required Gasoline 400 gal. or less		☐
Newport shop: eight (8) hour response required Gasoline fuel-out alarm		☐
Newport shop: three (3) business day response required Diesel between 1,001 gal. and 4,000 gal.		☐
Newport shop: next calendar day response required Diesel gasoline 1,000 gal. or less		☐
Newport shop: eight (8) hour response required Diesel fuel-out alarm		☐
Cusick shop: three (3) business day response required Gasoline between 201 gal. and 600 gal.		☐

MINIMUM REQUIREMENTS CALLED FOR	TO BE SUPPLIED (Initial)	EXCEPTIONS (add explanation)
Cusick shop: next calendar day response required Gasoline 200 gal. or less		☐
Cusick shop: eight (8) hour response required Gasoline fuel-out alarm		☐
Cusick shop: three (3) business day response required Diesel between 1,001 gal. and 3,000 gal.		☐
Cusick shop: next calendar day response required Diesel gasoline 1,000 gal. or less		☐
Cusick shop: eight (8) hour response required Diesel fuel-out alarm		☐
Ione shop: three (3) business day response required Gasoline between 1,001 gal. and 3,000 gal.		☐
Ione shop: next calendar day response required Gasoline 1,000 gal. or less		☐
Ione shop: eight (8) hour response required Gasoline fuel-out alarm		☐
Ione shop: three (3) business day response required Diesel between 1,001 gal. and 3,000 gal.		☐
Ione shop: next calendar day response required Diesel gasoline 1,000 gal. or less		☐
Ione shop: eight (8) hour response required Diesel fuel-out alarm		☐
Fuel Accounting Requirements		
All deliveries shall be metered at time of delivery to each tank		☐

MINIMUM REQUIREMENTS CALLED FOR		TO BE SUPPLIED (Initial)	EXCEPTIONS (add explanation)
Delivery meter shall be certified			☐
Delivery meter shall produce a printed record of each transaction			☐
Invoiced fuel cost shall be the base fuel price plus the Supplier's Margin as shown on the bid proposal			☐
Supplier shall select method to determine base fuel price Initial one of the methods below:			
OPIS benchmark report showing the average rack fuel price in Spokane, WA on the date of delivery, plus applicable taxes Initial: _____	Fuel wholesaler's invoice of actual cost delivered to Supplier's transport vehicle Initial: _____		☐
Fuel pricing including Supplier's margin shall be to \$0.0000 per gallon.			☐
Invoice shall include copy of printed delivery meter ticket			☐
Invoice shall include copy of OPIS benchmark report, if applicable			☐
Invoice shall include copy of fuel wholesaler's invoice if applicable			☐
Pend Oreille County uses the fuel for the exclusive use of the County, State agencies and other local government agencies			☐
Pend Oreille County will certify the above statement upon request			☐

Contract Terms		
The agreement shall begin on or after August 1, 2022		☐
The term of the agreement shall be until July 31, 2024		☐
The Contract may be extended on a month to month basis after expiration of the agreement by mutual agreement for up to an additional six (6) months		☐

BIDDER QUALIFICATIONS

MINIMUM QUALIFICATIONS OF BIDDER		
MINIMUM QUALIFICATIONS CALLED FOR	TO BE SUPPLIED (Initial)	EXCEPTIONS (add explanation)
My permanent place of business is _____		☐
This business has been in operation for _____ years		☐
Number of Years in the contracting business under present name: _____ years		☐
I have adequate equipment to expeditiously and properly execute the work contemplated for Pend Oreille County		☐
I have adequate funds to promptly meet obligations incidental to the work.		☐
Licensed in the State of Washington		☐
I provide Worker's Compensation Insurance for my employees		\ ☐
Registered with Depart of Revenue		☐

I hereby certify that the above is a true and accurate statement.

SUBMITTED BY:

SIGNATURE OF BIDDER

DATE

BIDDER'S CHECK LIST

The proposer's attention is especially called to the following forms which must be executed as required, and should be submitted with their proposal:

- A. **Proposal Signature Sheet**
To be filled out and signed by the proposer
- B. **Proposal Form**
The unit prices and total amounts bid must be shown in the spaces provided.
- C. **Technical Requirements**
This form shall be completed and submitted with proposal documents
- D. **Bidder Qualifications**
This form shall be completed and submitted with proposal documents.

The following forms are to be executed after the contract is awarded:

- A. **Contract**
This agreement to be executed by the successful bidder and Pend Oreille County.
- B. **Certificate of Insurance**
To the specifications listed in General Provisions
- C. **Emergency Contacts**
A list of names and emergency contacts from supplier.

Insurance Requirements

Prior to the beginning of and throughout the duration of the Work, vendor will maintain insurance in conformance with the requirements set forth below. Vendor will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, vendor agrees to amend, supplement or endorse the existing coverage. Vendor acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to County.

Vendor agrees to endorse third party liability coverage required herein to include as additional insured Pend Oreille County, its officials, employees and agents, using ISO endorsement CG 20 10 with an edition date prior to 2004 (if this is a construction contract ISO endorsement 20 37 is also required). Vendor also agrees to require this same provision of all subcontractors, joint ventures, or other parties engaged by or on behalf of vendor in relation to this agreement.

Vendor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 001 01, in an amount not less than **\$3,000,000 per occurrence** with a **\$3,000,000 annual aggregate** for bodily injury, personal injury and property damage including without limitation, blanket contractual liability.

Vendor shall maintain and provide proof of Workers' Compensation Insurance for vendor's employees in accordance with the laws of the State of Washington. And provide the proof of such coverage to Pend Oreille County.

Vendor shall maintain Commercial Automobile Insurance in an amount not less than: **\$1,000,000**

All coverage types and limits required are subject to approval, modification and additional requirements by Pend Oreille County. Vendor shall not make any reductions in scope or limits of coverage that may affect the County's protection without County's written consent. Vendor agrees to require insurer to provide notice to County 30 days prior to cancellation of such liability coverage or any material alteration or non-renewal of any such coverage, other than for non-payment of premium. Vendor shall assure that this provision also applies to any subcontractors, joint ventures or any other party engaged by or on behalf of vendor in relation to this agreement. Certificate(s) are to reflect that the issuer will provide 30 days' notice to County of any cancellation of coverage.

Proof of compliance with these insurance requirements, consisting of endorsements and certificates of insurance shall be delivered to County prior to the execution of this Agreement. If such proof of insurance is not delivered as required or if such insurance is canceled at any time and no replacement coverage is provided, County has the right, but not the duty, to terminate its contract or to obtain any insurance it deems necessary to protect its interests. Any premium so paid by County shall be charged to and promptly paid by vendor or deducted from sums due vendor.

It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by the vendor or indemnifying party, is intended to apply first and on a primary non-contributing basis in relation to any other insurance or self-insurance available to the County.

Vendor agrees not to self-insure or to use any self-insured retentions on any portion of the insurance required herein and further agrees that it will not allow any indemnifying party to self-insure its obligations to the County. If vendor's existing coverage includes a self-insured retention, the self-insured retention must be declared to the County. The County may review options with the vendor, which may include reduction or elimination of the self-insured retention, substitution of other coverage or other solutions.

Vendor agrees to waive rights of recovery against Pend Oreille County regardless of the applicability of any insurance proceeds and to require all indemnifying parties to do likewise.

All insurance coverage maintained or procured by the vendor or required of others by vendor pursuant to this agreement shall be endorsed to delete the subrogation condition as to County or must specifically allow the named insured to waive subrogation prior to a loss.

The Vendor shall take all necessary precautions in performing the work hereunder to prevent injury to persons and property.

PEND OREILLE COUNTY PUBLIC WORKS DEPARTMENT
GENERAL PROVISIONS (A PART OF ALL CONTRACT DOCUMENTS)

These General Provisions, the Specifications, the Supplier's Proposal and any attachments, constitutes the proposal document, and will be considered as one document.

1. Entire Agreement

This written contract represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understanding between the parties.

2. Laws and Regulations

The Supplier shall comply with all applicable laws and regulations pertaining to this contract. In addition, the Supplier shall ensure that any Sub-Contractor performing this contract shall comply with all applicable laws and regulations pertaining to this contract.

3. Assignment

This Agreement, or any interest herein, or claim hereunder, shall not be assigned or transferred in whole or in part by the Supplier to any other person or entity without the prior written consent of the County. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of Supplier as stated herein.

4. Non-Collusion

The proposer represents, by signature of non-collusion declaration, that the prices in this proposal are neither directly nor indirectly the result of any formal or informal agreement with another proposer.

5. Non-Discrimination

The Supplier shall not discriminate against any employee or applicant for contracted employment because of race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory or mental disability. The Supplier shall make decisions with regard to selection and retention of Sub-Contractor, procurement of materials and equipment and similar actions related to the Contract without regard to race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory, or mental disability. Compliance with Title VI of the Civil Rights Act of 1964, RCW 49.60, Law against Discrimination, the Americans With Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. (ADA) and its implementing regulations and other related laws and statutes is required.

6. Cooperative Purchasing (when specified)

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.

7. Licenses

If applicable, successful Supplier shall have a valid and current business license. Said license shall be obtained prior to the award of any contract. In addition, Suppliers are required to be registered by the State per Chapter 18.27 of the Revised Code of Washington and their registration number must be listed on the proposal.

8. Proposal Submittals

Proposals shall be submitted on the attached forms only. Extra pages and literature may be added to this package; however, the package shall be returned intact as received.

All prices and notations must be typewritten or written in ink, with no erasures or additions permitted to be written on bid form. Mistakes may be crossed out and corrections written adjacent thereto and

must be initialed in ink by the person signing proposal. The Supplier shall verify their proposal before submission, as they cannot be withdrawn or corrected after opening.

If applicable, unit prices for all items, all extensions, and the total amount of proposal must be shown. In the instance of a discrepancy between the unit price and the total price, the unit price shall govern. Any pricing, configuration, or other errors discovered after proposal opening or due date must remain and cannot be adjusted.

9. Late Receipt of Proposal Documents

Proposals and modifications received after the exact hour and date specified for receipt of proposals will not be considered (i.e. if proposal was due by 2:00 PM, any documents received after 2:00:00 PM will be rejected).

10. Qualified Proposals

The General Terms and Conditions included in document will govern the performance of the work. No other terms and conditions will be accepted. Proposals that are conditioned in any way, or proposals that take exception in any way to the Pend Oreille Counties' General Terms and Conditions, may result in the proposal being considered non-responsive.

11. Acceptance

The County reserves the right to reject any or all proposals, to waive any technicalities and informalities, and to accept or reject all or any part of this proposal at prices shown.

All proposals must remain open for acceptance by the County for a period of at least 60 calendar days from the date of opening of the proposals, unless otherwise stated.

12. Errors and Omissions

The County reserves the right to correct obvious ambiguities and errors in the proposal and to waive non-material irregularities and/or omissions. In this regard, if the unit price does not compute to the extended total price, the unit price shall govern.

13. Evaluation of proposal

Evaluation of proposals shall be on overall cost associated with each schedule.

14. Proprietary Material Submitted

Any information or documents contained in the proposal submitted that is proprietary must be clearly designated. Marking the entire proposal as proprietary will be neither accepted nor honored. If a request is made to view a Supplier's proposal, Pend Oreille County will comply according to the Open Public Records Act, Chapter 42.56 RCW. If any information is marked as proprietary in the proposal, such information will not be made available until the affected Supplier has been given an opportunity to seek a court injunction against the requested disclosure.

15. Samples

Samples of items, when required, must be furnished free of expense to the County, and if not destroyed by tests will, upon request, be returned at the proposer's expense.

16. Delay of an Award

If, after proposal opening, administration problems threaten to delay award beyond the proposer's acceptance period, proposers shall be requested to extend the proposal acceptance period. This request must be made and confirmed in writing prior to the expiration date of their proposals (with

consent of sureties, if any) to avoid the need to re-advertise.

17. Protest Procedure

Any protest must be made in writing, signed by the protestor, and state that the Supplier is submitting a formal protest. The protest shall be filed with the Pend Oreille County Engineer PO Box 5040/ 625 W. 4th St. Newport, WA 99156, or emailed to Publicworks4u@pendoreille.org. The protest shall clearly state the specific factual and legal ground(s) for the protest, and a description of the relief or corrective action being requested. Protests before award shall be filed five (5) days before the solicitation due date, and protests after the award shall be filed five (5) days after Award Announcement (see below for details). The following steps shall be taken to resolve the protest with the Supplier:

Step I The County Engineer will try resolving matter with protestor. All available facts will be considered, and the County Engineer shall issue a decision. This decision shall be delivered in writing to the protesting Supplier.

Step II If unresolved, within three (3) business days after receipt, the protest may be appealed to the Public Works Director by the County Engineer.

Step III If still unresolved, within three (3) business days after receipt, the protest may be appealed to the Board of Commissioners (or their designee). The Board of Commissioners shall make a determination in writing to the Supplier.

Grounds for Protest

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A matter of bias, discrimination, conflict of interest;
- Solicitation unduly constrains competition or contains inadequate or improper criteria;
- Errors in computing score;
- Non-compliance with procedures described in the solicitation or County Policy.

Protest Determination

Each review and determination of the protest shall issue a decision that either:

- Finds the protest lacking in merit and upholds the award; or
- Finds only technical or harmless errors in the acquisition process and determines the County to be in substantial compliance and therefore reject the protest; or
- Finds merit in the protest and provides options for correction, including, but not limited to, correcting the errors and re-evaluating the proposal, reissuing the proposal to begin a new process, or entering into a contract that remedies the protest finding; or
- Makes other findings and determines other courses of action as appropriate.

Timeframe

Only protests and complaints received within the required timeframe for protest action are accepted for consideration.

Award Announcement

Public Works shall announce the successful proposer via County Website, e-mail, fax, regular mail, or by any other appropriate means. Once the announcement is released by Public Works, the protest time frame begins. The timeframe is not based upon when the Supplier received the information, but rather when the announcement is issued by Public Works. Though every effort will be made by Public Works to distribute the announcement to the interested Suppliers, they are not responsible to assure that Suppliers receive the announcement. It is the responsibility of the Suppliers to obtain the announcement from Public Works.

Award Regardless of Protest

When a written protest against making an award is received, the award shall not be made until the matter is resolved, unless the County determines that one of the following applies:

- The supplies or services to be contracted for are urgently required;
- Delivery or performance will be unduly delayed by failure to make award promptly;
- A prompt award will otherwise be advantageous to the County.

If the award is made, the file must be documented to explain the basis for the award. Written notice of the decision to proceed shall be sent to the protester and others who may be concerned.

The County retains the right to enter into any contract and nothing herein shall be construed to limit that authority in any manner.

18. Waiver

Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

19. Re-Award

When a Supplier is unable to supply goods and/or services to the County and is in breach of the contract, or when the contract is terminated by the County for cause as herein provided, the County reserves the right to re-award the contract to the next most responsible proposer.

20. Severability

If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

21. Termination - Convenience

This contract may be terminated by Pend Oreille County, by giving thirty (30) days written notice of such intent and will become effective thirty (30) days from the date such written notice is delivered to the Supplier.

22. Termination - Cause

The County reserves the right to terminate this contract at any time, upon written notice, in the event that the services of the Supplier are deemed by the County to be unsatisfactory, or upon failure to perform any of the terms and conditions contained in this agreement. In addition to the foregoing right of termination, the County may terminate this contract, with or without cause, upon thirty (30) days written notice to Supplier.

23. Venue

All actions against any County may be commenced in the superior court of such county, or in the superior court of either of the two nearest judicial districts. All actions by any County shall be commenced in the superior court of the county in which the defendant resides, or in either of the two judicial districts nearest to the county bringing the action. (RCW 36.01.050)

24. Approximate Quantity

The quantities listed are the County's current approximate requirements. The County will neither be obligated by, nor restricted to, these quantities and may increase or decrease any item(s) ordered under this contract and pay according to the unit prices quoted in the proposal. If it is agreeable to both parties and prices have not changed and the same unit/materials are still available, additional

units/materials may be ordered within 12 months of the signing of the original agreement.

25. Delivery

Time is of the essence and this proposal is subject to cancellation by Pend Oreille County for Supplier's failure to deliver on time. For any exception to the delivery date specified in this proposal, Supplier shall give prior written notification and obtain written approval from the County. The acceptance by the County of later performance with or without objection or reservation shall neither waive the County's right to claim damages for such breach nor constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Supplier. All proposals shall include delivery F.O.B. Pend Oreille County project location. All shipping charges are incidental to the contract and shall be included in pricing.

26. Force Majeure

Supplier will not be responsible for delays in delivery due to acts of God, fire, strikes, epidemics, war, riot, delay in transportation or railcar transport shortages, provided Supplier notifies the County's representative immediately in writing of such pending or actual delay. Normally, in the event of any such delays (acts of God, etc.) the date of delivery will be extended for a period equal to the time lost due to the reason for delay.

27. Risk of Loss

Regardless of the F.O.B. Point specified above, contractor agrees to bear all risk of loss, injury, or destruction of goods ordered herein which occur prior to actual physical delivery to the County, and such loss, injury, or destruction shall not release contractor from any obligation hereunder.

28. Quality Standards

The brand names, when listed, indicate the standard of quality required. Brands of equal quality, performance and use will be considered, provided the Supplier specifies the brand, model and other data for comparison with their proposal. The County will be the sole judge for approving other brands offered as equals to the brand specified. Proposers shall indicate if they are offering alternate brands by supplying an additional page in the bid submittal and must provide descriptive specifications explaining the merits of the substitute item.

29. Delivery of Unapproved Substitutions

Suppliers are authorized to ship only those items ordered covered by the contract. If a review of orders placed by the County reveals that an item other than those covered by and specified in the contract have been ordered and delivered, the County Engineer will take such steps as are necessary to have the item(s) returned to the Supplier at no cost to the County regardless of the time between the date of delivery and discovery of the violation.

30. Inspection

Cost of inspection on deliveries or offers for delivery, which do not meet specifications, will be for the account of the contractor.

31. Rejection

All goods and any services purchased in this proposal are subject to approval by the County. Rejection of goods or services, resulting because of nonconformity to the terms, conditions, and specifications of this order, whether held by the County or returned, will be at contractor's risk and expense.

32. Change Orders

Change Orders for material or services will be without effect unless issued and authorized in writing by the County.

33. Hazardous Materials

If this order covers goods, which include hazardous chemicals, the Supplier shall, at the time of product delivery, provide the County with copies of Material Safety Data Sheets for such chemicals. These sheets shall be in the form then required by applicable law or regulation (See WAC 296-839). This requirement shall be in addition to whatever other requirements are imposed by law or regulation.

34. Identification

The project number shall appear on all invoices, packing lists, packages, shipping notices and other written documents relating to this order. Packing lists shall be enclosed in every box or package shipped pursuant to this order, indicating the content therein.

35. Payment

Supplier is to submit properly completed monthly invoice(s) and mail to: Pend Oreille County PO Box 5040 Newport, WA 99156 To insure prompt payment, each invoice should cite project number or proposal number, description of item purchased, unit and total price, work completed, discount terms and include the Supplier's name and return remittance address. Payment will be mailed within thirty (30) days of (a) the receipt and acceptance of the product or service and (b) a properly completed invoice. Materials on hand for this project shall be governed by the WSDOT Standard Specification 1-09.8

36. Taxes

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law.

37. Warranties

Contractor warrants that all goods and services furnished under this order are new, conform strictly to the specifications herein, are merchantable, good workmanship, free from defect, are fit for the intended purpose of which such goods and services are ordinarily employed and if a particular purpose is stated in a Special Condition, the goods are then warranted as for that particular purpose. Contractor further warrants that no violation of any federal, state or local law, statute, rule, regulation, ordinance or order will result from the manufacturer, production, sale, shipment, installation or use of any other goods. Vendor's warranties (and any more favorable warranties, service policies, or similar undertaking of Contractor) shall survive delivery, inspection, and acceptance of the goods or services.

38. Permits

The Supplier shall procure and pay for all permits and licenses necessary for the completion of the Contract. In the event a necessary permit is not obtained, the Supplier will not be permitted to work on items subject to said permit and any delays caused thereby will not be subject to extra compensation or extension. The County will reimburse for all invoiced permitting necessary to complete the work.

39. Retainage (on public works projects)

Pursuant to RCW 60.28 a sum of 5% of all monies earned by the contractor will be retained from payments. The contractor, at time of Contract execution, may select one of the following options for

monies retained under provisions of RCW 60.28:

1. Provide a payment bond in lieu of retainage;
2. Provide an escrow account in a bank, mutual savings bank or savings and loan association; or
3. The County shall retain the money in a fund.

The contractor shall designate the option desired at the time the Contract is executed.

Release of retainage will be made 60 days following the Completion Date, pursuant to RCW 39.12 and RCW 60.28 provided the following conditions are met:

1. On contracts totaling more than \$35,000, a release from the Washington State Department of Revenue.
2. Affidavits of Wages Paid for the Supplier and all Sub-Contractor are on file with the County.
3. A certificate of Payment of Contributions Penalties and Interest on Public Works Contract is received from the Washington State Employment Security Department.
4. Washington State Department of Labor and Industries shows the Supplier is current with payments of industrial and medical aid premiums.
5. All claims, as provided by law, filed against the retainage have been resolved.

40. Defense and Indemnity Agreement

A. Indemnification by Supplier. To the fullest extent permitted by law, the Supplier agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which 1) are caused in whole or in part by any act or omission, negligent or otherwise, of the Supplier, its employees, agents or volunteers or Supplier's sub-Supplier and their employees, agents or volunteers; or 2) are directly or indirectly arising out of, resulting from, or in connection with performance of this Agreement; or 3) are based upon the Supplier's or its Sub-Contractor's use of, presence upon or proximity to the property of the County for the value of the contract or \$1,000,000, whichever is less. This indemnification obligation of the Provider shall not apply in the limited circumstance where the claim, damage, loss or expense is caused by the sole negligence of the County. In the event of the concurrent negligence of the Supplier, its Sub-Contractor, employees or agents, and the County, its employees or agents, this indemnification obligation of the Supplier shall be valid and enforceable only to the extent of the negligence of the Supplier, its Sub-Contractor, employees and agents. This indemnification obligation of the Supplier shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Supplier hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the Supplier are a material inducement to County to enter into this Agreement, are reflected in the Supplier's compensation, and have been mutually negotiated by the parties.

B. Participation by County – No Waiver. The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of Supplier's indemnity obligations under this Agreement.

C. Survival of Supplier's Indemnity Obligations. The Supplier agrees all Supplier's indemnity obligations shall survive the completion, expiration or termination of this Agreement.

D. Indemnity by Sub-Contractor. In the event the Supplier enters into subcontracts to the extent allowed under this Agreement, the Supplier's Sub-Contractor shall indemnify the County on a basis equal to or exceeding Supplier's indemnity obligations to the County.