

WATER CONSERVATION BOARD
1313 SHERMAN STREET, ROOM 721
DENVER, CO 80203

Buyer: MAGGIE VAN CLEEF
Phone Number: 303-866-4188
Agency Contact: STEVEN SHULL
Phone Number: 303 866 3998

DATE: 04-29-08

IMPORTANT
The PO# and Line # must
appear on all invoices,
packing slips, cartons
and correspondence

ACC: 04-28-08



**PURCHASE
ORDER**
STATE OF COLORADO

P.O. # OE PDA 08000000120 Page# 01

State Award #

FEIN 846000204 Phone: 970-532-7700
Vendor Contact:
Purchase Requisition #:

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R
NORTHERN COLO WATER CONSV DISTRICT
SOUTH PLATTE FORUM
220 WATER AVENUE
BERTHOUD CO 80513

INSTRUCTIONS TO VENDOR:

1. If for any reason, delivery of this order is delayed beyond the delivery/Installation date shown, please notify the agency contact named at the top left. (Right of cancellation is reserved in instances in which timely delivery is not made.)
2. All chemicals, equipment and materials must conform to the standards required by OSHA.
3. NOTE: Additional terms and conditions on reverse side.

BID #

Invoice in Triplicate

To: DIVISION OF WATER CONSERVATION
1313 SHERMAN STREET, ROOM 721
DENVER, CO 80203

Payment will be made by this agency

Ship To: DIVISION OF WATER CONSERVATION
1313 SHERMAN STREET, ROOM 721
DENVER, CO 80203

Delivery/Installation Date: 10-30-08
F.O.B. DESTINATION STATE PAYS NO FREIGHT

SPECIAL INSTRUCTIONS:

LINE ITEM	COMMODITY/ITEM CODE	UNIT OF MEASUREMENT	QUANTITY	UNIT COST	TOTAL ITEM COST
001	91843000000				\$48,800.00
WATER RESERVE GRANT-INSTALL STAGE DISCHARGE DATA LOGGER ON SOUTH PLATTE RIVER. SEE SCOPE FOR MORE INFO.					

DOCUMENT TOTAL = \$48,800.00

THIS PO IS ISSUED IN ACCORDANCE WITH STATE AND FEDERAL REGULATIONS
This PO is effective on the date signed by the authorized individual.

DPSPG FAA

FOR THE STATE OF COLORADO

Authorized Signature

Date

Purchase Order Terms and Conditions

2. **Safety Information.** All chemicals, equipment and materials proposed and/or used in the performance of this PO must conform to the standards required by the William-Steiger Occupational Safety and Health Act of 1970. Bidders must furnish all Material Safety Data Sheets (MSDS) for any regulated chemicals, equipment or hazardous materials at the time of delivery.

3. **Changes.** Vendor agrees to furnish products and/or services in strict accordance with the specifications, and at the price set forth for each item. Nothing in this PO may be added to, modified, superseded or otherwise altered except in writing signed by an authorized representative of the agency purchasing office and acknowledged by vendor. Each shipment received or service performed shall be only upon the terms contained in this PO, notwithstanding any terms contained in any invoice or other act of vendor other than acknowledgment of a written change order to this PO.

4. Delivery. Unless otherwise specified in the solicitation or in this PO, delivery shall be FOB destination. In its acceptance of any quotation offer, the agency is relying on the promised delivery date, installation, or service performance as material and basic to its acceptance. In the event of vendor's failure to deliver or perform as and when promised, the agency reserves the right to cancel its order, or any part thereof, without prejudice to its other rights, and vendor agrees that the agency may return all or part of any shipment so made, and may charge vendor with any loss or expense sustained as a result of such failure to deliver or perform as promised. Time is of the essence.

5. Rights in Data, Documents, Computer Software or Other Intellectual Property. Unless otherwise agreed in writing, any software, research, reports, studies, data, photographs, negatives or other documents, drawings or materials delivered by vendor in the performance of its obligations under this PO shall be the exclusive property of the State. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the work.

6. **Quality.** The State will be the sole judge in determining "equals" with regard to quality, price and performance. All products delivered shall be newly manufactured and of the manufacturer's current model unless otherwise specified.

7. Warranties. All provisions and remedies of the Uniform Commercial Code ("UCC") relating to both implied and expressed warranties are herewith referred to and made a part hereof and are in addition to any warranties stipulated in the specifications.

8. Inspection and Acceptance. Final acceptance is dependent upon completion of all applicable inspection procedures. Should the products or services fail to meet any inspection requirements, the agency may exercise all of its rights, including those provided in the UCC. The agency reserves the right to inspect services provided under this PO at all reasonable times and places. "Services" as used in this clause includes services or performance of tangible material produced or delivered in the performance of the services under this PO. The agency reserves the right to inspect the quality of the goods or services. If the goods or services appear to conform with PO requirements, with no additional payment, when defects in the quality or quantity of service cannot be corrected by re-performance, the agency may (i) require the vendor to take necessary action to ensure that the future performance conforms to PO requirements and (ii) equitably reduce the payment due vendor to reflect the reduced value of the services performed. These remedies apply in no way to the agency's right to terminate the PO under the termination provisions of this PO. The agency's remedies are available at any time after PO completion.

9. Cash Discount. The cash discount period will start from date of receipt of acceptable invoice, or from date of receipt of acceptable products/services at the specified destination by an authorized agency representative, whichever is later.

10. **Taxes.** The State agency, as purchaser, is exempt from all federal excise taxes under Chapter 32 of the Internal Revenue Code [No. 84-730123K] and from all State and local government use taxes [CRS 39-26-14(a) and 203, as amended]. Tax exemption numbers for the specific agency may be found elsewhere in this PO. Vendor is hereby notified that when materials are purchased for the benefit of the State, such exemptions apply except that in certain political subdivisions (e.g., City of Denver) vendor may be required to pay sales or use taxes even though the ultimate product or service is provided to the State. These sales or use taxes will not be reimbursed by the State.

11. **Prompt Payment.** State law and regulations provide that vendors will be paid within 45 days after receipt of products or services and a copy of notice of amount due, unless otherwise agreed to by contract or special conditions of the PO. A State liability not paid within 45 days is considered delinquent and unless otherwise agreed to, interest on the unpaid balance shall be paid beginning with the 46th day at the rate of 1% per month until paid in full. A liability shall not arise if a good faith dispute exists as to the agency's obligation to pay all or a portion of the liability. Vendors shall invoice the agency separately for interest on delinquent amounts due. The billing shall reference the delinquent payment, the number of days interest to be paid and the applicable interest rate. [CRS 24-30-20(2)(24), as amended.]

12. **Vendor Offset.** Pursuant to CRS 24-30-202.4, as amended, the State Controller may withhold payment for debts owed to State agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the unemployment compensation fund; and (e) other unpaid debts, found to be owing to the State or its agencies by final agency determination or reduced to judgment as certified by the State Controller.

13. Assignment and Successors; Antitrust Claims. Vendor shall not assign rights or delegate duties under this PO, or subcontract any part of the performance required under this PO, without the express written consent of the State, which shall not be unreasonably withheld. This PO shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Assignment of accounts receivable may be made only with written notice furnished to the purchasing agency or institution.

14. **Indemnification.** the event any article sold or delivered under this PO is covered by any patent, copyright, trademark, or application thereof, vendor will indemnify and hold harmless the State from any and all loss, liability, cost, expenses and legal fees incurred on account of any claims, legal actions or judgments arising out of manufacture, sale or use of such article in violation, infringement or the use of such article in such a manner as to constitute a violation of the patent, trademark, copyright or application thereof, vendor shall indemnify, save, and hold harmless the State, its employees and agents against any and all claims, damages, liability and court awards including costs, expenses, and attorney's fees and related expenses, incurred as a result of any act or omission by vendor, or its employees, agents, subcontractors or assignees, arising out of or in connection with performance of services ordered by the State.

15. **INDEPENDENT CONTRACTOR.** VENDOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE. NEITHER VENDOR NOR ANY AGENT OR EMPLOYEE OF VENDOR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE STATE OF TEXAS. VENDOR SHALL WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX WITHHOLDING INCLUDING ALL FEDERAL AND STATE INCOME TAX AND LOCAL HEAD TAX ON ANY MONIES PAID PURSUANT TO THIS PO. VENDOR ACKNOWLEDGES THAT

VENDOR AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS. NEITHER VENDOR OR THIRD PARTY PROVIDES SUCH COVERAGE AND THAT THE STATE DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE. VENDOR SHALL HAVE NO OBLIGATION TO EXPRESSLY OR IMPLIED TO BIND THE STATE TO ANY AGREEMENT, LIABILITY, OR UNDERSTANDING, EXCEPT AS EXPRESSLY SET FORTH HEREIN. VENDOR SHALL PROVIDE AND KEEP IN FORCE, AND SHOW PROOF OF UPON REQUEST, WORKERS' COMPENSATION AND UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHALL BE SOLELY RESPONSIBLE FOR ITS ACTS AND THOSE OF ITS EMPLOYEES, AND AGENTS.

16. **Communication.** All communications, including reports, notices, and advice of any nature, concerning administration of this PO, prepared by vendor for the agency's use, must be furnished solely to the purchasing agent within the agency purchasing office.

17. **Compliance with Laws.** Vendor agrees to comply with all applicable federal and State laws, regulations and policies, as amended, including those regarding unfair labor practices, anti-kick-back and collusion.

18. **Americans with Disabilities Act (ADA) Requirements.** If this solicitation contemplates the provision of services to the public, vendor shall, in addition to any other requirements under Title 11 of the ADA, comply with the Title 11 requirements of the ADA regarding the accessibility of State services and programs, as an explicit requirement. Vendor assures that, at all times during the performance of any resulting PO, no qualified individual with a disability shall, by reason of that disability, be excluded from participation in, or be denied benefits of, services, programs, or activities performed by vendor for the benefit of the State.

19. **Insurance.** Vendor shall obtain, and maintain at all times during the term of this PO, insurance as specified in the solicitation or order, and shall provide proof of such coverage.

20. **Termination For Default/Cause.** a. Except as otherwise agreed, the UCC shall govern in the case of goods. In the case of services, if vendor refuses or fails to timely perform any of the provisions of this PO, with such diligence as will ensure its completion within the time specified in this PO, the purchasing agent may notify vendor in writing of non-performance, and if not promptly corrected within the time specified, such agent may terminate vendor's right to proceed with this PO. b. Such part thereof as to which there has been delay or a failure to properly perform. Vendor's claim continues performance of the PO to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

b. In the case of remedies exercised under this paragraph for services, or analogous remedies exercised under the UCC for in goods, the purchasing agency may withhold amounts due to vendor as the purchasing agent deems necessary to reimburse the purchasing agency for the excess costs incurred in curing, completing or procuring similar goods and services.

c. In the case of either goods or services, vendor shall not be in default by reason of any failure in performance of this PO in accordance with its terms, if such failure arises out of acts of God; acts of the public enemy; acts of the State or any governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusual

d. If after rejection, revocation, or other termination of vendor's right to proceed under the provisions of the UCC or this clause, it is determined for any reason that vendor was not in default under the provisions of this clause, or that the delay was excusable, the rights and obligations of the parties shall be the same as the notice of termination had been issued pursuant to the termination for convenience clause.

21. **Termination For Convenience.** a. If not accepted by written acknowledgment, this PO may be canceled by written or oral notice to vendor prior to shipment of goods or beginning of performance of services.

b. Unless otherwise agreed in writing, in addition to the purchase price, the purchasing agency shall, upon receipt of notice of termination, terminate this PO or the purchasing agreement, as applicable, and the vendor shall, at the request of the purchasing agency, terminate this PO or the purchasing agreement, as applicable, for the convenience of the agency or institution. The purchasing agent shall give written notice of the termination to vendor specifying the part of the PO terminated and when termination becomes effective. Upon receipt of notice of termination, vendor shall incur no further obligations under the PO. The State shall not be liable for the cost of the PO or the purchase price of the goods and services ordered, but the necessary to mitigate costs of performance. In the case of a PO for goods, the vendor shall be responsible for the cost of the goods and services ordered, but the necessary to mitigate costs of performance. In the case of a PO for services, the PO price or rate for supplies and services delivered and accepted, the reasonable costs of performance on unaccepted supplies and services, and a reasonable profit for that unaccepted work, in accordance with the cost principles promulgated by the State pursuant to 28 CFR 2.107-101, as amended. In the case of a PO for services, the PO price or rate for supplies and services delivered and accepted, the reasonable costs of performance on unaccepted supplies and services, and a reasonable profit for that preparator work. The amount of the termination liability under this paragraph shall not exceed the amount of the PO price plus a reasonable cost for settlement expenses. Vendor agrees to submit a termination claim to the purchasing agency for review and approval. The termination claim shall include a certification as required by 28 CFR 2.107-101, as amended, and a certification as required by 28 CFR 2.107-101, as amended, as well as reasonable supporting documentation. The termination claim shall be submitted to the purchasing agency within the time specified in the PO or the purchasing agreement.

22. **Purchase Order Approval.** This PO shall not be valid unless it is executed by the purchasing agent for the purchasing State agency or institution. The State shall have no responsibility or liability for products or services delivered or performed prior to proper execution hereof.

23. **Fund Availability; Federal Funds Contingency.** Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this PO is funded in whole or in part with federal funds, this PO is subject to a contingency upon the continuing availability of federal funds for the purposes hereof. If this PO contemplates the purchase of goods to be delivered in a single installment, the State represents that it has set aside sufficient funds to effect this PO in accordance with its terms.

24. Choice of Law. This PO is made in, and the laws of the State of Colorado shall govern, in connection with the formation, performance and the legal enforcement of, this PO. Unless otherwise specified in this solicitation or this order, venue for any judicial action arising out of or in connection with this PO shall be Denver, Colorado. Vendor shall exhaust administrative remedies in CRS 24-109-106, as amended, prior to commencing any judicial action against the State.

25. **Uniform Commercial Code.** All references in this PO to the UCC shall mean the UCC as adopted by the State of Colorado at Title 4, Colorado Revised Statutes, as amended.

26. **Non-discrimination.** Vendor agrees to comply with the letter and spirit of all applicable State and federal laws respecting discrimination and unfair employment practices.

27. [Not applicable to Intergovernmental POs] **ILLEGAL ALIENS – PUBLIC CONTRACTS FOR SERVICES AND RESTRICTIONS ON PUBLIC BENEFITS.** A Vendor certifies that it shall comply with the provisions of CRS 8-17.5-101 et seq. Vendor shall not knowingly engage an illegal alien to perform work under this PO or enter into a contract or PO with a subcontractor that fails to certify to vendor that the subcontractor shall not knowingly engage an illegal alien to perform work under this PO. Contractor represents, warrants, and agrees that it (i) has verified that it does not engage any illegal aliens, through its participation in the federal Basic Plot Employment Verification Program and (ii) otherwise will comply with the requirements of CRS 8-17.5-102(b)(1). Vendor shall comply with the requirements of CRS 8-17.5-102(b)(2) and the requirements of CRS 8-17.5-102(2)(b). Vendor shall comply with any requirement of this provision or CRS 8-17.5-101 et seq., shall be cause for termination for breach and vendor shall be liable for actual or consequential damages.

b. Vendor, if a natural person eighteen (18) years of age or older, hereby swears or affirms under penalty perjury that he or she (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of CRS 24-76.5-101 et seq., and (iii) shall produce one form identification required by CRS 24-76.5-103 prior to the effective date of this PO.