

PORT OF EVERETT Standard Terms & Conditions

1. **ENTIRE AGREEMENT:** This document, including all addenda and subsequently issued change notices, comprises the entire agreement between the Port of Everett and the Contractor and shall be governed by the laws of the State of Washington incorporated herein by reference. The venue for legal action shall be the Superior Court for the State of Washington, County of Snohomish. The Port reserves the right to reject ***any and all bids or proposals it determines are not in the best interest of the Port including those*** which propose alternate or additional terms and conditions. ***Further, the Port reserves the right to waive immaterial irregularities.***
2. **CONFLICT AND SEVERABILITY:**
 - A. **Conflict:** In the event of a conflict between documents and other applicable law, the Contractor shall seek clarification from the Port as to the controlling direction. In the absence of a requested clarification, the Port shall determine, consistent with the requirements of the law, the controlling provisions.
 - B. **Severability:** Any Provision of this document found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the document.
3. **ANTITRUST:** The Port maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, the Contractor hereby assigns to the Port any and all claims for such overcharges except overcharges which result from antitrust violations commencing after the price is established under this contract and which are not passed on to the Port under an escalation clause.
4. **NONDISCRIMINATION AND AFFIRMATIVE ACTION:** Acceptance of this contract binds the Contractor to the terms and conditions of Section 601, Title VI, Civil Rights Act of 1964, as may be amended: In that "No person in the United States shall, on the grounds of race, color, national origin, sex or age, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance." In addition, "No otherwise qualified handicapped individual in the United States, shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Unless exempted by Presidential Executive Order #11246, as may be amended or replaced and applicable regulations thereunder, Contractor shall not discriminate against any employee or applicant for employment.
5. **GIFTS AND GRATUITIES:** In accordance with Revised Code of Washington 42.23 and RCW 42.52.150 and 160, it is unlawful for any person to directly or indirectly offer, give or accept gifts, gratuities, loans, trips, favors, special discounts, services or anything of economic value in conjunction with Port business practices to another to refrain from submitting a proposal. Further RCW 42.23 and the Ethics in Public Service Law, Chapter 42.52 RCW prohibits municipal officers, state officers or employees from receiving, accepting, taking or seeking gifts, (except as permitted by RCW 42.52.150) if the officer or employee participates in contractual matters relating to the purchase of goods and services.
6. **RIGHTS AND REMEDIES:** In the event of any claim for default or breach of contract, no provision in this document or in the Bidder's shall be construed, expressly or by implication, as a waiver by the Port of any existing or future right and/or remedy available by law. Failure of the Port to insist upon the strict performance of any term or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract or by law, or the acceptance of (or payment for) materials, equipment or services, shall not release the Contractor from any responsibilities or obligations imposed by this contract or by law, and shall not be deemed a waiver of any right of the Port to insist upon the strict performance of the contract.
7. **HOLD HARMLESS:** Contractor shall indemnify, defend and hold harmless the Port from any and all claims, demands, suits, actions, proceedings, losses, costs and damages of every kind and

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description, including any attorney's fees and/or litigation expenses, which may be brought or made against or incurred by the Port on account of losses of or damage to any property or for injuries to or death of any person, caused by, arising out of, or contributed to, in whole or in part, by reasons of any act, omission, professional error, fault, mistake or negligence of Contractor, Contractor's employees, agents, representatives or subcontractors, their employees, agents or representatives in connection with or incidental to the performance of this agreement, or arising out of Worker's Compensation claims, Unemployment Compensation claims or Unemployment Disability Compensation claims of employees of Contractor and/or subcontractors or claim under similar such laws or obligations. Contractor also agrees to protect and hold harmless the Port against all claims, suits or proceeding for patent, trademark, copyright or franchise infringement arising from the purchase, installation or use of goods and services ordered, and to assume all expenses and damages arising from such claims, suits, or proceedings. Contractor's obligation under this Section to indemnify, defend and hold harmless shall not be eliminated or reduced by any alleged concurrent or sole negligence of the Port or its agencies, employees and officers.

Contractor shall pay all attorney fees and expenses incurred by the Port in establishing and enforcing the Port's rights to this paragraph, whether or not suit was instituted.

8. SUPERVISION AND COORDINATION: Contractor shall:
 - Competently and efficiently supervise and direct the implementation and completion of all contract requirements specified herein.
 - Designate in its bid to the Port, a representative(s) with the authority to legally commit Contractor's firm. All communication given or received from the Contractor's representative shall be binding on the Contractor.
 - Promote and offer to Purchasers only those materials, equipment and/or services as stated herein and allowed for by contractual requirements. Violation of this condition will be grounds for contract termination.
9. ADVERTISING: Contractor shall not advertise or publish information concerning this contract in any form or media without prior written consent from the Port Contracts & Procurement Administrator.
10. SUBCONTRACTS/ASSIGNMENT: Contractor shall not subcontract or assign its obligations under this contract without the prior written consent of the Port Contracts & Procurement Administrator. The Contractor shall be responsible to ensure that all requirements of the contract shall flow down to any and all subcontractors.
11. TAXES, FEES, AND LICENSES:
 - A. Taxes: Contractor shall pay for and maintain in current status any and all taxes which are necessary for contract performance. Unless otherwise indicated, the purchaser agrees to pay all State of Washington sales or use taxes. No charge by Contractor shall be made for federal excise taxes and the purchaser agrees to furnish Contractor with an exemption certificate, where appropriate. Sales tax shall not be included in bid pricing submitted.
 - B. Fees/Licenses: Prior to bid opening the Contractor shall pay for and maintain in a current status any license fees, assessments, permit charges, etc., which are necessary for contract performance. It is the Contractor's sole responsibility to monitor and determine any changes or the enactment of any subsequent regulations for said fees, assessments or charges and to immediately comply with said charges or regulations during the entire term of this contract.
12. WARRANTIES:
 - A. Product: Contractor warrants that all material, equipment and/or services provided under this contract shall be fit for the purpose(s) for which intended, for merchantability, and shall conform to the requirements and specifications herein. Acceptance of any service and inspection

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incidental thereto by the Port shall not alter or affect the obligations of the Contractor or the rights of the Port.

- B. Price: Contractor warrants that prices of materials, equipment and services set forth herein do not exceed those charged by the Contractor to any other customer purchasing the same goods or services under similar conditions and in like or similar quantities.
13. LIENS, CLAIMS, AND ENCUMBRANCES: All materials, equipment or services, shall be free of liens, claims or encumbrances of any kind and if the Port requests, a formal release of same shall be delivered to the Port.
14. PERFORMANCE: Acceptance by the purchaser of unsatisfactory performance with or without objection or reservation shall not waive the right to claim damage for breach, or terminate the contract, nor constitute a waiver requirements for satisfactory performance of any obligation remaining to be performed by Contractor.
15. IDENTIFICATION: All invoices, packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers and other written documents affecting this contract shall be identified by the applicable purchase order or field number. Packing lists shall be enclosed with each shipment, indicating the contents therein.
16. INVOICES: Contractor shall provide an original and one (1) copy of the invoice. Each invoice shall be submitted as required by the contract and shall reference the contract and/or purchase order number. Invoices shall be properly annotated with applicable prompt payment discount(s).
17. PAYMENT: Payment will be made by the Port of Everett. In accordance with RCW 42.24 the Port of Everett may issue warrants before the Port Commission approves the claims. Should the Port Commission disapprove the claim, it will become a receivable of the Port of Everett, and the Port will pursue collection diligently until the amounts are either collected or the Port Commission is satisfied and approves the claim. Any bid that requires payment in less than thirty (30) calendar days need not be considered. Prompt payment discount periods of thirty (30) calendar days or more will be considered in determining the apparent lowest responsible and responsive bid. Invoices will not be processed for payment nor will the period of cash discount commence until receipt of a properly completed invoice and until all invoiced items are received and satisfactory performance of Contractor has been attained. If an adjustment in payment is necessary due to damage or dispute, the cash discount period shall commence on the date final approval for payment is authorized. Payment will not be considered late if a check or warrant is mailed within the time specified. If no terms are specified, net 30 days will automatically apply. Payment(s) made in accordance with contract terms shall fully compensate the Contractor for all risk, loss, damages or expense of whatever nature and acceptance of payment shall constitute a waiver of all claims submitted by Contractor.
18. QUALITY STANDARDS: Product or service specifications herein are intended solely to clearly describe type and quality and not to be restrictive. Trade reference specifications describe the type product thus far found to best meet agency functional requirements and provide the most economical use life under agency use situations. So as not to misrepresent the requirements herein, brands other than those specified will therefore be considered on the basis of whether at least equal in quality/performance. Failure to submit with bid complete documentation sufficient to establish products bid at least equal will be complete grounds for rejection. By submitting bid, bidder warrants product bid as at least equal in quality and performance. The Port's acceptance of a product bid as an "equal" is conditioned on the Port's inspection and testing after receipt. If, in the sole judgment of the Port, the item is determined not to be an equal, the bid may be rejected or the product returned at bidder's expense and/or the contract canceled without any liability whatsoever to the Port. Any bid containing a brand which is not of equal quality, performance or use specified must be represented as an "alternate" and not as a "equal"; failure to do so shall be sufficient reason to consider the bid non-responsive.

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19. DETERMINATION OF RESPONSIBILITY:

- A. Bid Evaluation: During bid evaluation, the Port reserves the right to make reasonable inquiry of any bidder. Requests may include, but not be limited to, financial statements, credit ratings, references, record of past performance and on-site inspection of bidder's or bidder's subcontractor's facilities. Failure to respond to said request(s) will be sufficient reason to consider the bid non-responsive.
- B. Contract Term: During the contract term, should the Contractor be determined to be in violation of federal, state or local laws or regulations, the Port reserves the right to modify its initial determination of responsibility at the time of award to take other action as determined appropriate, including but not limited to termination of the contract.

20. AWARD FACTORS:

- A. Criteria: Port contracts shall be awarded to the lowest responsible and responsive bidder subject to the preferences provided by law. Award criteria may include all items as stated in RCW 43.19.1911 and WAC 236-48-093 and the contractual requirements provided herein.
- B. Rights Reserved: Subject to the provisions of Chapter 69, Laws of 1996 (SSB 6572), the Port reserves the right to:
 - 1. Waive any informalities.
 - 2. Reject any or all bids, or portions thereof. WAC 236-48-094 allows the Port to "accept any portion of the items bid" unless the bidder stipulates all or nothing on the bid.
 - 3. Reissue an IFB or negotiate under provisions outlined therein.
 - 4. Award on an all or none consolidated basis taking into consideration reduction in administrative cost as well as unit bid prices.

21. SUPPLIER REGISTRATION: Prior to award of a contract, any unregistered bidder may be required to complete a Supplier Registration Packet for placement on the Port's vendors list.

22. CHANGES: No alteration in any of the terms, conditions or contractual requirements herein shall be effective without the written consent of the Port Contracts & Procurement Administrator as evidenced by issuance by the Port of a contract change notice.

23. ADDITIONS OR DELETIONS: The Port reserves the right to add or delete items, agencies or locations as determined to be in the best interest of the Port. Added items, agencies or locations will be related to those on contract and additions or deletions will not represent a significant increase or decrease in size or scope of the contract. Such additions or deletions will be by mutual agreement, will be at prices consistent with the original bid price margins and will be evidenced by issuance of a written contract change notice from the Port Contracts & Procurement Administrator.

24. CONTRACT SUSPENSION: The Port may at any time and without cause, suspend the contract or any portion thereof, for a period of not more than thirty (30) calendar days, by written notice to the Contractor. Contractor shall resume performance with fifteen (15) calendar days of written notice from the Port .

25. BREACH, DEFAULT, TERMINATION:

- A. Breach: A breach of a term or condition of the contract shall mean any one or more of the following events: (1) Contractor fails to perform the services by the date required or by a later date as may be agreed to in a written amendment to the contract signed by the Port; (2) Contractor breaches any warranty or fails to perform or comply with any term or agreement in the contract; (3) Contractor makes any general assignment for the benefit of creditors; (4) in

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- the Port's sole opinion, Contractor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder; (5) Contractor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization or relief from creditors and/or debtors; (6) any receiver, trustee or similar official is appointed for Contractor or any of the Contractor's property; and (7) Contractor is determined to be in violation of federal, state or local laws or regulations and that such determination, in the Port 's sole opinion renders the Contractor unable to perform any aspect of the contract.
- B. Default: A Contractor may be declared in default for failing to perform a contractual requirement or for a material breach of any term or condition.
- C. Termination for Convenience: The Port may terminate this contract, in whole or in part, at any time and for any reason by giving thirty(30) calendar days written termination notice to Contractor. Termination charges shall not apply unless they are subsequently agreed upon by both parties. Where termination charges are applicable, both parties agree to negotiate in good faith and to limit the extent of negotiations to valid documented expenses incurred by Contractor prior to date of termination. Should the parties not agree to a satisfactory settlement, the matter may be subjected to mediation and/or legal proceedings.
- D. Termination for Breach and/or Default: Except in the case of delay or failure resulting from circumstances beyond the control and without the fault or negligence of the Contractor of the Contractor's supplies or subcontractors, the Port shall be entitled, by written or oral notice, to cancel and/or terminate this contract in its entirety or in part for breach and/or for default of any of the terms herein and to have all other rights against Contractor by reason of the Contractor's breach as provided by law.
- E. Termination by Mutual Agreement: The Port or the Contractor may terminate this contract in whole or in part, at any time, by mutual agreement with thirty(30) calendar days written notice from one party to the other.
26. OPPORTUNITY TO CURE DEFAULT:
- A. Events: In the event that Contractor fails to perform a contractual requirement or materially breaches any term or condition, the Port may issue a written or oral notice of default and provide a period of time in which Contractor shall have the opportunity to cure. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages. The Port is not required to allow the Contractor to cure defects if the opportunity for cure is not feasible as determined solely by the Port. The Port may terminate the contract for nonperformance, breach or default without allowing the opportunity to cure by the Contractor.
- B. Remedies: If the nonperformance, breach or default remains after Contractor has been provided the opportunity to cure, the Port may do one or more of the following:
1. Exercise any remedy provided by law.
 2. Terminate this contract and any related contracts or portions thereof.
 3. Impose liquidated damages.
 4. Suspend Contractor from receiving future Invitations for Bid.
27. LEGAL FEES: The Contractor covenants and agrees that in the event suit is instituted by the purchaser for any reason nonperformance, breach, or default on the part of the Contractor, and the Contractor is adjudged by a court of competent jurisdiction, he shall pay to the purchaser all costs, expenses expended or incurred by the purchaser in connection therewith, and reasonable attorney's fees.

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28. FORCE MAJEURE:

- A. Definition: Except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics or other similar occurrences.
- B. Notification: If either party is delayed by force majeure, said party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall be provided. The time of completion shall be extended by contract modification for a period of time equal to the time that the results or effects of such delay prevented party from performing in accordance with this contract.
- C. Rights Reserved: The Port reserves the right to cancel the contract and/or purchase materials, equipment or services from the best available source during the time of force majeure, and Contractor shall have no recourse against the Port.

29. ESTABLISHED BUSINESS: To be considered responsive, bidder must, at the time of bid opening, or prior to that time if required by law, be an established business firm with all required licenses, bonding, facilities, equipment and trained personnel necessary to perform the work as specified in the bid solicitation. The Port reserves the right to require proof of said requirements within 10 calendar days from the date of request.