

PORT OF EVERETT PURCHASE ORDER TERMS AND CONDITIONS

1. **ENTIRE AGREEMENT:** This document, and the Contractor terms attached, 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.

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. **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.

8. **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.

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9. **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.
10. **CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION**
- A. Pursuant to 2 CFR 200.213, the Contractor, by accepting this purchase order, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the Contractor is unable to certify, they must provide an explanation as to why they cannot prior to signing the agreement. The Contractor shall provide immediate written notice to the Port if at any time the Contractor learns that its certification was erroneous or has become erroneous by reason of changed circumstances, or have received notice that they have been suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in 2 CFR 180.
- B. The Contractor agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction. Pursuant to 2 CFR 180.330, the Contractor is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements. The Contractor agrees that it will include this clause without modification in all lower tier covered transactions.
11. **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.
12. **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 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.

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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 or 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.

13. 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.

14. 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.

15. Governing Law and Venue

The Contract Documents shall be governed by the laws of the State of Washington. The venue for any legal proceedings under this Contract shall be Snohomish County, Washington.