

**1. BID SUBMITTAL**

Any erasures or alterations of any kind and bids which are incomplete or contain irregularities may be rejected. The Port reserves the right, but without obligation, to waive informalities and irregularities. Bids shall be submitted by the time and date established in the Bid Solicitation.

**2. RESPONSIVE BIDS**

The Port, in its sole discretion, reserves the right to determine Bid irregularities which render a Bid non-responsive, and to waive informalities and immaterial irregularities in the Bid. A Bid shall be considered irregular and may be rejected by the Port as non-responsive for reasons including, but not limited to:

If the bid form furnished or authorized is not used or is altered;

If the bid form or any required supplemental documents are incomplete, contain any additions, deletions, conditions, or otherwise fail to conform to the Port's requirements;

If the bidder adds any provisions reserving the right to reject or accept the award, or enter into the contract;

If the Bid or Bid Guaranty is not properly executed, or shows an incorrect amount;

If the Bid fails to include a price for every bid item;

If the Port reasonably deems the Bid Guaranty inadequate; or

If the Port deems any of the bid prices to be excessively unbalanced either above or below the amount of a reasonable bid price for the item of Work to be performed, to the potential detriment of the Port.

**3. SINGLE BID RECEIVED**

If the Port receives a single responsive, responsible Bid, the Port shall have the right, in its sole discretion, to 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 Port to assist in such analysis. By conducting such analysis, the Port shall not be obligated to accept the single Bid; the Port reserves the right to reject such Bid or any portion thereof.

**4. NO BID RECEIVED**

For Contracts estimated to cost less than \$300,000, where the Port receives no bids, the Port shall have the right, in its sole discretion, to award a contract to a responsible Contractor chosen from the Small Works Roster. The Contract amount shall be at a negotiated price that does not exceed 10% of the published Engineer's estimate, and in no case shall the contract award exceed \$300,000.

**5. RIGHTS OF THE PORT**

The Port reserves the right to accept the Bid of the lowest responsive, responsible bidder, an "Alternative Bid" based upon plans and specifications prepared by the Bidder, to reject any or all Bids, republish the Advertisement for Bids, revise or cancel the work to be performed, or to do the work otherwise, if in the judgment of the Port, the best interests of the Port is served thereby.

**6. TAXES -- RETAIL SALES**

Washington State Sales Tax will be considered in the total bid price and must be shown as a separate item on the Bid. All other applicable taxes which the Contractor is required to pay shall be included by it in its bid prices for the work under this Contract.

**7. BID EVALUATION AND CONTRACT AWARD**

Bids will be evaluated by the Port to determine which bid is the lowest responsive bid by a responsible bidder. The Port may require the bidder to provide additional qualifications information. If the bidder is notified of contract award, the Agreement Form shall be executed in duplicate and returned, together with the Performance and Payment Bond and insurance certificate within ten days. After execution by the Port, one copy of the signed Agreement will be returned to the Contractor.

**8. INSURANCE**

The Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, their agents, representatives, employees or subcontractors.

No Limitation. Contractor's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the Port's recourse to any remedy available at law or in equity.

**A. Minimum Scope of Insurance**

Contractor shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form, providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or the equivalent and shall cover liability arising from premises, operations, independent contractors, products-completed

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operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Port shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the Port.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the state of Washington.

**B. Minimum Amounts of Insurance**

Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.

**C. Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance:

1. The Contractor's insurance coverage shall be primary insurance as respects the Port. Any Insurance, self-insurance, or insurance pool coverage maintained by the Port shall be excess of the Contractor's insurance and shall not contribute with it.
2. The Contractor's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Port.

**D. Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

**E. Verification of Coverage**

Contractor shall furnish the Port with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Contractor before commencement of the work.

**F. Subcontractors**

Contractor shall ensure that each subcontractor of every tier obtain at a minimum the same insurance coverage and limits as stated herein for the Contractor. Upon request from the Port, the Contractor shall provide evidence of such insurance.

**9. PERFORMANCE/PAYMENT BOND**

Pursuant to RCW 39.08.010 the Contractor, prior to commencing work, shall furnish a Performance/ Payment Bond for the full contract sum including sales tax; however, if the Contract Sum does not exceed \$35,000 the Contractor may, in lieu of providing a bond, request the Port retain 50% of the Contract amount earned for a period of 45 days following acceptance of the work or until receipt of all necessary releases and settlement of any liens filed under Chapter 60.20 RCW, whichever is later, at which time the Port in ordinary course of business will make final payment.

**10. PREVAILING WAGES**

The Contractor shall comply with the requirements of RCW 39.12, and shall pay each employee an amount not less than the Prevailing Rate of Wage, as specified by the Industrial Statistician of the Washington State Department of Labor and Industries (L&I). Before commencement and upon completion of work, the Contractor shall file the forms and pay the filing fees required by L&I. The Contractor shall indemnify and hold the Port harmless from any claims related to the payment or non-payment of such wages by the Contractor. The schedule of Prevailing Wage Rates is incorporated by reference into these Contract Documents.

The prevailing wage rates as provided to the Port by the Industrial Statistician of the Washington State Department of Labor and Industries is available for download at URL <http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/>. A copy of the prevailing wage rates is available for viewing at the Port of Olympia offices or may be requested by contacting the Port's contract administrator. In referencing such rates, the Port does not imply or warrant that the Contractor will find labor available at those rates. It is the Contractor's sole responsibility to determine the most current wage rates it will actually have to pay. These rates shall remain in effect for the duration throughout Contractor's performance of the Work.

**11. CONTRACT TIME**

The Contractor shall promptly start work as soon as possible after the effective date of the written Notice to Proceed issued by the Port. The Contractor shall plan and prosecute the work diligently so that the various portions of the work shall be completed within the time set forth herein. Failure to complete the work within the time specified may result in the assessment of damages for avoidable delay in addition to other remedies available to the Port. Avoidable delays in the prosecution of work include those delays which could have been avoided by the Contractor's exercise of care, coordination and foresight.

**12. AUTHORITY OF THE ENGINEER**

The Engineer is the construction site representative of the Port and the Contractor shall look to the Engineer in matters relating to compliance with Contract requirements. The work shall be done to the complete satisfaction of the Engineer.

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The Engineer will decide all questions which may arise concerning the quality and acceptability of materials and equipment furnished and work performed, the rate of progress of the work, and interpretation of the contract documents. The Engineer has the authority to reject work which is defective or does not otherwise conform to the contract documents. The Engineer is not responsible for and will not have control or charge of the means, methods, techniques, sequences, or procedures of construction, or for safety precautions or programs incidental thereto, these being the sole responsibility of the Contractor.

**13. CONTRACT DOCUMENT INTERPRETATION**

The intent of the contract documents is to prescribe a complete work. The Contractor shall furnish all labor, materials, equipment, and incidentals necessary or convenient to complete all parts of the work. Compensation for the cost of furnishing the foregoing and for full performance of the contract shall be considered as included in the contract sum.

**14. CHANGES**

The Port may make changes in the work within the scope of this Contract and such changes may be made without notice to any sureties. If any change causes an increase or decrease in the Contractor's cost of, or the time required for the performance of, any part of the work under this Contract, an equitable adjustment will be made consistent with such change and the Contract modified in writing accordingly; provided, however, that the Contractor notifies the Port of the change in cost or time before commencing the changed work. Records pertaining to changes in the work shall be maintained sufficient to document all costs. Failure to maintain and disclose the required records shall constitute a waiver of the Contractor's claim for costs not documented.

The value of any work covered by a change order or of any claim for increase or decrease in the Contract price will be determined by one or more of the following methods in the order of precedence listed below, if not specified in the bidding schedule:

**14. A. UNIT PRICES**

Unit prices set forth in the Contract Documents;

**14. B. LUMP SUM**

Lump sum as agreed, provided that the Contractor may be required to provide a detailed cost estimate for the proposed change;

**14. C. TIME AND MATERIALS**

Time and materials basis at rates set forth in the Contract Documents or, if not specified, as follows:

1. Labor not to exceed applicable Prevailing Rates of Wage, plus 15% for overhead, profit and all other costs incurred in supplying labor;

2. Materials and supplies incorporated in and necessary for the work, plus 15% for overhead, profit and all other costs incurred in supplying the materials and supplies;

3. Equipment, excluding small hand tools, at up to the maximum hourly rates set forth in the current "AGC-DOT Equipment Rental Agreement" at such rates as approved by the Engineer, plus 15% for overhead, profit and all other costs incurred in supplying such equipment;

4. "Overhead" shall include, but not be limited to: field and office engineering, estimating, general superintendence, purchasing, office expense, small hand tools, all applicable taxes (except state and local retail sales tax), bonding and insurance costs, delay, acceleration or other impact and any other costs of doing business;

5. Subcontractor's work costs shall be calculated in accordance with subparagraphs 1 through 4 above. To the total (excluding all markups for overhead and profit) shall be added 10% for the Contractor's supervision and overhead support;

6. All costs of the Contractor and any subcontractor attributable to a change in the work are either specifically listed or covered by the multipliers specified in paragraphs 1 through 5 above.

**15. QUALITY**

The Contractor shall supervise and direct the work using its best efforts, skills and attention. The Contractor shall be solely responsible for, and shall have full control and charge of construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the work under the contract. The Contractor is for all purposes an independent Contractor and not an agent or employee of the Port.

Unless otherwise specifically stated in the Contract, the Contractor shall provide and pay for materials, labor, tools, equipment, water, light, power, transportation, supervision, and temporary construction, and other services and facilities of any nature necessary to execute, complete and deliver the work within the Contract Time. Material and equipment shall be new and of a quality equal to or better than that specified. Equipment offered shall be current models which have been in successful regular operation under comparable conditions. The work performed shall be in conformity with the best modern practice of the trade with the intent to secure the best standard of construction and equipment of work as a whole and in part.

**16. SAFETY**

The Contractor shall maintain the work site and perform the work in a manner which meets all legal requirements for the provision of a safe workplace. The Contractor shall comply with safety standards and provisions of applicable laws, building and construction codes, and the safety regulations set forth in "Safety Standards for Construction", Chapter

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296-155 WAC, and "General Safety Standards", Chapter 296-24 WAC, issued by the Washington State Department of Labor and Industries.

**17. COMPLIANCE WITH LAWS AND PERMITS**

a) The Contractor shall comply with and give notices required by all laws, ordinances, codes, rules, regulations, and permits relating to the conduct of the work. Except as specifically otherwise provided herein, the Contractor shall obtain and pay for all permits and licenses necessary to conduct the work. The Contractor shall comply with Chapter 49.28 RCW, Hours of Labor.

b) Transportation Worker Identifications Credentials (TWIC)

Transportation Worker Identification Credentials (TWIC): The Transportation Worker Identification Credential (TWIC™) program is a Transportation Security Administration and U.S. Coast Guard initiative. The TWIC™ program provides a tamper-resistant biometric credential (TWIC Card) to maritime workers requiring unescorted access to secure areas of port facilities, outer continental shelf facilities, and vessels regulated under the Maritime Transportation Security Act, or MTSA, and all U.S. Coast Guard credentialed merchant mariners.

c) TWIC Escorting

A Transportation Identification Credential (TWIC) is issued and controlled by TSA under 49 CFR §1572. It is an authorized credential for fulfilling the identification requirements for access control. Possession of a TWIC itself does not, on its own, guarantee access to any MTSA regulated facility, including the Port. The individual must also have a valid reason to access the terminal as determined by the Port of Olympia's Marine Terminal personnel (the "Marine Terminal").

It is the Port of Olympia's policy that any personnel who require regular access to the Marine Terminal should obtain a TWIC. This includes Port employees, tenant employees, contractor personnel, and longshoremen. Additionally, any other person seeking unescorted access to any terminal in the USCG's Sector Puget Sound must possess a valid TWIC to gain access. All non-TWIC card holders must be accompanied by an approved TWIC escort at all times while on the Marine Terminal facility.

There are two types of areas in a terminal: restricted and secure access areas. Restricted access areas are generally the marine docks, tank storage areas and offices. All other areas within the fenced property may be defined as secure access areas. In a restricted area, the ratio is one TWIC escort per every 5 non-TWIC holders. For a secure area, the ratio is one TWIC escort per every 10 non-TWIC holders. If the non-TWIC holders are transported in an

enclosed vehicle (e.g. van or bus) escorting ratios do not apply as long as the visitors are not allowed to depart the vehicle.

The Escort must have a Port of Olympia TWIC escort endorsement to be an eligible escort. Escorts must agree to the security and safety regulations of our facility. Specifically, escorts must have knowledge of this escorting procedure and how to make emergency notification if the escorted individual(s) are engaged in activities other than those for which escorted access was granted.

Escorting may only be conducted in areas the badge holder has approved access. If other access is required, authorized personnel may escort only by pre-arrangement with the Marine Terminal office and upon completion of an escort permission form. The form establishes an understanding of the escort requirements and responsibilities and is an agreement to accept any liability imposed upon the Port of Olympia by the USCG or any Federal entities for failure of the escort to fulfill those responsibilities. The form is available from the Marine Terminal office.

TWIC escorting privileges are granted at the sole discretion of the Marine Terminal for a period of time determined by the facility. The facility reserves the right to deny granting privileges or to suspend, revoke or deny renewal of escorting privileges previously granted.

Although the sponsoring agency providing a TWIC escort is responsible for the actions of both its visitor and the escort, ultimately the Marine Terminal is responsible for violations. Any escort who fails to perform satisfactorily may be required to leave the facility and may be disqualified from conducting escorts in the future. Furthermore, said person shall be liable for the payment of any fine levied by the United States Coast Guard (USCG). While on the facility all TWIC holders must be able to present a valid TWIC within ten (10) minutes to the USCG or the Marine Terminal personnel. Persons unable to produce a valid TWIC will be escorted off the facility and may be subject to criminal prosecution. The facility may, at its sole discretion, ban any person for any period of time for violation of Federal laws or facility rules and regulations. Those persons who violate access control procedures may be subject to arrest, prosecution and/or loss of facility privileges.

**18. HAZARDOUS MATERIALS**

This Contract requires the exchange of hazardous materials information to prevent injury or illness to Port or Contractor personnel, to comply with WISHA and WAC 296-62-054.

**18. A. AVAILABLE DOCUMENTS**

The Port of Olympia Maintenance Department has available to the Contractor the following:

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1. A list of all known hazardous materials in use at the Port of Olympia. Information on each can be obtained by reviewing the Material Safety Data Sheets (MSDS).

2. Precautions to be taken to lessen the possibility of exposure.

**18. B. THE CONTRACTOR SHALL:**

1. Notify all subcontractors and/or suppliers of any hazardous materials the Port of Olympia may have on site.

2. Label any hazardous materials brought on site as to contents, hazard warning, name and address of manufacturer.

3. Provide the following written information, prior to commencement of work:

a) A list of hazardous materials to be used during the construction phase of the work, along with the MSDS's.

b) A list of any hazardous materials that have been incorporated into the project and will remain on site, along with the MSDS's.

The Contractor shall conduct its work to meet the requirements set forth in the specifications and any applicable laws or regulations related to hazardous or petroleum-contaminated materials encountered during performance of the work.

The Contractor shall give immediate notice to the Port upon the discovery of any hazardous or petroleum-contaminated materials not specifically identified in the Contract Documents and proceed thereafter only as directed by the Port or as set forth in the specifications. If the material proves positive as containing asbestos, such material shall be handled in compliance with WAC 296-62-077 through 296-62-07753. Hazardous materials include asbestos, PCBs, lead, radioactive materials, explosives and other materials defined as hazardous or dangerous wastes in WAC Chapters 173-303 and 173-305.

**19. PROTECTION OF UTILITIES**

The Contractor shall protect from damage public and private utilities encountered during the work. Prior to beginning work, the Contractor shall give proper notification as required by RCW 19.122.030 to the agencies that have utilities in place, and shall cooperate with these agencies in the protection and relocation of underground utilities, facilities and structures. The number to call is 1-800-424-5555.

**20. PAYMENT AND RETAINAGE**

Upon completion of the work or no more often than monthly, the Contractor shall submit an invoice for work completed to the attention of Accounts Payable at 1022 Marine Drive NE, Olympia, WA 98501. Within 8 days after receipt of invoice, the Port will either approve the invoice for payment or give the Contractor specific written reasons why part or all of the payment is being withheld and what remedial actions the

Contractor must take to receive the withheld amount. The Port will make payment within 30 days of receipt of the Contractor's properly completed invoice or receipt of the goods and services, whichever is later.

The Port will pay 95% of the amount of the approved invoice and will retain 5% in accordance with Retainage requirements of Chapter 60.28 RCW, unless the Contractor asks the Port to retain 50% of the payment in lieu of bond in accordance with Paragraph 5 above. Payment shall neither waive or release the Port's rights nor relieve the Contractor of any obligations under this Contract or by law.

Pursuant to Chapter 60.28 RCW, the Port will retain 5% of the Contract Sum for a period of 45 days after date of acceptance, or until receipt of all necessary releases and settlement of any liens filed under Chapter 60.28 RCW, whichever is later, at which time the Port in ordinary course of business will make final payment.

**21. WORKERS' BENEFITS**

The Contractor shall make all payments required for unemployment compensation under Title 50 RCW and for industrial insurance and medical aid required under Title 51 RCW, and shall furnish proof of payment if requested by the Port. If any payment required by Title 50 or Title 51 is not made when due, the Port may retain such payments from any money due the Contractor and pay the same into the appropriate fund.

**22. RECORD DRAWINGS**

Upon completion of work and before requesting final inspection, provide the Engineer with record drawings and all operation and maintenance information showing actual dimensions and locations along with changes made during construction.

**23. COMPLETION OF WORK**

The Contractor shall notify the Engineer when it considers the work complete. If, upon inspection, the Port determines that all work has been completed in accordance with the terms of this Contract, the Port will accept such work, which acceptance shall be evidenced by a written letter of acceptance to the Contractor. The Port shall not be barred by acceptance from requiring the Contractor to remove, replace, repair, or dispose of unauthorized or defective work, material, or equipment or from recovering damages for the same.

**24. GUARANTEE**

**24. A. REPAIRS**

For a period of 365 days after the date of acceptance of the work, the Contractor, upon notification from the Port, shall promptly schedule and make all repairs to the Contractor-furnished materials, equipment and/or workmanship which may be necessary to make such materials, equipment and/or workmanship equal to that specified in the Contract.

**24. B. WARRANTY**

The Contractor shall furnish to the Port any guarantee or warranty furnished as a normal trade practice in connection with the purchase by the Contractor of any equipment or materials; provided, such guarantee or warranty shall be in addition to those specific requirements for particular equipment or work items indicated in the specifications.

**25. NON-DISCRIMINATION**

The Contractor shall fully comply with all federal, state, and local laws, regulations, and ordinances pertaining to non-discrimination and equal employment.

**26. TERMINATION OF CONTRACT**

The Port may terminate the Contract upon written notice to the Contractor whenever the Contractor is deemed to be in default or violates the provisions of the Contract by failing, neglecting, or refusing to proceed according to and in full compliance with the Contract Documents. Upon termination the Port may exclude the Contractor from the site and shall take possession of the work and all of the materials and equipment for which the Port has paid any amount on to the Contractor. The Contractor shall be entitled to payment for portions of the work satisfactorily completed prior to termination, less costs incurred by the Port as a result of the Contractor's default.

The Port shall have the right to terminate this Contract for any reason whatsoever by notice in writing to the Contractor. Upon receipt of such notice, the Contractor shall immediately discontinue work unless the notice specifies otherwise. Upon such termination, the Contractor shall be paid in ordinary course of business for all work satisfactorily completed to the date of termination.

**27. INDEMNIFICATION**

The Contractor shall defend, indemnify and hold the Port, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the Port.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the Port, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

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

**28. ASSIGNMENT OF CONTRACT**

The Contractor shall not assign this contract, or subcontract the work, in whole or in part, except with the prior written consent of the Port. The Contractor shall require each subcontractor to comply with the requirements of these Contract Documents. Subcontractors will not be recognized as having a direct relationship with the Port, nor are subcontractors intended or incidental third-party beneficiaries to this Contract.