



**PORT OF TACOMA**  
**Request for Proposal**  
**No. 069962**

**Beverage/Coffee Service**

Issued by  
Port of Tacoma  
One Sitcum Plaza  
P.O. Box 1837  
Tacoma, WA 98401-1837

RFP INFORMATION	
Contact:	Sharon Rothwell
Email Addresses:	<a href="mailto:procurement@portoftacoma.com">procurement@portoftacoma.com</a>
<b>Pre-Proposal and Site Visit</b>	<b>Location :</b> Fabulich Center 3600 Port of Tacoma Road, Tacoma WA <b>Time :</b> 1:30pm (PST) Room 103 <b>RSVP is required 36 hours in advance of Pre-Proposal Site Visit. You will need to provide the name of the person attending. Due to security requirements, all attendees must show picture identification prior to obtaining their visitor badge.</b>
Phone:	253-592-6758
Deadline for Questions	AUGUST 5, 2014
Submittal Date	<b>AUGUST 11, 2014 @ 4:00 PM (PST)</b>

PLEASE SUBMIT ALL CORRESPONDENCE AND PROPOSALS  
VIA E-MAIL DIRECTLY TO THE PROCUREMENT CONTACT LISTED ABOVE AND INCLUDE  
'BEVERAGE/COFFEE SERVICES' IN THE SUBJECT LINE

**PORT OF TACOMA**  
**Request for Proposal # 069962**  
**Beverage/Coffee Services**

**1. BACKGROUND AND PURPOSE**

The Port of Tacoma is a major center for container cargo, bulk, break-bulk, auto, and heavy-lift cargo. The Port of Tacoma is a 24 hour a day, 7 day a week operation. To learn more about the Port of Tacoma, visit [www.portoftacoma.com](http://www.portoftacoma.com).

The purpose of this solicitation is to obtain Beverage/Coffee Services to support multiple port facilities to include terminal locations. This will replace an expiring contract. The current service contract has an annual spend of approximately \$28,000 per year.

**Single Award**

With this solicitation, the Port intends to award one contract and does not anticipate multiple awards. Regardless, the Port reserves the right to make multiple or partial awards.

**Contract Term**

The resulting Contract will be for two (2) years with the option to extend for five (5) additional one (1) year periods.

**Port Holidays**

New Year's Day	Veterans Day
Martin Luther King Day	Thanksgiving Day
Presidents' Day	Day after Thanksgiving
Memorial Day	Christmas Eve
Independence Day	Christmas Day
Labor Day	

**2. SOLICITATION OBJECTIVES**

The Port expects to achieve the following outcomes through a new contract.

- Obtain a skilled Service provider with a strong record and experience, so that the Port is assured to get dependable, responsive proven and expert beverage services;
- Obtain beverage services contract which will both satisfy the business needs of the Port and deliver best value;
- Obtain quality beverages;
- Product Stock levels commensurate with consumption so there is no discarding of out of date stock;
- Assist the Port in meeting environmental goals; and
- Accurate and timely invoicing.

### **3. MINIMUM QUALIFICATIONS**

The following are minimum qualifications and licensing requirements that the Contractor must meet in order to be eligible to submit a bid. Responses must clearly show compliance to these minimum qualifications. The Port reserves the right, but is not obligated, to obtain clarification from the Contractor if compliance to the minimum qualifications is not clear in the Contractor's response. The Port without further consideration shall reject those that are not clearly responsive to these minimum qualifications:

- Contractor shall have a minimum of three (3) years' experience in providing beverage/coffee services in similar office and industrial facilities

### **4. LICENSING and FEES**

This solicitation and resultant contract may require additional licensing as listed below. The Contractor needs to meet all licensing requirements that apply to their business immediately after contract award or the Port may reject the Contractor.

Companies must license, report and pay revenue taxes for the Washington State business License (UBI#), if the required by the laws of the State of Washington. The Contractor should carefully consider those costs prior to submitting their offer, as the Port will not separately pay or reimburse those costs to the Contractor.

#### **State Business Licensing**

You must have a State of Washington business license (a State "Unified Business Identifier" known as UBI #) prior to signing the contract. If the State of Washington has exempted your business from State licensing (for example, some foreign companies are exempt and in some cases, the State waives licensing because the company does not have a physical presence in the State), then submit proof of that exemption to the Port. The cost for any licenses, permits, and associated tax payments is the responsibility of the Contractor and not charged separately to the Port. Instructions and applications are at <http://www.dol.wa.gov/business/>.

#### **Fees/Licenses**

The Contractor shall pay for and maintain any licenses, fees, assessments, permits charges, etc., which are necessary for Contract performance. It is the Contractor's sole responsibility to maintain licenses and 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 changes or regulations during the entire term of this Contract.

#### **Constraints**

Contractor personnel must have; Transportation Worker Identification Credential (TWIC). The requested services may require the awarded Contractor to work within a secured/restricted TWIC regulated terminal. TWIC is a credentialing program managed by the Department of Homeland Security (DHS), through the United States Coast Guard and the Transportation Security Administration. All credentialed merchant mariners and individuals who will need unescorted access to secure areas of a maritime regulated facility or vessel must obtain a TWIC. For more information on TWIC, visit [www.tsa.gov/twic](http://www.tsa.gov/twic).

The awarded Contractor shall have a minimum of one TWIC compliant employee trained as an escort for every five workers not possessing TWIC cards working on a secured or restricted site. Each escort will be required to receive Terminal Operator provided escort training. All associated fees for obtaining a TWIC card are to be borne by the Contractor.

The Contractor shall comply with all special security, safety, and privacy requirements related to work at the Port of Tacoma.

## **5. STATEMENT OF WORK**

### **A. Scope of Work**

To provide beverage/coffee services for approximately 237 people, to include all coffee, tea, water, coco, etc. and supplies, labor, and equipment. Equipment is to be owned, and maintained by the Contractor.

Contractor is to ensure product levels are such that it does not result in an overstock level with expired product. If a product reaches an expiration date the product is to be replaced at no additional cost to the Port.

Beverage products offered should be the same as or equal to the current beverages in use. Equipment offered should be equal to or better than current equipment.

1) Product to be delivered to: 4 locations consisting of:

- ❖ Administration Building- 1 Sitcum Plaza, Tacoma, WA;
- ❖ Maintenance Facility- 802 Port Center Road, Tacoma, WA;
- ❖ Fabulich Center- 3600 Port of Tacoma, Road, Tacoma, WA; and
  - 2 delivery locations – Commission and Security suites (1<sup>st</sup> Floor)
- ❖ APM- Building 975- APM Guard House- adjacent to the Port Administration Building parking lot.

2) Equipment currently in use consists of:

Administration Building:

- ❖ Avalon Gourmet (1 ea.) Note: this machine is a one cup at a time brewer, with 3 choices of whole beans and the following drink selections:
  - French Vanilla
  - Half Caf
  - Vanilla Mocha
  - Vanilla Coffee
  - Vanilla Mocha Coffee
  - Hot Chocolate
  - Mochaccino
  - Energy Shot Coffee
  - Hot Shot Blend Coffee
  - Long Espresso
  - Café Latte
  - Cappuccino
  - Hot Water
- ❖ Gourmet 1000 brewer (1 ea.) w/ thermo pot

- ❖ Curtis brewer with Air pots (1 ea.)
- ❖ Aqua Mark LX (2ea.)- bottle less & filtered hot and cold water dispenser
- Maintenance
  - ❖ Avalon Gourmet (1ea)
  - ❖ Curtis brewer with Air Pots (1 ea.)
- Fabulich Center
  - ❖ 1-Curtis brewer with Air Pot (1 ea.)- Commission
  - ❖ 1-Curtis brewer with Air Pots (3ea)- Security
- APM
  - ❖ Owner's Coffee Mate brewer
- East Blair (EB-1)
  - ❖ Owner's Coffee Mate brewer

3) Products Currently in use along with order quantities by location are at Attachment F.

### **Right to Cancel**

The Port reserves the right to cancel or reissue all or part of this Solicitation at any time, as allowed by law, without obligation or liability.

### **Expansion Clause**

Expansion of scope of this contract may occur when in the opinion of the Port Contracts and Purchasing Department the circumstances meet the following criteria:

- (a) It could not be separately bid;
- (b) The change is for a reasonable purpose;
- (c) The change was not reasonably known to either the Port or Contractors at time of bid or else was mentioned as a possibility in the bid (such as a change in environmental regulation or other law);
- (d) The change is not significant enough to reasonably regard it as an independent body of work;
- (e) The change could not have attracted a different field of competition; and
- (f) And the change does not vary the essential identity or main purpose of the contract.

Agreement to such a contract modification must be mutual. Only the Port Contracts and Purchasing department has the authority make such agreements on behalf of the Port. No other Port department has the authority to make such written notices. Written formal notices will document all expansions.

The Port Purchasing shall make this determination, and may make exceptions for immaterial changes, emergency or sole source conditions, or for other situations as required in the opinion of the Port purchasing manager.

Note that certain changes are not considered an expansion of scope, including an increase in quantities ordered, the exercise of options and alternates in the bid, or ordering of work originally identified within the originating solicitation. Approval of such changes will be by written order issued by the Procurement Coordinator.

### **Trial Period and Right to Award to Next Highest Scoring Contractor**

A ninety-day (90) trial period shall apply to contract(s) awarded as a result of this solicitation. During the trial period, the Contractor(s) must perform in accordance with all terms and conditions of the contract. Failure to perform during this trial period may result in the immediate cancellation of the contract. In the event of dispute or discrepancy as to the acceptability of product or service, the Port's decision shall prevail. The Port agrees to pay only for authorized work up to the date of termination. If termination of the contract occurs within the trial period, the Port reserves the option to award the contract to the next highest responsive Contractor by

mutual agreement with such Contractor. Any new award will be for the remainder of the contract and will be subject to this trial period.

### **Site Security and Safety**

While on Port's premises, Contractor, its agents, employees, or Subcontractors shall conform with all physical, fire, safety or other security regulations. This includes the Failure to comply with any part of facility security or confidentiality is a violation of the contract specifications, terms, and conditions and may result in termination of the Contract. Unless the Port specifies otherwise in the Contract, the following shall apply:

### **Safety Requirements**

**Personnel:** All personnel working in the terminal areas are required to wear a safety vest and carry a cell phone.

**Traffic:** The maximum speed limit on Port owned roads is 25 MPH and 10 MPH in terminal areas. Compliance with posted speed limits and traffic control devices (signage, speed bumps, etc.) will be strictly enforced. Contractors are to proceed on Port property so as not to interrupt normal Port operations. This will, at times, mean yielding the right of way to cargo handling equipment and to any vehicle approaching from the opposite direction which is within a narrow roadway or so close thereto as to constitute a hazard. Contractor vehicles accessing terminal areas will be equipped with and use top mounted caution lights.

**Intermodal Rail Yards:** Generally, access to intermodal rail yards is restricted to container handling operations. Yards are not to be accessed without prior authorization from the respective Operations departments. Washington United Terminal (WUT) intermodal yard, Pierce County Terminal (PCT)' intermodal yard and Port of Tacoma (POT) North intermodal yard utilize a red and blue light system that indicates locomotive and rail car activity within the affected rail yard.

- **Security Plans**

Contractor is to adhere to the Port security plans. Before performance of contract work, the Contractor must contact the Port contract administrator and receive a security briefing and instructions. Be advised that the Port may on occasion utilize video surveillance to monitor all activities within the facility. Contractors shall provide up-to-date employee information to include name, address, and driver's license prior to receiving facility access.

- **Identification**

All Work Contractor employees must have visible company identification while performing work on Port premises. Any Contractor employee needing access to the facility may be required to have identification that is equal to that required for employment at the site/facility. Background checks or clearances may also be required, depending on the site.

### **Invoicing**

Invoices are to detail the services performed and products provided each month and must identify the Contract number or Purchase Order number on the invoice. Submit invoices electronically to [cpinvoices@portoftacoma.com](mailto:cpinvoices@portoftacoma.com) or by mail to Port of Tacoma, Accounts Payable P.O. Box 1837, Tacoma WA 98401-1837.

### **Price Protection**

For the term of the Contract, pricing for all Services will be no greater than the prices quoted in the Contractor's Bid. If, however, during any term of the Contract lower prices and rates

become effective for like quantities of Services under similar terms and conditions, through reduction in Contractor's list prices, promotional discounts, or other circumstances, Purchasers must be given immediate benefit of such lower prices and rates.

### **No Additional Charges**

Unless otherwise specified in the Solicitation, no additional charges by the Contractor will be allowed including, but not limited to: handling charges such as packing, wrapping, bags, containers, reels; or the processing fees associated with the use of credit cards. Notwithstanding the foregoing, in the event that market conditions, laws, regulations or other unforeseen factors dictate, at the Contract Administrators sole discretion, additional charges may be allowed.

### **Price Adjustments**

At least 45 calendar days before the end of the current term of this Contract, Contractor may propose rate increases by written notice to the Purchasing Contract Administrator. The Contracts and Purchasing Contract Administrator may take Price adjustments into consideration, when determining whether or not to extend this Contract. No consideration will be given to price increase requests without supporting documentation sufficient to justify the requested increase. The Contractor shall provide a detailed breakdown of their costs upon request. Price increases will be based on either a [Consumer Price Index](#) (CPI) or [Producer Price Index](#) (PPI) index. Consideration of the Contractor's requests for adjustments in pricing will be at the sole discretion of the Contracts & Purchasing office, only after expiration of the firm and fixed price period, and then on a pass through basis only that does not produce a higher profit margin for Contractor than that established by the original contract pricing.

All price increases must have supporting documentation sufficient to justify the requested increase. Base documentation on published indices such as the Consumer Price Index and the Producer Price Index and/or the result of increases at the manufacturer's level, incurred after contract commencement date. The grant of any price adjustment will be at the sole discretion of Purchasing and, if granted, shall not produce a higher profit margin for the Contractor than that established by the original contract pricing. The Contractor will receive written approval from the Contract Administrator of any price adjustment and such price adjustment shall be set forth in a written amendment to the contract. Price adjustments shall remain unchanged for at least one year thereafter.

The Port will not be bound by invoice prices that are higher than those in the contract, unless Purchasing has accepted the higher price and the amended the contract. The Contractor will correct any incorrect invoice pricing.

### **Subcontracts and Assignment**

Contractor shall not Subcontract, assign, or otherwise transfer any aspect of its obligations under this Contract without the prior written consent of the Contract Administrator. Contractor shall provide a minimum of 30 calendar days advance notification of intent to Subcontract, assign, or otherwise transfer any aspect of its obligations under this Contract. Violation of this condition may be a material breach establishing grounds for Contract termination. The Contractor shall be responsible to ensure that all requirements of the Contract shall flow down to any and all Subcontractors. In no event shall the existence of a Subcontract operate to release or reduce the liability of Contractor to the Port of Tacoma for any breach in the performance of the Contractor's duties.

### **Contractor Authority and Infringement**

Contractor has authorization to sell under this Contract, only those services stated herein and allowed for by the provisions of this Contract. Contractor shall not represent to any Purchasers that they have the Contract authority to sell any other materials, supplies, services, and/or equipment. Further, Contractor may not intentionally infringe on other established Port Contracts.

## **6. PAYMENT**

### **Prohibition on Advance Payments**

The Port does not accept requests for early payment, down payment or partial payment, unless the Bid or Proposal Submittal specifically allows such pre-payment proposals or alternates within the bid process.

### **Taxes on Invoice**

Contractor shall calculate and enter the appropriate state and local sales tax on all invoices. Tax is to be computed on new items after deduction of any trade-in in accordance with [Chapter 458- 296-127-02620-247 WAC](#).

### **Identification**

All invoices, correspondence, and other written materials associated with this Contract shall be identified by the Contract number or the applicable Purchaser's order number.

## **7. INSTRUCTIONS, INFORMATION, AND COMMUNICATION**

This chapter details Port procedures for directing the RFP process. The Port reserves the right in its sole discretion to reject the proposal of any Contractor that fails to comply with any procedure in this chapter.

### **Communications with the Port**

Direct all Contractor communications concerning this solicitation to the Procurement Coordinator. The Procurement Coordinator for this solicitation is:

Sharon Rothwell  
(253) 592-6758  
[procurement@portoftacoma.com](mailto:procurement@portoftacoma.com)

Unless authorized by the Procurement Coordinator, no other Port official or Port employee is empowered to speak for the Port with respect to this acquisition. Any Contractor seeking to obtain information, clarification, or interpretations from any other Port official or Port employee (other than the Contract Coordinator) is advised that such material be used at the Contractor's own risk. The Port will not be bound by any such information, clarification, or interpretation.

Following the Proposal submittal deadline, Contractors shall continue to direct communications to only the Port Procurement Coordinator. The Procurement Coordinator will send out information to responding companies as decisions are concluded.



Contact by a Contractor regarding this acquisition with a Port employee other than the Procurement Coordinator or an individual specifically approved by the Procurement Coordinator in writing, may be grounds for rejection of the Contractor's proposal.

### **Pre-Proposal Site Visit Conference**

The Port shall conduct an **optional pre-proposal** conference on the time and date provided in page 1, at 1 Sitcum Plaza, Tacoma WA 98421. Due to security requirements, **Contractors desiring to attend must RSVP to the RFP Coordinator with the name of the representative attending 36 hours prior to the site visit. All attendees must have a picture ID in order to enter the terminal areas.** The purpose of this meeting is to ensure the Contractor has a complete understanding of the scope of work and to avoid any delays or performance issues that could have otherwise been prevented by attending the Site Visit meeting. This is an opportunity for Contractors to raise questions, concerns regarding specifications, terms, conditions, and any requirements of this solicitation. Failure to raise concerns over any issues at this opportunity will be a consideration in any protest filed regarding such items that were known as of this pre-proposal conference.

All oral communications will be considered unofficial and non-binding on behalf of the Port, any clarification given or changes made as a result of the site visit must be reflected in an addendum.

### **Questions**

Contractors are encouraged to submit any questions they may have regarding this procurement. Getting answers during the procurement process allows Contractors to make a more informed proposal. Submit questions to the Procurement Coordinator no later than the date and time on page 1, in order to allow sufficient time for the Procurement Coordinator to consider the question before the bids or proposals are due. The Port prefers such questions to be through e-mail directed to the Procurement Coordinator e-mail address. Failure to request clarification of any inadequacy, omission, or conflict will not relieve the Contractor of any responsibilities under this solicitation or any subsequent contract. It is the responsibility of the interested Contractor to assure that they received responses to Questions if any are issued.

### **Changes to the RFP/Addenda**

A change may be made by the Port if, in the sole judgment of the Port, the change will not compromise the Port's objectives in this solicitation. A change to this RFP will be made by issuing a formal written addendum. The Addendum shall become part of this RFP and included as part of the Contract. It is the responsibility of the interested Contractor to assure that they have received Addenda if any are issued.

### **Receiving Addenda and/or Question and Answers**

The Procurement Coordinator will make efforts to provide you notice, either through the RSS Feed or direction e-mail courtesy announcements that changes or addendums have been posted on the Port website. Notwithstanding efforts by the Port to provide such notice to known Contractors, it remains the obligation and responsibility of the Contractor to learn of any addendums, responses, or notices issued by the Port. Such efforts by the Port to provide notice or to make it available on the website do not relieve the Contractor from the sole obligation for learning of such material.

Note, that some third-party services may independently post Port of Tacoma bids on their websites. The Port does not, however, guarantee that such services have accurately provided Contractors with all the information published by the Port, particularly Addendums or changes to bid date/time.

All Bids sent to the Port shall be considered compliant to all Addendums, with or without specific confirmation from the Bidder that the Addendum was received and incorporated. However, the Procurement Coordinator can reject the Bid if it does not reasonably appear to have incorporated the Addendum. The Procurement Coordinator could decide that the Bidder did incorporate the Addendum information, or could determine that the Bidder failed to incorporate the Addendum changes. If the changes are material, the Procurement Coordinator must reject the Offer, or the Procurement Coordinator may determine that the Bidder failed to incorporate the Addendum changes, but that the changes were not material and therefore the Bid may continue to be accepted by the Procurement Coordinator.

### **RFP Submittal Requirements**

Contractors will submit:

- Attachment A, Minimum Qualifications;
- Attachment B, Offer sheet; and
- Attachment C, Proposal Package;

This section details Port procedures for submittal.

1. Number all pages sequentially. The format should follow closely that requested in this RFP.
2. The Port may designate page limits for certain sections of the response. Any pages that exceed the page limit will be excised from the document for purposes of evaluation.
3. Contractors have full responsibility to ensure the response arrives at the Port within the deadline.
4. The response should be in an 8 1/2" x 11" format. Non-recyclable materials are strongly discouraged. Contractors are encouraged to "double side." If there are page limitations, one side of a printed page is considered one page.
5. Ensure that your cost proposal is either placed in a separate envelope or if submitting electronically is a separate attachment to your submittal e-mail. The cost proposal is to be labeled as such and include the name of the proposer.

### **Submittal of Proposal**

#### **Electronic:**

E-mail electronic submittals to the [procurement@portoftacoma.com](mailto:procurement@portoftacoma.com) , on or before the deadline RFP Schedule, on the cover page or as otherwise amended). Any risks associated are borne by the Bidder. The Port e-mail system will generally allow documents up to, but no larger than, 10 Megabytes.

**Hard Copy Submittal:**

Submittal Requirements: One original (1), five (5) copies of the response must be received no later than the date and time specified on the Procurement Schedule or as otherwise amended.

<b>Physical Address (courier)</b>	<b>Mailing Address (For US Post Office mail)</b>
Purchasing and Contracting Port of Tacoma 1 Sitcum Plaza Tacoma, WA 98421	Purchasing and Contracting Port of Tacoma P.O. Box 1837 Tacoma, Washington, 98401-1837

1. Hard-copy responses should be in a sealed box or envelope clearly marked and addressed with the Procurement Coordinator's name, RFP title and number. If packages are not clearly marked, the Contractor has all risks of the package being misplaced and not properly delivered.
2. The Submittal may be hand-delivered or must otherwise be received by the Procurement Coordinator at the address provided, by the submittal deadline. Please note that delivery errors will result without careful attention to the proper address.
3. Submittals and their packaging (boxes or envelopes) should be clearly marked with the name and address of the Contractor, solicitation number and procurement coordinator.
4. Please do not use any plastic or vinyl binders or folders. The Port prefers simple, stapled paper copies. If a binder or folder is essential due to the size of your submission, they are to be fully 100% recycled stock.
5. Please double-side your submittal.

**No RFP Opening – No Reading of Prices**

The Port does not conduct a bid opening for RFP responses however; the Port will post a list of those submitting proposals.

**Offer Form**

Contractor shall specify response in the format and on any forms provided, indicating unit prices if appropriate, and attaching additional pages if needed. In the case of difference between the unit pricing and the extended price, the Port shall use the unit pricing. The Port may correct the extended price accordingly. Contractor shall quote prices with freight prepaid and allowed. Contractor shall quote prices FOB Destination. All prices shall be in US Dollars.

**Contractor Responsibility to Provide Full Response**

It is the Contractor's responsibility to provide a full and complete written response, which does not require interpretation or clarification by the Procurement Coordinator. The Contractor is to provide all requested materials, forms, and information. The Contractor is responsible to ensure the proper submission of materials and that they accurately reflect the Contractor's specifications or proposal. During scoring and evaluation (prior to interviews if any), the Port will rely upon the submitted materials and shall not accept materials from the Contractor after the RFP deadline. This however this does not limit the right of the Port to consider additional information (such as references that are not provided by the Contractor but are known to the

Port, or past experience by the Port in assessing responsibility), or to seek clarifications as needed by the Port.

### **Partial and Multiple Awards**

Unless stated to the contrary in the Scope of Work, the Port reserves the right to name a partial and/or multiple awards, in the best interest of the Port. Contractors are to prepare proposals given the Port's right to a partial or multiple awards. For Proposals, the Port may negotiate with the successful Contractor, to finalize the work and specifications consistent with the objectives of the RFP.

### **Interlocal Purchasing Agreements**

This is for information only and is not be used to evaluate candidates. [RCW 39.34](#) allows cooperative purchasing between public agencies, and other political subdivisions. The seller agrees to provide service(s) at the offer prices, terms, and conditions, to other eligible governmental agencies that have such agreements with the Port. The Port of Tacoma accepts no responsibility for the payment of the purchase price by other governmental agencies. Should the Contractor require additional pricing for such purchases, the Contractor is to name such additional pricing upon offer to the Port.

### **Contract Terms and Conditions**

Contractors are to price and submit proposals with the understanding that they are required to comply with all specifications, requirements, Terms, and Conditions. Contractors are responsible to review all specifications, requirements, Terms and Conditions, insurance requirements, and other requirements herein. Submittal of a proposal is agreement to comply without exception, unless modified by the Port. The Port has the right to negotiate changes to submitted proposals and to change the Port's otherwise mandatory terms and conditions during negotiations, or by providing notice to the Contractor during the contract. See sample contract at Attachment E .

### **Negotiations**

Nothing herein prohibits the Port from opening discussions with the highest ranked apparent successful Contractor, to negotiate modifications to either the proposal or the contract terms and conditions, in order to align the proposal or the contract to best meet Port needs within the scope sought by the RFP.

### **Effective Dates of Offer**

Offer prices and costs in Contractor's submittal must remain valid until Port completes award. Should any Contractor object to this condition, the Contractor must provide objection through a question and/or complaint to the Procurement Coordinator prior to the proposal due date.

### **Prompt Payment Discount**

On the Offer form or in submittal, the Contractor may state a prompt payment discount term, if the Contractor offers one to the Port. A prompt payment discount term of ten or more days will be considered in evaluation.

### **Cost of Preparing Proposals**

The Port will not be liable for any costs incurred by the Contractor in the preparation and presentation of proposals submitted in response to this RFP including, but not limited to, costs incurred in connection with the Contractor's participation in demonstrations and the pre-proposal conference.

### **Contractor Responsibility**

It is the Contractor responsibility to examine all specifications and conditions thoroughly, and comply fully with specifications and all attached terms and conditions. Contractors must comply with all Federal, State, and City laws, ordinances and rules, and meet any and all registration requirements where required for Contractors as set forth in the Washington Revised Statutes.

### **Readability**

Contractors are advised that the Port's ability to evaluate proposals is dependent in part on the Contractor's ability and willingness to submit proposals, which are well ordered, detailed, comprehensive, and readable. Clarity of language and adequate, accessible documentation is essential.

### **Changes or Corrections in Proposal Submittal**

Prior to the submittal closing date and time, a Contractor may make changes to its proposal, if the change is initialed and dated by the Contractor. No change shall be allowed after the closing date and time. Note that you cannot change, mark-up, or cross-out any condition; format, provision, or term that appears on the Port has published Offer Form. If you need to change any of your own prices or answers that you write on the Offer Form must be made in pen, initialed, and be clear in intent. Do not use whiteout.

### **Errors in Proposals**

Contractors are responsible for errors and omissions in their proposals. No such error or omission shall diminish the Contractor's obligations to the Port.

### **Minority & Women's Business Enterprises (MWBE)**

The Port of Tacoma encourages participation in all of its contracts by Minority & Women's Business Enterprises (MWBE) firms either self-identified or certified by the Office of Minority & Women's Business Enterprises (OMWBE). While the Port does not give preferential treatment, it does seek equitable representation from the minority and women's business community.

Participation may be either on a direct basis in response to this Solicitation or as a Subcontractor to a Contractor. However, unless required by Federal statutes, regulations, grants, or contract terms referenced in the original Solicitation, no preference will be included in the evaluation of Bids, no minimum level of MWBE participation shall be required as a condition for receiving an award, and Bids will not be evaluated, rejected, or considered Non-Responsive on that basis.

Any affirmative action requirements set forth in Federal regulations or statutes included or referenced in the original Solicitation will apply. Contractors may contact the Office of Minority & Women's Business Enterprises (OMWBE) at <http://www.omwbe.wa.gov/index.shtml> to obtain information on certified firms for potential sub-contracting arrangements. Nothing in this section is intended to prevent or discourage Contractors from inviting participation from non-MWBE firms, MWBE firms, as well as Small and Emerging Businesses.

### **Withdrawal of Proposal**

A submittal may be withdrawn by written request of the submitter, prior to the closing date and time. After the closing date and time, the submittal may be withdrawn only with permission by the Port.

### **Rejection of Proposals and Rights of Award**

The Port reserves the right to reject any or all proposals at any time with no penalty. The Port also has the right to waive immaterial defects and minor irregularities in any submitted proposal.

### **Incorporation of RFP and Proposal in Contract**

This RFP and the Contractor's response, including all promises, warranties, commitments, and representations made in the successful proposal (as accepted by the Port), shall be binding and incorporated by reference in the Port's contract with the Contractor.

### **Insurance Requirements**

1. The Contractor shall procure and maintain during the life of this contract such insurance. It shall protect it from claims or damages for bodily injury, including death resulting therefrom as well as from claims for property damage, which may arise from operations under this contract, whether such operations be by itself, its agents, or by anyone directly or indirectly employed by either of them.
2. Certificates of all insurance shall be filed with the Port of Tacoma naming the Port of Tacoma as additional insured, and shall provide:
  - a. That the policies shall not be canceled or the amount thereof reduced, without thirty- days (30) prior written notice to the Port of Tacoma, and
  - b. That thirty-day (30) prior written notice shall also be given if the policy is not to be renewed at the scheduled expiration date.
3. The amount of such insurance shall not be less than:
  - a. Commercial General Liability Insurance, on an occurrence basis, including contractual liability and completed operations, in an amount of not less than One Million Dollars (\$1,000,000.00) for bodily injury, including sickness, disease, and death at any time resulting therefrom, sustained by any person and for property damage;
  - b. Business Auto Insurance in an amount of not less than One Million Dollars (\$1,000,000.00) for damages because of bodily injury or property damage;
4. The Contractor shall procure and maintain insurance in accordance with the requirements of all applicable State and Federal Worker's Compensation Laws. Contractor shall furnish to the Port of Tacoma evidence of such insurance, including Employers Contingent Liability (Stop Gap) Insurance.

### **Proprietary or Confidential Information**

To the extent consistent with [Chapter 42.56 RCW](#), the Public Disclosure Act, Purchasing shall maintain the confidentiality of Contractor's information marked confidential or proprietary. If a request is made to view Contractor's proprietary information, Purchasing will notify the Contractor of the request and of the date that the records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, Purchasing will release the requested information on the date specified.

The Port's sole responsibility shall be limited to maintaining the above data in a secure area and to notify Contractor of any request(s) for disclosure for so long as Purchasing retains Contractor's information in the Purchasing records. Failure to so label such materials or failure to timely respond after notice of request for public disclosure has been given shall be deemed a waiver by Contractor of any claim that such materials are exempt from disclosure.

### **Requesting Disclosure of Public Records**

The Port asks Contractors/Sub-Contractors and their companies to refrain from requesting public disclosure of proposal records until an intention to award is announced. This measure is intended to shelter the solicitation process, particularly during the evaluation and selection process or in the event of a cancellation or re-solicitation. With this preference stated, the Port

will continue to be responsive to all requests for disclosure of public records as required by State Law.

### **Non-Endorsement and Publicity**

Neither Purchasing nor the Purchasers are endorsing the Contractor's Products or Services, nor suggesting that they are the best or only solution to their needs. Contractor agrees to make no reference to Purchasing, any Purchaser, or the Port of Tacoma in any literature, promotional material, brochures, sales presentation, or the like, regardless of method of distribution, without the prior review and express written consent of the Purchasing Manager.

## **8. EVALUATION PROCESS**

**Step #1:** Initial Screening: Purchasing shall first review submittals to for initial decisions on responsiveness and responsibility. Those found responsive and responsible based on this initial review shall proceed to Step 2

**Step #2:** Proposal Evaluation: The Port will evaluate proposals using the criteria specified below. Responses will be evaluated and ranked or scored.

**Specifications:** The Port will evaluate each Contractor's compliance with the specifications and other bid requirements set forth in the RFP.

**Discounts for prompt payment** shall be reviewed for acceptance and shall be calculated into the Contractor's response for purposes of evaluation.

**Pricing:** Items on price sheets shall then be calculated for purposes of award. Item pricing will be multiplied by the number of units required for an item total. Item totals will be totaled for all items for a tabulated total. In the event of an error in math, unit pricing will be considered the correct price and will be used. If any cost item is missing from a bidder Offer Form, the Port reserves the right to reject that Bid or to calculate and compare bids without that cost item considered.

**Formula:** Lowest total Bid evaluation price divided by a higher total Bid evaluation price (Bid that is being evaluated) multiplied by number of available points equals the cost factor evaluation points. Points will be rounded to two places to the right of the decimal point using standard rounding method.

The Contractor with the lowest Total Bid Evaluation Price will receive the maximum allotted points for pricing. All other Contractors pricing points will be proportionate to the most favorable pricing. The example calculation below shows that a Contractor whose bid price is twice as much as the lowest proposed price would receive only half of the maximum available points.

$$\begin{array}{ccccccc} \text{Lowest Bidder} & & \div & \text{Other Bidder's} & & \times & \text{Maximum} \\ \text{Total Bid Evaluation Price} & & & \text{Total Bid Evaluation Price} & & & \text{Available Points} \\ & & & & & & = \text{Awarded} \\ & & & & & & \text{Price Points} \\ \$100 & \div & \$200 & \times & 70 \text{ points} & = & 35 \text{ points} \end{array}$$

Proposals should present information in a straightforward and concise manner, while ensuring complete and detailed descriptions of the Firm's/Team's abilities to meet the requirement of this RFP. Emphasis will be on completeness of content.

Proposals are to address, and will be evaluated upon, the following criteria:

Evaluation Criteria:		Points
1	Price	35
2	Experience and Past Performance	20
3	Technical Proposal <ul style="list-style-type: none"> <li>▪ Breadth of Product line and Purposed Equipment</li> <li>▪ Customer Service, Maintenance &amp; Machine Servicing, and quality control</li> <li>▪ Stocking Strategy and Purposed Account Transition</li> <li>▪ Risk</li> <li>▪ Best Value</li> </ul>	35
4	References	10
5	RFP Evaluation Total	100
6	Interview and Taste Test Total (Optional)	100

**Step #3:** Interview and Taste Test: The Port may conduct an interview and taste test with the top ranked firms that are considered most competitive. If an interview and taste test is conducted, rankings of firms and award configurations shall be determined by the Port, using the results of the interview and taste test.

The Contractor is to submit the list of names and company affiliations with the Procurement Coordinator before the interview and taste test. Contractors invited to the Interview and taste test are to may bring up to three (3) people total. The Contractor shall not, bring an individual who does not work for the Contractor or for the Contractor's Subcontractor on this project, without specific advance authorization by the Procurement Coordinator.

**Step #4:** Selection: The Port shall select the highest ranked Contractor for award.

**Step #5:** Contract Negotiations: The Port may negotiate elements of the proposal as required to best meet the needs of the Port, with the apparent successful Contractor. The Port may negotiate any aspect of the proposal or the solicitation.

Repeat of Evaluation Steps: If no Contractor is selected at the conclusion of all the steps, the Port may return to any step in the process to repeat the evaluation with those proposals that were active at that step in the process. In such event, the Port shall then sequentially step through all remaining steps as if conducting a new evaluation process. The Port reserves the right to terminate the process if it decides no proposals meet its requirements.

Points of Clarification: Throughout the evaluation process, the Port reserves the right to seek clarifications from any Contractor.

Tie Scores: In the event that the top two Contractors receive the same total score, the Port the Procurement Coordinator will use a coin toss to determine the winner. Those on the evaluation team shall serve as witness to the event.

## 9. AWARD AND CONTRACT EXECUTION INSTRUCTIONS

The Procurement Coordinator intends to provide written notice of the intention to award in a timely manner and to all Contractors responding to the Solicitation.



### **Protests and Complaints**

Protests and/or complaints are to be filed with the Director of Contracts and Purchasing. The Port has rules to govern the rights and obligations of interested parties that desire to submit a complaint or protest to this RFP process. They are:

- **For specification protests**, the protester must state exact location of the challenged portion or clause, unless the challenge concerns an omission, an explanation of why any provision should be struck, added, or altered, and contain suggested corrections. A specification protest must be filed within five (5) working days of solicitation release;
- **For non-responsive & not responsible determinations**, the aggrieved Contractor must specifically state why the determination is in error, identify where its submittal where it believes it is responsive/responsible, and why it believes, the Port was in error when it made the non-responsive/ not responsible determination. A non-responsive/ not responsible protest must be filed within two (2) working days of notification: and
- **For protests regarding award determinations**, the aggrieved Contractor(s) protest must set forth in specific terms the reasons why the Port's decision is thought to be erroneous. An award determination protest must be filed within two (2) working days of notification.

Interested parties have the obligation to be aware of and understand these rules, and to seek clarification as necessary from the Port. Note that there are time limits on protests and Contractors have final responsibility to learn of results in sufficient time for such protests to be filed in a timely manner.

### **Instructions to the Apparently Successful Contractor(s)**

The Apparently Successful Contractor will receive Intent to Award Letter from the Procurement Coordinator after the award decisions is made by the Port. The Letter will include instructions for final submittals that are due prior to execution of the contract or purchase order.

Once the contract is issued for signature, the Contractor must execute the contract and provide all requested documents within ten (10) business days. If the Contractor fails to execute the contract with all documents within the ten (10) day period, the Port may cancel the award and proceed to the next ranked Contractor, or cancel or reissue this solicitation. Cancellation of an award for failure to execute the Contract as attached may result in Contractor disqualification for future solicitations for this product/service.

### **Checklist of Final Submittals Prior to Award**

The Contractor(s) should anticipate that the Letter would require at least the following. Contractors are encouraged to prepare these documents as soon as possible, to eliminate risks of late compliance.

- State of Washington Business License
- Completion of New supplier package
- Certificate of Insurance (if a hard-copy is required by the specifications)
- Special Licenses (if any)

**Taxpayer Identification Number and W-9**

Unless the Contractor has already submitted a Taxpayer Identification Number and Certification Request Form (W-9) to the Port, the Contractor must execute and submit this form prior to the contract execution date.

**Attachments:**

- Attachment A – Minimum Qualifications
- Attachment B – Offer Sheet & Non-Collusion Form
- Attachment C – Proposal Package
- Attachment D - References
- Attachment E – Port Sample Contract with Terms and Conditions
- Attachment F - 2013 product list and order quantities by location

### ATTACHMENT A - MINIMUM QUALIFICATIONS

Please check the applicable box to signify compliance or non-compliance to each minimum qualification. If you do comply, describe exactly how you achieve each minimum qualification. The determination that you meet all the minimum qualifications is made from this document or a document with the same information.

Item #	Minimum Qualification	Complies	Does <u>Not</u> Comply	If you comply, describe how you meet the minimum qualification and attach any necessary documentation
1	Contractor shall have a minimum of three (3) years' experience in providing beverage/coffee services in similar office and industrial facilities			

**ATTACHMENT B - OFFER SHEET**

Page 1 of 1

Port of Tacoma

RFP# 069962

Title: Beverage/ Coffee Service

All prices shall include freight. Additional lines are provided to allow for product pricing for items not listed

Items	Brand Name	Unit of Measure	Unit of measure size	# of units to a case	Price per each	Price per case
Dark Roast Coffee						
Medium Roast Coffee						
Decaffeinated Coffee						
<b>Cocoa</b>						
Sugar free						
Fat free						
regular						
<b>Tea</b>						
decaffeinated						
herbal						
<b>Condiments</b>						
Sugar						
Raw Sugar						
Equal						
Splenda						
Stevia						



2. The bid prices shall include and cover all duties, handling and transportation charges and all charges incidental to the requested work excluding Sales Tax or Use Tax. Contractor shall agree to all Port contract Terms and Conditions without exception.
3. Do not mark, write-in or add any exceptions to the specifications, schedule, terms or conditions. Do not attach alternative boilerplate. Any such exceptions can invalidate your Offer and the Buyer can reject your Bid.
4. If you make an error in typing your prices or any corrections to your Offer Submittal, you may mark it in ink and initial the correction. If it is not marked in ink and or it is not initialled, the Buyer may reject your bid. Do not use whiteout.
5. Future contract price changes shall comply with this RFP. Mark-up, and discount rates will not change through the life of the contract
6. Prompt Payment Discount: \_\_\_\_\_%\_\_\_\_ days. Note: Prompt payment discount periods equal to or greater than 10 calendar days will be given consideration in the price evaluation by the amount of that discount.
7. Interlocal Agreement: The Port of Tacoma has entered into Interlocal Agreements with other governmental agencies pursuant to RCW 39.34, in lieu of those agencies conducting a separate competitive bid. Does Contractor agree to provide this product or service to such agencies? Yes: \_\_\_\_\_ No: \_\_\_\_\_

By submitting this proposal, the Contractor acknowledges he/she has read and understands the entire Request for Proposal (RFP) and agrees to comply with its terms and conditions. The Contractor also agrees to fulfill the offer made in their Bid through any subsequently awarded Contract.

**Non-collusion:** The undersigned declares under penalty of perjury that the bid/proposal submitted is a genuine and not a sham or collusive bid, or made in the interest or on behalf of any person or firm not therein named. That the bidder/Contractor has not directly or indirectly induced or solicited any bidder on the above work or supplies to put in a sham bid, or any other person or corporation to refrain from bidding. Lastly, that said bidder/Contractor has not in any manner sought by collusion to secure to the bidder an advantage over any other bidder or bidders.

Mailing Address, City, State, Zip Code \_\_\_\_\_

Telephone Number \_\_\_\_\_ Fax Number \_\_\_\_\_ Email Address \_\_\_\_\_

Washington State Contractor's License No. \_\_\_\_\_ Date of Issue \_\_\_\_\_

Expiration Date \_\_\_\_\_ DUNNS Number \_\_\_\_\_

Unified Business Identifier (UBI) No. \_\_\_\_\_ Federal Tax Id No. \_\_\_\_\_

Full Legal Name of Company: \_\_\_\_\_

Signed By: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

## **ATTACHMENT C - Proposal Package**

Submission Requirements: Responses should be clearly marked so that there is no doubt in the reader's mind which section the Contractor is responding.

Section A- Minimum Qualifications: submit (Attachment A) detailing how you meet the minimum qualification

Section B – Price: The Contractor should complete and return the pricing offer (Attachment B)

Section C – Proposal

Proposal response:

Discuss how you would structure and service the account if awarded the contract. Include:

- Number of accounts of similar size that you service;
- Discuss experience and past performance;
- Breadth of beverage product line (do not show pricing here)
- Purposed equipment;
- Machine service and support (specifically address frequency of cleaning of each type of machine you propose;
- Quality control;
- Customer service;
- Product stock level strategy;
- Discuss how you will transition the existing account stock;
- What is the biggest risk with this account and how do you mitigate it; and
- How your proposal is the best value to the Port;

ATTACHMENT D  
REFERENCES QUESTIONNAIRE

INSTRUCTIONS TO THE PROPOSER:

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Proposers are allowed three (3) completed reference questionnaires. The completed references questionnaires must be from individuals, companies, or agencies with knowledge of the proposer's experience that is similar in nature to the products or services being requested by this RFP, and are within the last (3) years from the date this RFP was issued.

References not received prior to the RFP Closing Date and time will receive a score of "0" for that reference. References outside the (3 years) (see paragraph above), and references determined to be not of a similar nature to the products or services requested by this RFP will also receive a score of zero (0) points. **Determination of similar will be made by using the information provided by the reference in Section II of the Reference Questionnaire, General Information and any additional information provided by the reference.**

If more than three (3) qualifying references are received, the first three (3) fully complete references will be used for evaluation purposes. The Port will average the References for scoring purposes.

1. Proposers must complete the following information on page 2 of the "Reference's Response To" document before sending it to the Reference for response.

- a. Print the name of your reference (company/organization) on the "REFERENCE NAME" line.
- b. Print the name of your company/organization on the "PROPOSER NAME" line.
- c. Enter the RFP Closing date and time in Instruction 5 (see the INSTRUCTIONS block.)

**2. Send the "Reference's Response To" document to your references to complete.**

**NOTE: It is the proposer's responsibility to follow up with their references to ensure timely receipt of all questionnaires. Proposers may e-mail the Procurement Representative prior to the RFP closing date to verify receipt of references.**



REFERENCE QUESTIONNAIRE  
REFERENCE'S RESPONSE TO:  
**RFP Number: 069962**  
**RFP Title: Beverage/ Coffee Service**

REFERENCE NAME (Company/Organization): \_\_\_\_\_

**PROPOSER NAME (Company/Organization):** \_\_\_\_\_ has submitted a proposal to the Port of Tacoma, provide the following services: **Information Beverage/ Coffee Services**. We've chosen you as one of our references.

**INSTRUCTIONS**

1. Complete **Section I. RATING** using the Rating Scale provided.
2. Complete **Section II. GENERAL INFORMATION** (*This section is for information only and will not be scored.*)
3. Complete **Section III. ACKNOWLEDGEMENT** by manually signing and dating the document. (*Reference documents must include an actual signature.*)
4. E-mail **THIS PAGE** and your completed reference document, **SECTIONS I through III** to:  
  
**Procurement Representative:** Sharon Rothwell  
  
E-mail: [procurement@portoftacoma.com](mailto:procurement@portoftacoma.com)
5. This completed document **MUST** be received no later than **August 11 at 4:00** p.m. (Pacific Time). Reference documents received after this time will not be considered. **References received without an actual signature will not be accepted.**
6. DO **NOT** return this document to the Proposer.
7. In addition to this document, the Port may contact references by phone for further clarification if necessary.

## Section I. RATING

---

Using the Rating Scale provided below, rate the following numbered items by circling the appropriate number for each item:

Rating Scale	
Category	Score
Poor or Inadequate Performance	0
Below Average	1 – 3
Average	4 – 6
Above Average	7 - 9
Excellent	10

Circle **ONE** number for each of the following numbered items:

1. Rate the overall quality of the firm's services:

**10    9    8    7    6    5    4    3    2    1    0**

2. Rate the response time of this firm:

**10    9    8    7    6    5    4    3    2    1    0**

3. Rate the overall customer service and timeliness in responding to customer service inquiries, issues and resolutions:

**10    9    8    7    6    5    4    3    2    1    0**

4. Rate the knowledge of the firm's assigned staff and their ability to accomplish duties as contracted:

**10    9    8    7    6    5    4    3    2    1    0**

5. *Rate the accuracy and timeliness of the firm's billing and/or invoices:*

**10    9    8    7    6    5    4    3    2    1    0**

6. Rate the firm's ability to quickly and thoroughly resolve a problem related to the services provided:

10    9    8    7    6    5    4    3    2    1    0

7. Rate the likelihood of your company/organization recommending this firm to others in the future:

10    9    8    7    6    5    4    3    2    1    0

## Section II. GENERAL INFORMATION

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1. Please include a brief description of the services provided by this firm for your business:

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2. During what time period did the firm provide these services for your business?

Month:\_\_\_\_\_ Year:\_\_\_\_\_ to    Month:\_\_\_\_\_ Year:\_\_\_\_\_

## Section III. ACKNOWLEDGEMENT

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I affirm to the best of my knowledge that the information I have provided is true, correct, and factual:

\_\_\_\_\_  
Signature of Reference

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Email Address

## Attachment E

Note: This contract indicates all terms and conditions required by Port of Tacoma. All submitting companies agree to this contract, terms and conditions.

### Port of Tacoma CONTRACT FOR

This Contract is made effective \_\_\_\_\_ (the "Effective Date"), and entered into by and between the Port of Tacoma ("Port"), a Washington municipal corporation; and \_\_\_\_\_ ("Contractor"), a **corporation** of the State of \_\_\_\_\_, and authorized to do business in the State of Washington.

Contractor Business	
Name of Representative	
Contractor Address	
Contractor Phone	
Contractor Fax	
Contractor E-mail	

WHEREAS, the purpose of this contract is to \_\_\_\_\_; and

WHEREAS, Contractor was selected as a result of a Request for Proposal process initiated \_\_\_\_\_ 20-\_\_\_\_ and

WHEREAS, funds for this purpose are authorized through Port of Tacoma annual budget;

**NOW, THEREFORE**, in consideration of the terms, conditions, covenants, and performance of the scope of work contained herein, as attached and made a part hereof, Port of Tacoma and Contractor mutually agree as follows:

- Entire Agreement:** This Contract, including all attachments, amendments and subsequently issued change notices, comprises the entire agreement between The Port and the Contractor. The Request for Proposal ("RFP"), Addenda, and Contractor's Proposal are explicitly included as Attachments. Where there are conflicts between these documents, the controlling document will first be this Contract as amended, then the Contractor's proposal, the RFP and Addenda.
- Term of Contract**  
This contract shall be for \_\_\_\_\_ extensions allowed, at \_\_\_\_ years each. Such extensions shall go into effect only with written confirmation from the Port to the Contractor, unless the Port provides the Contractor advance notice of the intention to not renew. Such notice shall be given prior to the otherwise automatic renewal date.
- Time of Beginning and Completion**  
Contractor shall begin the work stated in the "Scope of Work" ("work") section upon receipt of written notice to proceed from the Port. The Port will acknowledge in writing when work is complete. Time limits established pursuant to this Contract shall not be extended because of delays for which the Contractor is responsible, but may be extended by the Port, in writing, for its convenience or for conditions beyond Contractor's control. Time is of the essence.
- Scope of Work**  
Contractor shall provide the following products and/or services as specified below and/or as attached.

These services shall be termed “work” herein. [see RFP scope of work]

**5. Limits of Sales to Authorized Products and Services**

Contractor has responsibility to limit sales to those products or services authorized within the contract, whether authorized by changes and amendments or stated within the original contract scope. The Contractor is responsible for refusing orders that are not properly authorized by the contract or through other proper Purchase Orders issued by authorized persons from the Port. If the Contractor has consistent sales of unauthorized products or services, the Port reserves the right to use any of the following: terminate the contract in accordance with termination provisions, place the Contractor payments on “hold” for all incoming invoices while the Port determines which are authorized items eligible for payment, and/or refuse certain invoices that contain non-authorized items.

**6. Payment/Payment Procedures**

The Port agrees to compensate as specified herein or attached, in consideration of acceptable Contractor performance. Payment shall only be made for services performed and/or product delivered, after receipt, review, and authorization by the Port. Such payment shall be made according to early payment discount terms, or if no early payment discount is offered, thirty (30) days after the Port's receipt and acceptance of the goods or completion and acceptance of the services. Computation of Payment periods will be from either the date of delivery and acceptance of all goods ordered, the acceptance by the Port of completion of all services, or the date of receipt of a correct invoice, whichever date is later. This section is not intended to restrict partial payments that are specified in the contract. All dollars referenced in this Contract and attachments are US Dollars.

**7. Invoices**

Invoices must show line item detail and price for each. Invoices must provide the Contract or Purchase Order Number. If the pricing structure is based upon a discount below list, or a mark-up above cost, then the Contractor must provide a method for tracking the cost of the item to the Port, with the Port discount calculation displayed so that pricing discounts can be easily tracked and verified by the Port.

**8. Taxes, Fees and Licenses**

A. Fees and Licenses: 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 requirements for said fees, assessments, or charges, and to immediately comply with said changes during the entire term of this Contract. Contractor must pay all custom duties, brokerage or import fees where applicable as part of the contract price. Contractor shall take all-necessary actions to ensure that materials or equipment purchased are expedited through customs.

B. Taxes: Where required by state statute, ordinance or regulation, Contractor shall pay for and maintain in current status all taxes that are necessary for contract performance. Unless otherwise indicated, The Port agrees to pay State of Washington sales or use taxes on all applicable consumer services and materials purchased. No charge by the Contractor shall be made for federal excise taxes and The Port agrees to furnish Contractor with an exemption certificate where appropriate.

C. Contractor is to calculate and enter the appropriate Washington State and local sales tax on the invoice. Tax computation is to be on new items after deduction of any trade-in, in accordance with WAC 458-20-247.

9. Anti-Trust: Seller and Buyer recognize that in actual economic practice, overcharges resulting from anti-trust violations are in fact borne by the Buyer. Therefore, Seller hereby assigns to the Buyer any

and all claims for such overcharges.

**10. Pricing**

Pricing shall be subject to the following terms. The Contracts and Purchasing representative may exempt these requirements for extraordinary conditions that could not have been known by either party at the time of bid or other circumstances beyond the control of both parties, as determined in the opinion of the Contract Administrator. Changes (whether increases or decreases) may only be issued by the Contract Administrator. No other individual or Port Department has authorization to approve such modifications. The Contract Administrator shall issue price changes in writing. Absent a written contract document, such changes shall not be considered effective. The Change Order shall require joint signature.

**Requests for Price Decreases:** Contractors can offer volume discounts or improved pricing that is more favorable to the Port at any time, when a specific order is placed or when a long-term change in costs allows the Contractor to offer a permanent change to the contract prices. Requests that reduce pricing charged to the Port may be delivered to Contract Administrator at any time during the contract period. Such price reductions should use the same pricing structure as the original contract (i.e. discounts below list, mark-up above, fixed price, or hourly rates). The Port may likewise initiate a request to the Contractor for price reductions, subject to mutual agreement of the Contractor.

**Requests for Price Increases** must be delivered to Contract Administrator in accordance to the rules below. No other employee may accept a rate increase request on behalf of the Port. Any invoice that is sent to the Port with pricing above that specified by the Port in writing within this Contract or specified within an official written change issued by the Contract Administrator of this contract, shall be invalid. Payment of an erroneous invoice does not constitute acceptance of the erroneous pricing, and the Port would seek reimbursement of the overpayment or would withhold such overpayment from future invoices.

The Port will not be bound by prices contained in an invoice that are higher than those in the contract. Unless the Port has accepted the higher price and amended the contract, otherwise the invoice may be rejected and returned to the Contractor for corrections.

**11. Identification**

Place Contract or Purchase Order numbers on all invoices, packing slips, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written documents affecting the contract or the applicable purchase order number. Packing lists shall be enclosed with each shipment, indicating the contents therein.

**12. Charges for handling**

No charges will be allowed for handling that includes but is not limited to packing, wrapping, bags, containers, or reels, unless otherwise stated herein.

**13. Contract Notices, Deliverable Materials and Invoices Delivery**

The Port of Tacoma agent for Contract changes shall be the Port of Tacoma Contracts and Purchasing named below, hereinafter referred to as "Contract Administrator." Contract notices such as change requests, shall be delivered to Contract Administrator at the following addresses (or such other address as either party may designate in writing):

**If delivered by the U.S. Postal Service, it must be addressed to:**

Sharon Rothwell  
Port of Tacoma  
Contracts and Purchasing  
PO Box 1837  
Tacoma, WA 98401-1837

**If delivered by other than the U.S. Postal Service, it must be addressed to:**

Sharon Rothwell  
Port of Tacoma  
Contracts and Purchasing  
1 Sticum Plaza  
Tacoma, WA 98421

Phone: (253) 592-6758  
Fax: (253) 597-7573  
E-Mail: [srothwell@portoftacoma.com](mailto:srothwell@portoftacoma.com)

Project work, invoices, and communications shall be delivered to [cpinvoices@portoftacoma.com](mailto:cpinvoices@portoftacoma.com)  
or the \_\_\_\_\_

Port of Tacoma, \_\_\_\_\_  
Attention: \_\_\_\_\_  
Address: PO Box 1837  
Tacoma, WA 98401-1837  
Phone: (253) \_\_\_\_\_  
E-mail: \_\_\_\_\_

**14. Representations**

Contractor represents and warrants that it has the requisite training, skill and experience necessary to provide Work and is appropriately accredited and licensed by all applicable agencies and governmental entities.

**15. Warranties**

Contractor warrants that articles supplied under this order conform to specifications herein and are fit for the purpose for which such goods are ordinarily employed, except that if a particular purpose is stated, the material must also be fit for that particular purpose.

The Contractor shall warrant all materials and workmanship delivered under any resulting contract to be free from defects, damage, or failure for a minimum of ninety (90) days after the date of final acceptance and without cost to the Port for labor, materials, parts, installation, or any other costs except where longer periods of warranty of guarantees are specified.

**16. Independent Contractor**

An independent Contractor relationship is created by this contract. The Seller or its employees or agents performing under this contract are not employees or agents of the Port of Tacoma. Conduct and control of the work will be solely with the Seller.

**17. Inspection**

The Work shall be subject, at all times, to inspection by and with approval of the Port, but the making (or failure or delay in making) such inspection or approval shall not relieve Contractor of responsibility for performance of the Work in accordance with this Contract, notwithstanding The Port's knowledge of defective or noncomplying performance, its substantiality or the ease of its discovery. Contractor shall provide sufficient, safe, and proper facilities and equipment for such inspection and free access to such facilities.

**18. Title, Risk of Loss, Freight, Overages or Underage's**

Title of goods received under this contract shall remain with the Contractor until they are delivered to the address specified, at which time title passes to The Port. Regardless of FOB point, Contractor agrees to bear all risks of loss, injury, or destruction of goods and materials ordered herein which occur prior to delivery and acceptance. Such loss, injury, or destruction shall not release Contractor from any obligations under. Prices include freight prepaid and allowed. Contractor assumes the risk of every increase, and receives the benefit of every decrease, in delivery rates and charges. Shipments shall correspond with the Contract; any unauthorized advance or excess shipment is returnable at Contractor's expense.

**19. Performance**

Acceptance by The Port 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 of requirements for satisfactory performance of any obligation remaining to be performed by Contractor.

**20. Affirmative Efforts for Utilization of Women and Minority Subcontracting and Employment, Nondiscrimination in providing services**

Employment Actions: Contractor shall not discriminate against any employee or applicant for employment because of race, religion, creed, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, age, color, sex, national origin, marital status, political ideology, ancestry, sexual orientation, gender identity, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to employment, upgrading, promotion, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training.

**21. Assignment and Subcontracting**

Contractor shall not assign or subcontract any of its obligations under this Contract without the Port's written consent, which may be granted or withheld in The Port's sole discretion. Any subcontract made by Contractor shall incorporate by reference all the terms of this Contract. The Port's consent to any assignment or subcontract shall not release the Contractor from liability under this Contract, or from any obligation to be performed under this Contract, whether occurring before or after such consent, assignment, or subcontract.

**22. Key Persons and Subcontractors**

Contractor shall not transfer, reassign, or replace any individual or Subcontractor that is determined to be essential, without express written consent of the Port. If during the term of this Contract, any such individual leaves the Contractor's employment or any named Subcontractor is terminated for any reason, the Contractor shall notify the Port and seek approval for reassignment or replacement with an alternative individual or Subcontractor. Upon the Port's request, the Contractor shall present to The Port, one or more Subcontractors, or individual(s) with greater or equal qualifications as a replacement. The Port's approval or disapproval shall not be construed to release the Contractor from its obligations under this Contract.

**23. Publicity**

No news release, advertisement, promotional material, tour, or demonstration related to The Port's purchase or use of the Contractor's product or services performed pursuant to this Contract shall be produced, distributed, or take place, without the prior, specific written approval of the Port's Project Manager or his/her designee.

**24. Proprietary and Confidential Information**

A. Contractor understands that any records (including but not limited to bid or proposal submittals, the Agreement, and any other contract materials) it submits to the Port, or that are used by the Port even if the Contractor possesses the records, are public records under Washington State law, [RCW Chapter 42.56](#). Public records must be promptly disclosed upon request unless a statute exempts them from disclosure. The Contractor also understands that even if part of a record is exempt from disclosure, the rest of that record generally must be disclosed.

B. If the Port receives a public disclosure request made pursuant to RCW 42.56, the Port will not assert an exemption from disclosure on behalf of the Contractor. For materials that the Contractor has properly marked, the Port may notify the Contractor of the request and postpone disclosure for ten business days to allow the Contractor to file a lawsuit seeking an injunction preventing the release of documents pursuant to RCW 42.56.540. Providing any notification is a courtesy and is not an obligation on behalf of the Port. Unless the Contractor obtains and serves an injunction upon the Port



before the close of business on the tenth business day after the date of the notification, the Port may release the documents. It is the Contractor's discretionary decision whether to file the lawsuit.

C. If the Contractor does not obtain and serve an injunction upon the Port within 10 business days of the date of the Port's notification of the request, the Contractor is deemed to have authorized releasing the record.

D. The Contractor will fully cooperate with the Port in identifying and assembling records in case of any public disclosure request.

## **25. General Legal Requirements**

A. General Requirement: Contractor, at no expense to The Port, shall comply with all applicable laws of the United States and the State of Washington; the Charter and ordinances of The Port; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. Without limiting the generality of this paragraph, the Contractor shall specifically comply with the following requirements of this section.

B. Licenses and Similar Authorizations: Contractor, at no expense to The Port, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.

C. Taxes: The Contractor shall pay, before delinquency, all taxes, import duties, levies, and assessments arising from its activities and undertakings under this Contract; taxes levied on its property, equipment and improvements; and taxes on the Contractor's interest in this Contract

## **26. American with Disabilities Act**

Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Contract. In particular, if the Contractor is providing services, programs or activities to The Port employees or members of the public as part of this Contract, the Contractor shall not deny participation or the benefits of such services, programs, or activities, to people with disabilities on the basis of such disability. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Contract.

## **27. OSHAWISHA**

Contractor agrees to comply with conditions of the Federal Occupational Safety and Health Acts of 1970 (OSHA), as may be amended. If the Contractor has a workplace within the State of Washington, the Washington Industrial Safety and Health Act of 1973 (WISHA), as may be amended, and the standards and regulations issued thereunder and certifies that all items furnished and purchased under this order will conform to and comply with said standards and regulations. Contractor further agrees to indemnify and hold harmless purchaser from all damages assessed against purchaser as a result of Contractor's failure to comply with the acts and standards thereunder and for the failure of the items furnished under this order to so comply.

## **28. Contract Work Hours and Safety Standards**

For all contracts that employ mechanics or laborers, the Contractor and all subs shall comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each Contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provide that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market,

or contracts for transportation or transmission of intelligence.

**29. Indemnification**

To the extent permitted by law, the Contractor shall protect, defend, indemnify and hold the Port harmless from and against all claims, demands, damages, costs, actions and causes of actions, liabilities, fines, penalties, judgments, expenses and attorney fees, resulting from the injury or death of any person or the damage to or destruction of property, or the infringement of any patent, copyright, or trademark, or trade secret arising out of the work performed or goods provided under this Contract, or the Contractor's violation of any law, ordinance or regulation, contract provision or term, or condition of regulatory authorization or permit, except for damages resulting from the sole negligence of the Port. As to the Port of Tacoma, the Contractor waives any immunity it may have under [RCW Title 51](#) or any other Worker's Compensation statute. The parties acknowledge that this waiver has been negotiated by them, and that the contract price reflects this negotiation.

**30. Insurance.**

Contractor shall maintain at its own expense at all times during the term of this Contract the following insurance, as well as any other additional coverage requirements issued by the Port.

1. The Contractor shall procure and maintain during the life of this contract such insurance. It shall protect it from claims or damages for bodily injury, including death resulting therefrom as well as from claims for property damage, which may arise from operations under this contract, whether such operations be by itself, its agents, or by anyone directly or indirectly employed by either of them.
2. Certificates of all insurance shall be filed with the Port of Tacoma naming the Port of Tacoma as additional insured, and shall provide:
  - c. That the policies shall not be canceled or the amount thereof reduced, without thirty- days (30) prior written notice to the Port of Tacoma, and
  - d. That thirty-day (30) prior written notice shall also be given if the policy is not to be renewed at the scheduled expiration date.
3. The amount of such insurance shall not be less than:

Commercial General Liability Insurance, on an occurrence basis, including contractual liability and completed operations, in an amount of not less than One Million Dollars

  - d. (\$1,000,000.00) for bodily injury, including sickness, disease, and death at any time resulting therefrom, sustained by any person and for property damage;
  - e. Business Auto Insurance in an amount of not less than One Million Dollars (\$1,000,000.00) for damages because of bodily injury or property damage;
4. The Contractor shall procure and maintain insurance in accordance with the requirements of all applicable State and Federal Worker's Compensation Laws. Contractor shall furnish to the Port of Tacoma evidence of such insurance, including Employers Contingent Liability (Stop Gap) Insurance.

**31. Contractual Relationship**

The relationship of Contractor to The Port by reason of this Contract shall be that of an independent Contractor. This Contract does not authorize Contractor to act as the agent or legal representative of The Port for any purpose whatsoever. Contractor is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of The Port or to bind The Port in any manner or thing whatsoever.

**32. Federal Debarment for Primes and all Subcontractors**

Contractor shall immediately notify the Port of any suspension or debarment or other action that excludes the Contractor and any Subcontractor from participation in Federal contracting. Contractor shall verify all Subcontractors that are intended and/or used by the Contractor for performance of Port work are in good standing and are not debarred, suspended, or otherwise ineligible by the Federal Government. Debarment shall be verified at System for Award Management

<https://www.sam.gov/portal/public/SAM/>. The Contractor shall keep proof of such verification within the Contractor records.

**33. 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 or proposal to The Port, a representative(s) with the authority to legally commit Contractor's firm. All communications given or received from the Contractor's representative shall be binding on the Contractor; and
- 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.

**34. No Conflict of Interest**

Contractor confirms that Contractor does not have a business interest or a close family relationship with any Port officer or employee who was, is, or will be involved in the Contractor selection, negotiation, drafting, signing, administration, or evaluating the Contractor's performance.

**35. No Gifts or Gratuities**

Contractor shall not directly or indirectly offer anything of value (such as retainers, loans, entertainment, favors, gifts, tickets, trips, favors, bonuses, donations, special discounts, work or meals) to any Port employee, volunteer or official, that is intended, or may appear to a reasonable person to be intended, to obtain or give special consideration to the Contractor.

**36. Errors & Omissions: Correction**

Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by or on the behalf of the Contractor under this Contract. The Contractor, without additional compensation, shall correct or revise any errors or omissions in the designs, drawings, specifications, and/or other Contractor services immediately upon notification by The Port. The obligation provided for in this section with respect to any acts or omissions during the term of this Contract shall survive any termination or expiration of this Contract and shall be in addition to all other obligations and liabilities of the Contractor.

**37. Intellectual Property Rights**

**Patents:** Contractor hereby assigns to The Port all rights in any invention, improvement, or discovery, together with all related information, including but not limited to, designs, specifications, data, patent rights and findings developed in connection with the performance of Contract or any subcontract hereunder. Notwithstanding the above, the Contractor does not convey to The Port, nor does The Port obtain, any right to any document or material utilized by Contractor that was created or produced separate from this Contract or was preexisting material (not already owned by The Port), provided that the Contractor has clearly identified in writing such material as preexisting prior to commencement of the Work. To the extent that preexisting materials are incorporated into the Work, the Contractor grants The Port an irrevocable, non-exclusive, fully paid, royalty-free right and/or license to use, execute, reproduce, display, and transfer the preexisting material, but only as an inseparable part of the Work.

**Copyrights:** For materials and documents prepared by Contractor in connection with the Work, Contractor shall retain the copyright (including the right of reuse) whether or not the Work is completed. Contractor grants to The Port a non-exclusive, irrevocable, unlimited, royalty-free license to use every document and all other materials prepared by the Contractor for The Port under this Contract. If requested by The Port, a copy of all drawing, prints, plans, field notes, reports, documents, files, input materials, output materials, the media upon which they are located (including cards, tapes, discs and other storage facilities), software programs or packages (including source

code or codes, object codes, upgrades, revisions, modifications, and any related materials) and/or any other related documents or materials which are developed solely for, and paid for by, the Port in connection with the performance of the Work, shall be promptly delivered to the Port .

The Port may make and retain copies of such documents for its information and reference in connection with their use on the project. The Contractor does not represent or warrant that such documents are suitable for reuse by The Port, or others, on extensions of the project, or on any other project. Contractor represents and warrants that it has all necessary legal authority to make the assignments and grant the licenses required by this Section.

#### **38. Interlocal Cooperation Act**

[RCW 39.34](#) allows cooperative purchasing between public agencies, and other political subdivisions. SMC 20.60.100 also allows nonprofits to use these agreements. If a public agency files or has filed an Intergovernmental Cooperative Purchasing Agreement with the Port of Tacoma, those agencies are eligible to purchase from Contracts established by the Port. Such agencies may ask Port of Tacoma Contractors to accept orders from the agency, citing the Port of Tacoma contract as the basis for the order. The Contractor may accept or decline such orders. If the Contractor accepts an order from another public agency using the Port of Tacoma contract as the basis, the Contractor agrees to sell additional items at the contract prices, terms, and conditions. The Port of Tacoma accepts no responsibility for the payment of the purchase price by other governmental agencies.

#### **39. Expansion**

Expansion of any resultant contract or Purchase Order may occur as allowed below. A modification may be considered per the criteria and procedures below, for any ongoing unexpired Contract. Likewise, a one-time Purchase Order may be modified if the bid reserved the right for additional orders to be placed within a specified period of time, or if the project or body of work associated with a Purchase Order is still active. Modifications must be mutually agreed to. The only person authorized to make such agreements on behalf of the Port is the Contract Administrator. No other Port employee is authorized to make such written notices. Expansions must be issued in writing from Contract Administrator in a formal notice. The Contract Administrator will ensure the expansion meets the following criteria:

- (a) It could not be separately bid,
- (b) The change is for a reasonable purpose,
- (c) The change was not reasonably known to either the Port or Contractors at time of bid or else was mentioned as a possibility in the bid (such as a change in environmental regulation or other law);
- (d) The change is not significant enough to be reasonably regarded as an independent body of work;
- (e) The change could not have attracted a different field of competition; and
- (f) The change does not vary the essential identity or main purpose of the contract.

The Contract Administrator shall make this determination, and may make exceptions for immaterial changes, emergency or sole source conditions, or for other situations as required.

Note: changes, which are not considered an expansion of scope, including an increase in quantities ordered the exercise of options and alternates in the bid, or ordering of work originally identified within the originating solicitation. If such changes are approved, changes are conducted as a written order issued by Contract Administrator to the Contractor.

#### **40. Disputes**

If a dispute arises relating to this Agreement and cannot be settled through direct discussions, the parties agree to endeavor to settle the dispute through a mediation firm acceptable to both parties, the cost of which shall be divided equally. The Port reserves the right to join any dispute under this Agreement with any other claim in litigation or other dispute resolution forum, and the Contractor agrees to such joinder, so that all disputes related to the project may be consolidated and resolved in one forum. Venue for any litigation shall be the Pierce County Superior Court of the state of Washington and the prevailing party shall be entitled to recover its costs and reasonable attorney's fees.

#### **41. Termination**

- A. For Cause: The Port may terminate this Contract if the Contractor is in material breach of any of the terms of this Contract, and such breach has not been corrected to The Port's reasonable satisfaction in a timely manner.
- B. For Port's Convenience: The Port may terminate this Contract at any time, without cause and for any reason including The Port's convenience, upon written notice to the Contractor.
- C. Non-appropriation of Funds: The Port may terminate this Contract at any time without notice due to non-appropriation of funds, whether such funds are local, state or federal grants, and no such notice shall be required notwithstanding any notice requirements that may be agreed upon for other causes of termination.
- D. Acts of Insolvency: The Port may terminate this Contract by written notice to Contractor. If the Contractor becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or is wound up or liquidated, voluntarily or otherwise.
- E. Notice: The Port is not required to provide advance notice of termination. Notwithstanding, the Contract Administrator may issue a termination notice with an effective date later than the termination notice itself. In such case, the Contractor shall continue to provide products and services as required by the Contract Administrator until the effective date provided in the termination notice.
- F. Actions Upon Termination: In the event of termination not the fault of the Contractor, Contractor shall be paid for the services properly performed prior to the effective termination date that has been specified by the Contract Administrator, together with any reimbursable expenses then due, but in no event shall such compensation exceed the maximum compensation to be paid under the Contract. Contractor agrees that this payment shall fully and adequately compensate Contractor and all Subcontractors for all profits, costs, expenses, losses, liabilities, damages, taxes, and charges of any kind whatsoever (whether foreseen or unforeseen) attributable to the termination of this Contract. Upon termination for any reason, Contractor shall provide The Port with the most current design documents, contract documents, writings and other product it has completed to the date of termination, along with copies of all project-related correspondence and similar items. The Port shall have the same rights to use these materials as if termination had not occurred.

#### **42. Force Majeure – Suspension and Termination**

This section applies in the event that either party is unable to perform the obligations of this contract because of a Force Majeure event as defined herein, to the extent that the Contract obligations must be suspended in full. A Force Majeure event is an event that prohibits performance and is beyond the control of the party. Such events may include natural or man-made disasters, or an action or decree of a superior governmental body, which prevents performance.

Should either party suffer from a Force Majeure event and is unable to provide performance, such party shall give notice to the remaining party as soon as practical and shall do everything possible to resume performance.

Upon receipt of such notice, the party shall be excused from such performance as is affected by the Force Majeure Event for the period of such Event. If such Event affects the delivery date or warranty provisions of this Agreement, such date or warranty period shall automatically be extended for a period equal to the duration of such Event.

#### **43. Workers Right to Know**

"Right to Know" legislation required the Department of Labor and Industries to establish a program to make employers and employees more aware of the hazardous substances in their work environment. WAC 296-839-300 requires among other things that all manufacturers/distributors of hazardous substances, including any of the items listed on this RFP or contract bid and subsequent award, must include with each delivery completed Material Safety Data Sheets (MSDS) for each hazardous material. Additionally, each container of hazardous material must be appropriately labeled with: the identity of the hazardous material, appropriate hazardous warnings, and the Name and Address of the chemical manufacturer, improper, or other responsible party.

Labor and Industries may levy appropriate fines against employers for noncompliance and agencies may withhold payment-pending receipt of a legible copy of the MSDS. OSHA Form 20 is not acceptable in lieu of this requirement unless it is modified to include appropriate information relative to "carcinogenic ingredients: and "routes of entry" of the product(s) in question.

#### **44. Miscellaneous Provisions**

- A. Amendments: No modification of this Contract shall be effective unless in writing and signed by an authorized representative of the Port, except as otherwise authorized herein. The Port shall issue change notices to Contractor, and such notices shall take effect under the signature of the Port unless written objection of the notice is received by the Contractor upon their receipt of the change notice.
- B. Conflict: In the event of conflict between contract documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this contract to afford The Port the maximum benefits.
- C. Liens, Claims and Encumbrances: All materials, equipment, or services shall be free of all liens, claims or encumbrances of any kind and if The Port requests a formal release of same shall be delivered to The Port.
- D. Binding Contract: This Contract shall not be binding until signed by both parties. The provisions, covenants and conditions in this Contract shall bind the parties, their legal heirs, representatives, successors, and assigns.
- E. Applicable Law/Venue: This Contract shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for Pierce County, Washington
- F. Remedies Cumulative: Rights under this Contract are cumulative and nonexclusive of any other remedy at law or in equity.
- G. Captions: All titles, including sections or subsections, are for convenience only and do not define or limit the contents.
- H. Severability: Any term or provision of this Contract found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Contract.
- I. Waiver: No covenant, term, or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed. Any waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither, the acceptance by the Port of any performance by the Contractor after the time the same shall have become due nor payment to the Contractor for any portion of the Work, shall constitute a waiver by the Port of the breach or default of any covenant, term or condition unless

otherwise this is expressly agreed to by The Port, in writing. The Port 's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or the Port 's waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type.

- J. Entire Contract: This document, along with any attachments and work orders, constitutes the entire agreement between the parties with respect to the Work. No verbal agreement or conversation between any officer, agent, associate or employee of The Port and any officer, agency, employee or associate of the Contractor prior to the execution of this Contract shall affect or modify any of the terms or obligations contained in this Contract.
- K. Negotiated Contract: The parties acknowledge that this is a negotiated Contract, that they have had the opportunity to have this Contract reviewed by respective legal counsel, and that terms and conditions are not construed against any party on the basis of such party's draftsmanship thereof.
- L. No personal liability: No officer, agent or authorized employee of the Port shall be personally responsible for any liability arising under this Contract, whether expressed or implied, nor for any statement or representation made herein or in any connection with this Contract.

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Contract by having their authorized representatives affix their signatures below.

(Contractor)

**Port of Tacoma**

By \_\_\_\_\_  
Signature Date

By \_\_\_\_\_  
Signature Date

\_\_\_\_\_  
(Printed Name)

Sharon Rothwell  
Manager, Purchasing and Supplier Diversity

\_\_\_\_\_  
Title

**Attachment F**  
**Product use by Location**

**Administration Building- 1 Sitcum Plaza**

<i><b>All Products</b></i>	<i><b>2013 Order Quantity</b></i>
18527: SBC Espresso Bean 4/5lb	48
16410: Pioneer Snoqualmie Bfast Bean 6lb	45
9131: Tully's French 42/2.0	27
1061: Int'l Del Real Dairy Half &Half 384ct	33
18529: SBC Level 3 Decaf Bean 4/5lb	7
8608: Sugar in the Raw 2/200	26
18638: Everpure 4C Filter EV-9601	7
1688: Coffee Mate Hazelnut 16oz	81
6405: Tully's Decaf 42/2.0	4
19372: Equal Yellow 500ct	11
1371: Coffee Mate FrVan 15oz	48
6829: Tully's Espresso Bean 2/5lb	3
4335: Avalon Filter Paper Roll	13
16627: Pioneer Decaf Bean 6lb	2
2699: SMiss Cocoa Mix 2lb	36
14160: Innwave UV bulb 12-8111	4
<1569>: Douwe FrVan Capp 2lb	12
1042: Int'l Del Real Dairy Half &Half 180ct	5
1402: Coffee Mate Lite 11oz	30
5340: Folgers Gourmet FrVan 2lb	12
5725: DC Sugar Packets Aramark 2000ct	2



16735: 5" Stir Stix Red Stripe SR55RX 1000ct	10
1051: Coffee Mate Canister 12oz	9
1351: Sweet &Low Packets 24/100ct	4
1007: Lipton Tea 100ct	1
16526: Lipton Green Tea 100ct	1

### Security- 3600 Port of Tacoma Road

<i><b>All Products</b></i>	<i><b>2013 Order Quantity</b></i>
18524: SBC Level 3 4/18/2.0	81
18526: SBC Level 4 4/18/2.0	38
1042: Int'l Del Real Dairy Half &Half 180ct	20
7911: Splenda Sweetener 4/400	12
9131: Tully's French 42/2.0	4
20750: Solo Exec 12oz Paper Cup 412TN 20/50	40
18525: SBC Level 3 Decaf 4/18/2.0	4
18638: Everpure 4C Filter EV-9601	2
1089: DC Sugar Packets Aramark 1000ct	10
1051: Coffee Mate Canister 12oz	41
6404: Tully's House Blend 42/2.0	1
1060: SMiss Reg Hot Choc Mix 6/50	5
1688: Coffee Mate Hazelnut 16oz	13
1007: Lipton Tea 100ct	8
1371: Coffee Mate FrVan 15oz	11
16526: Lipton Green Tea 100ct	5

5725: DC Sugar Packets Aramark 2000ct	1
16733: Eco Wood Stirrer 7" 10/1000	4

#### **APM Terminal-1002 Milwaukie Way**

<i>All Products</i>	<i>2013 Order Quantity</i>
18524: SBC Level 3 4/18/2.0	20
20750: Solo Exec 12oz Paper Cup 412TN 20/50	40
1042: Int'l Del Real Dairy Half & Half 180ct	9
1089: DC Sugar Packets Aramark 1000ct	1

#### **Port of Tacoma Maintenance- 802 Port Center Road**

<i>All Products</i>	<i>2013 Order Qty</i>
9131: Tully's French 42/2.0	40
18527: SBC Espresso Bean 4/5lb	31
16410: Pioneer Snoqualmie Bfast Bean 6lb	20
1042: Int'l Del Real Dairy Half & Half 180ct	28
7911: Splenda Sweetener 4/400	18
16627: Pioneer Decaf Bean 6lb	4
5340: Folgers Gourmet FrVan 2lb	24
6829: Tully's Espresso Bean 2/5lb	2
4335: Avalon Filter Paper Roll	7
<1569>: Douwe FrVan Capp 2lb	12
18529: SBC Level 3 Decaf Bean 4/5lb	1
2699: SMiss Cocoa Mix 2lb	12
16735: 5" StirStix Red Stripe SR55RX 1000ct	4

**Fabulich Center- 3600 Port of Tacoma Road**

<i><b>All Products</b></i>	<i><b>2013 Order Quantity</b></i>
6404: Tully's House Blend 42/2.0	9
6405: Tully's Decaf 42/2.0	3
1042: Int'l Del Real Dairy Half &Half 180ct	8
20750: Solo Exec 12oz Paper Cup 412TN 20/50	20
1385: Bigelow 8 Flavor Asst 6/64	4
1089: DC Sugar Packets Aramark 1000ct	2
7911: Splenda Sweetener 4/400	1
16735: 5" Stir Stix Red Stripe SR55RX 1000ct	1