

RFP- 87747 IT Contract Staffing Services  
Addendum #3

Dated on 10/9/2019

The following is additional information regarding **RFP – 87747** titled **IT Contract Staffing Services**. **The due date and time for responses** **REVISED to 10/16/2019 PM (PDT)**. This addendum includes both questions from prospective proposers and the Port's answers, and revisions to the RFP. This addendum is hereby made part of the RFP and therefore, the information contained herein shall be taken into consideration when preparing and submitting information.

Item #	Date Received	Date Answered	Vendor's Question	Port's Answer	RFP Revisions
1.	9/24/19	10/2/19	You list seven categories for support (Project Manager, Business Analyst, etc.). If a firm specializes in only a few of those categories, are they disadvantaged in responding?	The Port will select a mix of firms that can cover all the listed position types. But, every firm does not need to be able to fill every position type.	
2	9/25/19	10/2/19	Is there currently an incumbent company or previous incumbent, who completed similar contract performing these services?	See RFP 87747, Page 1 section A, Background. Also see response to item #11.	
3	9/25/19	10/2/19	If so - can you please provide incumbent contract number, dollar value and period of performance?	There is no fixed contract value. A separate Purchase Order is created for each contract position staffed. The incumbent contracts have been in place since 2015.	
4	9/25/19	10/2/19	Are you satisfied with incumbent performance?	The Port is satisfied with this approach to filling contract IT positions.	
5	9/25/19	10/2/19	What is the budget of this opportunity? Is Budget approved?	Each position staffed is budgeted prior to a PSO form being issued for filling the position.	
6	9/26/19	10/2/19	Can you please let us know the name of incumbent, their hourly rate and historical spend?	See questions #11 and #12	

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7	9/26/19	10/2/19	Is budget allocated for this contract? If yes, can you please let us know the same?	See questions #3 and #5	
8	9/26/19	10/2/19	Job descriptions of the staffing positions aren't provided which makes it difficult for us to provide our best pricing. Could the Port provide the job descriptions of the positions?	The specific positions are unknown at this time. A PSO form with specific job description and deliverables will be issued when there is a contract staffing need. Sample PSO forms are provided in the RFP. Please provide your price range for the categories listed in Appendix E.	
9	9/26/19	10/2/19	Could the Port remove the restriction of proposal being limited to 10 pages only?	No	
10	9/27/19	10/2/19	What will be total spend on this project annually?	Total spend is unknown. See RFP 87747, Page 1 section A (Background) for anticipated number of positions per year.	
11	9/27/19	10/2/19	Is there any exiting vendor who providing the similar services to the government, if yes, please provide us with the names?	Yes, there are four companies. They Are: <ul style="list-style-type: none"> <li>• MySource Consulting</li> <li>• TekSystems</li> <li>• Amzur Technologies Inc.</li> <li>• Pro Innovations</li> </ul>	
12	9/27/19	10/2/19	What was the historic spend on this one?	Since 2015 we have spent approximately \$1.8M on staffing through the incumbent firms.	

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13	9/27/19	10/2/19	I see page 33 says that this is a sample contract that all selected firms will be required to agree to. What happens if we are unable to agree to certain provisions? Can we redline the document? Do they want us to take exceptions on a separate piece of paper?	Submit any exceptions to the terms & conditions as questions along with your requested revision of the language.	
14	9/30/19	10/2/19	Are any roles under this RFP subject to Wage Determination?	No	
15	9/30/19	10/2/19	Are background checks required by the Port and if so, what are they?	The Port requests that firms verify employment and education listed on the resume of candidates as well as perform a criminal records background check for selected candidates before they begin an assignment.	
16	9/30/19	10/2/19	Is overtime foreseeable?	Infrequent overtime may be requested.	
17	9/30/19	10/2/19	What is the allocated budget to this contract?	See response to items #3 and #5.	
18	9/30/19	10/2/19	Is this new RFP?	This is a new procurement to replace expiring contracts.	
19	9/30/19	10/2/19	So far how many current contract vendors you have to this contract? Could you please list of them.	See response to item #11.	
20	9/30/19	10/2/19	So far how many Project Service Order (PSO) released to you existing contract vendors?	Approximately 17 PSO's.	

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21	9/30/19	10/2/19	How much budget has utilized on released Project Service Order (PSO) to you existing contract vendors?	See response to item #12.	
22	9/30/19	10/2/19	When award will be announced?	We anticipate conducting interviews with short-listed firms starting mid-November and selecting final firms by mid-December.	
23	9/30/19	10/2/19	If we selected as awardee, how we can receive Project Service Order (PSO) form (Email / portal / Website	Email	
24	9/30/19	10/2/19	No. of expected Project Service Order (PSO) per year?	See RFP 87747, Page 1 section A, Background.	
25	9/30/19	10/2/19	Do you have any markup model for this contract?	No	
26	9/30/19	10/2/19	How do we provide exceptions to any of the RFP or contract terms?	See response to item #13.	
27	10/1/19	10/2/19	Who is the current incumbent on this contract?	See response to item #11.	
28	10/1/19	10/2/19	What is the current pricing on the contract?	See response to item #10.	
29	10/1/19	10/2/19	What is the budget allocated to this contract?	See response to item #10.	
30	10/1/19	10/2/19	How many temps are currently	We currently have one person	

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			working on the existing contract and will they all be transitioned to the new vendors?	working at the Port on a contract with one of the incumbent firms. They will not be transitioned to new vendors.	
31	10/1/19	10/2/19	Clarification regarding Reference (Attachment C) submission. Please clarify whether the references should be sent directly by the client or shall we submit it as part of the proposal response. We need this clarification as under Section D of the RFP it was given that proposal response should be 10 pages excluding the references.	You should send the Reference Form (Attachment C) to your clients. Your clients should send the completed reference form to the Port. Completed reference forms must be received by the Port by the Proposal Submittal/Closing Date.  As stated in the RFP Section D (RFP Elements & Evaluation Criteria), references do not count toward the 10-page total.	
32	10/1/19	10/2/19	I wanted to check the total spend for this contract staffing program which is for minimum 2 yrs. and can be extendable to 5 yrs.	See RFP Section B (Scope of services).	
33	10/1/19	10/2/19	Will proposer have the opportunity to negotiate the contractual terms if they win the award?	See response to item #13.	
34	10/1/19	10/2/19	Can redlines to the sample contract be proposed within the proposal submission?	See response to item #13.	
35	10/1/19	10/2/19	What will acceptance of performance look like?	The Port will approve timecards for hours worked. Performance concerns will be discussed with a representative from the staffing firm as needed.	
36	10/1/19	10/2/19	Can acceptance of services	Yes.	

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			performed be tied to the signing of a weekly timecard by an authorized Port representative?		
37	10/1/19	10/2/19	If prevailing wage is required, how will Contractor be notified? Will a wage determination sheet be provided?	See response to item 14.	
40	10/1/19	10/2/19	As this is a staffing services bid where contractor is providing people to work under Port's technical direction, what deliverables and/or work product will be expected from the contractor?	See RFP Section C (Deliverables).	
41	10/1/19	10/2/19	Can you provide clarification as to what you mean when you ask for assumptions and risks associated with providing the services?	Self-explanatory.	
42	10/2/19	10/2/19	Can we add rows for example to differentiate "Junior Level" and "Senior Level" roles (as subsets within the provided roles) This would be in effort to provide a more precise range of pricing	Attachment E already has columns identified for "Low Range (Junior level resource)" and "High Range (Senior level resource)". Please use this attachment for providing your ranges of rates for each resource type and experience level (Junior and Senior).	
42	10/3/19	10/7/19	Will respondents be allowed to pass through the costs for background checks and drug screens (at no additional markup) to the NWSA /Port of Tacoma (the Port)?	Yes, you would be able to pass through the costs for background and other screenings required by the Port.	

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43	10/3/19	10/7/19	Will respondents be disqualified or adversely impacted during the evaluation process if they were to submit exceptions to the Port in their proposal?	See item 13 above. If you have issues, submit a question(s) about a term or condition you have an issue with during the question period. No red lines permitted.	
44	10/3/19	10/7/19	With respect to Affordable Care Act (ACA) costs, would the Port prefer these charges as a separate line item on the invoices, or instead incorporated directly into each respondent's proposed rates? Please clarify.	It should be incorporated into the purposed rates.	
45	10/3/19	10/7/19	If government-mandated costs or expenses are enacted during the contract term, will respondents be allowed to request rate increases to cover these higher rates?	Yes, you can request an increase with justification.	
			<a href="#">Questions 46- 54 refer to the Sample Contract Language</a>		
46	10/8/19	10/9/19	Can we specify which divisions and branch will be doing business under the Agreement?	If awarded a contract that specificity can be added to the contract.	
47	10/8/19	10/9/19	<b>Section 6:</b> Can we add the following language at the end of this section to account for additional payment terms?  Suggested Revised Language (please add): "Notwithstanding any		Yes, see our attached revision of the sample contract.

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			language herein to the contrary, the Port's approval of the weekly timecard of Contractor's assigned personnel shall constitute acceptance of the corresponding services for the assigned personnel. If overtime is applicable, overtime will be billed at 1.50 times the normal billing rate. Federal law defines overtime as hours in excess of 40 hours per week, state laws vary. If state law requires double time pay, the double time hours will be billed at 2.00 times the normal billing rate."		
48	10/8/19	10/9/19	<b>Section 15:</b> Can we add the following to the end of this section? Suggested Revised Language: "In the event services are not free from defects or otherwise are non-conforming, Contractor will cause the assigned personnel to re-perform up to 40 hours of corrective services without charge or in the event re-performance is not desired, refund up to 40 hours of services times the regular bill rate for the assigned personnel associated with such services, provided that Contractor is notified within 90 days of the week ending date in which the hours of services were		Yes, see our attached revision of the sample contract.



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			rendered. Notwithstanding any language to the contrary herein, this shall be the Port's sole and exclusive remedy for defective or non-conforming services."		
49	10/8/19	10/9/19	<p><b>Section 16:</b> Can we add the following language to the last sentence to accurately reflect the employment relationship and the nature of staff augmentation services being provided?</p> <p>Suggested Revised Language: "Conduct and control of the employment relationship of personnel performing the work will be solely with the Seller."</p>		Yes, see our attached revision of the sample contract.
50	10/8/19	10/9/19	<p><b>Section 28:</b> Can we remove or otherwise designate this section as inapplicable to our services as we do not provide mechanics or laborers?</p>		Yes, see our attached revision of the sample contract.
51	10/8/19	10/9/19	<p><b>Section 33:</b> Can we add the following language to the first bullet point to make clear that while Contractor manages the employment relationship, we are not</p>		Yes, see our attached revision of the sample contract.

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			<p>providing onsite project managers to supervise the personnel?</p> <p>Suggested Revised Language: “Contractor shall: Competently and efficiently, supervise the employment relationship of Contractor personnel who are assigned hereunder to assist the Port with the implementation and completion of all contract requirements specified herein;”</p>		
52	10/8/19	10/9/19	<p><b>Section 36:</b> Can we add the following to the end of the second sentence to make clear the scope of the warranty remedy being provided?</p> <p>Suggested Revised Language: “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, <u>subject to the remedy provided in Section 15.</u>”</p>		Yes, see our attached revision of the sample contract.
53	10/8/19	10/9/19	<p><b>Section 41:</b> Can we add a mutual right to terminate for Contractor?</p> <p>Suggested Revised Language: “Contractor may terminate for</p>	No	

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			convenience upon thirty (30) days advance written notice to the Port.”		
54	10/8/19	10/9/19	<p>Section 45: Can we add the following language as a Section 45 to clarify the assignment limitations and business relationship of the parties?</p> <p>Suggested Revised Language (please add): “45. Miscellaneous. A. The Port agrees that it is responsible for providing day to day oversight and direction to Contractor’s assigned personnel performing services hereunder. The Port will not permit or require Contractor’s assigned personnel (i) to perform services outside of the scope of his or her assignment; (ii) to sign contracts or statements (including SEC documents); (iii) to make any management decisions; (iv) to make any final decisions regarding system design, software development or the acquisition of hardware or software; (v) to sign, endorse, wire, transport or otherwise convey cash, securities, checks, or any negotiable instruments or valuables; (vi) to operate machinery (other than office machines) or automotive equipment or (vii) to perform services remotely</p>	We partially agree with the exception of item (vii).	See our revision of the sample contract.

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			<p>(e.g., on premises other than The Port's or The Port's customer's premises), or to use computers, or other electronic devices, software or network equipment owned or licensed by Contractor's assigned personnel.</p> <p>B. In the event The Port wishes to convert any of Contractor's employees assigned or referred during the term of their assignment or within twelve (12) months after the last day of the assignment or referral, The Port agrees to pay a conversion fee. The specific fee shall be agreed upon on a case by case basis.</p> <p>C. Notwithstanding anything to the contrary herein, Contractor does not guarantee the completion of any tasks; Contractor shall have no obligation to continue performance once any stated "not to exceed" dollar amount or hours are reached or end date of the applicable Purchase Order, whether or not the stated deliverables, specifications or goals are completed."</p>		
55	10/8/19	10/9/19			Deadline for Questions is revised to 10/11/19.
56	10/9/19	10/9/19			Revised due date is 10-16/19 @ 2:00 PM PDT

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## ATTACHMENT D SAMPLE IT Contract Staffing / Terms & Conditions

(Do NOT fill out and include with proposals. This is a SAMPLE that includes the Port's terms and conditions that all **selected** firms will be required to agree to.)

### 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 provide the Port of Tacoma with Information Technology staffing Services; 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 three (3) years, with one extension two-year extension, for a total of 5 years. Such extensions shall be mutual 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.

4. **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. Notwithstanding any language herein to the contrary, the Port's approval of the weekly timecard of Contractor's assigned personnel shall constitute acceptance of the corresponding services for the assigned personnel. If overtime is applicable, overtime will be billed at 1.50 times the normal billing rate. Federal law defines overtime as hours in excess of 40 hours per week, state laws vary. If state law requires double time pay, the double time hours will be billed at 2.00 times the normal billing rate."

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.

For contracts where prevailing wages are required, the Contractor must include a statement that certifies Prevailing Wages have been paid for the Contractor and Subcontractors, if any. If it is to be the final payment, there must be an approved affidavit for the Contractor and Subcontractors before payment is made.

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. This is in addition to required annual Prevailing Wage adjustments instructions when specified elsewhere within this solicitation. 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.

**Hourly Rates or Service Pricing:** For multi-year contracts that provide services. The Contractor may submit a price reduction that implements a lower and more favorable cost to the Port at any time during the contract. Contractor requests for rate increases must be no sooner than one year after contract signature, are at the discretion of the Contracts and Purchasing; and must be:

- a. The direct result of increases to wage rates and do not exceed the CPI Index or other appropriate service rate index agreed upon between the Contracts and Purchasing and the Contractor.
- b. Incurred after contract commencement date.
- c. Not produce a higher profit margin than that on the original contract.
- d. Clearly identify the service titles and the hours of service performed if specified within the contract and the before and after wage rates for such titles.
- e. Be filed with Contract Administrator a minimum of 90 calendar days before the effective date of proposed increase.
- f. Be accompanied by detailed documentation acceptable to the Contracts and Purchasing sufficient to warrant the increase.
- g. The United States published indices such as the Consumer Price Index or other government data may be referenced to help substantiate the Contractor's documentation. A link to the CPI Data is available at [http://data.bls.govpdg/SurveyOutputServlet?data\\_tool=dropmap&series\\_id=CUUR0400SA0.CUUS0400SA0](http://data.bls.govpdg/SurveyOutputServlet?data_tool=dropmap&series_id=CUUR0400SA0.CUUS0400SA0).
- h. The Adjustment (if any) shall remain firm and fixed for at least 365 days after the effective date of the adjustment.
- i. Should not deviate from the original contract pricing scheme/methodology

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)

Port of Tacoma, [Department]  
Attention:  
Address: PO Box 1837  
Tacoma, WA 98401-1837  
Phone:  
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. In the event services are not free from defects or otherwise are non-conforming,

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Contractor will cause the assigned personnel to re-perform up to 40 hours of corrective services without charge or in the event re-performance is not desired, refund up to 40 hours of services times the regular bill rate for the assigned personnel associated with such services, provided that Contractor is notified within 90 days of the week ending date in which the hours of services were rendered. Notwithstanding any language to the contrary herein, this shall be the Port's sole and exclusive remedy for defective or non-conforming services."

#### **17-16. 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.~~ the employment relationship of personnel performing the work will be solely with the Seller."

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#### **18-17. 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.

#### **19-18. 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.

#### **20-19. 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.

#### **21-20. 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.

#### **22-21. 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.

**23-22. 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.

**24-23. 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.

**25-24. 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.

**26-25. 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

**27-26. 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.

**28-27. OSHA/WISHA**

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.

**29-28. Contract Work Hours and Safety Standards (Not applicable to contract IT Staffing)**

~~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.~~

**30-29. 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.

**31-30. 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 as 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:  
Commercial General Liability Insurance, on an occurrence basis, including contractual liability and completed operations, in an amount of not less than One Million Dollars
  - a. (\$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.

#### **32-31. 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.

#### **33-32. 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/SAM/pages/public/searchRecords/search.jsf> The Contractor shall keep proof of such verification within the Contractor records.

#### **34-33. Supervision and Coordination**

Contractor shall:

- Competently and efficiently, supervise and direct the implementation and completion of all contract requirements specified herein Contractor shall: Competently and efficiently, supervise the employment relationship of Contractor personnel who are assigned hereunder to assist the Port with 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.

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#### **35-34. 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.

**36-35. 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.

**37-36. 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 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, subject to the remedy provided in Section 15. 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.

**38-37. 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.

**39-38. 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.

#### **40-39. 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.

#### **41-40. 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.

#### **42.41. 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.

#### **43.42. 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) or Safety Data Sheets (SDS) 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/SDS. 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.

**44.43. 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.
- C. 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.
- D. 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
- E. Remedies Cumulative: Rights under this Contract are cumulative and nonexclusive of any other remedy at law or in equity.
- F. Captions: All titles, including sections or subsections, are for convenience only and do not define or limit the contents.
- G. 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.
- H. 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.
- I. 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.
- J. 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.

- K. 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.

#### 44. Miscellaneous.

A. The Port agrees that it is responsible for providing day to day oversight and direction to Contractor's assigned personnel performing services hereunder. The Port will not permit or require Contractor's assigned personnel (i) to perform services outside of the scope of his or her assignment; (ii) to sign contracts or statements (including SEC documents); (iii) to make any management decisions; (iv) to make any final decisions regarding system design, software development or the acquisition of hardware or software; (v) to sign, endorse, wire, transport or otherwise convey cash, securities, checks, or any negotiable instruments or valuables; (vi) to operate machinery (other than office machines) or automotive equipment, or to use computers, or other electronic devices, software or network equipment owned or licensed by Contractor's assigned personnel.

B. In the event The Port wishes to convert any of Contractor's employees assigned or referred during the term of their assignment or within twelve (12) months after the last day of the assignment or referral. The Port agrees to pay a conversion fee. The specific fee shall be agreed upon on a case by case basis.

C. Notwithstanding anything to the contrary herein, Contractor does not guarantee the completion of any tasks; Contractor shall have no obligation to continue performance once any stated "not to exceed" dollar amount or hours are reached or end date of the applicable Purchase Order, whether or not the stated deliverables, specifications or goals are completed."

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 SAMPLE-ONLY-DO-NOT-SIGN  
Signature

Date

By SAMPLE-ONLY-DO-NOT-SIGN  
Signature

Date

(Printed Name)

Sharon Rothwell  
Manager, Purchasing and Supplier Diversity

Title

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