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*Port of Grays Harbor*

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**CONTRACT DOCUMENTS  
FOR**

**28<sup>TH</sup> STREET BOAT LAUNCH IMPROVEMENTS  
CONSTRUCTION PHASE II**

**CONTRACT NO. 1836**

**November 2017**

**Prepared for:**  
**PORT OF GRAYS HARBOR**  
111 South Wooding Street  
Aberdeen, WA 98520

**PORT OF GRAYS HARBOR  
28<sup>TH</sup> STREET BOAT LAUNCH IMPROVEMENTS  
CONSTRUCTION PHASE II**

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**CALL FOR BIDS on Contract No. 1836**  
**28<sup>th</sup> Street Boat Launch Improvements Phase II**

Port of Grays Harbor Post Office Box 660 Aberdeen, WA 98520-0141 (360) 533-9528

Bids will be received at the Main Office of the Port of Grays Harbor, 111 South Wooding Street {Post Office Box 660}, Aberdeen, WA 98520-0141, **on or before 2:00 PM on TBD** for 28<sup>th</sup> Street Boat Launch Improvements Phase II and then at said office, opened and read publicly aloud.

Bid documents will be available by 1:00 p.m. on **TBD** at the Main Office of the Port of Grays Harbor, PO Box 660 (111 S. Wooding St.), Aberdeen, WA. 98520-0141. The telephone number is 360-533-9528. Access to bidding information (plans, specifications, addenda, and Bidders List) is available through the Port of Grays Harbor's on-line plan room. Free-of-charge access is provided to Prime Bidders, Subcontractors, and Vendors by going to [www.bxwa.com](http://www.bxwa.com) and clicking on "Posted Projects", "Public Works", and "Port of Grays Harbor". This online plan room provides Bidders with fully usable online documents with the ability to: download, view, print, order full/partial plan sets from numerous reprographic sources, and a free online digitizer/take-off tool. It is recommended that Bidders "Register" in order to receive automatic e-mail notification of future addenda and to place themselves on the "Self-Registered Bidders List". Bidders that do not register will not be automatically notified of addenda and will need to periodically check the on-line plan room for addenda issued on this project. Contact Builders Exchange of Washington at 425-258-1303 should you require assistance.

This project consists of the following major work items:

Demolition of the existing boat ramp; upland demolition; excavation and debris removal; performing marine earthwork for a new ramp; furnishing and installing a sanitary sewer line and water line; furnishing and installing the stormwater system; paving including sub base and striping; providing a foundation and sidewalk and installing a Port-furnished restroom structure; furnishing and installing a floating dock including guide piles, grounding piles, a grounding structure, and precast concrete floats; providing a new ramp including a cast-in-place concrete slab on grade with sub base, steel guide frame, and precast concrete panels with bedding; providing a cast-in-place concrete abutment; and providing upland electrical improvements.

The bid documents may be obtained at the Port's Office at the address given above. All bidders are required to use the forms furnished by the Port and to bid each item in the manner shown on the bid form.

The Port reserves the right to reject any or all bids, to waive any informality, to accept any bid and make such award, regardless of total price, that is judged to be in the best interest of the Port.

Upon award of the contract, a performance bond meeting the requirements of the "Instructions to Bidders" will be required. Progress payments will be made in accordance with the "General Conditions." The contract is subject to "Prevailing Wages" and Retainage (5%) will be held until releases are received from the Dept. of Labor & Industries and the Dept. of Revenue.

**A pre-bid conference will be held on TBD.** We will meet at the Port Administration office located at 111 South Wooding Street, Aberdeen, WA 98520. A site tour is included. Attendance is encouraged but not required in order to submit a bid.

For more information, please contact me at 360-533-9518

Mike Johnson

Contract and Project Manager

## INSTRUCTIONS TO BIDDERS

**The bidder's attention is especially called to the following forms which must be executed in full and submitted WITH THE BID. These forms may be removed from the contract documents package.**

- Bid Proposal  
Show the price for every Item and for every Alternate or Additive (if any). Be sure to sign it. Do not alter, add, delete or place conditions on the bid items.
- Affidavit of Non-Collusion  
Affidavit must be subscribed to and sworn before a Notary Public.
- Certification of Compliance with Wage Payment Statutes  
Complete and submit with bid.
- Bid Bond  
This form is to be executed by the bidder and his surety company unless bid is accompanied by a certified check. The amount of this bond shall not be less than 5 percent of the total amount bid (including all Alternates) and may be shown in dollars or on a percentage basis. (Ref. Item 11, General Conditions)
- Letter for Employment of Subcontractors- Prepared in Compliance with RCW 39.30.060  
Complete and submit with bid.

**The following forms will be executed AFTER the Contract is Awarded:**

- Agreement  
This agreement to be executed by the successful bidder and the Port. (Ref. Item 18, General Conditions)
- Performance and Payment Bond  
On contracts of \$150,000.00 or less, at the option of the Contractor, the Port will, in lieu of the Performance Bond, retain 10% of the contract amount for 30 days after date of final acceptance, or until Dept. of Labor & Industries release is received and all liens are settled, whichever is later. (Ref. Item 20, General Conditions)
- Retainage Bond  
This is the Contractor's option in lieu of 5% retainage on each contract payment, (Ref. Item 43, General Conditions)
- Letter for Employment of Subcontractors  
Must be submitted and approved for each subcontractor prior to bringing subcontractor on site.
- Contract Progress Payment  
This form, or information to complete it, must be submitted monthly. The Port disburses on every other Tuesday of the month. Note that all fees for Dept. of Labor & Industries Intent and Affidavit documents are the responsibility of the Contractor and are not reimbursed by the Port as separate pay items. (Ref. Item 58, General Conditions)
- This project will be subject to prevailing wages. The current prevailing wage rates for Grays Harbor County can be found at:

**Each bid proposal shall be sealed in a separate envelope, properly addressed to the Port. The name and address of the Contractor and the name of the project for which the bid is submitted shall be clearly written, printed or typed on the outside of the envelope.**

**Proposals must be received by the Port before the time deadline fixed for the opening of the bid proposals. It is the sole responsibility of the bidder to see that his or her bid is received by the Port on time. Any bid proposal received after the scheduled closing time for receipt of bids will be returned to the bidder unopened.**

**BID PROPOSAL- 28<sup>th</sup> Street Boat Launch Improvements - Construction Phase II**  
**Port of Grays Harbor - Contract No. 1836**

1. The undersigned, hereinafter referred to as the "Bidder", makes this proposal in good faith and with no intent to defraud. The contract documents and site have been thoroughly examined and to the best of the Bidder's knowledge, the scope of this project is understood.
2. The Bidder understands and agrees to comply with RCW 39.12.040 regarding prevailing wages.
3. The Bidder agrees, if this proposal is accepted, that Bidder will furnish the equipment, labor, materials and incidentals necessary to complete the work in accordance with the drawings, specifications, and any addenda, within the time allowed and will accept the dollar amount shown below in full payment for the work.
4. By submission of this bid proposal, Bidder hereby certifies that he is fully licensed in the State of Washington and the applicable community to perform all work contemplated by this contract.
5. The Bidder hereby acknowledges receipt of Addendum No.(s) \_\_\_\_\_.

**Base Bid**

Contractor Name Page 1 \_\_\_\_\_

Item No.	Units	ITEM	QUANTITY	UNIT PRICE \$	AMOUNT \$
1	Lump Sum	Mobilization and Demobilization	-		
2	Lump Sum	Construction Survey Support	-		
3	Lump Sum	Upland Demolition and Debris Removal	-		
4	Lump Sum	Temporary Erosion and Sedimentation Control	-		
5	Cubic Yard	Haul and Dispose of Excess and Unsuitable Material	2,726		
6	Lump Sum	Earth Work	-		
7	Lump Sum	Trench Safety Systems/ Shoring	-		
8	Lump Sum	Turbidity Curtain and Silt Fence	-		
9	Lump Sum	Demolition of Existing Ramp	-		
10	Ton	Upland Base Course Aggregates	2,210		
11	Ton	Hot Mix Asphalt Paving	1,343		

Item No.	Units	ITEM	QUANTITY	UNIT PRICE \$	AMOUNT \$
12	Lump Sum	Striping and Pavement Markings	-		
13	Lump Sum	Water System Extension	-		
14	Lump Sum	Sanitary Sewer	-		
15	Lump Sum	Stormwater System	-		
16	Linear Foot	Extruded Curb	615		
17	Lump Sum	Concrete Barriers	-		
18	Lump Sum	Signage	-		
19	Lump Sum	Restroom Concrete Foundations And Sidewalk	-		
20	Lump Sum	Repair Landscaping	-		
21	Lump Sum	Electrical And Lighting	-		
22	Cubic Yard	Marine Earthwork	2,155		
23	Ton	Gravel Bedding For Precast Panels And Cast-In-Place Slab	1,114		
24	Linear Foot	Furnish 16-Inch-Diameter Guide Piles	487		
25	Each	Install 16-Inch-Diameter Steel Pipe Guide Piles	8		
26	Linear Foot	Furnish 10-Inch-Diameter Steel Pipe Grounding Piles	1,080		
27	Each	Install 10-Inch-Diameter Steel Pipe Grounding Piles	30		
28	Each	Furnish And Install Pile Caps At Steel Piles	15		
29	Lump Sum	Furnish Precast Concrete Floats	-		
30	Lump Sum	Install Precast Concrete Floats	-		
31	Lump Sum	Furnish And Install Steel Guide Frame	-		

Item No.	Units	ITEM	QUANTITY	UNIT PRICE \$	AMOUNT \$
32	Lump Sum	Furnish And Install Precast Concrete Panels	-		
33	Cubic Yard	Furnish And Install Cast-In-Place Concrete Slab	152		
34	Lump Sum	Furnish And Install Cast-In-Place Concrete Abutment	-		
35	Lump Sum	All Other Work Not Included In Items 2 Through 34	-		

SUBTOTAL\$..... \_\_\_\_\_

WASHINGTON SALES TAX (8.8%)\$..... \_\_\_\_\_

**TOTAL COSTS\$..... \_\_\_\_\_**

License No.	UBI No.
Name (print)	Company:
Title:	Address:
Phone:	Fax:
Signature:	Email:

AFFIDAVIT OF NON-COLLUSION

State )  
County of ) SS

\_\_\_\_\_ being duly sworn on oath, deposes and says:

That he/she is an authorized representative of \_\_\_\_\_,  
a prospective bidder on the Port of Grays Harbor Contract No. \_\_\_\_\_.

That to his/her knowledge, information and belief there has been and is no collusion between the  
affiant’s principal and any other prospective bidder on this contract, nor has there been or is there any  
collusion between affiant’s principal and Port of Grays Harbor employees, officers, and/or  
representatives.

\_\_\_\_\_  
(Signature)

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

\_\_\_\_\_  
(Signature)

NOTARY PUBLIC in and for  
The State of \_\_\_\_\_  
residing at \_\_\_\_\_

My Commission expires:  
\_\_\_\_\_ (SEAL)



BID BOND

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_

of \_\_\_\_\_, as Principal,

and, \_\_\_\_\_

of \_\_\_\_\_, as Surety,

a corporation duly organized under the laws of the State of \_\_\_\_\_, and authorized to do business in the State of Washington as Surety, are held and firmly bound unto the Port of Grays Harbor in the full and penal sum of five percent (5%) of the total amount of the bid of the Principal for the work described below for the payment of which, well and truly made, we bind our heirs, executors, administrators and assigns, successors and assigns, firmly by these presents.

This bond is submitted in conjunction with and becomes part of the Bid Proposal for the work under a contract described as: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

NOW, THEREFORE, if the bid by the Principal is accepted, and the contract is awarded the Principal, and if the Principal shall duly make and enter into and execute the contract and shall furnish a performance and payment bond as required within a period of ten (10) days from and after date of receipt of notice of award, exclusive of the day of award, then this obligation shall be void, otherwise to remain in full force and effect.

WITNESS our hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Surety, Attorney in Fact

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Principal

# SUBCONTRACTOR LIST

Prepared in Compliance with RCW 39.30.060

## 28<sup>th</sup> Street Boat Launch Improvements Phase II

### CONTRACT NO. 1836

Every invitation to bid on a prime contract that is expected to cost one million dollars or more for the construction, alteration, or repair of any public building or public work of the state or a state agency or municipality as defined under RCW [39.04.010](#) as part of the bid, or within one hour after the published bid submittal time, the names of the subcontractors with whom the bidder, if awarded the contract, will subcontract for performance of the work of: HVAC (heating, ventilation, and air conditioning); plumbing as described in chapter [18.106](#) RCW; and electrical as described in chapter [19.28](#) RCW, or to name itself for the work. The prime contract bidder shall not list more than one subcontractor for each category of work identified, unless subcontractors vary with bid alternates, in which case the prime contract bidder must indicate which subcontractor will be used for which alternate. Failure of the prime contract bidder to submit as part of the bid the names of such subcontractors or to name itself to perform such work or the naming of two or more subcontractors to perform the same work shall render the prime contract bidder's bid nonresponsive and, therefore, void.

Failure to list subcontractors who are proposed to perform the work of heating, ventilation and air conditioning, plumbing, as described in Chapter 18.106 RCW and electrical as described in Chapter 19.28 RCW, or identify the bidder for the work will result in your bid being non-responsive and therefore void.

Subcontractors that are proposed to perform the work of heating, ventilation and air conditioning, plumbing, as described in Chapter 18.106 RCW and electrical as described in Chapter 19.28 RCW must be named below, or name the bidder for the work.

The bidder verifies that each first tier subcontractor, and every subcontractor of any tier that hires other subcontractors, has a current certificate of registration in compliance with chapter 18.27 RCW; a current Washington Unified Business Identifier (UBI); has Industrial Insurance (workers compensation) coverage for the subcontractor's employees working in Washington, as required in Title 51 RCW, if applicable; has a Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW, if applicable; has an electrical contractor license, if required by Chapter 19.28 RCW, if applicable; has an elevator contractor license, if required by Chapter 70.87 RCW.

Electrical Subcontractors- List Below

Plumbing Subcontractors- List Below

HVAC-List Below

The following listed bid items (listed in numerical sequence) for this project have been proposed for subcontracting to subcontractors as indicated.

SUBCONTRACTOR NAME	ITEM NUMBERS	ESTIMATED AMOUNT

LETTER FOR EMPLOYMENT OF SUBCONTRACTORS

\_\_\_\_\_, 20\_\_\_\_

TO: Port of Grays Harbor, Contract and Project Manager

RE: Contract No. \_\_\_\_\_

Dear Sir:

We the undersigned, request permission of the Port of Grays Harbor to employ a subcontractor in order to fully perform the work covered by the terms of the referenced contract.

We intend to employ the firm of:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

For the purpose of performing the following described work \_\_\_\_\_

\_\_\_\_\_ and represent and warrant that the work will be performed by said subcontractors in a good and workmanlike manner and under our direct supervision.

We further represent and warrant that the work to be performed by them constitutes approximately \_\_\_\_\_ percent of the total dollar value of said contract.

Very truly yours,

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Contractor



## PERFORMANCE AND PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_  
of \_\_\_\_\_, as Principal,  
and, \_\_\_\_\_  
of \_\_\_\_\_, as Surety, jointly and  
severally bind ourselves, our heirs, executors, administrators and assign, unto the Port of Grays Harbor  
for the penal sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_).

THE CONDITION of this bond is such that WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_,  
The Principle herein executed a certain Contract with the Port of Grays Harbor, by the terms, conditions  
and provisions of which Contract the Principal agrees to furnish all materials and/or do certain work, to  
wit: That the Principal will undertake and complete the performance of **Contract**  
**No.** \_\_\_\_\_ as per its conditions, drawings, and specifications. This contract, as so executed,  
is now referred to and by reference is incorporated herein and made a part hereof as fully for all  
purposes as if here set forth at length.

NOW, THEREFORE, if the Principal shall faithfully and truly observe and comply with the terms,  
conditions, and provisions of the Contract in all respects, and shall well, truly, and fully do and perform  
all matters and things undertaken under the Contract within the time prescribed therein, and until the  
same is accepted, and shall pay all laborers, mechanics, and subcontractors with provisions and supplies  
for the carrying on of such work, and shall in all respects faithfully perform the Contract according to  
law, then this obligation to be void, otherwise to remain in full force and effect.

WITNESS our hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
Surety, Attorney in Fact

\_\_\_\_\_  
\_\_\_\_\_  
Principal

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On contracts of \$150,000.00 or less, at the option of the Contractor, the Port will, in lieu of the  
Performance Bond, retain 10% of the contract amount for 30 days after date of final acceptance, or  
until Dept. of Labor & Industries release is received and all liens are settled, whichever is later.

Surety Contact Information:

Name \_\_\_\_\_

Address \_\_\_\_\_

City / State \_\_\_\_\_

Zip code \_\_\_\_\_

Phone \_\_\_\_\_

\_\_\_\_\_  
Principal

# RETAINAGE BOND

BOND NO. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_, a

\_\_\_\_\_ existing under and by virtue of the laws of the State of \_\_\_\_\_

and authorized to do business in the State of Washington as Principal, and \_\_\_\_\_

\_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws

of the State of \_\_\_\_\_. And authorized to transact business in the State of Washington as Surety, are jointly and severally held and bound unto the Port of Grays Harbor, hereinafter called Port, and are similarly held and bound unto the beneficiaries of the trust fund created by RCW 60.28, in the penal sum of

\_\_\_\_\_ Dollars (\_\_\_\_\_), which is five percent (5%) of the Principal's

bid on Contract No. \_\_\_\_\_.

WHEREAS, on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_, the said Principal herein executed a contract with the Port for:

WHEREAS, said contract and REC 60.28 require the Port to withhold from the Principal the sum of five percent (5%) from monies earned on estimates during the progress of the construction, hereinafter referred to as earned retained funds;

AND NOW WHEREAS, Principal has requested that the Port not retain any earned retained funds as allowed under RCW 60.28;

NOW, THEREFORE, the conditions of this obligation is such that the Surety is held and bound unto the beneficiaries of the trust fund created by RCW 60.28 in the penal sum of five percent (5%) of the final contract cost which shall include any increases due to change orders, increases in quantities of work, or the addition of any new item of work. If the Principal shall use the earned retained funds, which will not be retained, for the trust fund purposes of RCW 60.28, then this obligation shall be null and void; otherwise, it shall remain in full force and effect until release is authorized in writing by the Port.

PROVIDED, HOWEVER, that:

1. The liability of the Surety under this bond shall not exceed five percent (5%) of the total amount earned by the Principle if no monies are retained by the Port on estimates during the progress of construction.
2. Any suit under this bond must be instituted within the time period provided by applicable law.

WITNESS our hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_

Principal

\_\_\_\_\_

Attorney-in-fact, Surety

\_\_\_\_\_

Name and Address Local Office or Agent

Approved:  
PORT OF GRAYS HARBOR

By \_\_\_\_\_  
Director of Finance & Administration

Date: \_\_\_\_\_, 20\_\_\_\_\_

**PORT OF GRAYS HARBOR**

**GENERAL CONDITIONS**

**FOR**

**CONSTRUCTION**

**AND**

**SIMILAR WORK**

1/1/2017

## 1. DEFINITIONS

"Port" means Port of Grays Harbor – "Engineer" means Director of Engineering of Port of Grays Harbor or his designated representative – "Contractor" means firm performing this Contract.

Whenever the meaning of any other abbreviation, work or term in the Contract Documents is in question, the description given in Section 1, Division 1 of the "Standard Specifications for Road, Bridge, and Municipal Construction," current edition, written by the Washington State Chapter of the American Public Works Association and Washington State Department of Transportation shall govern.

## 2. QUALIFICATIONS OF CONTRACTORS

Contractors shall be qualified by experience, financing, and equipment to do the work called for in the plans and specifications. The Port reserves the right to make whatever inquiry or to take whatever action it deems necessary, including pre-qualification in ascertaining the ability of the Contractor to perform the work satisfactorily.

## 3. EXAMINATION OF PLANS, SPECIFICATIONS AND SITE OF WORK

The Contractor shall examine carefully the sites, including material sites, of the proposal work, the proposal, Plans, special conditions, specifications, addenda, and Contract forms therefor. The submission of a bid or proposal shall be conclusive evidence that the Contractor has made such examinations and has investigated and is satisfied as to the conditions to be encountered, the character, quantity, quality, and scope of work, the quantities and qualities of materials to be supplied and equipment and labor to be used, and the requirements of the proposal, plans, general conditions, special conditions, specifications and addenda for performance of the work in full.

The Contractor shall determine from careful examination the methods, materials, labor and equipment required to perform the work in full and shall reflect the same in his bid or proposal prices. If in the performance of the work, methods, materials, labor or equipment are required beyond those anticipated by the Contractor, he shall not be entitled to additional compensation.

## 4. ESTIMATED QUANTITIES

When quantities other than Lump Sum (LS) are shown on the Bid Proposal form, they are estimates only, being given only as a basis for the comparison of bids. The Port does not warrant, expressly nor by implication, that the actual amount of work will correspond therewith. The right to increase or decrease the amount of any class or portion of the work, or to make changes in the work required as may be deemed necessary by the Engineer, is reserved by the Port as provided elsewhere herein. The basis of payment shall be the actual units of work performed and measured in accordance with the Contract requirements.

## 5. INTENT OF THE CONTRACT DOCUMENTS

The Contract Documents shall be construed as a whole, and the Contract Documents are complementary, in that what is called for by any one document shall be as binding as if called for by all documents. The intent of the documents is to include all labor, materials, equipment, tools, plant and other items necessary for a complete finished job. The titling and division of the drawings and specifications by trades or other classifications is for convenience only and the fact that any part of the work should or could properly have been shown or specified under some other title or division shall not relieve Contractor of performing or furnishing the same nor entitle Contractor to any adjustment in cost, fee or schedule.

## 6. CONFLICTS IN OR OMISSIONS FROM CONTRACT DOCUMENTS

In the event there is or may be any conflict between or omission from the Contract Documents, or if Contractor has any doubt as to the meaning thereof, Contractor shall immediately submit the matter in writing to Port for written clarification. Any work performed before receipt of such clarification shall be at Contractor's risk and expense. If any clarification of the Contract Documents is needed, Port will clarify the same by issuing a written order pursuant to the 'Changes' clause hereof, provided, however, that notwithstanding the provisions of said clause, there shall be no increase in the estimated cost or fee or extension of the time for completion on account of any misdescription in, or omission from, the Contract Documents of details of the work which are clearly necessary to carry out the intent of the documents or which are customarily performed or furnished by Contractors for a complete finished job. Such misdescribed or omitted details shall be performed or furnished by Contractor at no increase in the cost or fee as if fully and clearly set forth in the documents.

In case of discrepancies, elements within the Contract Documents shall be considered in the following order with the earliest governing over any subsequent: 1) special conditions, 2) general conditions, 3) technical specifications, 4) plans (design drawings), 5) supplemental specifications of a referenced standard, and 6) standard specifications when referenced. On the plans or drawings, figured dimensions shall govern over scaled dimensions. In case of any ambiguity or dispute over interpretation of the provisions of the Contract, the decision of the Engineer will be final.

## 7. PATENTED DEVICES, MATERIALS AND PROCESSES

The Contractor shall assume all costs arising from the use of patented devices, materials, or processes used on or incorporated in the work, and shall indemnify and save harmless the Port and its duly authorized agents and employees from all action of any nature for, or on account of the use of any patented devices, materials, or processes.

## 8. LAWS TO BE OBSERVED

The Contractor shall always comply with all laws, ordinances, and regulations -- Federal, State, or local -- that affect work under the Contract. The Contractor shall indemnify and save harmless the Port (including the Commission, the Engineer, and any agents, officers, and employees) against any claims that may arise because the Contractor (or any employee or subcontractor) violated a legal requirement.

The Contractor shall be responsible for the safety of its workers and shall comply with safety and health standards such as Safety Standards for Construction Work (Chapter 296-155 WAC), General Safety and Health Standards (Chapter 296-24 WAC), General Occupational Health Standard (Chapter 296-62 WAC), and any other appropriate safety and health codes.

U.S. Mine Safety and Health Administration rules apply when the project includes pit or quarry operations. Among other actions, these regulations require the Contractor to notify the nearest Mine Safety and Health sub-district office (1) of the project before it begins, (2) of the starting date, and (3) of the completion date. The Contractor shall send the Engineer a copy of each report.

**Changes in Laws** -- The Port will not adjust payment to compensate the Contractor for changes in legal requirements unless those changes are specifically within the scope of RCW 39.04.120. For changes under RCW 39.04.120, the Port will compensate the Contractor by negotiated change order or by force account.

## 9. TAXES

The Port will not adjust its payment if the Contractor bases a bid on a misunderstood tax liability.

**Changes in Taxes** -- Under certain conditions, the Port will adjust payment to compensate for tax changes. First, the changes shall involve federal or state taxes on materials used in or consumed for the project. Second, the changes shall increase Contractor-paid taxes by more than \$1 00. For items in the original Contract, the tax change must occur after the bid opening date. For negotiated contracts or items in a supplemental agreement, the tax change must take place after the execution date of the Contract or Agreement. Within these

conditions, the Port will adjust compensation by the actual dollar amounts of increase or decrease caused by the tax changes.

If the Engineer requests it, the Contractor shall certify in writing that the Contract price does not include any extra amount to cover a possible change in taxes. The Port may audit the records of the Contractor to verify any claim for compensation because of changes in laws or taxes.

#### **10. WITHDRAWAL OR REVISION OF PROPOSAL**

A Contractor may withdraw or revise his bid proposal after it has been deposited with the Port provided that the request for withdrawal or revision is filed with the Port, in writing, by written telegram, or by mechanical transcriber before the time is set for opening proposals. The original proposal, as modified in writing by an attached revision, will be considered as the proposal submitted by the Contractor.

No Contractor shall be permitted to withdraw his proposal between the closing time for receipt of proposals and the execution of Contract unless the award is delayed for a period exceeding 60 calendar days, or if a Contractor's claim of error is upheld by the Port and the contractor is relieved of his responsibility as provided for in Clause 13.

#### **11. BID BOND**

A surety bond signed by the bidder and his Surety, shall be submitted on a form furnished by the Port. The Surety shall be registered with the Washington State Insurance Commissioner and the Surety's name shall appear in the current Authorized Insurance Company List in the State of Washington published by the Office of the Insurance Commissioner.

All proposal bonds and deposits will be held until the Contract and the performance bond have been executed. When the Contract has been executed, all remaining deposits or bonds, except those subject to forfeiture, will be returned.

In lieu of form, bid may be accompanied by a certified check. The amount of this bond shall not be less than 5 percent of the total amount bid (including all Alternates) and may be shown in dollars or on a percentage basis.

#### **12. CONSIDERATION OF BIDS**

After proposals have been opened and read publicly, they will be checked for mathematical accuracy with respect to the extensions of unit bid prices and the total price of the Contract. If there is a discrepancy between the unit bid price and the extended amount on any bid item, the unit bid price shall control. The total of extensions, corrected where necessary, will be used as the amount of the bid for award purposes and will fix the amount of the contract bond, if required.

The right is reserved to waive informalities in the bidding, to reject any or all bids, republish the call for bids, revise or cancel the work to be performed, or to do the work otherwise, if in the sole judgment of the Port the best interest of the public is served thereby.

#### **13. BIDDING ERRORS**

When, after opening and tabulation of bids, a bidder claims error and requests to be relieved of award, they shall be required to, on the same day as the bid opening or if bid opening is in the PM, then on the following business day, present his certified original work sheets. The Port will review the work sheets to determine the validity of the bidder's claim of error.

If the Port is convinced that an honest, allowable (excusable mathematical) error has been made, the bidder shall be relieved of responsibility. The Port shall determine whether to allow correction of the error or award to the next low responsive bidder.

#### **14. IRREGULAR PROPOSALS**

A proposal may be considered irregular and may be rejected by the Port for any of the following reasons:

- (a) If the proposal form furnished or authorized is not used or is altered;
- (b) If the proposal form as completed contains any additions, deletions, unauthorized alternate bids, or conditions;
- (e) If the bidder adds any provisions reserving the right to reject or accept the award, or enter into the Contract;
- (d) If the bid bond is not properly executed or is inadequate;
- (e) If the proposal fails to include a unit price for every unit bid item;
- (f) If the Port deems any of the unit prices to be excessively unbalanced either above or below the amount of a reasonable bid for the item of work to be performed to the potential detriment of the Port;
- (g) If receipt of addenda is not acknowledged on the proposal;
- (h) If the intended unit prices cannot be determined.

#### **15. DISQUALIFICATION OF BIDDERS**

The Port in its discretion, may determine that a bidder is not responsible and reject his proposal for any of the following reasons:

- (a) More than one proposal on the same project from a bidder under the same or different names;
- (b) Evidence of collusion with any other bidder or bidders. Participants in such collusion may be disqualified from submitting bids on any further work;
- (c) If a bidder is not qualified for the work involved or to the extent of his bid;
- (d) Unsatisfactory performance record, judged from the standpoint of conduct of work, workmanship, or progress, as shown by past or current work for the Port;
  - (e) Uncompleted work, whether for the Port or otherwise which might hinder or prevent the prompt completion of the work bid upon;
  - (f) Failure to pay or settle bills for labor or materials on former or current contracts;
- (g) If the bidder has previously defaulted in the performance of or failed to complete a written public contract, or has been convicted of a crime arising from a previous public contract;
- (h) Any other inability, financial or otherwise, to perform the work;
- (i) A bidder not authorized to do business in the State of Washington;
- (j) For any other reasons deemed proper.

#### **16. PRE-AWARD INFORMATION**

Before any Contract work is awarded, the Contractor may be required to furnish a complete statement as to the origin, composition and manufacture of any or all materials to be used in the construction of the work, together with samples, which samples may be subjected to tests under the Contract. He may also be required to submit a progress schedule, in such form as requested by the Engineer, showing the order of and time required on the various phases of the work, submit a breakdown of costs assigned to any bid item(s), or attend a conference with the Engineer or his representatives prior to award.

#### **17. AWARD OF CONTRACT**

The award of Contract, if it be awarded, shall be made within 30 calendar days, or such other calendar days as may be specified in the special conditions, after the date of opening of bids to the lowest bidder deemed responsible by the Port. Upon mutual consent of the bidder and the Port, the calendar day limit may be extended. The successful bidder will be notified, by letter mailed to the address shown

on his proposal, that his bid has been accepted and that he has been awarded the Contract.

#### **18. EXECUTION OF CONTRACT**

The successful bidder shall sign the Contract form furnished by the Port and return it within 10 calendar days after receipt of Contract together with satisfactory bonds and insurances as required by the Port.

No proposal shall be binding upon the Port until the Contract is properly executed by the Port. No work shall be performed within the project limits or Port furnished sites prior to such execution of Contract. Any work performed outside such areas, or materials ordered prior to such execution of Contract, shall be at the sole risk of the Contractor.

#### **19. FAILURE TO EXECUTE CONTRACT**

If the successful bidder fails to sign and return the Contract and furnish satisfactory bond within ten (10) days from the date of award or refuses performance/payment (in writing) to enter into the Contract, his bid bond shall be forfeited. The Contract may be awarded successively in a like manner to the remaining lowest responsible bidders until the contract and bond are executed by a responsible bidder or the remaining proposals are rejected.

The time for the successful bidder to sign and return the Contract and furnish satisfactory bond may be extended for a maximum of 20 additional days if requested by the bidder and the Port deems circumstances warrant an extension.

#### **20. PERFORMANCE/PAYMENT BOND**

The successful bidder shall, at the time of delivery of the executed Contract, furnish an executed bond on a form furnished or approved by the Port and signed by an approved Surety or Sureties in the full amount of the Contract price. The bond shall be conditioned upon the faithful performance of the Contract by the Contractor within the prescribed time. The bond shall provide that the Surety agrees to protect and indemnify the Port against any direct or indirect loss claimed by reason of failure by the Contractor or any of the Contractor's employees, subcontractors, or agents to faithfully perform the Contract, or by reason of failure by the Contractor to pay all laborers, mechanics, subcontractors, agents, material supplier, and all persons who shall supply such Contractor, subcontractor, or agents with provisions or supplies for carrying on the work.

On contracts of \$150,000.00 or less, at the option of the Contractor, the Port will, in lieu of the Performance Bond, retain 10% of the contract amount for 30 days after date of final acceptance, or until Dept. of Labor & Industries release is received and all liens are settled, whichever is later.

#### **21. NOTICE TO PROCEED**

Written Notice to Proceed will be given after the Contract has been executed and the performance bond and all required insurances have been filed with and approved by the Port. The Contractor shall not commence work under the Contract until such written notice has been given by the Engineer.

The contractor shall physically begin work within ten (10) calendar days of the Contract starting date specified in the Notice to Proceed, or, if the Contract starting date is specified in the Special Conditions, within ten (10) calendar days of such date. The Contractor shall prosecute the work vigorously and continually to completion except when it is physically impossible to do so on account of weather conditions or other unavoidable handicaps. The necessity of discontinuing and resuming work on any portion of the Contract shall be determined by the Engineer.

There shall be no voluntary shutdowns or slowing of operations by the Contractor without prior approval of the Engineer and such approval shall not relieve the Contractor from his responsibility to complete the Contract work within the prescribed Contract time.

#### **22. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE**

The Contractor shall obtain and keep in force during the term of the Contract, public liability and property damage insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW.

The Contractor shall not commence work under the Contract or under any special condition until he has obtained all insurance required and until such insurances have been approved by the Port. Contractor shall not allow any subcontractor to commence work on his subcontract until all similar insurances required of the subcontractor have been obtained and approved. Said insurance shall provide coverage to the Contractor, any subcontractor performing work provided by this Contract, and the Port.

The Port shall be named as an additional insured on said policy insofar as the work and obligations performed under the Contract are concerned. The coverage so provided shall protect against claims for personal injuries, including accidental death, as well as claims for property damages which may arise from any acts or omission of the Contractor or the subcontractor, or by anyone directly or indirectly employed by either of them.

The Port shall be specifically named as an insured in a policy with the same company which insures the Contractor or by an endorsement to an existing policy. No termination or change in the coverage required herein shall be effective without 20 days prior written notice to the Port by certified mail.

The amount of coverage shall be not less than \$1,000,000 for bodily injury, including death, and property damage for each occurrence. Total combined coverage of \$1,000,000.

Certification, by the Contractor that a policy or endorsement to an existing policy, naming the Port as an additional insured and otherwise satisfying the requirements set forth above, has been obtained from a particular company and is in effect, shall be forwarded to the Port with the signed Contract forms.

As soon as possible, but not later than the date upon which request is made by the Contractor for the initial progress estimate payment to be paid under this Contract, the Contractor shall forward to the Port the original policy or endorsement obtained. If a policy or endorsement, currently in force and satisfying all of the above requirements, has been previously filed with the Port, the Contractor may submit in lieu of an additional copy of the policy and endorsement, a certification by the insurance company issuing the policy and endorsement that its coverage has been extended to this Contract and setting forth the basic coverage limits, together with a copy of the endorsement adding the Port as a Named Insured as set forth above.

The Port will pay no progress estimate payments until the Contractor has fully complied with this section. This remedy is not exclusive and the Port may take such other action as is available to it under other provisions of this Contract, or otherwise in law. Coverage in the minimum amount set forth herein shall not be construed to relieve the Contractor from liability in excess of such coverage.

#### **23. RISK OF LOSS**

Contractor shall bear the risk of any loss or destruction of or damage to the work performed under this Contract or any materials, equipment or other items incorporated or to be incorporated therein until the completion of the work and its final acceptance by Port. The Contractor shall adequately protect same from damage or deterioration.

#### **24. PROTECTION OF PROPERTY**

All existing structures and other improvements altered or removed by Contractor in the execution of the work, unless otherwise specified, shall be appropriately repaired, replaced, or otherwise restored by Contractor at no cost to Port. Quality of the restoration shall

be as good as existing and meet the approval of Port.

At all times Contractor shall use suitable precautions to prevent damage to Port property or the property of third parties. If any such property is damaged by any negligent act or omission of Contractor or any subcontractor, of any tier, or any of their respective agents or employees, in connection with the performance of this Contract, Contractor shall at no cost to Port promptly and equitably reimburse the owner of such property for such damage or repair or otherwise make good the same to the owner's satisfaction. If Contractor fails to do so, Port may do so and charge to or otherwise recover from Contractor the cost thereof. This clause shall not be construed to relieve Contractor of, or limit Contractor's, liability under any other provision of this contract.

#### **25. USE OF BUILDINGS, STRUCTURES AND PREMISES**

It shall be the Contractor's responsibility to confine his construction activities within the work areas designated within the contract documents or by the Engineer, and particularly within the limits of property lines, easements, and construction permits.

Before using any private property adjoining the work the Contractor shall file with the Engineer a written permission of the property owner, and upon vacating the premises the Contractor shall furnish the Engineer with a release from all damages, properly executed by the property owner.

The Contractor shall confine his equipment, storage of materials and operation of work to the limits indicated by law, ordinances, permits or direction of the Engineer, and shall not unreasonably encumber the premises with his materials.

#### **26. UTILITY SHUT-OFF**

In the event Contractor requires the temporary shut-off of any utility, Contractor shall notify Port twenty-four hours in advance of the time it requires the shut-off unless otherwise specified in Special Conditions or Technical Specifications. It shall then perform the work requiring the shut-off on such days and at such hours as Port may direct. Regardless of the days or hours fixed by Port, there shall be no increase in the cost or fee on account of such work.

#### **27. METHOD OF SERVICE OF NOTICE**

Any written notice to the Contractor required under these specifications may be served on him, either personally, by mailing, or by leaving the same at his last post office address known to the Engineer.

All correspondence from the Contractor to the Port shall be directed to the Engineer.

#### **28. COOPERATION OF CONTRACTOR**

Contractor acknowledges that Port may undertake or award other contracts for additional work to be performed in connection with or in or about the work under this Contract. Contractor shall cooperate with Port and Port's other Contractors in coordinating its work and theirs so that all work may be promptly and properly performed without undue interference or delay. Contractor shall afford Port and Port's other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, including storage space, access, use of hoisting equipment and construction utilities.

#### **29. PORT OPERATIONS**

Contractor shall schedule all work under this Contract to avoid interruption of normal Port operations.

#### **30. SUBCONTRACTS AND PURCHASE ORDERS**

Contractor shall be responsible for all the work covered by this Contract, whether or not said work is subcontracted, and shall be fully liable to Port for the acts and omissions of all subcontractors (first- and lower- tier) under this Contract and their respective agents and employees. Contractor shall schedule, supervise and coordinate the operations of all subcontractors.

Contractor shall give Port immediate notice in writing of any claim made or action commenced against Contractor by any subcontractor or supplier which, in the opinion of Contractor, may result in liability for which Contractor may be entitled to reimbursement under this Contract.

The approval of any subcontract or purchase order by Port shall not be construed to constitute a determination of the reimbursability of any cost under this Contract.

In the event any work under this Contract is to be paid on any basis other than a firm fixed-price, Contractor agrees:

(a) In placing its subcontractors and purchase orders under this Contract, Contractor shall obtain competitive bids from responsible subcontractors and suppliers. Contractor shall take advantage of the most favorable prices obtainable (quality, time of performance and all other relevant factors considered). Before requesting bids from proposed subcontractors and major suppliers, Contractor shall furnish all pertinent information to and consult with Port, and Port shall have the right to add a reasonable number of names to the proposed bidding list. All bids received shall be open to inspection by Port, and, to the extent requested by Port, the bids shall be opened in the presence of the Engineer.

(b) Contractor shall not, without the prior written approval of Port, place any subcontract or purchase order under this Contract which:

(i) is on a firm fixed-price basis for an amount in excess of \$10,000.00;

(ii) is on any basis other than firm fixed-price, including all cost, cost-plus-a-fee, time-and-material and labor hour subcontracts and purchase orders;

(iii) is for the rental of any equipment or tools reimbursable under this Contract; or

(iv) is designated elsewhere in this Contract or is hereafter designated by Port in writing as being subject to Port's prior written approval. As a condition precedent to the approval of any subcontract or order, Port shall among other things have the right to insist upon the inclusion therein of terms and conditions adequate to protect Port's interests. The performance of the work covered by any subcontract or order approved by Port shall not be assigned or otherwise transferred to or placed with another source without the prior written consent of Port.

#### **31. SUPERINTENDENTS, LABOR, AND EQUIPMENT OF THE CONTRACTOR**

The Contractor shall give the work the attention necessary to facilitate reasonable progress thereon and shall cooperate with the Engineer and his inspectors in every way possible.

The Contractor shall be present in person or represented by a duly authorized person at the site of the work continually during its progress. The Contractor shall designate in writing before starting work a superintendent who shall be experienced, capable of understanding the Contract, and able to supervise performance of the work as provided in the Contract. The superintendent shall have authority to represent and act for the Contractor under the Contract while on the project in the absence of the Contractor.

All work under the Contract shall be performed under the continuous supervision of competent personnel experienced in the class of work specified. Incompetent, careless or negligent employees shall be forthwith removed by the Contractor upon request of the Engineer. Failure to comply with such request shall be sufficient grounds for termination of the Contract.

The lack of proper supervision by the Contractor or by his supervisory personnel shall be just cause for termination of the Contract.

All machinery and equipment shall be adequate for the purposes used, kept in good workable condition, and operated by competent operators.

### **32. TERMINATION FOR DEFAULT**

If the Contractor:

- (a) Refuses or fails to supply sufficient properly skilled workmen or materials of the proper quality; or
- (b) Fails to prosecute the work continuously to completion with promptness and diligence; or
- (c) Fails to perform any of its obligations under the Contract; or
- (d) Becomes insolvent or is declared bankrupt or commits any acts of bankruptcy or insolvency or makes an assignment for the benefit of his creditors:

the Port may, by serving written notice to the Contractor and his Surety:

- (a) Transfer the performance of work from the Contractor to his Surety; or
- (b) Provide such sufficiency of labor or materials as required and deduct the costs thereof from any money due or coming due to the Contractor under the Contract; or
- (c) Terminate the Contract.

The election of the Port to pursue one remedy shall not bar it from pursuing other remedies on the same or subsequent breaches.

Upon receipt of a notice that the work is being transferred to the Surety, the Surety shall enter upon the premises and take possession of all materials, tools, and appliances thereon for the purpose of completing the work included under the Contract and employ by contract or otherwise any person or persons satisfactory to the Port to finish the work and provide the materials therefore without termination of the Contract. Such employment shall not relieve the Surety of its obligations under the Contract and the bond. If there is a transfer to the Surety, payments on estimates covering work subsequent to such transfer shall be made to the extent permitted under law to the Surety or its agent without any right of the Contractor to make any claim thereon.

If the Port terminates the Contract by any of the means provided above, the Contractor shall not be entitled to receive any further payment on the Contract until the work has been fully performed, at which time, if the unpaid balance of the amount to be paid under the Contract due the Contractor shall exceed the expenses incurred by the Port in completing the work including all increased costs for completing the work and all damages sustained, or which may be sustained, by the Port by reason of such refusal, neglect, failure or discontinuance of work by the Contractor, such excess shall be paid by the Port to the Contractor. If such expenses and damages exceed the unpaid balance, the Contractor and his Surety shall be jointly and severally liable therefore to the Port and shall pay the difference to the Port on demand.

### **33. TERMINATION FOR PORT'S CONVENIENCE**

The Port may terminate the Contract in whole, or from time to time in part, whenever:

- (a) The Contractor is prevented from proceeding with the work by reason of a preliminary, special or permanent restraining order of a court of competent jurisdiction where the issuance of such restraining order is primarily caused by acts or omissions of persons or agencies other than the Contractor; or
- (b) The Port determines that such termination is in the public's best interest.

### **34. PAYMENT FOR TERMINATION FOR PORT'S CONVENIENCE**

Whenever the Contract is terminated in whole or in part before completion of all items of work, payment will be made for the actual work performed at unit Contract prices for completed items of work. Partially completed items of work shall be paid for by agreed prices or by force account. Deleted work shall be paid for as provided in clause 37.

### **35. FORCE ACCOUNT**

In any instance when work must be performed under force account conditions, payment for such work shall be computed in accordance with the provisions defined under 'Force Account' in the current addition of 'Standard Specifications for Road, Bridge, and Municipal Construction', written by the Washington State Department of Transportation and the Washington State Chapter of the American Public Works Association .

### **36. ARBITRATION OF DISPUTES**

After receipt of a Notice of Termination, the Contractor shall submit to the Engineer his termination claim in sufficient detail to enable the Engineer to ascertain the basis and amount of such claim. The claim shall be submitted promptly but in no event later than 60 days from the effective date of termination. The Contractor shall pursue resolution of his claim through the established administrative channels to the office of the Engineer. The Contractor shall make his records available to the extent deemed necessary by the Port to verify his claim. In the event the claim is not resolved and an agreement reached at the office of the Engineer, the Contractor may appeal to the Port Commission for determination.

### **37. DELETED ITEMS**

The Port shall have the right to cancel all or portions of the Contract relating to the construction or any item or items therein. The Port shall pay to the Contractor a fair and equitable amount covering all direct project costs incurred prior to the date of cancellation of such work by the Engineer.

No payment will be made for items which are deleted from the Contract and not performed or for any anticipated profits on costs incurred prior to the deletion of the work.

Acceptable materials ordered by the Contractor or delivered on the work prior to the date of cancellation of the work by the Engineer, shall either be purchased from the Contractor by the Port at the Contractor's direct cost and shall thereupon become the property of the Port or the Port will reimburse the Contractor for his direct costs connected with these materials.

### **38. CHANGE ORDERS**

The Port reserves the right to make, at any time during the progress of the work, increases or decreases in quantities and alterations in the details of construction, including the deletion, or alteration of any portion of the work and the addition of any new item of work, as may be found to be necessary or desirable by the Engineer. Any such change will be set forth in a written change order, which order will specify, in addition to the work to be done, the basis of compensation for such work and any increase or decrease in the Contract time if justified, as a result of such change order.

If Contractor receives any order from the Port issued pursuant to this clause which does not set forth the agreed adjustments in the estimated cost and fee, the time for completion and such other provisions as may be affected, to be made on account thereof, Contractor shall, within thirty (30) days after receipt of such order, file a written claim with Port specifying the adjustments, if any, claimed by him on account of such order. When agreement is reached, the Contract shall be modified in writing accordingly. No claim for extra compensation, an extension of time or other adjustment on account of any order issued by Port pursuant to this clause, or on account of

any alleged 'de facto' or constructive change, shall be enforceable against Port unless Contractor has filed such claim within the time specified above, except that Port may, if Port in its sole judgment decides the facts so justify, allow any such claim asserted before final payment under this Contract.

Payment for work pursuant to a change order, other than deleted work, shall be full compensation for any such changes, including payment for costs of all delays in connection with such change. Where the work performed can be measured and paid for at unit prices as provided in the Contract, it shall be measured and paid for at such prices. Otherwise payment shall be at the price agreed by the parties, or by force account. Deleted work will be paid for as provided in clause 37. No allowance shall be made for any anticipated profits which would have been earned on work deleted as the result of a change.

It shall be the responsibility of the Contractor before proceeding with any change to satisfy himself that the change has been properly authorized on behalf of the Port. No charge for extra work or any other change in the Contract will be allowed unless the extra work or change has been authorized in writing by the Port and the compensation or method thereof is stated in such written authority.

### **39. CHANGED CONDITIONS**

The Contractor shall notify the Engineer promptly in writing of: (a) surface or latent physical conditions at the site differing materially from those indicated in the Contract, or (b) unknown physical conditions of an unusual nature at the site differing materially from those ordinarily encountered and generally recognized to be inherent in the work of the character provided for in the Contract. If such notice is not given prior to the conditions being disturbed, or such condition is disturbed before the Contractor is ordered by the Engineer to continue the work, the Contractor will be deemed to have waived extra compensation for any additional or different work and material required because of such conditions. Oral notice shall not constitute adequate notification.

If the Port finds that changed conditions do exist and cause a material change either in the Contractor's costs or time required to perform the Contract, the Port may make an equitable adjustment in the amount of compensation to be paid for the performance of the work involved, or the time required, by agreement with the Contractor. If the parties are unable to agree, the Port may pay for such work by force account and allow such additional time of performance as it deems proper. The Port's determination shall be final and no additional compensation for such conditions will be allowed.

### **40. PROGRESS ESTIMATES AND PAYMENTS**

Progress estimates of work performed on any portion or portions of the work made by the Engineer or payments therefore, shall not be evidence of performance or an admission by the Port of any work or quantities shown thereon. Such estimates made during progress of the work are tentative and made for the purpose of determining pay quantities for partial payment only, and are subject to change at any time prior to final acceptance by the Port. The Port may make any changes in such estimates and in the final estimate as it deems to be proper.

The Contractor shall provide an anticipated cash flow curve and/or breakdown of any bid item when requested by the Engineer. The information provided will be used by the Port to prepare progress payment estimates and other financial information.

### **41. PAYMENTS**

The basis of payments will be the actual quantities of work performed according to the Contract and as specified for payment therein. Payments will be made for work and labor performed and material furnished under the Contract according to the prices in the proposal unless otherwise provided.

Partial payments will be made at the Contractor's request once each month, based upon progress estimates prepared by the Engineer. Upon completion and acceptance of all work, the amount due to Contractor under the Contract will be based upon the final estimate prepared by the Engineer.

Payments will be made by warrants, issued by the Port's fiscal officer, against the appropriate fund source funding the project. Payment to the Contractor of partial estimates, final estimates, and retained percentages will be subject to controlling laws.

Failure of the Contractor to perform any of his obligations under the Contract may be decreed by the Port to be adequate reason for withholding any payments until compliance is achieved.

### **42. PORT'S RIGHT TO WITHHOLD CERTAIN AMOUNTS**

The Port may withhold from payments to the Contractor, in addition to retained percentage, such an amount or amounts as may be necessary to cover:

- (a) Payments that may be earned or due for just claims for labor or materials furnished in and about the work;
- (b) Defective work not remedied;
- (c) Failure of the Contractor to make proper payments to a subcontractor;
- (d) Reasonable doubt that this Contract can be completed for the balance then unpaid;
- (e) Damage to another Contractor, where there is evidence thereof.

The Port will disburse and shall have the right to act as agent for the Contractor in disbursing such funds as have been withheld pursuant to this paragraph to the party or parties who are entitled to payment there from. The Port will render to the Contractor a proper accounting of all such funds disbursed on behalf of the Contractor.

### **43. RETAINED PERCENTAGE**

There will be reserved and retained from moneys earned by the Contractor, as determined by the progress estimates, a sum equal to 5 percent. Withholding, management, and release of such retained moneys shall be in accordance with the provisions of RCW 60.28. At the Contractor's option, a Retainage Bond may be submitted in lieu of the 5% retainage on each contract payment.

### **44. ASSIGNMENTS**

No assignment of this Contract by Contractor or of any moneys due or to become due hereunder shall be binding upon Port unless and until written consent of Port thereto is obtained.

### **45. RECORDS AND AUDIT**

Contractor shall maintain books, records, documents and other evidence pertaining to the costs incurred by Contractor in connection with this Contract (hereinafter collectively called the 'records') to such extent and in such detail as will properly reflect and fully support all costs, charges and other amounts of whatever nature for which reimbursement or payment is claimed under this Contract. Contractor shall preserve such records for a period of three years following the date of final payment under this Contract and for such longer period as may be required by any other provision of this Contract or law.

Contractor shall make available at the office of Contractor at all reasonable times from the date of this Contract until the expiration of the period specified in the paragraph above all of said records for inspection, audit and reproduction by Port.

All paragraphs of this clause shall be applicable to and included in each subcontract and purchase order under this Contract.

### **46. SALVAGE**

Unless otherwise provided in this Contract, all material excavated, demolished or removed from existing improvements by Contractor and not required for incorporation in the work, such as waste, rubble and salvageable materials, shall be removed from the site or otherwise disposed of by Contractor off Port property and at an approved disposal facility.

#### **47. MATERIAL AND WORKMANSHIP**

Unless otherwise specifically provided in this Contract, all material, which term as used in this Contract shall include all materials, equipment and other items incorporated or to be incorporated in the work covered by this Contract, shall be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in this Contract, reference to any material or patented process by trade name, make or catalog number, whether or not coupled with the words 'or equal,' shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and Contractor may, at its option, substitute any material or process which in the judgment of Port is equal to that so referred to. All substitutions, including 'or equal' items, must have the prior written approval of Port. When required by this Contract or when requested by Port, Contractor shall promptly furnish Port for its approval full information concerning, and samples of, the material to be incorporated in the work. Material installed or used without required approval shall be at the risk of subsequent rejection. Approval by Port of material shall not relieve Contractor of any warranty with respect thereto or any obligation or liability in connection with this Contract.

#### **48. CODES AND STANDARDS**

Material and workmanship specified by reference to codes or standards shall, unless otherwise specified, comply with the latest revision of such codes or standards in effect on the date of this Contract.

#### **49. GUARANTEES**

The Contractor shall warrant all of his work including installed equipment, materials, and workmanship for one year. The Contractor shall furnish to the Port any longer guarantee or warranty furnished as a normal trade practice in connection with its purchase of any equipment, materials or items which are to be incorporated into the project.

#### **50. REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK**

Work and materials which do not conform to the requirements of the Contract work done beyond lines and grades shown on the plans or established by the Engineer, and extra work and material furnished thereon without written approval of the Engineer will be considered unauthorized and will not be paid for by the Port. Upon order of the Engineer, unauthorized work or materials immediately shall be remedied, removed, replaced or disposed of at the Contractor's expense.

Failure or neglect on the part of the Engineer to condemn unsatisfactory material or reject inferior workmanship will in no way release the Contractor, nor shall it be construed to mean the acceptance of such work, nor shall the final acceptance bar the Port from recovering damages in case fraud was practiced, or for defective work resulting from the Contractor's dishonesty, or for the breach of Contractor's warranty herein provided. No compensation will be made for defective work or materials.

#### **51. CLEAN-UP AND SANITATION**

Contractor shall comply with the requirements and regulations of the State Departments of Social and Health Services, Game, Fisheries, and Ecology.

Contractor shall keep its work and storage areas cleared of debris at all times. Upon completion of the work and before final acceptance, Contractor shall, subject to the provisions hereof governing salvage and the disposal of Port owned property, and unless otherwise specified herein, remove from the site all construction equipment, debris, surplus materials and temporary construction, clean both sides of all glass installed and leave the premises in a broom-clean, neat and workmanlike condition.

#### **52. INSPECTION OF WORK AND MATERIALS**

All work done and all materials furnished shall be subject to inspection by the Engineer, or his inspectors. At all times during construction he shall have access to the work, and shall be furnished sufficient, safe and proper facilities such as walkways, railings, ladders and platforms for ascertaining that the materials furnished and work performed are as required by the Contract.

Upon request of the Engineer, the Contractor shall furnish without charge such samples of materials used or to be used in the construction as may be required to ensure conformance with the Contract. Any work done or materials used without inspection may be ordered removed and replaced at the Contractor's expense, except that, in lieu of inspection, the Port may require certified statements from the manufacturer as to quality.

Inspections, tests, measurements, or other acts or functions performed by Port personnel are recognized as being for the sole purpose of assisting the Engineer to determine with reasonable assurance that the work, materials, rate of progress and quantities comply with the Contract terms. Such acts or functions shall in no manner be construed to relieve the Contractor from determining to his own satisfaction that it is in full compliance with Contract requirements at all times nor to relieve it from any of the responsibility for the work assigned to it by the Contract. Work and materials not meeting Contract requirements shall be made good, and unsuitable work and materials are to be rejected notwithstanding that such work or materials may have been previously inspected or that payment therefor may have been included in a progress estimate. The Contractor shall furnish, at its own expense, such labor and facilities as may be required to enable the Engineer to make a thorough inspection and culling of the materials.

If the Engineer requests it, the Contractor shall remove or uncover such portions of the completed work as may be directed. After examination, the Contractor shall restore said portions of the work to the standard required by the Contract. Should the work thus exposed or examined prove acceptable, the uncovering or removing, and the replacing of the covering or the making good of the parts removed, shall be paid for by agreed price or by force account, but should the work so exposed or examined prove unacceptable, or if the work was placed without due notice to the Engineer or without authority, the uncovering or removing, and replacing of the covering and the making good of parts removed, shall be at the Contractor's expense.

#### **53. FINAL INSPECTION**

The Engineer will not make the final inspection until the work required by the Contract, including final cleanup and all extra work ordered by the Engineer, has been completed.

In order that the Engineer may determine whether the Contractor has complied with those requirements of this Contract, compliance with which is not readily ascertainable through inspection and tests of the work and materials, the Contractor shall, at any time requested, submit to the Engineer properly authenticated documents or other satisfactory proofs as to his compliance with such requirements.

#### **54. FINAL ACCEPTANCE**

A Resolution of Acceptance for the project, submitted by the Engineer or other officer of the Part and approved by the Commission of the Port shall constitute final acceptance of the work and materials included in the Contract. The date of final acceptance shall be the date on which the Commission approves said certificates by resolution.

Final acceptance shall not constitute acceptance of any unauthorized or defective work or material, nor shall progress estimates be

construed as acceptance of any work under this Contract. The Port shall not be barred from requiring the Contractor to remove, replace, repair, or dispose of any unauthorized or defective work or material or from recovering damages for such work or material.

#### **55. AUTHORITY OF THE ENGINEER**

The Engineer will decide all questions which may arise as to the quality and acceptability of materials furnished and work performed, the rate of progress of the work, the interpretation of the plans and specifications, the acceptable fulfillment of the Contract on the part of the Contractor, and compensation, and the Engineer's decision on any such questions shall be final and binding upon the Contractor.

The Engineer shall represent the Port on the project and shall have authority to enforce terms and requirements of the Contract, and make effective such decisions or orders which the Contractor fails to carry out promptly. The Port will not be obligated to make any payment to the Contractor if any such decisions or orders are not carried out by the Contractor.

The Engineer has authority to suspend at the Contractor's risk, the work, in whole or part: for the failure of the Contractor to carry out the Contract; to carry out orders; to correct conditions unsafe for the work, workmen, or the general public; and also for unsuitable weather or other conditions which he considers unsuitable for the prosecution of the work or for any other condition or reason deemed by him to be in the public interest.

Nothing in this section or elsewhere in the Contract shall be construed as requiring the Engineer, or any of his duly authorized representatives to direct or advise as to the method or manner of performing any work under the Contract. No approval or advice as to the method or manner of performing or producing any materials to be furnished shall constitute a representation or warranty by the Port that the result of such method or manner will conform to the Contract, relieve the Contractor of any of his risks or obligations under the Contract, or create any liability to the Port because of such approval or advice.

#### **56. PERSONAL LIABILITY OF PUBLIC OFFICERS**

Neither appointed nor elected officials, the Engineer, nor any other officer, employee, or official of the Port shall be personally liable for any acts or failure to act in connection with the Contract, it being understood that in such matters they are acting solely as agents of the Port.

#### **57. NO WAIVER OF OWNER'S LEGAL RIGHTS**

The Port shall not be precluded nor impeded by any measurement, estimate, or certificate made either before or after the completion and acceptance of the work and payment therefore, from showing the true amount and character of the work performed and materials furnished by the Contractor, or from showing that any such measurement, estimate, or certificate is untrue or incorrectly made, or that the work or materials do not conform in fact to the Contract. The Port shall not be precluded nor impeded, notwithstanding any such measurement, estimate or certificate, and payment in accordance therewith, from recovering from the Contractor and its Sureties such damages as it may sustain by reason of the Contractor's failure to comply with the terms of the Contract. Neither the acceptance by the Engineer nor any payment for the whole or any part of the work nor any extension of time, nor any possession taken by the Port, shall operate as a waiver of any portion of the Contract or of any power herein reserved or any right to damages herein provided, nor bar recovery of any money wrongfully or erroneously paid to the Contractor. A waiver of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach.

#### **58. LABOR RATES AND RELATED NOTIFICATIONS**

The Port is a public entity. Therefore, all Contractors performing work for the Port shall pay the prevailing wage in accordance with RCW 39.12.020. The Contractor and every subcontractor at every tier shall submit to the State of Washington an Intent To Pay Prevailing Wage Statement in accordance with RCW 39.12.040. The Contractor and every subcontractor shall pay the filing fee for each such statement directly to the State. No payment against the Contract may be made until the 'intent' form is sent to the Port by the State.

The Contractor shall certify compliance with the prevailing wage statement on each request for payment against the Contract. Following completion of the Contract work, the Contractor and every subcontractor shall submit to the State of Washington an

Affidavit of Wages Paid in accordance with RCW 39.12.040. The Contractor and every subcontractor shall pay the filing fee for each such statement directly to the State. Prior to making the final payment, the Port must receive from the State the Affidavit(s) Of Wages Paid (RCW 39.12.040), the Industrial Insurance release (RCW 51.12.070), and the State Department of Revenue's release (RCW 60.28).