

DIVISION 0 – BIDDING REQUIREMENTS, CONTRACT FORMS & CONDITIONS OF THE CONTRACT

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1.01 OWNER CONTROLLED INSURANCE PROGRAM

A. Overview. The Port of Seattle (the “Port” or the “the Port”) has arranged with AON Risk Services, Inc., of Washington, (the “OCIP Administrator”) for certain of its projects, including the Work to be insured under its the Owner Controlled Insurance Program (“OCIP”). The OCIP is more fully described in the “Owner Controlled Insurance Program Insurance Manual” attached hereto (the “Insurance Manual”) and the Port’s Safety Management standards, Division 00860 (“Construction Safety Standards”) that are incorporated in these General Conditions and the Contract Documents by this reference. The OCIP will provide to Enrolled Parties (as defined below) stop-gap employer’s liability insurance, commercial general liability insurance, excess liability insurance, excess automobile liability insurance, professional liability insurance and contractor’s pollution liability insurance, as summarily described below, in connection with the performance of the Work (“OCIP Coverages”).

B. Enrolled Parties and Their Insurance Obligations. OCIP Coverages shall cover Enrolled Parties. Enrolled Parties are: the Port, the OCIP Administrator, eligible Construction Manager, Contractors, Subcontractors, Sub-subcontractors, and certain Port designated Consultants who enroll in the OCIP, and such other persons or entities as the Port in its sole discretion may designate (each such party who is insured under the OCIP is collectively referred to as an “Enrolled Party”). Parties performing labor or services at the Work site are eligible to enroll in the OCIP unless an Excluded Party (as defined below).

Enrolled Parties shall obtain and maintain, and shall require each of its subcontractors to obtain and maintain, the insurance coverage specified in Subparagraph H below and the Insurance Manual.

C. Excluded Parties and Their Insurance Obligations. OCIP insurance does not cover the following “Excluded Parties”:

1. Hazardous materials transport companies and/or haulers;
2. Vendors, suppliers, fabricators, material dealers, truckers, haulers, drivers and others who merely transport, pickup, deliver, or carry materials, personnel, parts or equipment or any other items or persons to or from the Work site;
3. Contractors and each of their respective subcontractors who do not perform any actual labor on the Work site during the term of Contract;

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- 4. Any parties or entities not specifically identified in this Article or excluded by the Port in its sole discretion, even if otherwise eligible.

Excluded Parties and parties no longer covered by the OCIP shall obtain and maintain, and shall require each of its subcontractors to obtain and maintain, the insurance coverage specified in Subparagraph H below and the Insurance Manual.

- D. OCIP Insurance Policies Establish OCIP Coverages. The OCIP Coverages and exclusions summarized in these General Conditions and the other Contract Documents are set forth in full in their respective insurance policy forms. The summary descriptions of the OCIP Coverages in these General Conditions or the Insurance Manual are not intended to be complete or to alter or amend any provision of the actual OCIP Coverages. In the event any provision of these General Conditions, the Insurance Manual, the Contract Documents, or the summary below conflicts with the OCIP insurance policies, the provisions of the actual OCIP insurance policies shall govern.
- E. Summary of OCIP Coverages. OCIP Coverages shall apply only to those operations of each Enrolled Party performed at the Work site in connection with the Work and only to Enrolled Parties that are eligible for the OCIP, even if erroneously enrolled in the OCIP. An Enrolled Party’s operations away from the Work site, including product manufacturing, assembling, or otherwise, shall only be covered if such “off-site” operations are identified and are dedicated solely to the Work. OCIP Coverages shall not cover “off-site” operations until receipt by Contractor of written acknowledgment of such coverage from the OCIP Administrator. The OCIP does not cover products liability for any product manufactured, assembled, or otherwise worked upon away from the Work site, unless such manufacturing or assembly is expressly required by the Contract Documents. The OCIP shall provide only the following insurance to eligible and Enrolled Parties:

Summary Only

- 1. Stop-Gap Employer’s Liability Insurance:

Bodily Injury by Accident, each accident	\$2,000,000
Bodily Injury by Disease, each employee	\$2,000,000
Bodily Injury by Disease, policy limit	\$2,000,000

This insurance is primary for all occurrences at the Work site.

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2. General Liability Insurance Equivalent to ISO Occurrence Form 1996:

Each Occurrence Limit	\$2,000,000
General Aggregate Limit for all Enrolled Parties	\$4,000,000
6 Years Products & Completed Operations Extension	
Products & Completed Operations Aggregate for all Enrolled Parties	\$4,000,000

This insurance is primary for all occurrences at the Work site.

3. Excess Liability Insurance (over Stop-Gap Employer's Liability & General Liability):

Combined Single Limit	\$300,000,000
General Annual Aggregate for all Enrolled Parties	\$300,000,000
6 Years Products & Completed Operations Extension	
Products & Completed Operations Aggregate for all Enrolled Parties	\$300,000,000

Excess limits of liability of primary General Liability and Employer's Liability

4. Excess Automobile Liability Insurance (over Additional Insurance Required from Enrolled Parties and Excluded Parties as specified in Subparagraph H.1. below) for operations occurring in the Air Operations Area (AOA) or Air Movement Area (AMA).

Inside the Air Operations Area	\$4,000,000
Inside the Air Movement Area	\$9,000,000

5. Professional Liability Insurance covering all enrolled architects, engineers, and design consultants, as defined in the language of the professional liability insurance policy, with respect to their professional services in connection with the Work. The insurance policy will be of a "claims-made form", and will have a combined limit of liability of not less than \$25,000,000 per Claim and \$25,000,000 in the Aggregate, inclusive of defense costs and expenses, over the term of the policy and will include a ten (10) year Extended Reporting Period after Work completion. Policy limits are shared, at least in part, with the Contractor's Pollution Liability policy. The enrolled architects, engineers and design consultants will be responsible for a per Claim deductible for coverage under the Professional Liability Insurance policy, as stated in the contract with the Port.

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6. Contractor's Pollution Liability with a total combined limit of liability of not less than \$25,000,000 per occurrence and in the aggregate for all Enrolled Parties under the OCIP with completed operations for at least five years. Policy limits are shared with Professional Liability policy
- F. Port's Insurance Obligations. The Port shall pay the costs of premiums for the OCIP Coverages. The Port will receive or pay, as the case may be, all adjustments to such costs, whether by way of dividends, retroactive adjustments, return premiums, other moneys due, audits or otherwise. Each Contractor and each of its subcontractors hereby assign to the Port the right to receive all such adjustments. The Port assumes no obligation to provide insurance other than that specified in these General Conditions and the OCIP insurance policies. The Port's furnishing of OCIP Coverages shall in no way relieve or limit, or be construed to relieve or limit, Contractor or any of its subcontractors of any responsibility, liability, or obligation imposed by the Contract Documents, the OCIP insurance policies, or by law, including without limitation any indemnification obligations which Contractor or any of its subcontractors has to the Port thereunder. The Port reserves the right at its option, without obligation to do so, to furnish other insurance coverage of various types and limits provided that such coverage is not less than that specified in the Contract Documents.
- G. Contractor's OCIP Obligations. Contractor shall:
1. Incorporate the terms of these General Conditions in all subcontract agreements.
 2. Within five (5) days of execution of the Contract enroll in the OCIP and maintain enrollment in the OCIP, and assure that Contractor's eligible subcontractors enroll in the OCIP and maintain enrollment in the OCIP within five (5) days of subcontracting.
 3. Comply with all of the administrative, safety, insurance, and other requirements outlined in these General Conditions, the Insurance Manual, the OCIP insurance policies, or elsewhere in the Contract Documents.
 4. Provide each of its subcontractors with a copy of the Insurance Manual and assure subcontractor compliance with the provisions of the OCIP insurance policies, the Insurance Manual, these General Conditions, and the Contract Documents. The failure of (a) the Port to include the Insurance Manual in the bid documents or (b) Contractor to provide each of its eligible subcontractors with

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a copy of same, shall not relieve Contractor or any of its subcontractors from any of the obligations contained therein.

5. Accurately and fully complete the Insurance Cost Worksheet (AON Form-1) and the Insurance Summary Form (AON Form-2) located in the Insurance Manual and submit to the Port prior to Award.
6. Acknowledge, and require all of its subcontractors to acknowledge in writing, that the Port and the OCIP Administrator are not agents, partners or guarantors of the insurance companies providing coverage under the OCIP (each such insurer, an “OCIP Insurer”) and that the Port is not responsible for any claims or disputes between or among Contractor, its subcontractors, and any OCIP Insurer(s). Any type of insurance coverage or limits of liability in addition to the OCIP Coverages that Contractor or any subcontractor requires for its or their own protection, or that is required by applicable laws or regulations, shall be Contractor’s or its subcontractor’s sole responsibility and expense and shall not be billed to the Port.
7. Cooperate fully with the OCIP Administrator and the OCIP Insurers, as applicable, in its or their administration of the OCIP.
8. Provide, within five (5) business days of the Port’s or the OCIP Administrator’s request, all documents or information as requested of Contractor or its subcontractors. Such information may include but not be limited to, payroll or man-hour records, certified copies of insurance coverages, declaration pages of coverages, certificates of insurance, underwriting data, prior loss history information, safety records or history, OSHA citations, or such other data or information as the Port, the OCIP Administrator, or OCIP Insurers may request in the administration of the OCIP, or as required by the Insurance Manual.
9. Contractor shall pay to the Port a sum as set forth in below (or the loss amount, if less) for each occurrence, including court costs, attorneys fees and costs of defense for bodily injury or property damage to the extent losses payable under the OCIP General Liability Policy are attributable to Contractor’s Work, acts or omissions, or the Work, acts or omissions of any of Contractor’s subcontractors, or any other entity or party for whom Contractor may be responsible (“General Liability Obligation”).

<u>Contract Value (Bid Price)</u>	<u>Liability Obligation</u>
\$10,000,000 or Less	\$5,000

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\$10,000,001 to \$25,000,000	\$7,500
\$25,000,001 to \$50,000,000	\$15,000
Over \$50,000,001	\$25,000

The General Liability Obligation shall remain uninsured by Contractor and will not be covered by the OCIP Coverages. The Port in its sole discretion has the right to charge back the obligation to any Contractor or subcontractor it deems responsible, if after the involved parties have had seven (7) days in which to try to determine the responsible party, the Port is not provided with notice regarding the responsible party(ies).

10. Unless waived by the Port of Seattle, Contractor shall pay all deductibles set forth in the OCIP Insurance Policies, except the General Liability policy, for losses attributable to Contractor’s Work, acts or omissions, or the Work, acts or omissions of any of Contractor’s subcontractors, or any other entity or party for whom Contractor may be responsible.

H. Additional Insurance Required From Enrolled Parties and Excluded Parties. Contractor shall obtain and maintain, and shall require each of its subcontractors to obtain and maintain, the insurance coverage specified in this Subparagraph in a form and from insurance companies reasonably acceptable to the Port. The insurance limits may be provided through a combination of primary and excess policies, including the umbrella form of policy with coverage no less broad than the underlying policy. Each policy required under this Article shall name the Port, Parsons Transportation Group, Inc., the OCIP Administrator, the ir respective officers, agents and employees, and any additional entities as the Port may request as additional insureds (on an ISO form 20 26 or equivalent basis). The inclusion of the Port as an additional insured shall not create premium liability for the Port. The additional insured endorsement shall state that the coverage provided to the additional insureds is primary and non-contributing with respect to any other insurance available to the additional insureds. The Port’s acceptance of the Contractor’s certificate of insurance does not waive the Contractor’s obligation to comply with the insurance requirements of this Article relating to subcontractors.

As to eligible and Enrolled Parties, stop-gap employer’s liability insurance and commercial general liability insurance required by this Article shall only be for off-site activities or operations not insured under the OCIP Coverages.

1. Standard Commercial Automobile Liability Insurance covering all owned, non-owned and hired automobiles, trucks, and trailers with a combined single limit of not less than \$1,000,000.

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2. Workers’ Compensation Insurance, including U.S. Longshoremen’s and Harborworker’s Act coverage, if appropriate, with limits as required by law; Stop-Gap Employer’s Liability Insurance with limits of not less than \$1,000,000 each accident/\$1,000,000 each employee/\$1,000,000 policy limit; and, if appropriate, Jones Act coverage with limits of not less than \$1,000,000. Enrolled Parties and Excluded Parties shall certify that its operations are covered by the Washington State Worker’s Compensation Fund and shall provide its Account Number; or, if self-insured, its Certificate of Qualification Number. If vessels are to be used, maritime coverage endorsement covering a master or member of a crew of the vessel.

3. Commercial General Liability Insurance in a form providing coverage not less than the standard ISO Commercial General Liability insurance policy (“Occurrence Form”). The limits, on a per project basis (ISO form 26 03 or equivalent), shall be:

	<u>Enrolled Parties</u>	<u>Excluded Parties</u>
Each Occurrence	\$1,000,000	\$2,000,000
General Aggregate	\$2,000,000	\$5,000,000 (\$10,000,000 inside AMA)
Products/Completed Operations Aggregate	\$2,000,000	\$5,000,000 (\$10,000,000 inside AMA)
Personal/Advertising Injury Aggregate	\$1,000,000	\$5,000,000 (\$10,000,000 inside AMA)

4. If required by the Port, Aviation and/or Watercraft Liability Insurance, in form and with limits of liability and from an insuring entity reasonably satisfactory to the Port.

5. If required by the Port, Excluded Parties shall maintain Contractor’s Pollution Liability insurance with a total combined limit of liability of not less than \$1,000,000 per occurrence and in the aggregate.

6. The Contractor shall at its sole expense obtain and keep in force insurance of the kinds specified in this Subparagraph H in carriers rated ‘A-’ or higher with a Financial Size Category of ‘VIII’ or better by Best Rating Guide until Notice of Completion. In the case of insurers which do not have a Best’s rating of ‘A-:VIII’ or better, the contractor must submit financial information which

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forms the basis for considering the insurer to be financially and administratively sound.

7. Contractor shall furnish, within 10 days of receipt of the Notice of Intent to award, evidence satisfactory to the Port that the insurance policies listed above and the applicable endorsements have been secured.
 8. All policies provided by the Contractor shall include a provision that each insurer shall comply with RCW 48,18.290 and give forty-five 45 days' prior written notice to the Port of any policy's termination as required by RCW 48.18.290, or of any material change in any of their terms which relate to this Contract. The language of all policies provided by the Contractor is subject to the Port's approval.
 9. If the Contractor is required to make corrections to the Work after the Work has been given Notice of Completion, the Contractor shall: (a) if the OCIP is still in place and if contractor is eligible for enrollment, re-enroll in the OCIP, or (b) if the OCIP is not still in place or if the contractor is not eligible for enrollment, obtain at its own expense, prior to the commencement of any corrective work, such insurance coverage as is required of Excluded Parties in this Article, which coverage shall be maintained until the corrections to the Work have been accepted by the Port.
- I. Contractor Representations and Warranties to the Port. Contractor represents and warrants to the Port:
1. That all information it submits to the Port, or the OCIP Administrator shall be accurate and complete.
 2. That Contractor, on behalf of itself and its subcontractors, has had the opportunity to read and analyze copies of the OCIP binders and specimen policies that are on file in the Port's office and that they understand the OCIP Coverages. Any reference or summary in the Contract, these General Conditions, the Insurance Manual, or elsewhere in any other Contract Document as to amount, nature, type or extent of OCIP Coverages and/or potential applicability to any potential claim or loss is for reference only. Contractor and its subcontractors have not relied upon said reference but solely upon their own independent review and analysis of the OCIP Coverages in formulating any understanding and/or belief as to amount, nature, type or extent of any OCIP Coverages and/or its potential applicability to any potential claim or loss.

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3. Contractor represents on its own behalf and on behalf of its subcontractors that the Costs of OCIP Coverages were not included in Contractor's Bid or proposal for the Work, the Bid, the contract price, and will not be included in any Change Order or any request for payment for the Work or extra work. The "Costs of OCIP Coverages" is defined as the amount of Contractor's and its subcontractors' reduction in insurance costs due to eligibility for OCIP Coverages as determined by the Owner using Form AON-1 and Form AON-2 located in the Insurance Manual and information available to Owner and/or the OCIP Administrator regarding the costs of similar coverages taking into account limits of liability, coverages, and rating of the insurer.
 4. Contractor acknowledges that Owner shall not pay or compensate Contractor or any subcontractor, in any manner, for Costs of OCIP Coverages.
- J. Audits. Contractor agrees that the Port, the OCIP Administrator, and/or any OCIP Insurer may audit Contractor's or any of its subcontractor's payroll or man-hour records, books and records, insurance coverages, insurance cost information, or any other information that Contractor provides to the Port, the OCIP Administrator, or the OCIP Insurers to confirm their accuracy and to assure that Costs of OCIP Coverages are not included in any payment for the Work.
- K. The Port's Election to Modify or Discontinue OCIP. The Port may, for any reason, modify the OCIP Coverages, discontinue the OCIP, or request that Contractor or any of its subcontractors withdraw from the OCIP upon thirty (30) days written notice. Upon such notice Contractor and/or one or more of its subcontractors, as specified by the Port in such notice, shall obtain and thereafter maintain at the Port's expense during the performance of the Work, all (or a portion thereof as specified by the Port) of the OCIP Coverages. The form, content, limits of liability, cost, and the insurer issuing such replacement insurance shall be subject to the Port's approval.
- L. Withhold of Payments. The Port may withhold from any payment owing to Contractor the Costs of OCIP Coverages if included in a request for payment. In the event of a Port audit of Contractor's records and information as permitted in the Contract, these General Conditions, or other Contract Document reveals a discrepancy in the insurance, payroll, man-hour, safety, or any other information required by the Contract Documents to be provided by Contractor to the Port, or to the OCIP Administrator, or reveals the inclusion of Costs of OCIP Coverages in the Bid or any payment for the Work, Owner shall have the right to full deduction from the Contract Sum of all such Costs of OCIP Coverages

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and all audit costs. Audit costs shall include but not be limited to the fees of the OCIP Administrator, and the fees of attorneys and accountants conducting the audit and review. If the Contractor or its subcontractors fail to timely comply with the provisions of this Article, the Port may withhold any payments due Contractor and its subcontractors until such time as they have performed the requirements of this Article.

- M. Waiver of Subrogation. Contractor hereby waives all rights of recovery under subrogation, because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, or any other reason against the Port, the OCIP Administrator, its or their officers, agents, or employees, and any other contractor or subcontractor performing Work or rendering services on behalf of the Port in connection with the planning, development and construction of the Work. Contractor shall also require that all Contractor maintained insurance coverage related to the Work include clauses providing that each insurer shall waive all of its rights of recovery by subrogation against the Port together with the same parties referenced immediately above in this Article. Contractor shall require similar written express waivers and insurance clauses from each of its subcontractors. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.
- N. Duty of Care. Nothing contained in these General Conditions or the Insurance Manual shall relieve the Contractor or any of its subcontractors of their respective obligations to exercise due care in the performance of their duties in connection with the Work and to complete the Work in strict compliance with the Contract Documents.
- O. Conflicts. In the event of a conflict, the provisions of this Article shall govern, then the provisions of the Contract and its other related Contract Documents, then the provisions of the Insurance Manual.
- P. Safety. Contractor shall be solely responsible for safety on the project. Contractor shall establish a safety program that, at a minimum, complies with all local, state and federal safety standards, and any safety standards established by the Port for the Work, including the Construction Safety Standards.