



**THE PORT OF TACOMA  
REQUEST FOR QUALIFICATIONS  
No. PA00000296**

**Habitat Mitigation Professional Services**

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

<b>RFQ INFORMATION</b>	
Contact:	Jerry Clardy, Procurement
Email Addresses:	<a href="mailto:procurement@portoftacoma.com">procurement@portoftacoma.com</a>
Phone:	253-888-4751
Deadline for Questions	<b>MARCH 27, 2025 @ 2:00 PM (PST)</b>
Proposal Submittal Deadline	<b>APRIL 3, 2025 @ 2:00 PM (PST)</b>

**PLEASE SUBMIT ALL QUESTIONS AND PROPOSALS  
VIA THE PROCUREMENT PORTAL**

**(LINK LOCATED ON THE LEFT SIDE OF THE PROCUREMENT PAGE)**

**PORT OF TACOMA**  
**Request for Qualifications (RFQ) # PA000000296**  
**Habitat Mitigation Professional Services**

The Port of Tacoma (Port) is soliciting Statements of Qualifications (SOQ) from highly qualified teams interested in providing professional consulting services to assist the Port with planning, permitting, surveying, design, and construction services to develop habitat mitigation site(s) as concurrent, advance, or bank mitigation. The Port is planning four habitat mitigation projects located at Port Parcel's 12, 37D, 75, and 129. The habitat mitigation projects may include scrub-shrub, and/or forested wetland (riverine, and/or palustrine) restoration, wetland buffers, floodplain improvements, and/or fish bearing stream restoration/relocation.

Through this SOQ solicitation, the Port may select up to three teams to conduct the professional consulting services for one or more of the projects. Although this SOQ is for the full range of professional consulting services, each project will begin with planning and preliminary design and each project may be advanced to a different level of completion requiring different levels of professional consulting services. The Port does not guarantee all disciplines of services will be used nor does the Port guarantee a specific volume of work under the contract(s). The Proposer shall state in their SOQ if the Proposer wants to be excluded from consideration for any of the four projects.

**A. CONTRACTING DESCRIPTION**

The Port will select the most qualified team(s) (team(s) include all key members from the prime consultant firm and subconsultants for all necessary project services. and enter into negotiations with the intent of issuing up to three (3) professional service contracts based upon the information provided herein. Parcel 12 an 37D will be combined into one contract.

The contract period of performance will be up to 60 months from contract execution or through planning, design, permitting, and construction.

The following documents are attached to this RFQ:

Attachment A – Submittal Instructions

Attachment B – Contract Template and Terms & Conditions

By submitting a Proposal, the Proposer represents that it has carefully read and agrees to be bound by the Port's Standard Terms and Conditions. Identify during the question submittal and response period, any sections you consider onerous, clarify why you consider these sections onerous, propose alternative language, and describe why it is in the NWSA / Port's best interests to adopt the alternative language. Taking exceptions to these terms and conditions or conditioning your proposal on terms and conditions other than the Port's will render your proposal non-responsive.

\* By submitting a proposal, the Proposer represents that it has carefully read all attachments. As applicable, proposers shall identify propose alternate wording, if any, to these documents as an appendix to their submitted proposal.

**B. BACKGROUND OF PROJECT SITES:****Parcel 12**Location:

3802 Taylor Way, Tacoma, WA (Pierce County Parcel #'s 0320011090 & 0320011091)

Existing Conditions:

Approximately 5.25 acres of undeveloped land consisting of trees and invasive vegetation. Historically used as an upland dredge/sediment disposal location. The site is partially bisected by the Drainage District 23 ditch. This ditch is categorized as non-fish bearing.

Potential Future Conditions:

The ditch will be dredged and maintained in its current location and configuration and will not be integrated into the habitat mitigation. The center of the site will be lowered to develop approximately 2.5 acres of wetland critical area with a forested buffer. A portion of the adjacent ditch area on the dogleg that extends south to 4<sup>th</sup> Street may be widened to provide additional stormwater drainage capacity in the ditch system.

Existing Information:

The Port has developed a conceptual level mitigation plan and is currently working with the City of Tacoma on the Critical Areas Development Permit. Wetland delineation has been completed and topographic survey is being scheduled. Ground water monitoring wells and related barometric pressure monitors are being installed to support current permitting efforts.

Mitigation Use:

The mitigation will be used as compensatory mitigation from development at Port Parcel 117.

Schedule:

Anticipate executing professional services contract in May of 2025. Anticipate planning, design and permitting to be accomplished by May of 2026 with bidding and construction to commence in the summer of 2026. Site planting will occur during the winter of 2026/2027 to be complete by April 1, 2027, at which point the two-year site maintenance period will begin. Anticipate project completion mid-2029.

**Parcel 37 D – Gog-le-hi-te 1**Location:

1402 Lincoln Ave. Tacoma, WA (Pierce County Parcel #'s 0320031004, 0320031027, , 0320031026,

Existing Conditions:

Approximately 2 acres of undeveloped land consisting of trees and invasive vegetation adjacent to the Gog-le-hi-te 1 intertidal habitat area. The site is bounded on two sides by Army Corps of Engineers levee walking and driving paths.

Potential Future Conditions:

Existing invasive reed canary grass and blackberry vegetation will be removed. The root mass may be removed as well. The site will be graded to ensure wetland sustainment and planted with appropriate vegetation.

Existing Information:

The Port has a conceptual idea for this site and is currently working with the City of Tacoma on the Critical Areas Development Permit. Wetland delineation is going to be completed prior to this contract issuance. Topographic survey is also being scheduled. Ground water monitoring wells and related barometric pressure monitors are being installed to support current permitting efforts.

Mitigation Use:

The mitigation will be used as compensatory mitigation from development at Port Parcel 117.

Schedule:

Anticipate executing professional services contract in May of 2025. Anticipate planning, design and permitting to be accomplished by May of 2026 with bidding and construction to commence in the summer of 2026. Site planting will occur during the winter of 2026/2027 to be complete by April 1, 2027, at which point the two-year site maintenance period will begin. Anticipate project completion mid-2029.

**Parcel 75 (Canyon-Clear Creek Confluence Habitat Site)**Location:

4121 Pioneer Way E, Tacoma, WA (Pierce County Parcel No. 0320133050)

Existing Conditions:

Approximately 6 ac of undeveloped land consisting of trees, invasive vegetation, and likely wetlands. Clear Creek and/or Canyon Creek were likely historically ditched and channelized along Pioneer Way E. Clear Creek is classified as a Type F2 stream and has documented presence of ESA and non-ESA salmonids.

Potential Future Conditions:

Re-meandered creek with fish habitat, and restored floodplain emergent, scrub-shrub, and/or forested wetlands and wetland buffers. Design and construction will likely be conducted by Pierce County with review by the project team.

Existing Information:

The Port does not have any specific information for Parcel 75. The project is within Pierce County's Clear Creek Flooding Project (<https://www.co.pierce.wa.us/3321/Clear-Creek-Flooding>), and is upstream of the Port's Upper Clear Creek Mitigation Site/Bank and other Clear Creek habitat restoration sites

(<https://www.portoftacoma.com/community/environment/habitat>).

The project will include permitting support, mitigation planning/documentation, and review of Pierce County's design and construction. The project will likely be designed and constructed by Pierce County; however, this SOQ includes these services should they be needed by the Port to support Pierce County's project on Port property and for obtaining mitigation credits for work done on Port property.

Mitigation Use:

The project may be developed as concurrent or advance mitigation site for the Port.

Schedule:

Anticipate executing professional services contract in May of 2025. Planning, permitting, and construction is dependent on the Pierce County project

**Parcel 129 (Upper Clear Creek Mitigation Site – Phase II)**

Location:

3604 40th Avenue E, Tacoma, WA (Pierce County Parcel No. 0320132105). Immediately adjacent to the southeast corner of the Port's Upper Clear Creek Mitigation/Bank Site.

Existing Conditions:

Parcel 129 was formerly an approximately 11 ac farm site that included a building site and agricultural fields. Above ground structures were demolished in late 2020, early 2021. The Clear Creek Mitigation Site was historically ditched and channelized along the railroad tracks near Pioneer Way E to the west of the project site and was restored by re-diverting the creek back onto the Upper Clear Creek Mitigation Site in 2015. Clear Creek is classified as a Type F2 stream and has documented presence of ESA and non-ESA salmonids.

Potential Future Conditions:

Depending on Port needs and negotiations with permitting agencies and/or the Upper Clear Creek Mitigation Bank Interagency Review Team (IRT), the project would be designed as a riverine Category I forested wetland with or without fish habitat (i.e., stream channels, off-channel habitat). Restored floodplain emergent, scrub-shrub, and/or forested wetlands and wetland buffers with or without fish habitat. The project would generate wetland credits with or without fish credits depending on the design.

Existing Information:

The Port conducted a Phase I Environmental Site Assessment in 2018 for the purchase of the property. The project is within Pierce County's Clear Creek Flooding Project (<https://www.co.pierce.wa.us/3321/Clear-Creek-Flooding>) and is adjacent to the Port's [Upper Clear Creek Mitigation Site/Bank](#) and other Clear Creek habitat restoration sites (<https://www.portoftacoma.com/community/environment/habitat>).

The Upper Clear Creek Mitigation Bank includes a Mitigation Banking Instrument (MBI) and supporting studies and information. Preliminary studies and a basis of design report were completed in 2020 for Parcel 129 and included a Basis of Design (BOD) Report (for 10 acres), Wetland Delineation Report, Available Information Technical Memorandum, Cultural Resources Survey, SEPA (building demolition), and Request for Qualifications PA000000296  
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groundwater well installation and monitoring data. The IRT has provided direction to the Port on how the existing mitigation bank can be amended to include Parcel 129 which will include additional prospectus and MBI documents relevant to expanding the Mitigation Bank to include Parcel 129. In 2022 the Port purchased an additional approximately 1 acre that was added to Parcel 129 but was not included in the 2020 BOD Report.

Mitigation Use:

The project will amend the existing Upper Clear Creek Mitigation Bank MBI to include Parcel 129 and will relocate existing paper buffers from the original Mitigation Bank site to generate mitigation bank credits.

Schedule:

Upon contract execution, the selected team will utilize existing Upper Clear Creek Mitigation Bank and Parcel 129 Basis of Design (BOD) documents to support a MBI amendment which may include additional or expanded baseline studies or reports. The existing Parcel 129 BOD will be updated to include the additional one acre purchased by the Port in 2022. The design will be advanced only as far as necessary to support the bank amendment. The schedule for final design and construction will be determined at a later date and is dependent on the IRT approval timeline and schedule.





Vicinity Map – Port Parcels 12, 37D, 129 and 75

### **C. SCOPE OF SERVICES AND DELIVERABLES:**

The scope of work for the professional consulting services shall include all or some of the components noted below. The scope of services will be further defined as required for each site:

- Licensed surveyor to provide topographic surveys and other survey support
- Produce design and construction documents
- Produce civil and landscape architectural drawings to include full irrigation design
- Provide bid documents to include full CSI technical specifications and support for CSI specification divisions 0 and 1 utilizing the Port's specification system BSD Speclink
- Project cost estimates and review packages at various stages of design (30, 60, 90 and final)
- Permitting and environmental assistance and support (see below for further details)
- Provide bidding support including bidder question responses

- Provide construction management support including on-site inspection services, submittal review, RFI responses, construction meeting attendance and documentation
- Utilization of the Port's Project Management software "Trimble Unity Connect" formerly "eBuilder" at all levels of design, bidding and construction support in conjunction with D365.
- Miscellaneous other work associated with the planning, permitting, design, bidding, and construction of the site, including meetings as necessary and providing project schedule(s)

Permitting and environmental assistance and support services shall include:

- SEPA/NEPA studies, analyses, and documentation
- Joint Aquatic Resources Permit Applications (JARPAs) in support of:
  - US Army Corps of Engineers Section 404 and Section 10 permits
  - Clean Water Act Section 401 water quality certifications and coastal zone management act consistency
  - Hydraulic Project Approvals (HPA)
  - Endangered Species Act compliance
  - Biological assessments or evaluations
  - Shoreline substantial development permits
  - Floodplains, floodways, and other critical areas
  - Wetland, aquatic, fish habitat, and critical areas permits including, habitat evaluation, NOAA's habitat equivalency analysis (HEA), delineation, and mitigation measures/plans for concurrent, advance, or bank mitigation.
- Geologic, hydrogeologic, hydrologic, hydraulic, and geotechnical evaluation and modelling including draft and final reports
- Site and material characterization (site assessment, soil or water quality investigation including analytical characterization and soil fertility investigation and evaluation, waste material characterization, etc.)
- Historic, archeological, and cultural preservation including surveys, plans, reports, negotiation support, on-site monitoring and inadvertent discovery support
- Stormwater analysis, engineering, and support
- Permitting, mitigation, and agency coordination/negotiation support.
- Outreach planning and assistance to inform and engage stakeholders in appropriate steps of the permitting and environmental review process
- Mitigation Bank Instrument, prospectus, supporting documents, and IRT/bank coordination and negotiation



- Additional other miscellaneous permitting and environmental support tasks generally associated SEPA and NEPA processes and environmental permit application requirements

**D. SOQ ELEMENTS & EVALUATION CRITERIA:**

SOQ should present information in a straightforward and concise manner, while ensuring complete and detailed descriptions of the proposing team (to include the prime consultant’s key team members and any major sub-consultants) and the team’s ability to meet the requirement of this solicitation. Attention will be given to the technical competencies and completeness of content. The written proposals should be prepared in the sequential order as outlined below.

Proposals are limited to 8 numbered pages (8 ½ by 11 inch) **excluding** the cover letter, compensation information and any submitted appendices. All pages shall be in portrait orientation with 1 inch margins. Font size shall be 12 point or larger. Proposals that do not follow this format may be deemed nonresponsive.

The cover letter shall include the solicitation Title and Number, Name, Title, Email Address, Phone Number and Addresses of the Proposing Team’s main contact and include the following information:

- Describe all claims submitted by any client against the firm within the past two years related to the personal services provided by the firm or its key personnel. For purposes of this request, “claim” means a sum of money in dispute in excess of 10% of the firm’s fee for the services provided.
- Any real or perceived conflicts of interests for team members, inclusive of the prime, sub-consultants and key team members.

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

**1. Firm Experience and History .....25 PTS**

Specialized experience and technical competence of the firms comprising the team, considering the type of services required. Past record of performance on contracts with other government agencies or public bodies and with private industry, including such factors as control of costs, quality of work, ability to meet schedules and cooperation and communication with the owner. Recent experience of the firm and successful completion of Work of a similar type and complexity will be a material consideration.

**Submittal Requirements**

1. Brief résumé of the Submitter firm, including but not limited to: home and branch office information; date established; former name(s); type of ownership or legal structure; general description of services provided and type of clients served; personnel.

2. Description of recent projects or Work for which the Submitter firm (or firm's team) provided services to illustrate the firm's ability to perform the requirements of this Contract. SOQs should include but are not limited to
  - Work name and location
  - Role of the firm (prime, subconsultant, joint venture, etc.)
  - Client (Owner) name, Owner's project manager or primary contact, physical address, phone number and email address.
  - Name, address, phone number and email address of firm's project manager.
  - Brief description of the Work (including description of the services provided by the firm; total cost of project; completion date; etc.).

## **2. Knowledge and Experience of Key Individuals ..... 50 PTS**

Specialized experience and technical competence of the key individuals and support staff that will provide the requested services, including but not limited to the proposed project manager, major subconsultants, and key staff in each firm.

Key individual's knowledge of and experience with problems, conditions, or circumstances applicable to specific location of this project, including, but not limited to:

- Characteristics of the Puget Sound environment that are unique to this project;
- Applicable laws, ordinances, codes, regulations, and permits the interpretations thereof needed to perform the project;
- Any indigenous geographical, geo-technical, or other substantive technical issues that will likely be encountered in this project.

Knowledge, recent experience and expertise of these key individuals with projects of similar type and complexity will be a material consideration.

### **Submittal Requirements**

1. Brief résumés for each of the key individuals and/or support staff who will provide the requested services. (Full, one-page résumés may also be attached to the Appendix.)
2. A representative list of past or current projects performed by the key individuals who will provide the requested services. SOQs shall include information about the project manager, major subconsultants, and key staff. SOQs shall include but are not limited to:
  - Project name and location
  - Role of the individual (prime or subconsultant)

- Client (Owner) name, Project Manager or primary contact, physical address, phone number and email address
- Name, address, and phone number of prime consultant's project manager
- Brief description of the Work (including description of the services provided by the firm; (total cost of project; completion date; etc.)
- Brief description of key personnel's knowledge of and experience with problems, conditions or circumstances applicable to specific location of this project, including, but not limited to:
  - Characteristics of the Puget Sound environment that are unique to this project;
  - Applicable laws, ordinances, codes, regulations, and permits the interpretations thereof needed to perform the project;
  - Any indigenous geographical, geo-technical, or other substantive technical issues that will likely be encountered in this project.

### **3. Capacity and Project Organization ..... 25 PTS**

The Submitter will be required to demonstrate the firm's capacity and experience to provide the Port of Tacoma and the Northwest Seaport Alliance with the required services. This should be demonstrated through the firm's understanding of the Scope of Work to be provided in order to manage and complete the work.

#### **Submittal Requirements**

Provide information demonstrating the team's:

1. Capacity to perform the Work (including any specialized services) within the time limitations, considering the firm's current and planned workload;
2. Clearly demonstrate the firm's capability to support the technical requirements as identified in the Scope of Work.
3. Availability and accessibility (key personnel and support staff identified in criteria 2); Provide and organizational chart of your firm and include the respective roles that each employee will provide for the team.
4. Prime is required to identify in their Proposal what specific Task(s) they would perform, as well as what Task(s) their Subconsultants would perform.
5. Ability to coordinate the work quickly and efficiently with the Port of Tacoma and the Northwest Seaport Alliance personnel considering:
  - The team's organizational structure.
  - Reporting relationship between individual team members.
  - The physical location of the office from which the work will be performed.

FINAL EVALUATION PHASE (if applicable)

**4. Interviews (as requested by the Port)..... 100 PTS**

If an award is not made based on the written evaluations and references alone, interviews may be conducted with the top-ranked teams. Failure to participate in the interview process will result in the team’s disqualification from further consideration. The Port will inform top-ranked teams invited for an interview of the interview schedule, agenda and criteria for scoring to time of invitations. Note: Verbal changes to a team’s written SOQ will not be allowed or accepted.

**1. References.....**

References Pass/Fail Reference checks may be performed on the selected firm, if based directly on the proposals received, or on shortlisted firms if interviews are being requested. The Port may evaluate the reference checks to assess the proposed team’s overall performance and success of previous, similar work. Reference checks may also be utilized to validate information contained in the proposal.

**Attachments:**

**ATTACHMENT A – SUBMITTAL INSTRUCTIONS**

**ATTACHMENT B – CONTRACT TEMPLATE & TERMS AND CONDITIONS**

**ATTACHMENT A**  
**SUBMITTAL INSTRUCTIONS**

**PROCUREMENT PROCESS****SOLICITATION TIMELINE:**

Issuance of Solicitation	MARCH 6, 2025
Last Day to Submit Questions	MARCH 27, 2025 @ 2:00 PM (PST)
<b>Submittal Packets Due</b>	<b>APRIL 3, 2025 @ 2:00 PM (PST)</b>
Review/Shortlist*	APRIL 15, 2025
Interviews (if required)*	APRIL 29, 2025
Final Selection*	APRIL 29, 2025
Execute Contract*	MAY 21, 2025

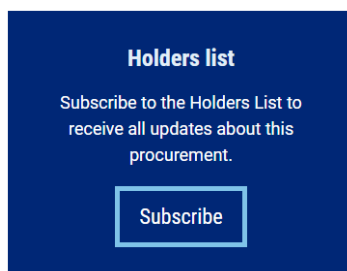
\*Dates are tentative.

All status updates on the above solicitation timeline will be announced on the Port's website for this solicitation.

**VENDOR OBLIGATION**

The NWSA and Port of Tacoma's (Port) Invitation to Bid, Request for Proposals and Request for Qualifications can be accessed on the Port's website, [www.portoftacoma.com](http://www.portoftacoma.com) under 'Business -> Contracting -> Procurement'.

When viewing the details page for this procurement on the Port's Website firms have the option of subscribing to the Holder's List.



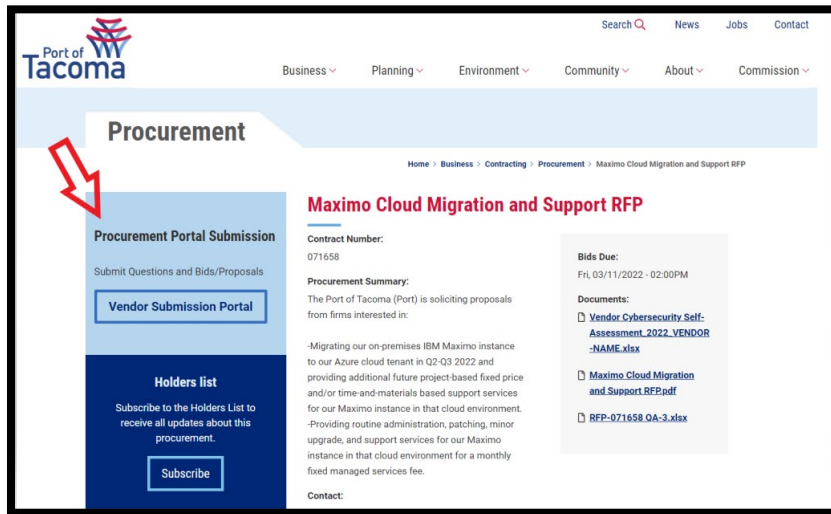
By subscribing to the Holder's List, firms will automatically be notified when new documents or changes relating to this procurement occur.

**\*Only those who have subscribed to the Holder's List will receive notifications throughout the procurement process, up until a firm is selected.**

## COMMUNICATION / INQUIRES

Proposers who, relative to this scope of services, contact any individuals or Commission members representing the NWSA or the Port, other than the Procurement Representative listed on the solicitation may be disqualified from consideration.

Written questions about the meaning or intent of the Solicitation Documents shall only be submitted to the Procurement Department via the Procurement Portal (**Portal link is accessible via this specific procurements website. See left side of page.**).



Proposers who may have questions about provisions of these documents are to submit their questions by the date listed above. The NWSA/Port will respond to all written questions submitted by this deadline, and responses will be posted on the corresponding procurements website.

## ADDENDA

The NWSA/Port may make changes to this Solicitation. Oral or other interpretations, clarifications or submittal instructions will be without legal effect. Any information modifying a solicitation will be furnished in a formal, written addendum. If at any time, the NWSA/Port changes, revises, deletes, increases, or otherwise modifies the Solicitation, the NWSA/Port will issue a written Addendum to the Solicitation. Addenda will be posted to the Port's web site and conveyed to those potential submitters who have requested to be placed on the Holder's List.

## SUBMITTAL PROCESS

### Electronic Submittal:

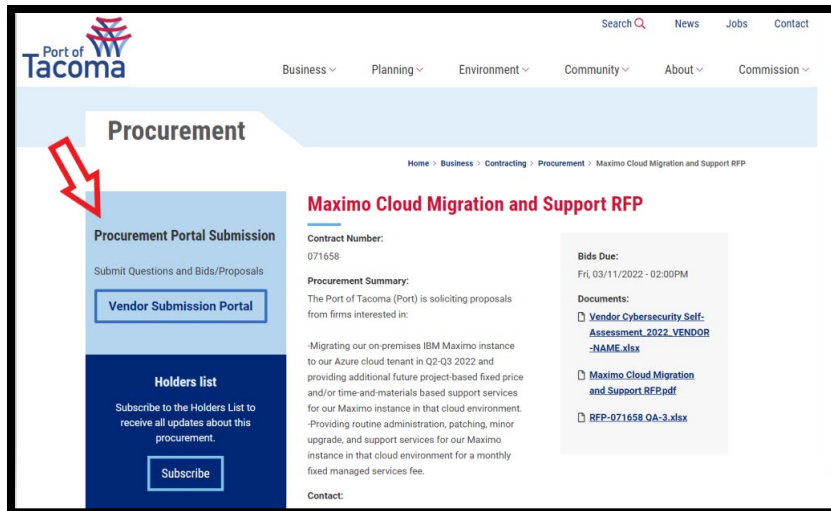
Proposals must be received via the procurement portal on or before the date and time outlined on the front page of this proposal.

### Procurement Submission Portal Instructions:

Navigate to this procurements web page (referencing the number and name) via the following link [Procurement | Port of Tacoma](#). While on the procurements page, click on the 'Procurement Submission Portal' link (located on the lefthand side of the page).

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Full instructions on how to utilize the submission portal can be found on the Port's website, [www.portoftacoma.com](http://www.portoftacoma.com) under 'Business -> Contracting -> Procurement'. See bold red heading above the bid search box "Bid and Question Submittal Instructions", to access the thorough instructions in PDF format.

Please submit proposal, including all appendices and compensation in separate Adobe Acrobat PDF format. Submittals need to be limited to **9 MB in total email size**. Please provide one (1) non-redacted version, and one (1) redacted version (**removing all Company information**) of your PDF submittal. It is the **Consultant's responsibility to verify the receipt of the submittal. Electronic verification will be provided.**

**\*Late proposals will not be accepted by the NWSA/Port. Proposals received after the stated date and time will not be reviewed and shall be deemed non-responsive.**

All proposals submitted shall be valid and binding on the submitting firm for a period of ninety (90) days following the submittal deadline and for any extension of time granted by the submitting firm.

## EVALUATION AND AWARD PROCESS

An evaluation team, using the point method of award, will review each proposal and evaluate all responses received based upon the criteria listed herein. The NWSA/Port may request clarifications or additional information, if needed. After the evaluation team individually scores each proposal, the scores are tallied and the firms are ranked based on the scores.

A selection may be made based on the proposals and initial evaluation criteria alone. Alternatively, the evaluation team may create a short list of the top ranked firms and invite the short-listed firms in for interview and/or check references. Scores for reference checks and interviews will be tallied and added to the short-listed firm's initial evaluation scores. Final selection will be based on the accumulative score.

The NWSA/Port intends to select the Proposer who represents the best value to the NWSA/Port.

The NWSA/Port reserves the right to accept or reject any or all information in its entirety or in part and to waive informalities and minor irregularities and to contract as the best interest of the NWSA/Port may require. The NWSA/Port reserves the right to reject any or all Proposals submitted as non-responsive or non-responsible.

### **Procedure When Only One Proposal is received**

In the event that a single responsive proposal is received, the Proposer shall provide any additional data required by the NWSA/Port to analyze the proposal. The NWSA/Port reserves the right to reject such proposals for any reason.

### **GENERAL INFORMATION**

News releases pertaining to this RFQ, the services, or the project to which it relates, shall not be made without prior approval by, and then only in coordination with, the NWSA/Port.

### **COSTS BORNE BY PROPOSERS**

All costs incurred in the preparation of a Proposal and participation in this RFQ and negotiation process shall be borne by the proposing firms.

### **PROTEST PROCESS**

A Bidder protesting for any reason the Bidding Documents, a Bidding procedure, the NWSA/Port's objection to a Bidder or a person or entity proposed by the Bidder, including but not limited to a finding of non-Responsibility, the Award of the Contract or any other aspect arising from or relating in any way to the Bidding shall cause a written protest to be filed with the NWSA/Port within two (2) business days of the event giving rise to the protest. (Intermediate Saturdays, Sundays, and legal holidays are not counted as business days.)

The written protest shall include the name of the protesting Bidder, the bid solicitation number and title under which the protest is submitted, a detailed description of the specific factual and legal grounds for the protest, copies of all supporting documents, evidence that the apparent low bidder has been given notice of the protest, and the specific relief requested. The written protest shall be sent by email to [procurement@portoftacoma.com](mailto:procurement@portoftacoma.com)

Consideration. Upon receipt of the written protest, the NWSA/Port will consider the protest. The Port may, within three (3) business days of the NWSA/Port's receipt of the protest, provide any other affected Bidder(s) the opportunity to respond in writing to the protest. If the protest is not resolved by mutual agreement of the protesting Bidder and the NWSA/Port, the Contracts Director of the Port or his or her designee will review the issues and promptly furnish a final and binding written decision to the protesting Bidder and any other affected Bidder(s) within six (6) business days of the NWSA/Port's receipt of the protest. (If more than one (1) protest is filed, the NWSA/Port's decision will be provided within three (3), but no more than six (6) business days of the NWSA/Port's receipt of the last protest.) If no reply is received from the NWSA/Port during the six (6) business-day period, the protest will be deemed rejected.

Waiver. Failure to comply with these protest procedures will render a protest waived.

Condition Precedent. Timely and proper compliance with and exhaustion of these protest procedures shall be a condition precedent to any otherwise permissible judicial consideration of a protest.

**SMALL BUSINESS AND DISADVANTAGED BUSINESS OPPORTUNITIES**

The Northwest Seaport Alliance encourages participation in all of its contracts by MWBE firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this solicitation/invitation or as a subcontractor to a Bidder/Proposer. However, unless required by federal statutes, regulations, grants, or contract terms referenced in the contract documents, no preference will be included in the evaluation of bids/submittals, no minimum level of MWBE participation shall be required as a condition for receiving an award and bids/submittals will not be rejected or considered non-responsive on that basis. Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the contract documents will apply. The selected firm will be required to show evidence of outreach.

**PUBLIC DISCLOSURE**

Proposals submitted under this Solicitation will be considered public documents and, with limited exceptions, will become public information and may be reviewed by appointment by anyone requesting to do so following the conclusion of the evaluation, negotiation, and award process. This process is concluded when a signed contract is completed between the NWSA/Port and the selected Consultant.

If a firm considers any portion of its response to be protected under the law, the vendor shall clearly identify each such portion with words such as "CONFIDENTIAL," "PROPRIETARY" or "TRADE SECRET" on each page for which the protection is sought. If a request is made for disclosure of such portion, the NWSA/Port will notify the vendor of the request and allow the vendor not less than ten (10) days to seek a protective order from the Courts or other appropriate remedy and/or waive the claimed confidentiality. Unless such protective order is obtained and provided to the NWSA/Port by the stated deadline, the NWSA/Port will release the requested portions of the proposal. By submitting a response the vendor assents to the procedure outlined in this paragraph and shall have no claim against the NWSA/Port on account of actions taken under such procedure.

**ATTACHMENT "B"**

**PROFESSIONAL SERVICES AGREEMENT NO. PA00000296**

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**PROJECT:** XX

**CONSULTANT:** Company, Address, City, State, Zip

**PROJECT MANAGER:** XXXXXXXXX**GL ACCOUNT NO.** XXXXXXX

THIS AGREEMENT is made and entered into by and between the **Port of Tacoma / NWSA** (hereinafter referred to as the "Port") and xxCOMPANYxx (hereinafter referred to as the "Consultant") for the furnishing of Water Quality Program Support Services (MS4 Permit) (hereinafter referred to as the "Project").

**SCOPE OF WORK**

Consultant will provide .....

**DELIVERABLES**

Deliverables will include:

**COMPENSATION**

This will be accomplished on fully burdened, time and materials basis and will not exceed \$00,000.00 without prior written approval from the Port.

Consultant is responsible for working within the budget as agreed. Should the Consultant incur costs beyond the not-to-exceed contract budget amount without an executed amendment to this contract, the Consultant is solely responsible for the additional costs.

Invoices shall be submitted by the consultant to [cpinvoices@portoftacoma.com](mailto:cpinvoices@portoftacoma.com) each month. Invoice period is for the previous calendar month and shall be computed pursuant to the rates and limitations set forth in the Agreement. Consultant agrees to submit monthly invoices as the Services progress. Invoices that are submitted for payment ninety (90) days or more after the Services were completed are subject to non-payment. Under no circumstances will the Port of Tacoma pay interest on payment.

The length of this agreement is from the date of execution to xxDATExx. This agreement is expressly conditioned upon the **Terms and Conditions** attached and by reference incorporated herein. Consultant acknowledges reading this Agreement, understands it and agrees to be bound by its Terms and Conditions.

**AGREED**

**PORT OF TACOMA and NWSA**

**CONSULTANT (LEGAL NAME)**

By \_\_\_\_\_ Date \_\_\_\_\_  
Jerry Clardy  
Sr. Contracts Administrator

By \_\_\_\_\_ Date \_\_\_\_\_  
Print Name  
Title

**Port of Tacoma / NWSA  
Terms and Conditions  
Personal and Professional Service Agreements**

**1. Relationship of the Parties**

Consultant and its employees, are independent Contractors. Nothing contained herein shall be deemed to create a relationship of employer and employee or of principal and agent.

**2. Subconsultant and Supplier Relations**

- a. Subconsultants at all tiers shall be approved by the Port prior to performing Services in support of this Agreement between Consultant and Port.
- b. The award of a subcontract does not create a contract between the Port and the subconsultant. Subconsultants shall have no rights whatsoever against the Port by reason of their contract with the Consultant. The foregoing provision shall apply with equal force to subconsultants, suppliers and all other persons or parties otherwise engaged by the Consultant to do any portion of the Services.
- c. The Consultant shall ensure every subcontract shall bind the subconsultant to the applicable terms of the Agreement. The Consultant shall appropriately monitor the activities of the subconsultant. In no event shall the activities of the subconsultant operate to release or reduce the liability of the Consultant to the Port for any breach in the performance of the Consultant's duties.

**3. Conflicts of Interest**

Consultant warrants that it has no direct or indirect economic interest which conflicts in any manner with its performance of the Services required under this Agreement. Consultant warrants that it has not retained any person to solicit this Agreement and has not agreed to pay such person any compensation or other consideration contingent upon the execution of this Agreement.

**4. Compliance with Laws**

- a. Consultant agrees to comply with all local, state, tribal, and federal laws and regulations applicable to the Services existing at the time this Agreement was executed or that became applicable subsequent to this Agreement's execution, and those regarding employee safety, the work place environment, and employment eligibility verifications as required by the Immigration and Naturalization Service. Consultant shall obtain and maintain all professional licenses and permits required to complete the Services.
- b. Consultant must comply with all Occupational Safety and Health Administration (OSHA), Washington Industrial Safety and Health Act (WISHA), Department of Labor, Environmental Protection Agency and other applicable environmental standards as prescribed by law while on or occupying Port-owned properties.
- c. The Consultant is responsible for ensuring that all personnel

performing Services are paid wages in accordance with federal, state and local laws when applicable.

## **5. Records and other Tangibles**

- a. The Port is a public entity and must maintain access to, and be able to provide, records per RCW 40.14, RCW 42.56, and the Secretary of State's Local Government Common Records Retention Schedule (CORE) Version 3.3 (October 2016). Therefore, until the expiration of six (6) years after the term of this Agreement, consultant agrees to maintain accurate records of all activities done in providing the Services and to deliver such records to the Port upon termination of the Agreement or otherwise as requested by the Port.
- b. The Port or its designated agent, and federal and state auditing authorities have the right to audit this Agreement and access to all records and documents, including financial data, for a period of not less than six (6) years after Completion of all projects related to this Agreement or until resolution of any litigation related to this Agreement whichever occurs last.

## **6. Ownership of Intellectual Property (IP)**

- a. The plans, specifications, models, programs, reports, and other products prepared by the Consultant in performing the Services are Instruments of Service for purposes of the copyright laws of the United States. The Port has ownership rights to the Instruments of Service. Consultant shall not be liable for changes made in the Instruments of Service by anyone other than the Consultant. Consultant shall have free right to retain, copy and use any tangible materials or information produced but only for its own internal

purposes. Any patentable result or materials suitable for copyright arising out of this Agreement shall be owned by and made available to the Port for public use, unless the Port determines it is not in the public interest that it be owned or available.

- b. The Instruments of Service shall include all calculations, notes, draft documents, reports, drawings, specifications, electronic files, including e-mails, and any other materials, information or documentation developed or prepared in the performance of the Services and shall be owned by and treated as Port property. The Consultant shall obtain no proprietary rights or interest the Instruments of Service.
- c. Any items incorporated into the Instruments of Service that were developed by the Consultant prior to the execution of this Agreement, and not paid for by the Port, is not covered by this provision "Consultant Data."
- d. All information, materials, data and documentation furnished or made available to the Consultant by the Port for purposes of performing services pursuant to this Agreement on this project shall remain the property of the Port "Port Data." The Consultant shall obtain no proprietary rights or ownership interests to such Port Data. At the Port's written request, the Consultant shall return all such Port Data remaining in the Consultant's possession at the termination or expiration of this Agreement.

## **7. Disclosure**

All information developed by the Consultant, all analyses or opinions reached by the Consultant (Instruments of Service) and all information made available to the Consultant by the Port



(Port Data), shall not be disclosed by the Consultant without the written consent of the Port.

## **8. Compensation**

- a. As full compensation for the performance of its obligations of this Agreement and the Services, the Port shall pay Consultant as specified in the Agreement.
  - b. Consultant is responsible for working within the agreement amount. Should the consultant incur costs beyond the agreement amount without an executed amendment to this agreement, the Consultant is solely responsible for the additional costs.
9. Invoices shall be submitted by the consultant through e-Builder® each month. Training and account information for e-Builder® will be provided by the Port upon contract execution. Invoice period is for the previous calendar month and shall be computed pursuant to the rates and limitations set forth in the Agreement. Consultant agrees to submit monthly invoices as the Services progress. Invoices that are submitted for payment ninety (90) days or more after the Services were completed are subject to non-payment. Under no circumstances will the NWSA pay interest on payment.

- a. Consultant shall submit detailed numbered invoices showing descriptions of the Services being invoiced, work order number, title of the Project, total authorized, total current invoice, balance of authorization, individual's names and titles, hours, hourly rate, and all authorized expenses, if allowed, for the month, itemized, with backup, in

accordance with the Port's "Guidelines for Consultant Fees and Reimbursable Items", by the 10<sup>th</sup> of the following month to be paid by the end of the 30<sup>th</sup>, unless other terms are agreed to by the parties.

- b. Consultant agrees to submit timely invoices as the Services progress. Invoices that are submitted for payment ninety (90) days or more after the Services were completed are subject to non-payment.
- c. Un-invoiced Services performed through December 31 of each year shall be invoiced no later than the 7<sup>th</sup> day of January. If the Consultant is unable to provide an invoice they shall advise the Port in writing with a summary of the work completed and the accrual amount to be invoiced through December 31 of that year.

## **10. Costs and Disbursements**

Consultant is responsible for and shall pay all costs and disbursements required for the performance of the Services.

## **11. Standard of Care**

- a. Consultant shall perform the Services to conform to generally accepted professional standards. Consultant shall be responsible for the professional quality, technical adequacy and accuracy, timely completion and coordination of all plans, designs, drawings and specifications prepared under this Agreement. Consultant shall, without additional compensation, correct or revise any errors or omissions in such Services.
- b. The Port's approval of plans, drawings and specifications shall not relieve Consultant of responsibility for the adequacy or accuracy thereof. The Consultant shall remain liable for damages and costs

incurred by the Port arising from the Consultant's errors, omissions or negligent performance of the Services.

## 12. Time

Time is a material consideration in the performance of the Services. The Consultant shall complete the Services within the agreed upon schedule; including any established milestones and task completion dates, and the overall period of performance. The completion dates for tasks may be modified by a written directive; however, the period of performance for the Agreement may only be modified through an amendment. The period of performance and contract milestones shall not be extended because of any unwarranted delays attributable to the Consultant. The period of performance and contract milestones may be extended in the event of a delay caused by the Port which results in a delay in the performance of an affected task, because of unavoidable delay caused by any governmental action, or other conditions beyond the control of the Consultant, which could not reasonably be anticipated and which results in a delay in the period of performance and contract schedule. Upon mutual agreement, the period of performance may be accelerated to meet Project requirements.

## 13. Assignability

The Consultant may not assign, transfer, or novate all or any portion of the Agreement, including but not limited to any claim or right to the Contract Sum, without the Port's prior written consent. If the Consultant attempts to make an assignment, transfer, or novation without the Port's consent, the assignment or novation, shall be of no effect, and the Consultant shall nevertheless remain legally responsible for all obligations under the Agreement. The Consultant also shall not assign or

transfer to any third party any claims it may have against the Port arising under the Agreement or otherwise related to the Project.

## 14. Termination of Agreement

### a. Termination for Default:

- i. The Port may terminate this Agreement, in writing, if the Consultant substantially fails to fulfill any or all of its material obligations under this Agreement through no fault of the Port; provided that the Consultant has been given an opportunity to cure.

1. Cure Notice: If the Port determines that a breach of this Agreement has occurred, that is, the Consultant has failed to comply with any material terms or conditions of this Agreement or the Consultant has failed to provide in any manner the Services agreed to herein, and if the Port deems said breach to warrant corrective action, the following sequential procedure will apply:

- ii. The Port will provide the Consultant with a written Cure Notice; notifying the Consultant of the nature of the breach;
- iii. The Consultant shall respond within five (5) calendar days of the notification. The Consultant shall submit a corrective action plan indicating the steps to be taken to correct the specified deficiencies within fifteen

(15) calendar days of the notification. The corrective action plan shall specify the proposed completion date for bringing this Agreement into compliance within the number of calendar days specified by the Port;

b. Show Cause Notice:

- i. In the event that the Consultant does not respond within the appropriate time with a corrective action plan, the Port will provide the Consultant with a written Show Cause Notice; notifying the Consultant of their requirement to notify the Port in writing within seven (7) calendar days of any reason the Port should not terminate this Agreement. At the expiration of the seven (7) calendar day period the Port may commence termination of this Agreement in whole or in part;
- ii. The Port may withhold payment owed the Consultant, instruct the Consultant to stop work and to refrain from incurring additional costs until the Port is satisfied that the breach has been corrected;
- iii. No increase in total price or period of performance shall result from breach of this Agreement; and
- iv. Nothing herein shall be deemed to affect or waive any other rights of the Port.

c. Notice of Termination:

- i. If the Port terminates this Agreement for default, the Port shall determine the

amount of Services satisfactorily performed to the date of termination and the amount owing to the Consultant using the criteria set forth below; provided, that (a) no amount shall be allowed for anticipated profit on unperformed Services or other work and (b) any payment due to the Consultant at the time of termination may be adjusted to the extent of any additional costs the Port incurs because of the Consultant's default. In such event, the Port shall consider the actual costs incurred by the Consultant in performing this Agreement to the date of termination, the amount of Services originally required which was satisfactorily completed to the date of termination, whether the Services are in a form or of a type which is usable and suitable to the Port at the date of termination, the cost to the Port of completing the Services itself or of employing another firm to complete it and the inconvenience and time which may be required to do so, and other factors which affect the value to the Port of the Services performed to the date of termination. Under no circumstances shall payments made under this provision exceed the Total Price set forth in this Agreement. This provision shall not preclude the Port from filing claims and/or commencing litigation to secure compensation for damages incurred beyond that covered by withheld payments.

ii. Upon receipt of a termination notice the Consultant shall at no additional cost to the Port:

1. Promptly discontinue all Services (unless the notice directs otherwise);
2. No later than fourteen (14) calendar days after receipt of termination, promptly deliver or otherwise make available to the Port all Instruments of Service and Port Data including data, drawings, electronic drawing files, specifications, calculations, reports, estimates, summaries, official Project documentation and other Project documentation, such other information and materials as the Consultant or subconsultants may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for this Agreement where the Port has paid the Consultant for such items.
3. Upon termination, the Port may take over the Services and prosecute the same to completion by agreement with another party or otherwise.

i. The Port may terminate this Agreement, for the convenience of the Port. The Port shall terminate by delivery to the Consultant a Notice of Termination specifying the termination and the effective date.

ii. If the Port terminates this Agreement for convenience, the Port shall pay the Consultant for the following items:

1. An amount for Direct Labor Costs and Indirect Costs in accordance with the Agreement for Services satisfactorily performed to the date of termination;
2. Reasonable invoiced Other Direct Costs as allowed by the Agreement, actually incurred before the date of termination; or
3. Reasonable termination settlement costs the Consultant actually incurred unless the Port determines to assume said commitments. Reasonable termination settlement costs include settlement costs for subconsultants, and reasonable accounting and clerical costs actually incurred by the Consultant.

d. Termination for Convenience:

iii. Upon receipt of a termination notice the Consultant shall at no additional cost to the Port:

1. Promptly discontinue all Services (unless the notice directs otherwise);
2. No later than fourteen (14) calendar days after receipt of termination, promptly deliver or otherwise make available to the Port all Instruments of Services and Port Data including drawings, specifications, calculations, reports, estimates, summaries, official Project documentation, other Project documentation, and such other information and materials as the Consultant may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for this Agreement where the Port has reimbursed the Consultant for such costs;
3. Take any action necessary, or that the Port may direct, for the protection and preservation of property related to this Agreement that is in the possession of the Consultant and in which the Port has or

may acquire an interest.

iv. Within sixty (60) calendar days of receipt of the notice of Termination for Convenience, the Consultant shall submit to the Port a Termination Settlement Proposal. The Termination Settlement Proposal shall include:

1. Request for Direct Labor Costs and Indirect Costs for services satisfactorily performed to the date of termination;
2. As allowed by the Agreement, Actual and reasonable Other Direct Costs incurred before the termination;
3. Documentation supporting all costs identified in the Termination Settlement Proposal; and
4. A statement certifying, under penalty of perjury, that the Termination Settlement Proposal is made in good faith, the Termination Settlement Proposal and supporting data are true and accurate to the best of the Consultant's knowledge and belief, the Termination Settlement Proposal is fully supported by the accompanying data, and the amount requested accurately

reflects the amount for which the Consultant believes the Port is responsible.

- v. Termination settlement costs and proposals are subject to audit verification by the Port.
- vi. Upon termination, the Port may take over the work and prosecute the same to completion by agreement with another party or otherwise.

## 15. Disputes

If a dispute arises relating to this Agreement and cannot be settled through direct discussions, the parties agree to endeavor to settle the dispute through a mediation firm acceptable to both parties, the cost of which shall be divided equally. The Port reserves the right to join any dispute under this Agreement with any other claim in litigation or other dispute resolution forum, and the Consultant agrees to such joinder, so that all disputes related to this Agreement may be consolidated and resolved in one forum.

## 16. Venue & Governing Law

Venue for any litigation shall be the Pierce County Superior Court of the State of Washington and the prevailing party shall be entitled to recover its costs and reasonable attorney(s) fees. This Agreement shall be interpreted under the laws of the State of Washington.

## 17. Integration and Merger/ Extent of Agreement

- a. This Agreement represents the entire and integrated understanding between the Port and Consultant, supersedes any previous written or oral representations and may be

amended only by written instrument signed by both the Port and Consultant. No verbal agreement or conversation between any officer, agent, associate or employee of Port and any officer, agency, employee or associate of Consultant prior to or following the execution of this Agreement shall affect or modify any of the terms or obligations contained in this Agreement.

- b. Authority to sign. Every signer of this Agreement warrants that they have the authority to enter into this Agreement and to bind the entity for which they represent.

## 18. Non-Discrimination

- a. Nondiscrimination in Employment and Provision of Services: During performance of this Agreement, the Consultant and all parties subcontracting under the authority of this Agreement agrees that it will not discriminate against any employee or applicant for employment because of the employee or applicant's age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.
- b. Equal Employment Opportunity Efforts: The Consultant and all parties subcontracting under the authority of this Agreement agree to undertake equal employment opportunity efforts to ensure that applicants and employees are treated, without regard to their age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a



trained dog guide or service animal by a person with a disability.

- c. The Consultant and all parties subcontracting under the authority of this Agreement shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders and regulations that prohibit discrimination.

#### **19. Indemnity / Hold Harmless Clause**

- a. The Consultant shall indemnify, defend and hold harmless the Port of Tacoma and the Northwest Seaport Alliance and its officers, managing members, employees and agents from and against any liability, claims, damages, losses, expenses or actions, including reasonable attorney's fees and costs, arising out of the negligence, recklessness, or intentional wrongdoing of Consultant or its officers, employees, subcontractors, or agents; or arising out of a failure to comply with any applicable state, federal, local, law, statute, rule, regulation or act by the Consultant or its officers, employees, subcontractors, or agent's provided, however, that for any defense obligation related to a claim for which Contractor has insurance coverage under a professional liability policy, such obligation shall be limited to reimbursement by the Consultant for expenses incurred by the Port of Tacoma or the Northwest Seaport Alliance.
- b. This duty to indemnify, defend and hold harmless shall not apply to claims which arise solely out of negligence on the part of the Port of Tacoma and the Northwest Seaport Alliance, and this duty shall survive the termination or expiration of this Agreement.
- c. Consultant specifically assumes potential liability for actions brought

by Consultant's own employees against the Port and the Northwest Seaport Alliance and, solely for the purpose of this indemnification and defense, Consultant specifically waives any immunity under the state industrial insurance law, Title 51 RCW. Consultant's indemnity obligations shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under the Worker Compensation Acts, Disability Benefit Acts, or other employee benefit acts. Consultant recognizes that this waiver was the subject of mutual negotiation.

- d. Consultant shall indemnify and hold the Port of Tacoma and Northwest Seaport Alliance harmless from and against any liability, expense, fines, penalties, cost, demand, or other obligation, resulting from or out of any cyber-related risk that include theft, loss or misuse of data, release of private information as result of a network breach, penetration, compromise, or loss of IT systems control.
- e. The provisions of this Section 19 shall survive the expiration or termination of this Agreement.

#### **20. General Insurance Requirements**

The Consultant shall procure and maintain during the life of this Agreement such insurance as shall protect it from claims or damages for, IT Professional or Cyber Liability, bodily injury, including death resulting therefrom as well as from claims for property damage, and cyber-related risks such as theft, loss or misuse of data, release of private information as result of a network breach, penetration, compromise, or loss of IT systems control, which may arise from operations under this Agreement, whether such operations be by itself, its agents, or by

anyone directly or indirectly employed by either of them, and shall comply with any such Project specific insurance requirements as determined by the Port.

## **21. Miscellaneous Provisions**

- a. Remedies Cumulative: Rights under this Agreement are cumulative and nonexclusive of any other remedy at law or in equity.
- b. Captions: All titles, including sections or subsections, are for convenience only and do not define or limit the contents.
- c. Severability: Any term or provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Agreement.
- d. Waiver: No covenant, term, or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance by Port of any performance by Consultant after the time the same shall have become due nor payment to Consultant for any portion of the Services shall constitute a waiver by Port of the breach or default of any covenant, term or condition unless otherwise this is expressly agreed to by Port, in writing. Port's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Port's waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type.

- e. Negotiated Agreement: The Parties acknowledge that this is a negotiated Agreement, that they have had the opportunity to have this Agreement reviewed by respective legal counsel, and that terms and conditions are not construed against any Party on the basis of such Party's draftsmanship thereof.
- f. No Personal Liability: No officer, agent or authorized employee of either Port or Consultant shall be personally responsible for any liability arising under this Agreement, whether expressed or implied, nor for any statement or representation made herein or in any connection with this Agreement.

## **22. Key Personnel**

The Consultant's key personnel, as described in the Consultant selection submittals, shall remain assigned for the duration of the Project unless otherwise agreed to in writing by the Port.

## **23. Insurance - Assumption of Risk**

- a. As a further consideration in determining compensation amounts, the Consultant shall procure and maintain, during the life of this Agreement, such commercial general liability insurance, professional liability insurance and environmental liability insurance including asbestos abatement liability and other insurance as required by contract for this project that shall protect Consultant and any subconsultant performing work under this Agreement from claims for damages from bodily injury, including death, resulting therefrom as well as from claims for property damage, economic damage or cleanup costs, which may arise under this Agreement, whether arising from operations conducted by the Consultant, any

subconsultant, or anyone directly or indirectly employed by either of them. Consultant recognizes that it is the obligation of the Consultant to ensure that all Subconsultants of any tier have insurance for the activities performed under this agreement. If this agreement requires that a Subconsultant perform ultra-hazardous operations the Port will require that it be named as an Additional Insured by endorsement on all Subconsultant insurance policies and waivers of subrogation shall be provided by endorsement. Workers Compensation and Professional Liability are exempted from the additional insured requirement.

b. Consultant shall submit to the Port of Tacoma, prior to the commencement of services, certificates of insurance evidencing:

- i. Commercial General Liability coverage on occurrence form CG0001 or equivalent with limits of \$2,000,000 per occurrence and \$4,000,000 aggregate. Coverage will include: Products and Completed Operations, Contractual Liability and Personal & Advertising Injury; and
- ii. Automobile Liability covering owned, non-owned and hired vehicles of \$2,000,000 combined single limit per accident; and
- iii. Professional Liability including environmental consulting services of not less than \$2,000,000 per claim and in the aggregate. If the scope of Professional Services includes environmental testing, consulting or other such professional services, the

Consultant's Professional Liability policy shall include coverage for these services. If such coverage is written on a claims-made basis, any retroactive date on the policy shall be prior to the start of this contract. Coverage shall remain in effect for the term of this Agreement plus three years. Certificates of Insurance citing the contract and project number shall be provided to the Port of Tacoma on an annual basis for each of the three years.

iv. Workers Compensation Insurance: Statutory Workers Compensation Insurance as required by the State of Washington.

v. Stop Gap/Employers Liability Insurance shall be provided with a limit of not less than \$2,000,000 per claim.

vi. Protection and Indemnity Insurance/Jones Act: \$1,000,000 limits shall be provided covering all vessels and crew.

vii. Maritime Employers Liability: \$1,000,000 limits shall be provided covering all divers.

c. All policies shall be issued by a company having an A. M. Best Financial Strength Rating of A- and Financial Size Category of VIII or better. The Consultant shall be responsible for notifying the Port in writing within ten (10) days of receipt of notice of coverage being suspended, voided, cancelled or materially reduced. Except for professional liability, the Port and the Northwest Seaport Alliance shall be named as an additional insured on all policies by endorsement on ISO Form CG 20 10 Form B or

equivalent. Except for Workers Compensation and Professional Liability, waivers of subrogation shall be provided by endorsement to all policies.

- d. Consultant is responsible for complying with the Washington State laws that pertain to industrial insurance (RCW 51). Consultant shall submit a current employer liability certificate as issued by the Washington Department of Labor and Industries that shows the status of Consultant's worker compensation account prior to contract execution, including those Consultants who are qualified self-insurers with the state. Consultant bears the responsibility to ensure that any out-of-state (non-Washington) employees and subconsultants have appropriate workers compensation coverage while working for the Port in Washington State. Consultant may be exempt from state worker compensation insurance requirements (RCW 51.12.020) such as if Consultant is a sole proprietor.
- e. Certain Services under this Agreement may require United States Longshoremen's and Harbor Worker's Act (USL&H) and Jones Act. The Consultant shall be solely responsible for determining the applicability of USL&H and Jones Act coverage. The failure of the Consultant to procure either USL&H or Jones Act coverage shall at no time create liability on the part of the Port. The Consultant shall bear all responsibility and shall indemnify and hold harmless the Port for any and all liability, cost and/or damages.

#### **24. Payment Schedule**

- a. Consultant shall submit detailed numbered invoices in accordance with the Agreement by the 10th of

the month. After a complete and correct invoice has been received by the Port, payment will be made within thirty (30) days.

- b. Invoices shall be submitted through the Port's Contract Management software e-Builder®. Incomplete or improperly prepared invoices will be returned for correction without processing or payment.
- c. Consultant shall submit detailed invoices showing the following:
  - i. Invoice Number, Contract number, Title, Invoice Period.
  - ii. Summary page with a brief description of Services completed during the invoice period, deliverables provided during the invoice period, and forthcoming milestones / deliverables.
  - iii. Further, provide a summary breakdown of all projects with the amount of the overall invoice to be charged to each project.
  - iv. Current Amount Due, with a Time and Materials Breakdown: titles, hours, hourly rates, and all expenses itemized, with backup, in accordance with the Contract.
  - v. Total amount of the Contract, and balance of Contract amount. Indicate "Final Invoice" when invoice is the final billing.

#### **25. Compensation**

- a. Consultant expenses will be reimbursed at cost with the exception of:

- i. Subconsultant services will be reimbursed at cost plus negotiated markup.
  - ii. Services provided by a third party will be reimbursed at cost plus negotiated markup.
- b. Costs marked up by a sub-tier shall be passed through to higher tiers as a direct cost. In no case shall the mark up at any tier exceed the negotiated percentage.
- c. Reimbursable expenses by a sub-tier shall be passed through to higher tiers as a direct cost. In no case shall markup be applied to reimbursable expenses at any level.
- d. Rates: Rates are fully burdened and will remain in effect for the contract term unless renegotiated and agreed to by both parties in a written amendment.
  - i. Rates may be negotiated no more than once annually. Rate adjustments will be tied to the CPI for the Seattle, Tacoma/Bremerton area.
- e. Rates and Markup: are defined in the attached Rate Sheet and made a part of this contract.
- f. Overtime: The Port will allow overtime rates for preapproved labor categories, as required by federal law, at 1.5 times the rate when approved in advance by the Project Manager and when required by the nature of the Services. The Consultant shall submit a list of labor classifications to which overtime rates are applicable to by law.
- g. Local Travel: Compensation for vehicle usage will be paid at the current Internal Revenue Service allowable mileage reimbursement rate. Out of state mileage will not be paid. Consultants who are located

within 50 miles of the Project site will not be reimbursed for meals, lodging or mileage.

h. Other Travel:

- i. The Port will reimburse the Consultant for all allowable travel expenses (including expenses for travel by car, air, water and rail, accommodation and meals) incurred in order to provide the Services to the Port in accordance with the following guidelines:
- ii. Lodging and meal reimbursement is in accordance with the following Per Diem rates established by the IRS at <http://www.ofm.wa.gov/resources/travel.asp>.
- iii. Amounts reimbursed will be computed at the rate for physical location to which travel is authorized by the Project Manager. Lodging, travel and local mileage must be approved in writing by the Project Manager prior to performing travel. Request for travel should include a breakout of costs associated with the requested travel.
- iv. Airfare will be reimbursed at the lowest available commercial coach rate. Airfare will be booked at least 15 days in advance of travel. The Port will reimburse for up to a mid-size vehicle with standard equipment (this does not include GPS, video screens, etc). The Port will also reimburse for gasoline expense associated with rental vehicle with the exception of gasoline provided/billed by the rental

car company. The Port will not reimburse the Consultant for mileage at the IRS rate on a rented vehicle. Receipts are required for all reimbursed expenses with the exception of meals. Reimbursement (other than meals) will be for actual costs incurred subject to the Per Diem rates established by the IRS at <http://www.ofm.wa.gov/resources/travel.asp> for the location to which travel has been authorized.

## **26. Deliverables**

All tangible materials produced as a result of this Agreement shall be prepared as specified by the Port's Project Manager. Delivery of materials produced shall consist both of the tangible materials and one copy of any computer files used in the creation of the tangible product in a PDF format or other format specified by the Port.

## **27. Drawing, Specification and GIS**

- a. Consultant shall prepare specifications using BSD Speclink-E, Masterformat specification organization, latest edition.
- b. Consultant shall prepare specifications in accordance the Port's Specification Standards available at <https://www.portoftacoma.com/business/contracting/forms> and from the Port Project Manager. The Port's Master format specifications are available at <https://www.portoftacoma.com/business/contracting/forms>.
- c. Consultant shall use e-Builder® for electronic information exchange and invoicing.

- d. All site plans, derivative drawings, record drawings, and bid plans shall be completed using Port GIS and CADD standards and layer/block protocols available at <https://www.portoftacoma.com/business/contracting/forms> and from the Port Project Manager.

## **28. Security – Transportation Worker Identification Credential (TWIC)**

- a. The Services may require the consultant to work within a secured/restricted TWIC regulated terminal.
- b. TWIC is a credentialing program managed by the Department of Homeland Security (DHS), through the United States Coast Guard and the Transportation Security Administration. All credentialed merchant mariners and individuals who will need unescorted access to secure areas of a maritime regulated facility or vessel must obtain a TWIC. For more information on TWIC visit <https://www.tsa.gov/for-industry/twic>.
- c. The Consultant shall have a minimum of one TWIC compliant employee trained as an escort for every five workers not possessing TWIC cards working on a secured or restricted site. Each escort will be required to receive Terminal Operator provided escort training.

## **29. Existing Hazardous Material Information**

The Port shall furnish the Consultant with the information as required by the Hazard Communication standard for materials pre-existing on the Project. The Consultant is solely responsible for ensuring that this information is made available to the Consultant's personnel, subconsultants, and that relevant information is incorporated into work products including, but not limited to,

reports, specifications, and contract documents.

### 30. Extent of Agreement

- a. In the event the Consultant identifies something that may impact the Services, Project schedule, total price, task budget(s) or cost of performing the Services, the Consultant shall inform the Project Manager in writing prior to exceeding the task budget(s) and within seven (7) calendar days of the event and possible impacts to scope, schedule and cost or task budget.
- b. The Project Manager may, at any time, by written directive require the Consultant to perform the Services consistent with the Agreement; provided that this directive does not add scope or cost to the project.
- c. Any directive shall not constitute an amendment to the Agreement nor entitle the Consultant to any additional compensation or a time adjustment.

### 31. Prevailing Wages

- a. The Consultant shall ensure that all Subcontractors of any tier pay all prevailing wages and other wages (such as Davis-Bacon Act wages) applicable to the Project.
- b. Pursuant to RCW 39.12, "Prevailing Wages on Public Works," no worker, laborer, or mechanic employed in the performance of any part of the Work shall be paid less than the "prevailing rate of wage" in effect as of the date that bids are due.
- c. The applicable effective date for prevailing wages for this project is the execution date of this Amendment.

- d. The State of Washington prevailing wage rates applicable for this public works project, which is located in Pierce County, may be found at the following website address of the Department of Labor and Industries: <https://lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates/>
- e. The schedule of the prevailing wage rates is made a part of the Contract Documents by reference as though fully set forth herein; and a copy of the applicable prevailing wage rates are also available for viewing at the Port Administration Building, located at One Sitcum Plaza, Tacoma, WA 98421 (253-383-5841). Upon request to the Procurement Department at [procurement@portoftacoma.com](mailto:procurement@portoftacoma.com), the Port will email or mail a hard copy of the applicable Journey Level prevailing wages for this project.
- f. Questions relating to prevailing wage data should be addressed to the Industrial Statistician.

#### Mailing Address:

Department of Labor and Industries  
Prevailing Wage Office  
PO Box 44540, Olympia, WA 98504  
Telephone: (360) 902-5335  
Facsimile: (360) 902-5300

- g. If there is any discrepancy between the attached or provided schedule of prevailing wage rates and the published rates applicable under WAC 296-127-011, or if no schedule is attached, the applicable published rates shall apply with no increase in the Contract Sum. It is the Contractor's responsibility to ensure that the correct prevailing wage rates are paid.
- h. Prior to any payment being made by the Port under this Contract, the Contractor, and each Subcontractor of any tier, shall file a Statement of

Intent to Pay Prevailing Wages under oath with the Port and certified by the Director of Labor and Industries. The statement shall include the hourly wage rate to be paid to each classification of workers entitled to prevailing wages, which shall not be less than the prevailing rate of wage, and the estimated number of workers in each classification employed on the Project by the Contractor or a Subcontractor of any tier, as well as the Contractor's contractor registration number and other information required by the Director of Labor and Industries. The statement, and any supplemental statements, shall be filed in accordance with the requirements of the Department of Labor and Industries. No progress payment shall be made until the Port receives such certified statement.

- i. The Contractor shall post in a location readily visible to workers at the Project site (1) a copy of the Statement of Intent to Pay Prevailing Wages approved by the Industrial Statistician of the Department of Labor and Industries and (2) the address and telephone number of the Industrial Statistician of the Department of Labor and Industries to whom a complaint or inquiry concerning prevailing wages may be directed.
- j. If a State of Washington prevailing wage rate conflicts with another applicable wage rate (such as Davis-Bacon Act wage rate) for the same labor classification, the higher of the two shall govern.
- k. Pursuant to RCW 39.12.060, if any dispute arises concerning the appropriate prevailing wage rate for work of a similar nature, and the dispute cannot be adjusted by the parties in interest, including labor and management representatives,

the matter shall be referred for arbitration to the Director of the Department of Labor and Industries, and his or her decision shall be final and conclusive and binding on all parties involved in the dispute.

- l. The Contractor shall defend (at the Contractor's sole cost, with legal counsel approved by Port), indemnify and hold the Port harmless from all liabilities, obligations, claims, demands, damages, disbursements, lawsuits, losses, fines, penalties, costs and expenses, whether direct, indirect, including but not limited to attorneys' fees and consultants' fees and other costs and expenses, from any violation or alleged violation by the Contractor or any Subcontractor of any tier of RCW 39.12 ("Prevailing Wages on Public Works") or Chapter 51 RCW ("Industrial Insurance"), including but not limited to RCW 51.12.050.

### **32. On-Call Definitions Supplementary Conditions (As Applicable)**

- a. Task Order: The document that memorializes agreement between the Consultant and the Port, in accordance with the terms of the On-Call Contract. Task Orders are executed for defined Services under the On-Call Contract.
- b. Contract Owner: Port staff member responsible for managing the On-Call Contract and executing all Task Orders.
- c. Project Manager: Port staff member responsible for managing a specific Task Order.
- d. Consultant Representative: The Consultant staff member(s) delegated the authority to provide signature approval for Task Orders under the On-Call Contract.



Exceed dollar amount.

e. Task Order Proposals:

- i. The Project Manager will request consultant to provide a fee proposal for the Services requested by the Port.
- ii. The Port will not pay for time or materials associated with development of fee proposals, unless such costs are approved by the Project Manager and Contract Owner in advance.
- iii. Task Order proposals shall be signed and submitted by the Consultant Representative to the Port's Project Manager in writing. Proposals shall include one of the following:

1. Time and Materials

Proposal

- a. Description of Task Order scope and deliverables.
- b. Consultant's Personnel Titles and Rates as negotiated.
- c. Hours per person per task.
- d. Sub-tier consultant scope and deliverables (when applicable).
- e. Anticipated reimbursable costs.
- f. Total proposal with Not to

f. Task Order Execution:

Executed Task Orders will be issued by the Contract Owner to the Consultant.

g. Task Order Revision:

- i. Revisions include when the Consultant becomes aware of the potential to exceed the executed amount or when changes are requested by the Project Manager.
- ii. Consultant shall provide a revised proposal detailing all revisions per 2A and B above. Consultant shall not proceed with changed work until a revised Task Order is executed by the Contract Owner.

h. Payment Schedule:

- i. Each Task Order shall be invoiced separately. Consultant shall submit detailed invoices showing the following:
- ii. Invoice Number, Contract number, Title, Task Order Number and Title.
- iii. Summary page with a brief description of Services completed during the invoice period, deliverables provided during the invoice period, and forthcoming milestones / deliverables.
- iv. Current Amount Due:
- v. For Lump Sum Task Orders: Percentage of Services complete, percentage of completed Services billed.

1. For Time and Materials Task Orders: titles, hours, hourly rates, and all expenses itemized, with backup, in accordance with the contract.
  - vi. Total amount of the Task Order, and balance of Task Order amount.
  - vii. Indicate "**Final Invoice**" when invoice is the final billing for that Task Order.
- i. Task Order Closure:

When the Services have been completed and final invoice processed by the Port, the Contract Owner will issue a Task Order Completion Notification to the Consultant Representative.
- j. Task Order Termination:

The Port may terminate the Task Order at its convenience with or without cause. In such case, the Consultant shall be paid for all Services performed and reasonable expenses properly incurred in connection with the termination.