



REQUEST FOR QUALIFICATIONS No. 070389

ON-CALL MATERIAL TESTING AND INSPECTION SERVICES

Issued by:

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

RFQ INFORMATION	
Contact:	Jana Prince, Procurement
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Phone:	253.383.9459
Submittal Date	AUGUST 15, 2016 @ 2:00 PM

Please submit all correspondence and team submittals via e-mail to the procurement contact listed above and include the RFQ title in the subject line

PORT OF TACOMA
On-Call Material Testing and Inspection Services
Request for Qualifications (RFQ) #070389

The Port of Tacoma (Port) and the Northwest Seaport (NWSA) are soliciting Statements of Qualifications (SOQ) from firms interested in providing material testing and special inspection services for construction projects on an on-call basis. The Port will be the contracting agency for this contract and work under this contract may support either the Port and the NWSA. Firms will perform various tasks as the Port's representative related to ongoing public works / construction projects.

A. ON-CALL CONTRACTING

The Port will issue a request for a proposal for each task order which will define the work being requested. Before the Consultant may begin work, a fee proposal and schedule must be submitted to and approved by the Project Manager identified. The Contracts Department will issue each approved task order to the consultant which will outline a defined scope, deliverables, schedule and proposal amount. Reference the On-Call Supplementary Conditions section of Attachment B.

The Port will select and issue one or more (up to three) contract(s) based upon qualifications received. Upon successful negotiation of rates and fees, the Port will award initial contract(s) in the amount of up to \$300,000; at the Port's sole option, contract amounts may be increased to meet ongoing needs of the Port and NWSA.

Tasks may be performed on federally funded work and the selected consultant(s) will be subjected to any federal terms and conditions for and federal forms as required for that specific task order. Other grant reimbursement task orders may also be issued and all requirements will be negotiated at the time of task order negotiation and execution.

The contract period of performance for work issued under this contract will be three years from the date of contract execution. Following the initial 3 year term, the contract may be extended to complete on-going and identified work in progress although no new work will be assigned under these contracts at that time.

The Port's Standard Professional Services Contract, including Port Standard and Project Terms and Conditions, On-Call Supplementary Conditions, and a sample rate sheet is included as Attachment B to this RFQ. By submitting a Statement of Qualifications (SOQ), the Proposer represents that it has carefully read the Port's Standard and Project Terms and Conditions, On-Call Supplementary Conditions, and Reimbursable Guidelines shown on the Sample Rate Sheet. Proposers shall identify all concerns and propose alternate wording changes to these documents at the time of submittal.

B. SCOPE OF SERVICES

The scope of services for this contract is to provide a comprehensive range of construction material testing and inspection for quality assurance and/or quality control during project construction for the Port.

Specific types of materials sampling and testing needed are as required to accomplish all work associated within the scope of the associated construction project.

Services may be required on construction sites, the facilities of material suppliers, manufacturers and/or fabricators, and/or at an Accredited Laboratory facility.

Generally, material testing and inspection services will include, and are not limited to, the following items:

Project Management and Coordination

- Provide designated Project Manager(s) for the duration of the construction contract
- Scheduling of Services to not delay work by the Port or the Port's Contractor
- Provide inspection and weekly test reports for inclusion into the project files.
- Final inspection reports

Field Sampling and Testing

- Field sampling and testing of concrete for slump, temperature, unit weight, air content and molding of compressive or flexural strength specimens performed by personnel certified by the American Concrete Institute (ACI) as a Concrete Field Testing Technician – Grade 1.
- Sampling of aggregates, soil, soil-aggregate mixtures or asphalt at the source or jobsite, including from stock-piles and/or trenches
- Field compaction testing using a nuclear density gauge for soil, soil-aggregate mixtures or asphalt.
- Obtaining drilled cores of asphalt or concrete.
- Proctor and/or Rice laboratory densities
- In-situ density testing
- Suspect on-site soil sampling, laboratory testing and reporting.

Reporting

- Receive analytical results from laboratory, summarize into draft and final reports

Laboratory Testing - Hot Mix Asphalt

Laboratory Testing - Soil and Aggregates

- Sampling and testing of all import materials for gradation and or other elements
- Sampling and testing of soil and sediments for hazardous substances

Laboratory Testing - Concrete and Masonry

- Sampling and Testing of Portland Cement Concrete Pavement
- Sampling and testing of structural concrete

Reinforcement steel weld testing.

Washington Association of Building Officials (WABO) certified inspection services as part of City of Tacoma permit requirements and as required as outlined in Chapter 17 of the International Building Code

Testing to be per WSDOT, ASTM, ACI, AWS, ANSI and AASHTO Standards

Additional other miscellaneous tasks generally associated with Material Testing and Inspection for Port public works projects.

MINIMUM QUALIFICATIONS

Firms shall be fully Certified by Washington Association of Building Officials.

All field personnel employed by the firm shall be WABO Certified for the category of service required.

The Consultant and approved subconsultants will maintain an accredited laboratory facility in Pierce, Thurston and/or King County. Accreditation shall be from the American Association of State Highway and Transportation Officials (AASHTO) for the following:

- A. Quality Systems (AASHTO Materials Reference Laboratory R-18).
- B. Hot Mix Asphalt.
- C. Soil.
- D. Aggregate.
- E. Portland Cement Concrete.

The Consultant and approved subconsultants will perform testing for all hazardous substances using methods specified in U.S. Environmental Protection Agency (EPA) "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846) using a laboratory accredited by the Washington State Department of Ecology

C SOQ ELEMENTS & EVALUATION CRITERIA:

Submittals should present information in a straightforward and concise manner, while ensuring complete and detailed descriptions of the proposing team (to include the key team members including prime and major subconsultants who will be providing the requested services) and the team's ability to meet the requirements of this RFQ. Emphasis will be on technical competence and completeness of content. The written SOQ should be prepared in the sequential order as outlined below.

Each SOQ is limited to 8 numbered pages (8 ½ by 11 inch) **excluding** the cover page, cover letter and appendices. All pages shall be in portrait orientation with 1 inch margins. Font size shall be 11 point or larger. Submittals that do not follow this format may be rejected.

Cover letter shall include the name, title, email address, phone number and address of the submitting's team main contact and include the following information:

- Describe any claim submitted by any client against the prime firm within the past two years related to the professional 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, inclusive of the prime, subconsultants and key staff members.
- Main address of firm.

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

1. Experience, Qualifications, & Past Performance.....35 PTS

Proposal Elements:

In a narrative, identify the team (to include working titles, degrees, certificates and licenses), describe the roles and responsibility of each team member, and why each team member is critical to the success of the overall contract. Describe the team's experience and capacity for providing the services being requested in this RFQ.

- Provide an organizational chart demonstrating the relationships and hierarchy of the team described above. Identify individuals by name, position, discipline and firm. Identify key back up personnel.
- Resumes of the key individuals are to be included as an appendix and are not included in the total page count. Resumes are to be limited to one single-sided, letter-size page. Resumes exceeding this limit will not be reviewed.
- Include a list of, at a minimum, five (5) recent contracts/projects in the last five years, to include a point of contact, contact information (phone and email), and brief description, for services relevant to the items listed in the Scope of Services as performed by the key team members. Only projects completed by key members of the project team will be considered.

The Port will evaluate:

- The team's capacity and ability to provide the Port with the required services detailed in the Scope of Services. Proposers shall be able to demonstrate a thorough understanding of the Port's needs and the services to be provided in order to fully staff, manage and complete the work.
- The experience, technical competence, and qualifications of the team, including each member's specific role and responsibility proposed for this project and their past experience and expertise in the areas for which they are proposed.
- Approach for responding to urgent or emergency requests.

2. Project Approach Narrative.....55 PTS

Proposal Elements:

Clearly describe the team's general approach and methodology for accomplishing the various services outlined in the Scope of Services section. Approach should include information on:

- Project Approach: Describe the team's general approach to performing the services being requested and innovative ideas to enhance the scope of services.
- Communication Plan: Describe the team's general response plan. Describe overall project communication for each task between the team, the Port's project manager and various stakeholders.
- QC/QA: Quality Control and Quality Assurance program for the requested services.

Describe the team's experience responding to and overall management of on-call/task order services and describe the firm's approach for responding to the Port's request for services.

- Provide approach for scheduling and sequencing of individual task orders and for providing simultaneous services on multiple task orders and facilitating efficient progress on each task order.
- Approach for managing multiple task budgets and approach for ensuring cumulative task budgets do not exceed the overall contract amount.

The Port will evaluate:

The project team's approach for providing professional civil and structural engineering services and for providing efficient management of an on-call contract with multiple task orders.

3. Accuracy and Completeness of the SOQ.....10 PTS

SOQs will be evaluated on the following criteria:

- Formatting and layout.
- Spelling and grammatical accuracy.
- Legibility of figures and chart information.
- Coherent and logical flow of written responses.

FINAL EVALUATION PHASE (if applicable)

4. References.....50 PTS

Reference checks will be requested from the project list provided under 1. Experience, Qualifications, & Past Performance. Reference checks may be performed on the apparent selected vendor, if based directly on the SOQs received or on shortlisted firms if interviews are being requested. The Port will evaluate the reference checks to assess the proposed team's overall performance and success of previous, similar work. Reference checks will also be utilized to validate information contained in the SOQ.

5. Interviews (as requested by the Port).....100 PTS

If an award is not made based on the written evaluations alone, interviews will be conducted with the top-ranked proposers. Failure to participate in the interview process will result in the Proposer's disqualification from further consideration.

ATTACHMENT A – INSTRUCTIONS FOR PROPOSING

ATTACHMENT B – PORT'S PROFESSIONAL SERVICES CONTRACT TEMPLATE (WITH ATTACHMENTS)

PROCUREMENT PROCESS

SOLICITATION TIMELINE:

Issuance of RFQ	JULY 22, 2016
Last Day To Submit Questions	AUGUST 8, 2016
SOQs due	AUGUST 15, 2016 @ 2:00 PM
Short List Consultants*	AUGUST 23, 2016
Interviews (if required)*	AUGUST 30, 2016
Final Selection*	AUGUST 31, 2016
Execute Contract*	SEPTEMBER 13, 2016

*Dates with an asterisk are estimated dates and are for information purposes only.

All status updates on the above solicitation timeline will be announced on the Port's [website for this solicitation](#).

VENDOR OBLIGATION

Port of Tacoma Requests for Bids, Requests for Proposals and Requests for Qualifications can be accessed on the Port's website, www.portoftacoma.com under 'Contracts'; Procurement.

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



By subscribing to the Holders List, firms will automatically be notified when new documents or changes relating to this procurement occurs.

COMMUNICATION / INQUIRES

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

Written questions about the meaning or intent of the Solicitation Documents shall only be submitted to the Procurement Department, procurement@portoftacoma.com (**Solicitation Name** in subject line).

Proposers who may have questions about provisions of these documents are to email their questions by the date listed above. The Port will respond to all written questions submitted by this deadline.

PRE-PROPOSAL CONFERENCE

The Port will not conduct a pre-proposal conference for this procurement. To obtain answers to any questions or for further clarifications, submit all questions as noted above.

ADDENDA

The 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. Addenda will be posted to the Port's web site and conveyed to those potential submitters who have subscribed to the Holders List.

SUBMITTAL PROCESS

SOQs must be received via email on or before the date and time outlined on the front page of this RFQ. Send your electronic submittal to:

procurement@portoftacoma.com.

Name of Firm, RFQ Title (Subject Line)

Please submit one electronic copy in Adobe Acrobat PDF format, including all appendices. Submittals need to be limited to **9 MB in total email size**. It is the Consultant's responsibility to verify the receipt of the submittal. Electronic verification will be provided upon request.

***Late SOQs will not be accepted by the Port. SOQs received after the stated date and time will not be reviewed and shall be deemed non-responsive.**

EVALUATION AND AWARD PROCESS

An evaluation team will review the SOQs and evaluate all responses received based upon the criteria listed herein. The Port may request clarifications or additional information, if needed. A selection may be made based on the SOQ's and initial evaluation criteria alone or the firms determined to be most qualified through the initial evaluation phase will be invited in for interviews and the final determination for short listed firms will be based on reference checks and interviews.

The Port intends to select the Proposer who represents the most qualified team to the Port and begin the negotiation and award process based on the evaluated scores.

The selected Consultant will be invited to enter into contract negotiations with the Port. Should the Port and the selected firm(s) not reach a mutual agreement, the Port will terminate negotiations and move to the next highest ranked firm and proceed with negotiations.

The 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 Port may require. The Port reserves the right to reject any or all SOQs submitted as non-responsive or non-responsible.

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 Port.

COSTS BORNE BY PROPOSERS

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

PUBLIC DISCLOSURE

SOQs submitted under this Solicitation will be considered public documents and, with limited exceptions, will become public information and may be reviewed by anyone requesting the document under a Public Records Request following the conclusion of the evaluation, negotiation, and award process. This process is concluded when a signed contract is executed between the Port and the selected Consultant.

If a firm considers any portion of its response to be protected under the law, the firm shall clearly identify each such portion with words such as "CONFIDENTIAL", "PROPRIETARY" or "BUSINESS SECRET" on each page for which the protection is sought. If a request is made for disclosure of such portion, the Port will notify the firm 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 Port by the stated deadline, the Port will release the requested portions of the response. By submitting a response, the vendor assents to the procedure outlined in this paragraph and shall have no claim against the Port on account of actions taken under such procedure.

Port of Tacoma Standard Terms And Conditions Professional Services Agreement

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

Subconsultants at all tiers shall be approved by the Port prior to performing work in support of this Agreement between Consultant and Port.

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 scope of services defined in this Agreement.

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

Consultant agrees to comply with all local, state, tribal, and federal laws and regulations applicable to the scope of 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 scope of work as defined.

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.

5. Records and other Tangibles

The Consultant shall maintain all records and documents, including financial data and other evidence directly pertinent to performance of the work under this Agreement in accordance with Generally Accepted Accounting Principles and Practices consistently applied and as further specified below. Consultant shall provide the Port, or its designated agent, with access to or copies of records and other tangibles upon written request.

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 Work

The services to be performed by Consultant shall be deemed instruments of service for purposes of the copyright laws of the United States. The Port has ownership rights to the plans, specifications, and other products prepared by the Consultant as a result of this Agreement "Subject Data." Consultant shall not be liable for changes made in the plans, specifications or other products 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.

Subject Data 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 work pursuant to this Agreement and shall be owned by and treated as Port property. The Consultant shall obtain no proprietary rights or interest to such Subject Data.

Any subject data which is 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."

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 (Subject Data) 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

As full compensation for the performance of its obligations of this Agreement and the services to be provided, the Port shall pay Consultant as specified in the Agreement.

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.

Invoices shall be submitted to 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 work progresses. Invoices that are submitted for payment 90 days or more after the work was completed are subject to non-payment. Under no circumstances will the Port pay interest on payments.

Un-invoiced services performed through December 31 of each year shall be invoiced no later than the 7th 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.

9. Costs and Disbursements

Consultant is responsible for and shall pay all costs and disbursements required for the performance of its services under this Agreement.

10. Standard of Care

Consultant shall perform its work 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 work.

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 services furnished under this Agreement.

11. Time

Time is a material consideration in the performance of all work by the Consultant under this Agreement. The Consultant shall complete its work and services within the agreed upon schedule; including any established milestones and task completion dates, and the overall period of performance, set forth in the Scope of Work. 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.

12. 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 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.

13. Termination of Agreement

A. Termination for Default:

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 work or services agreed to herein, and if the Port deems said breach to warrant corrective action, the following sequential procedure will apply:

- a) The Port will provide the Consultant with a written Cure Notice; notifying the Consultant of the nature of the breach;
- b) 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;

- 2) Show Cause Notice:**

- a) 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;

- b) 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;
- c) No increase in total price or period of performance shall result from breach of this Agreement; and
- d) Nothing herein shall be deemed to affect or waive any other rights of the Port.

3) Notice of Termination:

If the Port terminates this Agreement for default, the Port shall determine the amount of work 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 work originally required which was satisfactorily completed to the date of termination, whether that work is 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 work 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 this Agreement's work 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.

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

- a) Promptly discontinue all services (unless the notice directs otherwise);
- b) No later than fourteen (14) calendar days after receipt of termination, promptly deliver or otherwise make available to the Port all Subject Data 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.
- c) Upon termination, the Port may take over the work and prosecute the same to completion by agreement with another party or otherwise.

B. Termination for Convenience:

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.

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.

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 Subject Data 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.

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.

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

14. 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.

15. 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.

16. Integration and Merger/ Extent of Agreement

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.

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.

17. Non-Discrimination

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.

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.

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.

18. Indemnity / Hold Harmless Clause

The Consultant shall indemnify, defend and hold harmless the Port of Tacoma and its officers, employees and agents from and against any liability, claims, damages, losses, expenses or actions, including reasonable attorney's fees, costs caused by or arising out of or relating to the activities of Consultant or its officers, employees, subcontractors, or agents under this Agreement; or arising from the Consultant's, its' officers, employees, subcontractors, or agent's failure to comply with any applicable state, federal, local, law, statute, rule, regulation or act. This duty to indemnify, defend and hold harmless shall encompass, but not be limited to, any claims which include or allege negligence of consultant, its agents, officers or employees other than claims which arise solely out of the negligence on the part of the Port of Tacoma, and this duty shall survive the termination or expiration of this Agreement.

19. 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 bodily injury, including death resulting therefrom as well as from claims for property damage, 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.

20. 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 Work 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.

Port of Tacoma Project Terms and Conditions Professional Services Agreement

1. 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.

2. 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 indemnify, defend, and hold harmless the Port, its officials, officers, agents, and employees, from any and all claims, demands, damages, lawsuits, liabilities, losses, liens, expenses and costs arising out of the subject matter of this Agreement; provided that this provision shall not apply to the extent that damage or injury results from the fault of the Port, or its officers, agents, or employees. The term "fault" as used herein shall have the same meaning as set forth in RCW 4.22.015, as amended.
- c) This indemnification shall extend to and include attorney's fees and the cost of establishing the right of indemnification hereunder in favor of the Port. This indemnification shall survive the termination of this Agreement.
- d) Consultant specifically assumes potential liability for actions brought by Consultant's own employees against the Port 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 recognizes that this waiver was the subject of mutual negotiation.
- e) With respect to professional liability claims only, and not commercial general liability claims, Consultant agrees to indemnify and hold harmless the Port of Tacoma, its appointed and elective officers and its employees from and against any and all suits,

claims, actions, losses, costs, penalties and damages of whatever kind and nature, including attorney fees and costs by reason of any and all claims and demands on it, its officers and employees, arising from the negligent acts, errors or omissions by the Consultant in the performance of the Consultant's professional services.

- f) 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 \$1,000,000 per occurrence and \$2,000,000 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 \$1,000,000 combined single limit per accident; and
 - iii) Professional Liability **including environmental consulting services** of not less than \$1,000,000 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 \$1,000,000 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.**
- g) All policies shall be issued by a company having an A. M. Best Financial Strength Rating of A- and Financial Size Category of VI 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 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.**
- h) 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.

- i) Certain work or services under this Agreement may require Longshore and Harbor Worker's Compensation Act (33 U.S.C. §§901 et seq.) insurance coverage, coverage to comply with the Federal Employers Liability Act, or Jones Act coverage. Consultant is fully responsible for ascertaining whether or not such insurance is required. If these or any other federally required insurance coverages apply to this Agreement, the Consultant is responsible for obtaining the coverage, and/or meeting any self-insurance requirements to qualify as a self-insurer.

3. Payment Schedule

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.

All invoices shall be sent "Attention: Facilities Development". Invoices shall be emailed to cpinvoices@portoftacoma.com. The email must include the required supporting documentation. Incomplete or improperly prepared invoices will be returned for correction without processing or payment.

4. Compensation

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

- a) Subconsultant services will be reimbursed at cost plus negotiated markup.
- b) Services provided by a third party will be reimbursed at cost plus negotiated markup.

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.

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.

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.

Rates may be negotiated no more than once annually. Rate adjustments will be tied to the CPI for the Seattle, Tacoma/Bremerton area.

Rates and Markup are defined on Attachment ### of this contract.

Overtime: The Port will allow overtime rates for preapproved labor categories, as required by federal law, at 1.25 times the rate when approved in advance by the Project Manager and when required by the nature of the Work. The Consultant shall submit a list of labor classifications to which overtime rates are applicable to by law.

Prevailing Wages: If Divers, drillers, truck drivers, disposal or other tasks are defined in the scope - verify exact work with the PM and determine if prevailing wage language is required.

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.

Other Travel:

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 scope of work to the Port in accordance with the following guidelines:

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>

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.

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.

5. 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 on CD-Rom in a PDF format or other format specified by the Port.

6. Drawing, Specification and GIS

If the scope of work includes development of specifications:

- a) Consultant shall prepare specifications using BSD Speclink-E, Masterformat specification organization, latest edition.
- b) Consultant shall prepare specifications in accordance with the Port's Specification Standards available at <http://portoftacoma.com/contracts.forms> and from the Port Project Manager. The Port's Mastersformat specification are available at <http://portoftacoma.com/contracts.forms>.

If the scope of work includes development of Drawings:

- c) All site plans, derivative drawings and bid plans shall be completed using Port GIS and CADD standards and layer/block protocols available at <http://portoftacoma.com/contracts.forms> and from the Port Project Manager.

7. Security – Transportation Worker Identification Credential (TWIC)

The requested services may require the consultant to work within a secured/restricted TWIC regulated terminal.

TWIC is a credentialing program managed by the Department of Homeland Security (DHS), through the United States Coast Guard and the Transportation Security Administration. All credentialed merchant mariners and individuals who will need unescorted access to secure areas of a maritime regulated facility or vessel must obtain a TWIC. For more information on TWIC visit www.tsa.gov/twic.

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.

8. 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.

9. Extent of Agreement

In the event the Consultant identifies something that may impact the scope of work, project schedule, total price, task budget(s) or cost of performing work, 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.

The Project Manager may, at any time, by written directive require the Consultant to perform work consistent with the Agreement's scope of work; provided that this directive does not add scope or cost to the project.

Any directive shall not constitute an amendment to the Agreement nor entitle the Consultant to any additional compensation or a time adjustment.

10. Prevailing Wages

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.

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.

The applicable effective date for prevailing wages for this project is the execution date of the task order.

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:

Port of Tacoma On-Call Terms and Conditions On-Call Professional Service Agreements

1. Definitions Supplementary Conditions

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 work under the On-Call Contract.

Contract Owner - Port staff member responsible for managing the On-Call Contract and executing all Task Orders.

Project Manager - Port staff member responsible for managing a specific Task Order.

Consultant Representative – The Consultant staff member(s) delegated the authority to provide signature approval for Task Orders under the On-Call Contract.

2. Task Order Proposals

The Project Manager will request consultant to provide a fee proposal for a scope of work requested by the Port.

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.

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:

A. Lump Sum Proposal

- i) Description of Task Order scope and deliverables, including all inclusions and exclusions to the scope.
- ii) Indicate portion of total dollar amount tied to certain phases and/or specific deliverables, if requested by the Project Manager.
- iii) Total dollar amount

OR

B. Time and Materials Proposal

- i) Description of Task Order scope and deliverables.
- ii) Consultant's Personnel Titles and Rates as negotiated.
- iii) Hours per person per task.
- iv) Sub-tier consultant scope and deliverables (when applicable).
- v) Anticipated reimbursable costs.
- vi) Total proposal with Not to Exceed dollar amount.

3. Task Order Execution

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

4. Task Order Revision

Revisions include when the Consultant becomes aware of the potential to exceed the executed amount or when changes are requested by the Project Manager.

Consultant shall provide a revised proposal detailing all revisions per 3A and B above. Consultant shall not proceed with changed work until a revised Task Order is executed by the Contract Owner.

5. Payment Schedule

Each Task Order shall be invoiced separately. Consultant shall submit detailed invoices showing the following:

- A. Invoice Number, Contract number, Title, Task Order Number and Title.
- B. Summary page with a brief description of work completed during the invoice period, deliverables provided during the invoice period, and forthcoming milestones / deliverables.
- C. Current Amount Due:
 - i) For Lump Sum Task Orders: Percentage of work complete, percentage of completed work billed.
 - ii) For Time and Materials Task Orders: titles, hours, hourly rates, and all expenses itemized, with backup, in accordance with the contract.
- D. Total amount of the Task Order, and balance of Task Order amount.
- E. Indicate “**Final Invoice**” when invoice is the final billing for that Task Order.

6. Task Order Closure

When work has been completed and final invoice processed by the Port, the Contract Owner will issue a Task Order Completion Notification to the Consultant Representative.

7. 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 work performed and reasonable expenses properly incurred in connection with the termination.

HOURLY RATES

Consultant Project Name

<u>Personnel</u>	<u>Hourly Rates</u>	
Sr. Consultant 2	\$	-
Sr. Consultant 1	\$	-
Consultant 2	\$	-
Consultant 1	\$	-
Project 2	\$	-
Project 1	\$	-
Staff 2	\$	-
Staff 1	\$	-

<u>Subconsultant</u>	<u>Hourly Rates</u>	
Sr. Consultant 2	\$	-
Sr. Consultant 1	\$	-
Consultant 2	\$	-
Consultant 1	\$	-
Project 2	\$	-
Project 1	\$	-
Staff 2	\$	-
Staff 1	\$	-

<u>Equipment</u>	<u>Rate</u>	<u>Unit</u>
Equipment 1	\$	- Day
Equipment 2	\$	- Day
Equipment 3	\$	- Each
Equipment 4	\$	- Each
Equipment 5	\$	- Feet
Equipment 6	\$	- Feet
Equipment 7	\$	- Day
Equipment 8	\$	- Day

<u>Reimbursable</u>	
Outside Lab Services	Cost
Subconsultants	Cost + Negotiated Markup (= or < 4%)
Mileage	IRS allowable rate