



**PORT OF TACOMA AND
NORTHWEST SEAPORT ALLIANCE
REQUEST FOR PROPOSALS
No. 071018**

Workers' Compensation Claims Administration

Issued by
Port of Tacoma and The Northwest Seaport Alliance
One Sitcum Plaza
P.O. Box 1837
Tacoma, WA 98401-1837

RFP INFORMATION	
Contact:	Heather Shadko, Procurement
Email Addresses:	procurement@portoftacoma.com
Phone:	(253) 383-9436
Submittal Date	DECEMBER 14, 2018 @ 2:00 PM (PST)

PLEASE SUBMIT ALL CORRESPONDENCE AND PROPOSALS
VIA E-MAIL DIRECTLY TO THE PROCUREMENT CONTACT LISTED ABOVE
AND INCLUDE 'TPA SERVICES' IN THE SUBJECT LINE

PORT OF TACOMA & THE NORTHWEST SEAPORT ALLIANCE
Request for Proposals (RFP) #071018
Workers' Compensation Claims Administration Services

The Port of Tacoma and The Northwest Seaport Alliance (NWSA) are jointly soliciting proposals from firms interested in providing workers' compensation claims administration services. The Port of Tacoma began a program of self-insurance in July of 1986 and The NWSA began an equivalent program of self-insurance in December of 2016.

A. BACKGROUND

The NWSA is an operating partnership of the ports of Seattle and Tacoma. The NWSA's facilities, most of which are leased to private operators, comprise the fourth-largest container gateway in North America. Regional marine cargo facilities also are a major center for bulk, breakbulk, project/heavy-lift cargoes, automobiles and trucks.

The NWSA is governed by the two ports as equal Managing Members. The Managing Members consist of ten commissioners, five from each port. Each port's commissioners are elected at large by the citizens of their respective counties. To learn more about the NWSA, visit www.nwseaportalliance.com.

The Port is an economic engine for South Puget Sound. More than 29,000 jobs are generated by port activity, which also provides \$195 million per year in state and local taxes to support education, roads, police and fire protection for our community. As a partner in the NWSA, the Port is also a major cargo gateway to Asia and Alaska. To learn more about the Port, visit www.portoftacoma.com.

Combined, the Port and the NWSA have approximately 300 full-time employees performing managerial, supervisory, administrative, maintenance, security, longshore cargo handling and related functions. As public agencies organized under the Revised Code of Washington (RCW), the Port and the NWSA are not subject the U.S. Longshore Harbor Workers' and Compensation Act.

Recent claim volumes for both organizations are summarized below:

Port of Tacoma

Year	# Medical Only Claims	# Indemnity (Time Loss) Claims	Total Claims
2018 (as of 11/1)	9	5	14
2017	16	10	26
2016	18	7	25

The Northwest Seaport Alliance

Year	# Medical Only Claims	# Indemnity (Time Loss) Claims	Total Claims
2018 (as of 11/1)	8	3	11
2017	3	3	6
2016	n/a	n/a	n/a

The Port and NWSA's Standard Terms and Conditions are included as Attachment B to this RFP. By submitting a Proposal, the Consultant represents that it has carefully read and agrees to be bound by the Port and The NWSA's Standard Terms and Conditions. Proposers must identify, during the questions 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 Port's and The NWSA's best interests to adopt the alternative language.

B. SCOPE OF SERVICES

Consultant shall provide self-insured workers' compensation claims administration services to the Port of Tacoma (hereinafter "Port") and The Northwest Seaport Alliance (hereinafter "NWSA") as required under Chapter 296-15 of the Washington Administrative Code (WAC). The term of the service Agreement shall be three (3) years commencing February 1, 2019, with three (3) annual options to extend through January 31, 2025. Two (2) separate contracts with identical Scopes of Work, Deliverables and Terms will be signed as a result of this solicitation. For simplicity, the term "Client" (below) shall serve to indicate either the Port of Tacoma or The Northwest Seaport Alliance as their respective interests apply. Services under these contracts shall include:

1. Receive notice of and create files on each claim reported and maintain these files for the Client.
2. Investigate all claims as required to determine their validity and compensability.
3. Determine proper benefits due on compensable claims.
4. Make timely payment of medical and indemnity benefits due, in accordance with payment procedures as established from funds provided by the Client.
5. Prepare documentation and defense of cases considered non-compensable and assist legal counsel selected by the Client in preparation of cases for hearing, appeals and/or trial.
6. Maintain and provide the Client pertinent data on all claim payments.
7. Provide monthly and annual loss and payment reports in tailored formats, as mutually agreed at the inception of the program, showing descriptive data, details of each month's payments, total payments, reserves and total experience for each claim. Loss reports must include annual (calendar year) summaries for the period beginning July 1986.

8. Develop and execute claim resolution strategies for all open indemnity (and extended medical only) claims in close coordination with designated Client contact(s). Track and report progress relative to the same.
9. Coordinate additional claim-related (i.e., allocated) services including but not limited to vocational, nursing, legal and investigation services.
10. Provide the Client, its insurance broker and excess insurers such reports as may be reasonably required under the applicable insurance policy.
11. Provide information and assistance as may be required for preparation and filing of all reports required by the Industrial Insurance Act of the State of Washington (hereinafter "Act"), and any other applicable law, in connection with the Client's approved self-insured status.
12. File with the appropriate State of Washington administrative agencies, including but not limited to the Department of Labor and Industries, such information as is required by the Act and any other applicable law with respect to each claim.
13. Provide loss control services, consultations and surveys as mutually agreed.
14. Perform all services rendered pursuant to this Agreement in full compliance with the Act and all other applicable law.
15. Prepare annual OSHA 300 reports, or equivalent as may apply.
16. Electronically interface with the Centers for Medicare and Medicaid Services (CMS) to capture and report data in the format prescribed by CMS Specifications.
17. Report directly to CMS on behalf of the Client as an Account Designee (reporting agent), as such term is defined in the CMS User Guide published on March 16, 2009 ("Account Designee"), or as defined in any more recent CMS User Guide, or equivalent.
18. To the extent the Client is the Responsible Reporting Entity ("RRE") as that term is defined in Medicare, Medicaid and SCHIP Extension Act (MMSEA) Section 111 as set forth in 42 U.S.C. 1395Y, Consultant will assist the Client as follows:
 - a. Develop an electronic interface with CMS to forward the information needed to meet Client's MMSEA reporting obligations.
 - b. As the custodian of the original claims information from which reports are compiled, Consultant will be the authorized Account Designee for the Client. As Account Designee, the Consultant will prepare and submit test files to CMS in accordance with the applicable regulations and requirements of the CMS Specifications.
 - c. Consultant will prepare the CMS Medicare beneficiary required data files and submit them to CMS or otherwise forward them as required by applicable regulations.
 - d. Consultant will establish and implement proper safeguards against unauthorized use and disclosure of the data exchanges for purposes of complying with MMSEA. Proper safeguards shall include, but not be limited to, the adoption of policies and procedures to ensure that the data obtained shall be used solely in accordance with Section 1106 of the

Social Security Act [42 U.S.C. 1306], Section 1874(b) of the Social Security Act [42 U.S.C. 1395kk(b)], Section 1862(b) of the Social Security Act [42 U.S.C. 13958y(b)], and the Privacy Act of 1974, as amended [5 U.S.C. 552a]. Consultant will establish appropriate administrative controls to protect the confidentiality of data to prevent unauthorized access to the data provided by CMS. Further, Consultant agrees to grant an authorized representative of the Center for Medicare and Medicaid Services (CMS) and/or Client access to facilities where the Client's Medicaid data is stored or kept for purposes of inspecting security arrangements at a mutually agreeable date and time. The purpose of any such inspection will be to confirm that the Consultant is in compliance with all applicable security requirements. Access to the records matched to any records created by the matching process shall be restricted to authorized CMS, Consultant and Client employees, agents and/or officials who require access to perform their official duties in accordance with the uses of the information as authorized under Section 111 of the MMSEA of 2007 and this Agreement. Such personnel shall be advised of (1) the confidential nature of the information; (2) safeguards required to protect the information; and (3) the administrative, civil and criminal penalties for noncompliance contained in applicable Federal laws.

19. Consultant will be responsible for payment of any and all fines assessed to the Client in regards to compliance with the Medicare beneficiary reporting requirements of MMSEA of 2007 that relate to the negligent acts or omissions of the Consultant except to the extent that:

- a. Such fines or penalties are the direct result of specific direction given by the Client and/or its agent or the negligent actions or omissions of Client and/or its agent;
- b. Consultant did not receive information from Client that is essential to the performance of the duties set forth herein in a timely manner so as to be able to comply with the terms this Agreement.

20. Submit numbered invoices showing contract number. All invoices shall be e-mailed to cpinvoices@portoftacoma.com. Incomplete or improperly prepared invoices will be returned for correction without processing or payment.

DELIVERABLES:

1. Monthly and annual summary and detailed loss reports
2. Monthly check registers
3. Additional reports as required by the Department of Labor and Industries and/or applicable statute.

D. PROPOSAL ELEMENTS & EVALUATION CRITERIA:

Proposals should present information in a straightforward and concise manner, while ensuring complete and detailed descriptions of the proposing team (to include the prime, key team members and major sub-consultants) and the team's ability to meet the requirements and provide the requested services of this RFP. The written proposals should be prepared in the same sequential order of proposal criteria as outlined below.

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

The cover letter shall include the RFP Title and Number, Name, Title, Email Address, Phone Number and current Address of the submitting firm’s main contact and include the following information:

- Describe any claim submitted by any client against the prime firm within the past two (2) 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 for team members, inclusive of the prime, sub-consultants and key team members.

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

INITIAL EVALUATION PHASE

1) Qualifications and Experience (20 Points)

- a) The Consultant firm’s history of providing services within Washington State (as listed in Section B, Scope of Services).
- b) The qualifications and experience of the Consultant firm’s executive team and management.
- c) The qualifications and experience of the individual(s) assigned to the Port’s and the NWSA’s accounts.

2) Claims handling approach and methodology (20 Points)

- a) Processes and procedures for accurately evaluating submitted claims for worker’s compensation benefits eligibility, and for the timely and accurate issuance of payments.
- b) Methodologies and timelines for establishing and executing claim closure strategies.
- c) Processes and procedures for communicating with injured workers and with employer representatives responsible for the initial processing and reporting of claims and for administration of the employers’ limited-duty return to work programs.
- d) Preferred methods for measuring the claims adjuster’s service performance.

3) Extent of the Consultant’s network of supporting service providers (30 Points)

- a) Extent of contacts and history and breadth of experience relative to the network of service providers operating in the South Puget Sound area offering the following services:
 - (a) Nurse case management

- (b) Vocational Rehabilitation
- (c) Independent Medical Examinations
- (d) Legal (Attorneys)
- (e) Safety and loss control
- (f) Sub rosa

Alternatively, if the Consultant's use of outside services is limited, the history and breadth of experience of the Consultant firm in directly furnishing the aforementioned services.

4) Compensation (30 Points)

Describe your fixed price fee proposals including methodology for rebating any commission and any performance guarantees.

Cost Proposals (individually for the Port of Tacoma and The Northwest Seaport Alliance) should each contain the initial three (3) years and pricing for the option years.

All rates quoted shall be:

- Quoted in US Dollars;
- Full cost inclusive of, but not limited to, sales tax and other government fees, taxes and charges as well as travel, lodging, and administrative overhead.
- Valid throughout the contract period unless otherwise amended and agreed to by both parties in writing.

FINAL EVALUATION PHASE (if applicable)

References: (50 Points)

Reference checks may be performed on the apparent selected Vendor, if based directly on the proposals received or on shortlisted Consultants if interviews are requested. The Port and NWSA 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 proposal.

Interviews (as requested by the Port and NWSA): (100 Points)

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

ATTACHMENT A – INSTRUCTIONS FOR PROPOSING

ATTACHMENT B – CONSULTANT TERMS AND CONDITIONS

RFP PROCESS

SOLICITATION TIMELINE:

Issuance of RFP	NOVEMBER 16, 2018
Last Day To Submit Questions	NOVEMBER 30, 2018
Bid packets due	DECEMBER 14, 2018 @ 2:00 PM (PST)
Review/Shortlist*	DECEMBER 17-20, 2018
Interviews (if required)*	JANUARY 10, 2019
Final Selection*	JANUARY 10, 2019
Execute Contract*	JANUARY 15, 2019

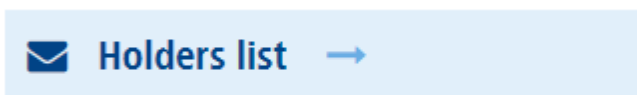
*Dates are tentative.

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

VENDOR OBLIGATION

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 under 'Contracts'; 'Procurements'.

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 Port, other than the Procurement Representative listed on the RFP 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 the 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.

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. If at any time, the Port changes, revises, deletes, increases, or otherwise modifies the Solicitation, the 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. Acknowledgement of addenda is required in cover letter.

SUBMITTAL PROCESS

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

procurement@portoftacoma.com

Name of Firm, RFP Title (Subject Line)

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**. It is the **Consultant's responsibility to verify the receipt of the submittal**. Electronic verification will be provided upon request.

***Late proposals will not be accepted by the 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 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.

The evaluation team will create a short list of the top ranked firms and invite the short-listed firms in for an interview and product demo 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 Port intends to select the Proposer who represents the best value to the Port. 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 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 Port to analyze the proposal. The Port reserves the right to reject such proposals for any reason.

GENERAL INFORMATION

News releases pertaining to this RFP, 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 Proposal and participation in this RFP 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 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 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.

Consideration. Upon receipt of the written protest, the Port will consider the protest. The Port may, within three (3) business days of the 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 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 Port's receipt of the protest. (If more than one (1) protest is filed, the Port's decision will be provided within six (6) business days of the Port's receipt of the last protest.) If no reply is received from the 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 Port of Tacoma 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 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 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 Port by the stated deadline, the 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 Port on account of actions taken under such procedure.

PERSONAL SERVICES AGREEMENT NO. 071018

PROJECT: Workers' Compensation Claims Administration

CONSULTANT: Company, Address, City, State, Zip

PROJECT MANAGER: PM **GL ACCOUNT NO.**

THIS AGREEMENT is made and entered into by and between the **Port of Tacoma** (hereinafter referred to as the "Port") and **xxCOMPANYxx** (hereinafter referred to as the "Consultant") for the furnishing of **xxTITLExx** Personal Services (hereinafter referred to as the "Project").

The Port and Consultant mutually agree as follows:

SCOPE OF WORK

Consultant will provide

DELIVERABLES

Deliverables will include:

COMPENSATION

This will be accomplished on fully burdened, fixed 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.

All 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.

Consultant agrees to submit timely 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.

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

CONSULTANT (LEGAL NAME)

By _____
Name
Title
Date

By _____
Date

Print Name
Title

Port of Tacoma Terms And Conditions Personal Services Agreement

In consideration of the mutual covenants, obligations, and compensation to be paid by the Port to Consultant, it is agreed that:

Consultant shall obtain all professional licenses and permits required to complete the scope of work as defined.

1. Key Personnel

The Consultant and/or its subconsultants' key personnel, as described in its Consultant selection submittals, shall remain assigned for the duration of the Project unless otherwise agreed to by the Port.

2. Relationship of the Parties

Consultant, its subconsultants and employees, is an independent Contractor. Nothing contained herein shall be deemed to create a relationship of employer and employee or of principal and agent.

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 project, including building codes and permitting regulations existing at the time this Agreement was executed and those regarding employee safety, the work place environment, and employment eligibility verifications as required by the Immigration and Naturalization Service.

5. Records and other Tangibles

The Port of Tacoma 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 years after the term of this Agreement, Consultant agrees to maintain accurate records of all work done in providing services specified by the Agreement and to deliver such records to the Port upon termination of the Agreement or otherwise as requested by the Port.

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. Consultant shall not be responsible for changes made in the models, programs, reports 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. Use of models, programs, reports or other products prepared under this Agreement for promotional purposes shall require the Port's prior consent. Notwithstanding anything to the contrary in this Agreement, Consultant and its personnel are free to use and employ their general skills, know how, and expertise, and use,

disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of this Agreement so long as they acquire and apply such information without any unauthorized use or disclosure of confidential or proprietary information from the Port.

7. Disclosure

All information developed by the Consultant and all information made available to the Consultant by the Port, and all analyses or opinions reached by the Consultant shall be confidential and 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.

9. Payment Schedule

Consultant shall submit detailed numbered invoices showing description of work items being invoiced, contract number, title of project, total authorized, total current invoice, balance of authorization, by the 10th of the month to be paid by the end of the current month, unless other terms are agreed to by the parties.

10. Costs and Disbursements

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

11. 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 and automobile liability insurance as shall protect Consultant and any subconsultants performing work under this Agreement from claims or damages from bodily injury, including death, resulting there from as well as from claims for property damage which may arise under this Agreement, whether arising from operations conducted by the Consultant, any subconsultants, or anyone directly or indirectly employed by either of them. Certificates of Insurance shall evidence:

i. Commercial General Liability coverage on occurrence form CG0001 or equivalent with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate.

ii. Automobile Liability: ISO Form Number CA 00 01 covering owned, non-owned and hired vehicles of \$1,000,000 combined single limit per accident.

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

iv. Stop Gap/Employers Liability Insurance shall be provided with a limit of not less than \$1,000,000 per claim.

b) With respect to claims other than professional liability claims, Consultant and its subconsultants agree to defend, 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.

- c) With respect to professional liability claims only, Consultant and its subconsultants agree 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.
- d) 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. The Port shall be named as an additional insured on all policies by endorsement on ISO Form CG 20 10 Form B or equivalent. Additionally, except for Workers Compensation, waivers of subrogation shall be provided by endorsement to all policies.

12. Standard of Care

Consultant shall perform its work to conform to generally accepted professional standards. Consultant shall, without additional compensation, correct or revise any errors or omissions in such work.

13. Time

Time is of the essence in the performance by the Consultant of the services required by this Agreement.

14. Assignability

Consultant shall not assign any interest in this Agreement and shall not transfer any interest in the Agreement to any party without prior written consent of the Port.

15. Term of this Agreement

The effective dates of this Agreement are as specified. This Agreement may be terminated by the Port for cause when the Port deems continuation to be detrimental to its interests or for failure of the consultant to perform the services specified in the Agreement. The Port may terminate this Agreement at any time for government convenience in which case it shall provide notice to the Consultant and reimburse the Consultant for its costs and fees incurred prior to the notice of termination.

16. 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 the project may be consolidated and resolved in one forum. Venue for any litigation shall be the Pierce County Superior Court of the state of Washington and the prevailing party

shall be entitled to recover its costs and reasonable attorney's fees.

amended only by written instrument signed by both the Port and Consultant.

17. Extent of Agreement

This Agreement represents the entire and integrated understanding between the Port and Consultant and may be

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