



**REQUEST FOR QUALIFICATIONS No.
071077**

**ON-CALL COST ESTIMATING &
CONSTRUCTABILITY SERVICES 2019**

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

RFQ INFORMATION	
Contact:	Heather Shadko
Email Addresses:	procurement@portoftacoma.com
Submittal Date	January 30, 2019 @ 2:00 PM PST

Please submit all correspondence and proposals via e-mail directly to the procurement contact listed above and include "On-Call Cost Estimating and Constructability Services 2019" in the subject line.

PORT OF TACOMA
Request for Qualifications (RFQ) No. 071077
On-Call Cost Estimating and Constructability Services 2019

The Port is soliciting Statements of Qualifications (SOQ) from firms interested in providing cost estimating, design & investigative reviews and constructability services on an open-order/on-call basis.

A. CONTRACT DESCRIPTION

The Port will select up to two teams and issue contract(s) based upon qualifications received for the services requested. Following successful negotiation of rates and fees, the Port will execute the initial contract(s) in the amounts of up to \$300,000; the contract amount may be increased to meet ongoing needs of the Port for the services requested up through the contract period of performance.

At the sole option of the Port, the contract may be extended as needed through contract amendments; however, no new task orders will be issued after 36 months from the date of contract execution. The Port does not guarantee all disciplines or services will be used, nor does the Port guarantee a specific volume of work under the contract(s).

The Port will issue a request for proposal for each task order which will define the work being requested. The Consultant will be expected to meet with the Port to discuss new task orders being issued under this contract and then submit a fee proposal and schedule to the Project Manager. Task Orders issued under this contract may not in any case exceed \$150,000.

Attachment A – Instructions for Proposing

Attachment B – Sample Professional Service On-Call Contract

Attachment C – Standard Terms and Conditions

Attachment D – Project Terms and Conditions

Attachment E – On-Call Terms and Conditions

Attachment F – Sample Rate Sheet

* By submitting a Statement of Qualifications (SOQ), the Proposer represents that it has carefully read all attachments. Any exceptions to the Terms and Conditions in the Draft Professional Service Agreement shall be included in the appendix of the SOQ and shall reflect how the Port of Tacoma and the Northwest Seaport Alliance would benefit by the exception.

B. SCOPE OF SERVICES

The selected firm will provide cost estimating and constructability services for various Port projects. These projects cover a wide variety of types, including but not limited to, site, building, pier, bridge, railroad, utility, dredging, remediation, habitat, and landscaping improvements requiring the use of civil, structural, electrical, mechanical, and environmental engineers, as well as architects. The quantity and duration of projects will depend on the Port's requirements and needs for these services. Tasks will generally be associated with public works projects, but services may be needed for other types of Port projects, as needed.

The work may include, but is not limited to, the following tasks:

- Cost Estimating
 - o Provide estimates of construction and/or project costs and review and analyze estimates provided by other consultants at all stages of a project, including conceptual, schematic (30%), design development (60%), and construction document (100%).
 - o Analyze scope, schedule, and budget options for a project and provide recommendations to keep the project costs within the approved budget. The Consultant shall review, provide cost estimates for, and analyze contractor change order proposals and similar cost documents during project construction.
- Design Review & Analysis
 - o The Consultant shall provide independent, 3rd party design review, evaluation, and analysis of Port projects. Design review services may be required during any phase of project development, design, or construction.
- Constructability Review & Analysis
 - o The Consultant shall coordinate and conduct constructability (or deconstruction) reviews to verify that a project can be constructed according to the design assumptions, the intent of the contract documents, and within the cost and schedule guidelines. Constructability services may be required during any phase of the project.
- Investigative Review
 - o Analysis of project documents throughout any portion of the project development or project execution as requested by the Port for determination of cause of problematic issues, cost overruns, potential trends, or other reviews as may be requested.

- Additional other miscellaneous tasks, including but limited to, Value Engineering, Change Order Evaluations, Material Escalation Analysis, and Contract Risk Analysis, or other tasks generally associated with cost estimating, design & investigative reviews, and constructability for Port projects may be required by the Port.

C. QUALIFICATION 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) 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 7 numbered (single-sided) pages (8 ½ by 11 inch) excluding the cover page (limited to one single-sided page), cover letter (limited to 2 single-sided pages) and appendices. All pages shall be in portrait orientation with 1 inch margins. Font size shall be 11 point or larger. If charts and/or graphs are utilized, text must be no smaller than 9 point font. The SOQ shall be submitted as an Adobe Reader compatible (PDF) file. Submittals that do not follow this format may be rejected.

The cover letter shall include the RFQ Title and Number; Name, Title, Email Address, Phone Number, and Addresses of the Proposing team's main contact and include the following information:

- Descriptions of all claims submitted by any client against the prime within the past two years related to the professional services provided by the prime (inclusive of the prime and sub-consultants) or their key personnel. For this purpose, "claim" means a sum of money in dispute in excess of 10% of the prime's fee for the services provided;
- Any real or perceived conflicts of interests for team members, inclusive of the prime, sub-consultants and key team members.

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

1. Experience, Qualifications, & Past Performance40 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. Describe how team members meet or exceed the preferred experience being requested in this RFQ.

- Provide an organizational chart demonstrating the relationships and hierarchy of the team described above and availability to support Port projects. Identify individuals by name, position, discipline, and firm. Identify key back up personnel.
- Resumes of the team members may be included as an appendix. Resumes are to be limited to one single-sided, letter-size page for each team member. Resumes exceeding this limit will not be reviewed. The resume is supplemental information in addition to the information requested in the SOQ.
- Capacity to perform the Work (including any specialized services) within the time constraints identified, considering the firm's current and planned workload.
- Include a list of, at a minimum, five (5) recent contracts/projects in the last ten 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 team members. Only projects completed by team members of the project team will be considered. Supplemental project information may be included as part of the appendix.

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.

2. Project Approach Narrative.....50 PTS

Proposal Elements:

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

- General information for supporting the Port with an overall approach to architectural services at the Port.
- Project Management: Describe how the team will manage and coordinate the necessary disciplines required to accomplish the services requested.

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(s) for services.

- Provide approach for scheduling and sequencing of individual task orders and for providing simultaneous services on multiple task orders and facilitating efficient and consistent 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 the requested services, the team's understanding of the Port and the Port's goals, and for providing efficient management of the program.

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 may be requested from the project list provided under 1. Experience, Qualifications, and 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 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. Specific information regarding the interview will be sent to short-listed firms.

INSTRUCTIONS FOR PROPOSERS

PROCUREMENT PROCESS

SOLICITATION TIMELINE:

Issuance of RFQ	JANUARY 11, 2018
Last Day To Submit Questions	JANUARY 23, 2019
SOQs due	JANUARY 30, 2019 @ 2:00 PM
Short List Consultants*	FEBRUARY 8, 2019
Interviews (if required)*	WEEK OF FEBRUARY 11, 2019
Final Selection*	FEBRUARY 15, 2019
Execute Contract*	FEBRUARY 22, 2019

*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

Requests for Bids, Requests for Proposals and Requests for Qualifications can be accessed on the Port's website, www.portoftacoma.com under 'Contracts'; Procurement, Bid #071077.

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 Procurement at 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 in the RFQ. 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 may be invited in for interviews and the final determination for short listed firms will be based on reference checks and/or interviews.

The Port intends to select the proposed Team(s) which represents the most qualified team to the Port and begin the negotiation and award process based on the evaluated scores.

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

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.

PROFESSIONAL SERVICES AGREEMENT NO. 071077

PROJECT: On-Call Cost Estimate and Constructability Services 2019

CONSULTANT: Company, Address, City, State, Zip

PROJECT MANAGER: Laurie Emerson

PROJECT NO. Various

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 On-Call Architectural Professional Services (*hereinafter referred to as the "Project"*).

The Port and Consultant mutually agree as follows:

SCOPE OF WORK

The selected firm will provide cost estimating and constructability services for various Port projects. These projects cover a wide variety of types including but not limited to site, building, pier, bridge, railroad, utility, dredging, remediation, habitat and landscaping improvements requiring the use of civil, structural, electrical, mechanical and environmental engineers as well as architects. The quantity and duration of projects will depend on the Port's requirements and needs for these services. Tasks will generally be associated with public works projects, but services may be needed for other types of Port projects, as needed.

The work may include, but is not limited to, the following tasks:

- Cost Estimating
 - o Provide estimates of construction and/or project costs and review and analyze estimates provided by other consultants at all stages of a project, including conceptual, schematic (30%), design development (60%), and construction document (100%).
 - o Analyze scope, schedule, and budget options for a project and provide recommendations to keep the project costs within the approved budget. The Consultant shall review, provide cost estimates for and analyze contractor change order proposals and similar cost documents during project construction.

- Design Review & Analysis
 - o The Consultant shall provide independent, 3rd party design review, evaluation and analysis of Port projects. Design review services may be required during any phase of project development, design or construction.
- Constructability Review & Analysis
 - o The Consultant shall coordinate and conduct constructability (or de-construct) reviews to verify that a project can be constructed according to the design assumptions, the intent of the contract documents, and within the cost and schedule guidelines. Constructability services may be required during any phase of the project.
- Investigative Review
 - o Analysis of project documents throughout any portion of the project development or project execution as requested by the Port for determination of cause of problematic issues, cost overruns, potential trends or other reviews as may be requested.
- Additional other miscellaneous tasks generally associated with cost estimating, design & investigative reviews and constructability for Port projects and as otherwise may be required by the Port for similar services.

The work will be authorized as individual Task Orders to the contract in accordance with the Supplemental Terms and Conditions. Separate Task Orders defining scope and schedule will be issued by the Port for each assignment.

DELIVERABLES

ASSUMPTIONS

COMPENSATION

This will be accomplished on a time and materials basis and will not exceed **\$300,000.00** without prior written approval from the Port.

The length of this agreement is from the date of execution to **xxDATExx**.

This agreement is expressly conditioned upon the Standard, Project and On-Call Terms and Conditions and Rate Sheet attached to this contract. 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 _____ Date _____
Laurie Emerson
Sr. Contracts Administrator

By _____ Date _____

Print Name Title

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.

The Consultant is responsible for ensuring that all personnel performing work on this Agreement are paid wages in accordance with federal, state and local laws when applicable.

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 the negligence, recklessness, or intentional wrongdoing 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 not apply to claims which arise out of the sole negligence on the part of the Port of Tacoma, and this duty shall survive the termination or expiration of this Agreement.

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.

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 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, which may arise under this Agreement, whether arising from operations conducted by the Consultant, any subconsultant, or anyone directly or indirectly employed by either of them. Consultant recognizes that it is the obligation of the Consultant to ensure that all Subconsultants of any tier have insurance for the activities performed under this agreement. If this agreement requires that a Subconsultant perform ultra-hazardous operations the Port will require that it be named as an Additional Insured by endorsement on all Subconsultant insurance policies and waivers of subrogation shall be provided by endorsement. Workers Compensation and Professional Liability are exempted from the additional insured requirement.
- b) Consultant shall submit to the Port of Tacoma, prior to the commencement of services, certificates of insurance evidencing:
 - i) Commercial General Liability coverage on occurrence form CG0001 or equivalent with limits of \$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 of not less than \$1,000,000 per claim and in the aggregate. 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.
- c) 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.
- d) Consultant is responsible for complying with the Washington State laws that pertain to industrial insurance (RCW 51). Consultant shall submit a current employer liability certificate as issued by the Washington Department of Labor and Industries that shows the status of Consultant's worker compensation account prior to contract execution, including those Consultants who are qualified self-insurers with the state. Consultant bears the responsibility to ensure that any out-of-state (non-Washington) employees and subconsultants have appropriate workers compensation coverage while working for the Port in Washington State. Consultant may be exempt from state worker compensation insurance requirements (RCW 51.12.020) such as if Consultant is a sole proprietor.
- e) Certain 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 in the attached Rate Sheet and made a part of this contract.

Overtime: The Port will allow overtime rates for preapproved labor categories, as required by federal law, at 1.5 times the rate when approved in advance by the Project Manager and when required by the nature of the Work. The Consultant shall submit a list of labor classifications to which overtime rates are applicable to by law.

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.

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. 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 <https://www.tsa.gov/for-industry/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.

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 the following:

A. 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 2A 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 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

On-Call Cost Estimating and Constructability Services 2019

<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

Reimbursable

Subconsultants	Cost + Negotiated Markup (= or < 4%)
Other Direct Costs	Cost
Mileage (All Vehicles)	IRS allowable rate