



QUESTIONS & RESPONSES #02

RFP # / TITLE 070585 | NWSA & POT Total Rewards Program Consultant Services
CONTACT Heather Shadko, PROCUREMENT
EMAIL NWSAprocurement@nwseaportalliance.com
PHONE NUMBER 253-428-8697
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PROPOSER QUESTIONS	PORT RESPONSES	RFP/ RFQ Section
What is the approximate number of people that the NWSA employs? In the RFP, it mentions 140 employees, but another section references close to 30,000.	The Norhtwest Seaport Alliance and the Port of Tacoma directly employ 140 non-represented employees. The local economy is impacted by the more than 29,000 indirect jobs that are generated by the two Ports.	Pg. 2
Does your organization have any flexibility with regards to the limit of liability clause in the RFP? If we are engaged to perform this work, our internal legal team would work with your legal team to come to an agreement.	Per the RFP, we requested potential proposers provide us language they wanted to change with an explanation as to why the change is necessary and why it would be in the NWSA's interest to adapt the change. We ask this so that any changes we may make to the terms and conditions would benefit all proposers. We do not have any flexibility to make changes after the RFP closes. Page 3 of the RFP also states conditioning a proposal on terms and conditions not contained in the RFP or altering the terms and conditions would be grounds a non-responsive determination.	

What benefits broker(s) are you currently working with, and what is your relationship with them?	Arthur J. Gallagher is our benefits broker - provide strategic consulting and negotiating services for health and welfare benefit programs.	
What is the budget for this project?	Under \$100 thousand dollars.	
On page 4, Task 2, what do you wish to be included in the “high level cost implications” for the potential new programs?	Relying on consultant's expertise in bringing forth "best practices" benefit programs for consideration and identifying the potential costs of those programs.	
What is the anticipated completion date of the project?	The contract will be for one year with an oppotion to renew for one additional year. We anticpate the project being completed within this period.	Pg. 2
Does the NWSA and Port of Tacoma have an HR Business Partner model that will be engaged with the project? If so, what is the size of the team?	We have a Human Resources Team of 4 that will be engaged in the project.	
Does the project have an Executive sponsor that will be a liaison to the Executive Teams?	The Human Resources Officer will be the liaison.	

How many interviews are needed for Task 1? What are the number of NWSA Managing Members, Port Commissioners and Executive Team Members?	<p>Anticipate 1 group interview session (Executive Team) and 1 group scoping session (Executive Team), and individual phone conversations with the NWSA Managing Members (and Port of Tacoma Commissioners).</p> <p>10 Managing Members (which includes 5 Port of Tacoma Commissioners and 5 Port of Seattle Commissioners); Since scope covers both the NWSA and Port of Tacoma, the 5 Port of Tacoma Commissioners will be serving in their capacity as Port of Tacoma Commissioners and as 5 of the 10 Managing Members of the NWSA.</p> <p>9 NWSA Executive Team Members (that also serve in their capacity as Port of Tacoma Executive Team).</p>	
Are the results from previous employee opinion surveys?	We do not understand this question.	
Does the NWSA and Port of Tacoma have a defined list of companies in which they compete for talent?	We do not have a defined list.	
Does the NWSA and Port of Tacoma have market data or will surveys need to be identified and purchased?	We have limited data primarily limited to public sector.	
Does a job structure exist with defined levels?	Yes - we have job classification system.	
Does NWSA/Port of Tacoma have compensation administration software such as MarketPay or Payfactors?	No - we do not have compensation administration software.	
Does NWSA/Port of Tacoma wish to use an internal resource (Finance Department) to model reward plans or will this be provided by the consultant?	We will utilize in house financial modeling.	
Does NWSA/Port of Tacoma plan to use internal marketing departments to design the total reward communication materials?	Not yet determined.	

**Exceptions to Northwest Seaport Alliance's
Request for Proposal**

The submission of this proposal in response to the RFP may constitute [OUR COMPANY'S] acceptance of NWSA's contract terms should the changes to the provisions below, or the addition of the new provisions below, be accepted. [OUR COMPANY] shall not be bound by any contract terms or obligated to perform the services described in this proposal until a mutually acceptable written agreement is signed by the parties. **RESPONSE: IF THIS LANGUAGE APPEARS ANYWHERE IN A PROPOSAL, THE PROPOSAL WILL BE FOUND NON-RESPONSIVE AND REJECTED. THE NWSA CANNOT ACCEPT OFFERS THAT ARE CONDITIONED.**

Section	Exception	Is the term onerous?	Why is the term onerous?	Why the revision is better for NWSA
PSA Section 1	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 NWSA, <u>or if such key personnel leave the employ of Consultant.</u>	Yes	The original term does not acknowledge that individuals may leave [OUR COMPANY's] employment and, as such, can be read to require [OUR COMPANY] to retain an employee who desires to leave.	If key personnel leave the employment of [OUR COMPNAY], it allows for the personnel to be replaced rather than leaving a vacancy and permits [OUR COMPANY] the opportunity to continue the provision of services to the [NWSA]. RESPONSE: SEE THE ATTACHED MODIFIED TERMS AND CONDITIONS.
PSA Section 5	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 <u>make such records available to the NWSA for audit following NWSA's written request and at a mutually agreed upon time and location.</u>	Yes	Many of the documents that would be subject to audit would be considered confidential information of [OUR COMPANY] and as such requiring us to provide it for audit is concerning – hence make available rather than provide. Additionally, audits can be very invasive and disruptive to our normal operations, hence the additional of a request to audit and the requirement that an audit requires mutual agreement.	Inducing process and clarity into the audit procedures will make for a more efficient, smoother and less time consuming audit experience for the Port. RESPONSE: THIS LANGUAGE WILL NOT BE ADAPTED. THE ISSUE IS NOT JUST RELATED TO AUDITS. THE NWSA IS A PUBLIC ENTITY AND MUST MAINTAIN ACCESS TO, AND BE ABLE TO PROVIDE, RECORDS PER THE SECRETARY OF STATE'S LOCAL GOVERNMENT COMMON RECORDS RETENTION SCHEDULE (CORE) VERSION 3.3 (OCT 2016) AND RCW 40.14.

PSA Section 6	<p><u>Subject to the terms of Exhibit A, the</u> services to be performed <u>and deliverables provided</u> by Consultant <u>to NWSA</u> shall be deemed <u>work made for hire</u> for purposes of the copyright laws of the United States. The NWSA has ownership rights to the plans, specifications, and other products <u>delivered to them</u> the Consultant <u>under this Agreement</u>. 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 NWSA's prior consent.</p>	Yes	<p>As an independent contractor, [OUR COMPANY's] work is defined as "work made for hire" for purposes of US copyright laws. [OUR COMPANY] is contracting to provide a certain set of deliverables to the Alliance, and we agree that the Alliance should own those deliverables, once completed and delivered to the Alliance, but ownership of anything that [OUR COMPANY] prepares under this Agreement is outside the scope of the Agreement. Further, [OUR COMPANY] requires that its deliverables be subject to downstream controls, hence the Ex. A reference.</p>	<p>This better reflects the intent of the NWSA in terms of ownership of the materials being provided under this RFP, and addresses any future disputes around who owns what in terms of material used by NWSA's service providers. RESPONSE: EXHIBIT A AS PROPOSED WILL NOT BE ADAPTED NOR WILL THE PROPOSED LANGUAGE SUGGESTED HERE. THE PROPOSED LANGUAGE IN EXHIBIT A WILL BE ADDRESSED SEPERATELY.</p>
PSA Section 7	<p>All information developed by the Consultant and all information made available to the Consultant by the NWSA, 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 NWSA. <u>The foregoing protections will not apply to information which: (i) is or becomes generally known to the public other than as a result of Consultant's breach of this Section 7; (ii) prior to Consultant's receipt from NWSA, was obtained by Consultant from a third party who is under no obligation of confidentiality with respect to such information; (iii) is developed by Consultant completely independent from the confidential information of NWSA; or (iv) is required by law or regulation to be disclosed, but only to the extent and for the purpose of such required disclosure after providing NWSA with advance written notice if reasonably possible such that NWSA is afforded an opportunity to contest the disclosure or seek an appropriate protective order. Consultant shall have the burden of proving the existence of any of the exceptions described in this Subsection.</u></p>	Yes	<p>To require the confidential treatment of information that is not confidential is an issue for [OUR COMPANY]. To the extent information presented by the NWSA is not actually confidential, contractual obligations of confidentiality should not apply.</p>	<p>By better delineating what is and is not truly confidential (but ensuring that the selected service provider is required to keep confidential all information that is confidentially), the NWSA will find this a much easier matter to administer, as there will not be room for equivocation with respect to whether or not particular material is confidential.</p> <p>Further, the service provider will have the responsibility of proving the existence of a relevant exception, again leaving NWSA in a preferred position. RESPONSE: NOTE THE CHANGE IN THE MODIFIED TERMS AND CONDITIONS.</p>
PSA Section 9	<p>Consultant shall submit detailed numbered invoices showing contract number, description of work items being invoiced, title of project, total authorized, total current invoice, balance</p>	Yes	<p>[OUR COMPANY] needs to retain the right to suspend</p>	<p>An obligation for prompt payment will help keep the accounts payable at NWSA manageable,</p>

	of authorization, hours, hourly rate 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. <u>All payments are due within thirty (30) days of NWSA's receipt of invoice. Consultant reserves the right to suspend performance if any undisputed invoice goes unpaid for more than sixty (60) days.</u>		services for repeated non-payment.	and leaving a service provider with the opportunity to suspend services in the face of non-payment will also ensure that NWSA stays abreast with its payment obligations. RESPONSE: THIS LANGUAGE WILL NOT BE ADAPTED. PER RCW 39.76.011, THE NWSA IS REQUIRED TO PROMPTLY PAY BILLS.
PSA Section 10	<p>b) With respect to claims other than professional liability claims, Consultant and its subconsultants agree to defend, indemnify and hold harmless the NWSA of Tacoma, its appointed and elective officers and its employees from and against any and all <u>third party</u> 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 <u>grossly</u> negligent acts, errors or omissions by the Consultant in the performance of the Consultant's professional services.</p> <p>c) With respect to professional liability claims only, Consultant and its subconsultants agree to indemnify and hold harmless the NWSA of Tacoma, its appointed and elective officers and its employees from and against any and all <u>third party</u> 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 <u>grossly</u> negligent acts, errors or omissions by the Consultant in the performance of the Consultant's professional services.</p>	Yes	[OUR COMPANY] cannot agree to any indemnity obligations that go beyond indemnifying for third party claims that involve any liens filed by [OUR COMPANY] or its subcontractors' gross negligence in performing the services. [OUR COMPANY] owes a duty to its clients, not to any third party.	The revisions here clarify the actual legal boundaries of indemnity. Further, the tailoring of [OUR COMPANY'S] indemnity here means that [OUR COMPANY] is able to assume this obligation to the NWSA outside the bounds of the limitation of liability, meaning the NWSA can expect a full, dollar for dollar recovery in connection with an indemnified claim. RESPONSE: THIS LANGUAGE MODIFICATIONS WILL NOT BE ADAPTED. THE NWSA BELIEVES THE ORIGINAL LANGUAGE PROVIDES SUFFICIENT SAFEGUARDS FOR THE CONSULTANT.
PSA Section 16	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. <u>. If the parties are not able to settle the dispute through mediation, the parties agree that the dispute will be resolved by final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall take place before a panel of three arbitrators. Within 30 days of the commencement of the arbitration, each</u>	Yes	[OUR COMPANY] cannot agree to allow a dispute under this Agreement to be joined with any other dispute in any other forum.	[OUR COMPANY] has found that due to the very complex nature of its services, the issues are also very complex and require an experienced adjudicator who understands what actuaries do. Dispute resolution via arbitration by arbitrators with applicable background is our preferred method, though we are happy to

	<p><u>party shall designate in writing a single neutral and independent arbitrator. The two arbitrators designated by the parties shall then select a third arbitrator. The arbitrators shall have a background in either insurance, actuarial science or law. The arbitrators shall have the authority to permit limited discovery, including depositions, prior to the arbitration hearing, and such discovery shall be conducted consistent with the Federal Rules of Civil Procedure. The arbitrators shall have no power or authority to award punitive or exemplary damages. The arbitrators may, in their discretion, award the cost of the arbitration, including reasonable attorney fees, to the prevailing party. Any award made may be confirmed in any court having jurisdiction. Any arbitration shall be confidential, and except as required by law, neither party may disclose the content or results of any arbitration hereunder without the prior written consent of the other parties, except that disclosure is permitted to a party's auditors and legal advisors.</u></p>			<p>first negotiate and/or mediate any disputes, should the parties so desire. Courts are okay for other types of claims, but not appropriate for actuarial claims. A jury of twelve lay people will not understand the complexities that typically are involved in such a claim. Jury trials do not make for a fair forum for resolution of the issues.</p> <p>As a result of the foregoing and given the incredibly complex nature of a dispute, both [OUR COMPANY] and the NWSA will be advantaged by having a trier of fact who is capable of providing a logical, well founded and reasonable opinion. RESPONSE: THIS LANGUAGE WILL NOT BE ADAPTED.</p>
PSA Section 17.	<p>This Agreement <u>and the attached Exhibit A</u> represents the entire and integrated understanding between the NWSA and Consultant and may be amended only by written instrument signed by both the NWSA and Consultant.</p>	Yes	<p>The attached Exhibit A should be included as representing the entire agreement between the parties.</p>	<p>The inclusion of the terms noted in Ex. A induce more clarity in the NWSA – vendor relationship and, as such, work to NWSA's benefit. RESPONSE: THIS LANGUAGE WILL NOT BE ADAPTED.</p>
Exhibit A *New Exhibit	<p>Please add the following as a new Exhibit A to the PSA: EXHIBIT A ADDITIONAL TERMS AND CONDITIONS</p> <p>1. TOOL DEVELOPMENT. Consultant shall retain all rights, title and interest (including, without limitation, all copyrights, patents, service marks, trademarks, trade secret and other intellectual property rights) in and to all technical or internal designs, methods, ideas, concepts, know-how, techniques, generic documents and templates that have been previously developed by Consultant or developed during the course of the provision of the Services provided such generic documents or templates do not contain any System Confidential Information or proprietary data. Rights and ownership by Consultant of original technical designs,</p>		<p>[OUR COMPANY] will use proprietary software, spreadsheet tools and models in the performance of its services. Many of these tools are pre-existing. However, we may develop new tools, or modifications or improvements to our existing tools during the course of a client engagement. As a consultancy, we need to</p>	<p>RESPONSE: THIS EXHIBIT AS A WHOLE WILL NOT BE ADAPTED. INDIVIDUAL CONCEPTS WILL BE DISCUSSED INDIVIDUALLY.</p> <p>This language creates a brightline regarding the ownership of deliverables and the ownership of [OUR COMPANY] IP used in creating such deliverables and occasionally embodied in a deliverable. To the extent [OUR</p>

	<p>methods, ideas, concepts, know-how, and techniques shall not extend to or include all or any part of System’s proprietary data or System Confidential Information. To the extent that Consultant may include in the materials any pre-existing Consultant proprietary information or other protected Consultant materials, Consultant agrees that System shall be deemed to have a fully paid up license to make copies of the Consultant owned materials as part of this engagement for its internal business purposes and provided that such materials cannot be modified or distributed outside the System without the written permission of Consultant or except as otherwise permitted hereunder.</p> <p>2. LIMITATION OF LIABILITY. Consultant will perform all services in accordance with applicable professional standards. In the event of any claim arising from services provided by Consultant at any time, the total liability of Consultant, its officers, directors, agents and employees to System shall not exceed five million dollars (\$5,000,000). This limit applies regardless of the theory of law under which a claim is brought, including negligence, tort, contract, or otherwise. In no event shall Consultant be liable for lost profits of System or any other type of incidental or consequential damages. The foregoing limitations shall not apply in the event of the intentional fraud or willful misconduct of Consultant.</p> <p>5. CHOICE OF LAW. The construction, interpretation, and enforcement of this Agreement shall be governed by the substantive contract law of the State of Washington without regard to its conflict of laws provisions. In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties hereto agree that any such</p>		<p>protect our rights in such tools and modifications so that we can provide similar services to other clients. We are only seeking protection for the generic tools that we use in the performance of our services. Such rights do not extend to client specific information or custom client deliverables.</p> <p>[OUR COMPANY’S] risk management requirements mandate that [OUR COMPANY] contracts be subject to an acceptable Limitation of Liability clause that limits liability to an amount reasonably proportional to the size of the project.</p>	<p>COMPANY] IP is embodied in a deliverable, this language will ensure NWSA has full rights to make use of the IP embodied in the deliverables – a clarification which works to NWSA’s benefit.</p> <p>RESPONSE: THIS LANGUAGE WILL NOT BE ADAPTED.</p> <p>Our experience in the industry is such that firms who are willing to agree to perform services in such a fashion that they are willing to assume unlimited liability to a client do so because they possess no real or significant assets to make good on a judgment against them – leaving them, in reality, completely judgment proof and causing NWSA to shoulder, alone, the full extent of the damages they create. [OUR COMPANY] seeks to control its liability (but still agrees to remain liable on an unlimited basis for our indemnity obligation) and can stand behind the \$5M offered here such that NWSA is made whole in the event of a claims. RESPONSE: THIS LIMITAION OF LIABILITY LANGUAGE WILL NOT BE ADAPTED.</p> <p>The agreement does not currently include a section regarding controlling law. Addressing this question now is in the best interest of both parties, as it induces a significant amount of clarity around how to interpret various</p>
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	<p>action or proceedings shall be brought in Pierce County Superior Court. If any provision of this agreement is deemed unenforceable as a matter of law, the remaining provisions will stay in full force and effect.</p> <p>6. NO THIRD PARTY DISTRIBUTION. Consultant's work is prepared solely for the internal business use of the System. To the extent that Consultant's work is not subject to disclosure under applicable public records laws, Consultant's work may not be provided to third parties without Consultant's prior written consent. Consultant does not intend to benefit or create a legal duty to any third party recipient of its work product, and Consultant may include a legend on its reports so stating. System agrees not to remove any such disclaimer language from Consultant's work. Consultant's consent to release its work product to any third party may be conditioned on the third party signing a Release, subject to the following exception(s):</p> <p>(a) The System may provide a copy of Consultant's work, in its entirety, to the System's professional service advisors who are subject to a duty of confidentiality and who agree to not use Consultant's work for any purpose other than to benefit the System.</p> <p>(b) The System may provide a copy of Consultant's work, in its entirety, to other governmental entities, as required by law.</p> <p>No third party recipient of Consultant's work product should rely upon Consultant's work product. Such recipients should engage qualified professionals for advice appropriate to their own specific needs.</p>		<p>[OUR COMPANY's] risk management policies require that [OUR COMPANY] mitigate risks by controlling the delivery of its work to only the client with whom [OUR COMPANY] has direct contractual obligations and rights. [OUR COMPANY's] work is created with the specific circumstances of its client in mind, and the delivery of [OUR COMPANY's] work product to third parties greatly increases the potential risk exposure for [OUR COMPANY]. [OUR COMPANY] asks that disclosure of its work product is restricted unless the distribution is based on requirements of public records laws, or as otherwise permitted in the clause.</p>	<p>terms. RESPONSE: SEE THE MODIFIED SECTION 4 OF THE TERMS AND CONDITIONS.</p> <p>This works to the benefit of NWSA by limiting the chances that a third party would bring a claims against NWSA as a result of the third party's reliance on NWSA materials (to the third party's detriment).</p> <p>RESPONSE: THIS LANGUAGE WILL NOT BE ADAPTED. THE RECORDS OF THE NWSA ARE SUBJECT TO PUBLIC DISCLOSURE. SEE COMMENTS TO SUGGESTED LANGUAGE FOR SECTION 5 ABOVE.</p>
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