

**NWSA**  
**REQUEST FOR QUALIFICATIONS**  
**No. 070664**

**201024.01 – West Sitcum Stormwater Treatment**

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

<b>RFQ INFORMATION</b>	
Contact:	Procurement
Email Addresses:	<a href="mailto:nwsaprocurement@nwseaportalliance.com">nwsaprocurement@nwseaportalliance.com</a>
Submittal Date	<b>JULY 13, 2017 @ 2:00 PM</b>

PLEASE SUBMIT ALL CORRESPONDENCE AND STATEMENT OF  
QUALIFICATIONS VIA E-MAIL DIRECTLY TO THE PROCUREMENT  
CONTACT LISTED ABOVE AND INCLUDE IN THE SUBJECT LINE:  
'201024.01 – West Sitcum Stormwater Treatment'

**NORTHWEST SEAPORT ALLIANCE**  
Request for Qualifications (RFQ) #070664  
201024.01 – West Sitcum Stormwater Treatment

The [Northwest Seaport Alliance](#) (NWSA) is soliciting Statements of Qualifications (SOQ) from highly qualified teams interested in providing engineering, design, permitting, bidding and construction support services for the installation of stormwater treatment facilities at the West Sitcum Terminal.

**A. CONTRACTING DESCRIPTION**

The NWSA will select the most qualified team (team includes all key members whether from the prime consultant firm or subconsultants for all necessary project services) and enter into negotiations with the intent to issue one professional service contract based upon the information provided herein. Following successful negotiation of rates and fees, the NWSA will execute the contract for the initial phase of work negotiated or may contract for all services requested for the entire project.

The scope of professional services for future phases may be contingent on the work results of the initial phase; therefore the NWSA reserves the right to amend the general statement of work tasks listed below as required to accomplish the project scope and goals; and additionally reserves the right to select another team to perform additional phases, if needed.

Overall contract period of performance (to be extended, as needed through contract amendments) is intended to encompass the duration of the project.

The following documents are attached to this RFQ:

- RFQ-A – Instructions for Proposers
- RFQ-B – Sample Professional Service Agreement
- RFQ-C – Standard Terms and Conditions
- RFQ-D – Project Terms and Conditions
- RFQ-E – Sample Rate Sheet

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

## **B. PROJECT BACKGROUND, SCOPE AND GOALS**

### **PROJECT BACKGROUND**

The NWSA currently leases out approximately 140 acres for container handling operations at the West Sicum Terminal. Operations at this site are permitted under the NPDES General Permit for Industrial Activities by the Washington State Department of Ecology (WSDOE). The permit requires the terminal operator to perform quarterly monitoring of stormwater from specific outfalls. Sampling results showed stormwater discharge had pollutant concentrations above established benchmark levels. The discharges have reached a Level 3 corrective action, requiring installation of treatment best management practices with the goal of achieving benchmarks in future discharges.

### **SCOPE OF PROJECT**

The scope of the project is to:

1. Evaluate the best approach to addressing the Level 3 Corrective Action, including a risk analysis for conducting a Receiving Water Body Study and legal risk profile;
2. Develop stormwater treatment alternatives that are capable of providing appropriate level of treatment of the pollutant load generated at the highest operating tempo at the facility in the last five year; and
3. Complete final design, prepare bid documents and provide construction services for the preferred stormwater treatment system

### **PROJECT GOALS AND OBJECTIVES**

The goal of this project is to design a stormwater system that will give the future terminal operator the best opportunity to meet Industrial General Stormwater permit requirements. Project objectives include quantifying the lowest risk profile process for permitting and operations and selection of the optimal treatment technology at a reasonable installation and operational cost.

## **C. PROFESSIONAL SERVICES STATEMENT OF WORK TASKS**

The study and conceptual phase will define other improvements and/or development needs to be designed and constructed to meet the overall goals of the project.

The initial scope of services for this contract is to provide a project approach, a risk analysis for performing a receiving water body study (study), conducting the study, should the Alliance agree that is the best approach, and project conceptual design alternatives. The full detailed scope for this phase will be negotiated with the selected team. Generally, conceptual design services will include, and are not limited to, the following items:

- Perform risk analysis for performing a receiving water body;
- Perform a the Receiving Water Body Study, if requested;
- Develop stormwater treatment implementation approach;

- Develop an alternatives analysis which includes cost estimates and proposed schedule;

The scope for future phases will generally include, but in no way is limited to, the following elements for any or all of the proposed contract packages identified in the conceptual design phase:

The scope of work will include engineering, project design, building permitting support, preparation of bid documents, cost estimates and schedules, bid period support, and construction support services, including the following tasks:

- Attend meetings as requested by the Northwest Seaport Alliance;
- Bid and Construction Support Services to include;
  - Issued for construction plans and technical specifications,
  - Respond to bidder questions,
  - Attend pre-bid conference and bid opening,
  - Provide construction support for the duration of the project, including review of submittals and shop drawings, responses to requests for information (RFI), and review of pay estimates and change order proposals, and
  - Review of contractor's redlined drawings and create record drawings.

The scope of work will also include surveying of the site as required to confirm existing conditions for design and installation of the selected stormwater treatment system(s).

Environmental permitting and testing will be performed by NWSA staff and other consultants under separate contracts. The NWSA will provide record drawings, utility information, historical geotechnical reports, and current analytical data for the stormwater runoff to date. The consultant will prepare a Stormwater Site Plan for the City of Tacoma environmental review.

The successful consultant team will be expected to demonstrate relevant experience with stormwater permitting/compliance issues and be proficient in stormwater system design, including Low Impact Development (LID) treatment technologies.

Features to be considered for this project are as follows:

- Interruption of site operations must be kept to a minimum;
- Maximizing the use of the existing storm drainage collection system and conveyance components; and
- Sustainable design and construction methods.

Deliverables include:

- Project schedule that accounts for project design, permitting, bidding and construction, including updates reflecting schedule revisions;

- Current and proposed site conditions, drainage maps and calculations, assessment of the existing stormwater systems, and recommended system modifications for stormwater treatment;
- Risk analysis of receiving water body study;
- Receiving water body study report, should the Alliance choose to select that option;
- Evaluation of alternative stormwater treatment methods, including performance, capital cost and life-cycle cost based treatment approaches;
- Conceptual design drawings.

Detailed design drawings and bid documents consisting of:

- Stormwater Site Plan for the City of Tacoma environmental review.
- Construction drawings, technical specifications, and cost estimates at the 60%, 90% and 100% completion levels;
  - Data will be delivered in a format that can be imported into the NWSA's Enterprise GIS system. Object table templates will be provided by the NWSA.
- Issued for Bid drawings and contract provisions.

Bid and Construction Support Services to include:

- Issued for Construction plans and technical specifications.
- Record drawings prepared from Contractor's redlined as-built plans.
  - Data will be delivered in a format that can be imported into the NWSA's Enterprise GIS system. Object table templates will be provided by the NWSA.
- Any other professional support or management required to meet the project's goals and intent.

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

Submittals should present information in a straightforward and concise manner, while ensuring complete and detailed descriptions of the proposing team (to include the prime, key team members and major sub-consultants) and the team's ability to meet the requirements and provide the requested services listed in this RFQ. Attention will be paid to technical competence and completeness of content. The written SOQ shall be prepared in the same sequential order of SOQ criteria outlined below.

SOQs must not exceed **8 numbered pages** (8 ½ by 11 inch) **excluding** the cover page, cover letter and requested appendices. All pages shall be in portrait orientation with 1 inch margins. Font size shall be 11 point or larger. SOQs that do not follow this format will not be reviewed. Use of color is not prohibited but note that SOQs are often reproduced for review in black and white.

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

**INITIAL EVALUATION PHASE**

- 1. Qualifications and experience of the key team members who will be responsible for overseeing and performing the services ..... 50 PTS**
  - a. Describe key personnel of the proposed team and overall organization of the project team. Provide a summary of background, experience, technical competence and qualifications of key personnel (include working titles, degrees, certificates and licenses, etc.) and their project specific roles and responsibilities. Emphasize experience and expertise in performing services of similar scope and complexity.
  - b. Provide a summary of proposing team's services, experience and expertise related to the elements described in the scope of services and more specifically with the following scope elements:
    - 1) Developing Industrial Stormwater permit management approaches, providing risk analysis, and performing receiving water body studies
    - 2) Engineering design of stormwater treatment facilities
    - 3) Experience in providing other services identified in Section C, Professional Services Statement of Work Tasks.
  - c. Provide a list of references for recent contracts/projects, to include a client point of contact name and title, contact information (phone and email), period of performance, key personnel involved, and brief description of services relevant to the services being requested. Only projects completed by proposed key team members will be considered.

**2. Project Approach Narrative ..... 30 PTS**

SOQs should clearly outline the team's recommended approach and methodology for:

- Accomplishing the necessary services to accomplish the project scope: Clearly describe the approaches and methods that will be used to accomplish the necessary services. Include a summary of innovative ideas and suggestions for

implementing or enhancing the scope of services.

- Coordination & Communication: Provide a plan for communications and coordination between the project team, the NWSA's project manager and the various stakeholders.

**3. Project Schedule** ..... **10 PTS**

Describe the team's availability, capacity and ability to undertake the work immediately and dedicate the necessary personnel and resources to meet the anticipated schedule.

Discuss how the team anticipates approaching to the schedule and what risks and/or constraints may negatively affect the timeline. Describe experience and approach in addressing scheduling constraints.

**4. 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)**

**5. References** ..... **50 PTS**

The NWSA will evaluate the reference checks to assess the project team's overall performance and success of previous, similar work. Reference checks will also be utilized to validate information contained in the SOQ. Reference checks may be checked on only the selected, most qualified team, or the short-listed teams.

**6. Interviews (as requested by the NWSA)** ..... **100 PTS**

If an award is not made based on the written evaluations and references alone, interviews may be conducted with the top-ranked teams. Failure to participate in the interview process will result in the team's disqualification from further consideration. The NWSA will inform top-ranked teams invited for an interview of the interview schedule, agenda and criteria for scoring to time of invitations.

## INSTRUCTIONS FOR PROPOSERS

### **PROCUREMENT PROCESS**

#### **SOLICITATION TIMELINE:**

Issuance of RFQ	JUNE 22, 2017
Last Day To Submit Questions	JULY 6, 2017
<b>SOQs due</b>	<b>JULY 13, 2017 @ 2:00 PM</b>
Short List Consultants*	JULY 27, 2017
Interviews (if required)*	AUGUST 3, 2017
Final Selection*	AUGUST 7, 2017
Execute Contract*	SEPTEMBER 4, 2017

\*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 of Tacoma's [website for this solicitation](#) on behalf of The Northwest Seaport Alliance.

#### **VENDOR OBLIGATION**

The Northwest Seaport Alliance (NWSA) Requests for Bids, Requests for Proposals and Requests for Qualifications can be accessed on the Port of Tacoma's (Port) website, [www.portoftacoma.com](http://www.portoftacoma.com) under 'Contracts'; Procurement and then finding RFQ Number (070664) and West Sitcum Stormwater Treatment.

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

 **Holders list** →

Detailed instructions for subscribing to the Holder's List are available [here](#).

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

#### **COMMUNICATION / INQUIRIES**

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 [nwsaprocurement@nwseaportalliance.com](mailto:nwsaprocurement@nwseaportalliance.com) (**West Sitcum Stormwater Treatment** in subject line).

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

## PRE-PROPOSAL CONFERENCE

The NWSA 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 NSWA 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 on behalf of the NWSA 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:

[nwsaprocurement@nwseaportalliance.com](mailto:nwsaprocurement@nwseaportalliance.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 NWSA. 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 NWSA 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 NWSA intends to select the proposed Team which represents the most qualified team to the NWSA and begin the negotiation and award process based on the evaluated scores.

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

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

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

## COSTS BORNE BY PROPOSERS

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

## **PUBLIC DISCLOSURE**

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

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

## PROFESSIONAL SERVICES AGREEMENT NO. 070664

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**PROJECT:** West Sictum Stormwater Treatment

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

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**PROJECT MANAGER:** Carol Rhodes

**PROJECT NO.** 201024.01

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THIS AGREEMENT is made and entered into by and between the **Northwest Seaport Alliance** (hereinafter referred to as the "NWSA") and **xxCOMPANYxx** (hereinafter referred to as the "Consultant") for the furnishing of xxTitlexx Professional Services (hereinafter referred to as the "Project").

The NWSA and Consultant mutually agree as follows:

### **SCOPE OF WORK**

The Consultant will

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 NWSA for each assignment.

The Consultant is acting on behalf of the NWSA's project manager, and is not responsible for Contractor means and methods.

### **DELIVERABLES**

### **ASSUMPTIONS**

### **COMPENSATION**

This will be accomplished on a time and materials basis and will not exceed **\$00,000.00** without prior written approval from the NWSA.

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

This agreement is expressly conditioned upon the Standard, Project 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**

**NORTHWEST SEAPORT ALLIANCE**

**CONSULTANT (LEGAL NAME)**

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

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

## **The Northwest Seaport Alliance 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 NWSA prior to performing work in support of this Agreement between Consultant and NWSA.

The award of a subcontract does not create a contract between the NWSA and the subconsultant. Subconsultants shall have no rights whatsoever against the NWSA 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 NWSA 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 NWSA-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 NWSA, or its designated agent, with access to or copies of records and other tangibles upon written request.

The NWSA 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 NWSA 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 NWSA for public use, unless the NWSA 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 NWSA 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 NWSA, is not covered by this provision "Consultant Data."

All information, materials, data and documentation furnished or made available to the Consultant by the NWSA for purposes of performing services pursuant to this Agreement on this project shall remain the property of the NWSA "NWSA Data." The Consultant shall obtain no proprietary rights or ownership interests to such NWSA Data. At the NWSA's written request, the Consultant shall return all such NWSA 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 NWSA (NWSA Data), shall not be disclosed by the Consultant without the written consent of the NWSA.

## **8. Compensation**

As full compensation for the performance of its obligations of this Agreement and the services to be provided, the NWSA 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](mailto:cpinvoices@portoftacoma.com) each month. Invoice period is for the previous calendar month and shall be computed pursuant to the rates and limitations set forth in the Agreement. Consultant agrees to submit monthly invoices as the 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 NWSA pay interest on payments.

Un-invoiced services performed through December 31 of each year shall be invoiced no later than the 7<sup>th</sup> day of January. If the Consultant is unable to provide an invoice they shall advise the NWSA 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 NWSA'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 NWSA 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 NWSA 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 NWSA's prior written consent. If the Consultant attempts to make an assignment, transfer, or novation without the NWSA'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 NWSA arising under the Agreement or otherwise related to the Project.

## **13. Termination of Agreement**

### **A. Termination for Default:**

The NWSA 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 NWSA; provided that the Consultant has been given an opportunity to cure.

**1) Cure Notice:** If the NWSA 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 NWSA deems said breach to warrant corrective action, the following sequential procedure will apply:

- a) The NWSA 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 NWSA;

**2) Show Cause Notice:**

- a) In the event that the Consultant does not respond within the appropriate time with a corrective action plan, the NWSA will provide the Consultant with a written Show Cause Notice; notifying the Consultant of their requirement to notify the NWSA in writing within seven (7) calendar days of any reason the NWSA should not terminate this Agreement. At the expiration of the seven (7) calendar day period the NWSA may commence termination of this Agreement in whole or in part;
- b) The NWSA may withhold payment owed the Consultant, instruct the Consultant to stop work and to refrain from incurring additional costs until the NWSA 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 NWSA.

**3) Notice of Termination:**

If the NWSA terminates this Agreement for default, the NWSA 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 NWSA incurs because of the Consultant's default. In such event, the NWSA 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 NWSA at the date of termination, the cost to the NWSA 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 NWSA 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 NWSA 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 NWSA:

- 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 NWSA all Subject Data and NWSA 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 NWSA has paid the Consultant for such items.

- c) Upon termination, the NWSA may take over the work and prosecute the same to completion by agreement with another party or otherwise.

**B. Termination for Convenience:**

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

If the NWSA terminates this Agreement for convenience, the NWSA 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 NWSA 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 NWSA:

- 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 NWSA all Subject Data and NWSA 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 NWSA has reimbursed the Consultant for such costs;
- 3) Take any action necessary, or that the NWSA 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 NWSA 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 NWSA 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 NWSA is responsible.

Termination settlement costs and proposals are subject to audit verification by the NWSA. Upon termination, the NWSA 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 NWSA 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 NWSA and Consultant, supersedes any previous written or oral representations and may be amended only by written instrument signed by both the NWSA and Consultant. No verbal agreement or conversation between any officer, agent, associate or employee of NWSA 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 Northwest Seaport Alliance 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 Northwest Seaport Alliance, 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 NWSA 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 NWSA.

## **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 NWSA 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 NWSA of the breach or default of any covenant, term or condition unless otherwise this is expressly agreed to by NWSA, in writing. NWSA's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or NWSA'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 NWSA 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.

## **The Northwest Seaport Alliance 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 NWSA.

### **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, environmental 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 or cleanup costs, which may arise under this Agreement, whether arising from operations conducted by the Consultant, any subconsultant, or anyone directly or indirectly employed by either of them. Consultant recognizes that it is the obligation of the Consultant to ensure that all Subconsultants of any tier have insurance for the activities performed under this agreement. If this agreement requires that a Subconsultant perform ultra-hazardous operations the NWSA 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 Northwest Seaport Alliance, prior to the commencement of services, certificates of insurance evidencing:
  - i) Commercial General Liability coverage on occurrence form CG0001 or equivalent with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate. Coverage will include: Products and Completed Operations, Contractual Liability and Personal & Advertising Injury; and
  - ii) Automobile Liability covering owned, non-owned and hired vehicles of \$1,000,000 combined single limit per accident; and
  - iii) Professional Liability including environmental consulting services of not less than \$1,000,000 per claim and in the aggregate. If the scope of Professional Services includes environmental testing, consulting or other such professional services, the Consultant's Professional Liability policy shall include coverage for these services. If such coverage is written on a claims-made basis, any retroactive date on the policy shall be prior to the start of this contract. Coverage shall remain in effect for the term of this Agreement plus three years. Certificates of Insurance citing the contract and

project number shall be provided to the Northwest Seaport Alliance 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 NWSA in writing within ten (10) days of receipt of notice of coverage being suspended, voided, cancelled or materially reduced. Except for professional liability, the NWSA 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 NWSA 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 NWSA, payment will be made within thirty (30) days.

All invoices shall be sent "Attention: Facilities Development". Invoices shall be emailed to [cpinvoices@portoftacoma.com](mailto: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 shall submit detailed invoices showing the following:

- a) Invoice Number, Contract number, Title, Invoice Period
- 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) Further, provide a summary breakdown of all projects with the amount of the overall invoice to be charged to each project.
- d) Current Amount Due:
  - i) Time and Materials Breakdown: titles, hours, hourly rates, and all expenses itemized, with backup, in accordance with the contract.
- e) Total amount of the Contract, and balance of Contract amount.
- f) Indicate "**Final Invoice**" when invoice is the final billing.

#### **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 NWSA 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 NWSA'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 NWSA.

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

- a) Consultant shall prepare specifications using BSD Speclink-E, Masterformat specification organization, latest edition.
- b) Consultant shall prepare specifications in accordance with the NWSA's Specification Standards available at <http://portoftacoma.com/contracts.forms> and from the NWSA Project Manager. The NWSA's Matersformat specifications are available at <http://portoftacoma.com/contracts.forms>.
- c) All site plans, derivative drawings, record drawings, and bid plans shall be completed using NWSA GIS and CADD standards and layer/block protocols available at <http://portoftacoma.com/contracts.forms> and from the NWSA Project Manager.

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

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

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

**HOURLY RATES**  
**CONSULTANT NAME**  
**Contract Name**

<u>Personnel</u>	<u>Hourly Rates</u>
Sr. Principal	
Principal	
Associate	
Sr. Engineer/Scientist 2	
Sr. Engineer/Scientist 1	
Project Engineer/Scientist 2	
Project Engineer/Scientist 1	
Engineer/Scientist 3	
Engineer/Scientist 2	
Engineer/Scientist 1	
Lead Technician	
Sr. Technician	
Technician	
CAD Design Coordinator	
CAD Designer	
CAD Technician	
Administrator 3	
Administrator 2	
Administrator 1	

Reimbursable

Subconsultants	Cost + 4%
Other Direct Costs	Cost
Mileage (All Vehicles)	IRS allowable rate