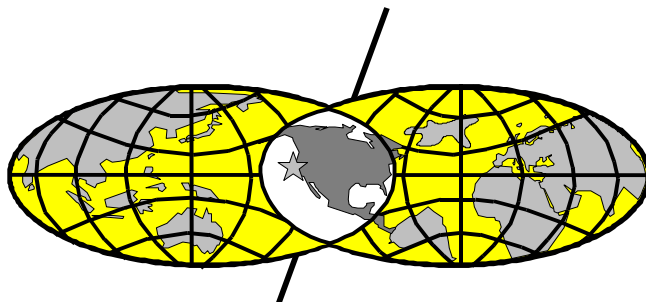


REQUEST
FOR
QUALIFICATIONS
FOR

Noise Monitoring System Upgrade Program Consultant

April 8, 2009



PORT OF OAKLAND
THE BOARD OF PORT COMMISSIONERS
530 WATER STREET
OAKLAND, CA 94607

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**REQUEST FOR QUALIFICATIONS (RFQ)
FOR NOISE MONITORING SYSTEM UPGRADE PROGRAM CONSULTANT**

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1. INTRODUCTION

The Port Of Oakland requests Statements of Qualifications from consultants qualified to provide airport noise consulting services to assist in the design and preparation of plans and specifications for upgrades to the airport noise and operations monitoring system at Oakland International Airport (OAK). The consultant will advise the Port on system design specifications and assist with the installation of the replacement fixed noise monitors as well as other services and upgrades identified in the scope of work.

The Port has posted this Request for Qualifications (RFQ) on its website at: <http://portofoakland.com/business/rfpsrfgs.asp>.

The Port will accept consultant Statements of Qualifications until 3:00 p.m. on Wednesday, May 6, 2009. Eight copies should be delivered to the following address:

**NOISE MONITORING SYSTEM UPGRADE CONSULTANT
Noise/Environmental Compliance Office
Terminal One, Second Floor
Oakland International Airport
One Airport Drive
Oakland, California 94621**

Attendance at a pre-submittal conference is mandatory and will be held 10:00 a.m. on Wednesday, April 22, 2009:

**Tower Conference Room
Terminal One, Eighth Floor
Oakland International Airport
One Airport Drive
Oakland, California**

The pre-submittal conference will include a brief overview of the upgrade program and submittal requirements, followed by a question and answer session. Any question not asked at the pre-submittal conference regarding this RFQ should be submitted in writing to Wayne Bryant via e-mail to wbryant@portoakland.com no later than 5:00 p.m. PDT on Thursday, April 23, 2009. Any Addenda issued by the Port in response to respondents' questions will be posted on the above mentioned website. Only questions answered by formal written Addenda will be binding.

The Port prohibits all unlawful discrimination and preferential treatment in contracting, subcontracting and purchasing, including the services requested pursuant to this RFQ. Additionally, the Port is subject to the requirements of the U.S. Department of Transportation's regulation, 49 Code of Federal Regulations Part 26 (the "DOT

Regulations”). Under the DOT Regulations, any Port contractor must agree that it will not discriminate against any business owner because of the owner’s race, color, national origin or sex in connection with the award or performance of any contract or subcontract, purchase or lease agreement or other agreements covered by the DOT Regulations.

2. BACKGROUND

The Port of Oakland is an “independent department” of the City of Oakland established under the City’s Charter. The Port is a municipal corporation, acting by and through its Board of Port Commissioners. The Port owns and through its Aviation Division operates and maintains the Oakland International Airport, which accommodates commercial passenger, air cargo, and private aircraft traffic.

The Port operates a Lochard ANOMS™ Version 8 aircraft noise and operations monitoring system at Oakland International Airport. The system includes sixteen (16) fixed remote noise monitors (RMT) located throughout communities adjacent to the airport including one that is located at the airport’s ground run-up enclosure (GRE). The RMTs are Larson Davis Model 870 noise analyzers and microphones, many of which were installed 15 years ago. With the availability of federal funding, the Port now desires to replace the fixed noise monitors. In addition, the Port wishes to upgrade and enhance various functions of the noise and operations monitoring system to make the most effective use of current technology. The program scope has been approved for federal funding under AIP Project No. 3-06-0170-43. The total maximum funding available for the project is approximately \$1.2M including an estimated \$125,000 available for program management consulting costs.

The airport noise monitoring system upgrade and enhancement program is designed to maximize the performance of the airport’s noise and operations monitoring system to assure that the system is providing the most efficient and productive results for the Port and stakeholders in the airport noise abatement program. The primary upgrade involves the replacement of the noise monitoring equipment. The noise monitoring system also requires fine-tuning for system calibration to enhance the correlations between aircraft operations and runway assignments and noise events. In addition, several system module enhancements are planned for inclusion in the system upgrade. A variety of functional modules are not currently integrated but desired, e.g. aircraft pilot/operator identification software services, noise contour generation software services, customized and automated aircraft noise abatement procedure monitoring and reporting, and automated complaint response services. The Port also requires assistance to develop a replacement maintenance service agreement for the system as well as State of California certification of the noise monitoring system.

Projects in the technical program work scope will be federally funded through the Federal Aviation Administration Airport Grant Program. Professional services contracts that are awarded with federal funds shall be subject to all applicable federal contracting provisions for Professional Services Contracts.

3. REQUESTED SCOPE OF SERVICES

Set forth below is a summary of the anticipated scope of services solely to assist each

Respondent in understanding the Port's program objectives. The final scope of services and responsibilities of the Consultant will be set forth in the contract to be executed with the selected firm. The Port reserves the right to determine and approve the final program work scope and the costs for the final scope of work must not exceed the budget established by the FAA AIP grant.

A. Program Management Consulting Assistance:

The selected Consultant will be required to assist, to advise and to guide the Port of Oakland in the upgrade of the Oakland International Airport's noise and operations monitoring system.

Consultant responsibilities may include but will not be limited to the following:

- Advise the Port of Oakland on noise monitoring system design and procurement issues.
- Evaluate current remote noise monitor sites and propose alternatives for relocation and other technical installation specifications and develop project work scope, including RMT site selection and replacement plans.
- Assist the Port of Oakland in producing RFP(s) and selecting vendor(s) and subcontractors for the technical program work scope.
- Assist with program management (including management of subs) from pre-design work through completion of construction, installation and system acceptance.
- Assist vendor with fine-tuning the system calibration for correlating aircraft noise events with aircraft operations and runway assignments.
- Assist Port and vendor with development of system performance enhancement features and productivity tools for aircraft noise analysis and reporting functions.
- Assist with system acceptance testing and CA State certification.
- Assist in the production of a system maintenance service agreement.
- Perform feasibility studies including conceptual plans, estimates, and cost-benefit analyses of alternatives.
- Meet with representatives of the Port, other agencies and the community as requested by the Port and as required for the successful completion of a project.
- Provide assistance, as requested by the Port, in resolving design-related issues that arise during design, bidding, and construction.
- Cost estimating and budget tracking.
- Project scheduling and monitoring.

B. Technical Program Work Scope:

The list of system modules or enhancements presented below is provided to assist Respondents in understanding the intended scope of the noise monitoring system upgrade program under which the selected consultant will provide advice and guidance to the Port of Oakland.

Noise Monitor Replacement

The noise monitoring system upgrade program replaces the Larson Davis Remote Monitoring Terminals (RMT) with Lochard Environment Monitoring Units (EMU™) or equivalent equipment. The work will include the replacement of the sixteen (16) existing permanent noise monitors along with possible relocation of some units and the replacement of up to four (4) portable noise monitors. Most of the RMT units will remain at their current location but may require power supply and communications upgrades or replacement. Several RMT units will be relocated to new locations and require complete construction plans and engineering review as well as building permits. An evaluation of proposed noise monitoring sites will be required to determine the most appropriate sites. In addition, community outreach will be a required component of this activity.

Complaint Response Automation and Report Customization

All routine noise abatement program monitoring tasks and reports need to be automated to the maximum extent possible. Complaint response and noise abatement monitoring and compliance report functions must be automated in a manner that allows the operator to maintain and report on noise complaints and noise abatement procedure violations efficiently and accurately. Also, the air traffic control (ATC) recording module must be integrated with the noise and operations monitoring system.

Aircraft Operator/Pilot Identification Services

The system requires an upgraded aircraft operator registry service that allows multiple aircraft registry data sources to be stored and viewed in the noise monitoring system. This feature should be integrated with the noise monitoring system to allow for automation of advanced letter template management and mail merge functions.

System Calibration for Aircraft Operations and Noise Events

The consultant will coordinate with the noise monitoring system vendor and thoroughly evaluate all system algorithms and software program functions to maximize the correlations of aircraft flight operations to aircraft noise events as well as the automated assignment of aircraft landings and departures to the appropriate runways. Report generation functions will also be examined to assure that data collection and integration along with system query and reporting functions meet the highest standards of accuracy.

State of California Certification of Noise Monitoring System

The consultant may assist the Port in meeting any noise monitoring system certification requirements to meet the State of California noise monitoring system specifications. The Port may need to obtain a letter of certification from the State of California.

Noise Monitoring System Vendor Services Maintenance Agreement

The consultant may assist the Port in coordination with the vendor to renew a noise monitoring system maintenance agreement between the system vendor and the Port of Oakland. The maintenance agreement shall be thorough and detailed but practical and performance measures should be included where possible.

Low-Frequency Aircraft Noise Event Detection

The Port of Oakland has been attempting to address the concerns of local communities over the impacts of low-frequency aircraft noise for several years. Residents have perceived that low-frequency aircraft noise is associated with both back-blast noise caused by the departure of certain aircraft types and with the activities related to ground engine run-up noise including noise generated at the airport's GRE. Appropriate measurement tools and practices should be employed to generate the data necessary for responding to community issues. This project may include a study design phase, a measurement period and data analysis phase as well as the development and installation of a cost-effective system for maintaining a monitoring program.

Noise Contour Generation Software

The noise monitoring system should have a module that will automate noise contour production and maintain selectable noise contour graphics within the system's database. The automated contour software is a separate module that will use the FAA's Integrated Noise Model (INM), or similar software. The software must be certified for use in California State Title 21 Reports.

Website Design and Integration and Three-dimensional Flight Tracking

The noise monitoring system is used in conjunction with the Port's noise program website that provides an important communications link with the public. These enhancements will empower the public to perform independent research and file complaints thereby saving on staff resources. The system may also be upgraded to provide three-dimensional flight tracking for public display. This function should also allow the flight to be tracked by height above the ground in lieu of the current sea-level based mapping. These features should enhance the users interface and may be used in public presentations to improve community education.

4. PROJECT SCHEDULE

A proposed draft project schedule has been attached to the RFQ for the respondent's review. It is estimated that the project can be completed within a 20 to 24-month time frame.

5. DESCRIPTION OF CONSULTANT QUALIFICATIONS

The consultant must have recent and broad experience assisting airports with program management of noise monitoring system design, equipment acquisition and installation, and the development of system maintenance agreements. At a minimum, a Respondent must have direct experience in at least two similar projects within the past five years.

6. FORMAT AND REQUIRED CONTENTS FOR STATEMENT

A. Format

The Responder's Statement of Qualifications should be concise, well organized and

demonstrate the Responder's qualifications and experience applicable for conducting and providing the services requested. Responders will be evaluated based on the information submitted in accordance with the evaluation procedures described herein. The Statement of Qualifications must be limited to a maximum of twelve (12) double-sided pages (8½ X 11) of text (24 pages). The page count does not include the responder's cover letter, any pricing proposal, or full resume.

B. Content

The Statement of Qualifications submitted in response to this RFQ must be organized in the following order and shall include all of the following sections. Statement of Qualifications that are not in strict compliance with this requirement may be rejected.

1. Cover Letter
2. Executive Summary
One to two page (maximum) overview including highlights of response.
3. Identification of Responder
 - 3.1 Legal name, form of company, and address of all firms on responder's team, including prime and sub-consultants, if any.
 - 3.2 Name, title, address, and telephone number of contact person for prime firm.
 - 3.3 General background, capabilities, and staff resources for each firm.
 - 3.4 Location of office where staff are located and work will be accomplished.
4. Experience
Describe consultant's experience in completing airport noise monitoring system consulting programs that are similar in size and complexity. List a minimum of two (2) successfully completed programs, and any programs currently being performed that the consulting firm and its sub-consultants consider to have given them relevant experience to the type of work proposed in this RFQ. For each program or project, provide the following information: client name and contact person with telephone number/email, type of work performed, role of firm, key staff on project, and value of consulting contract. If the respondent's team has sub-consultants, their experience can count toward the requirement.
5. Program Organization and Key Personnel
Describe proposed program organization with reporting authorities.
 - 5.1 Identify individual who will serve as the project manager on this program and all key members, including sub-consultants, and the roles and responsibilities of each key team member.
 - 5.2 Provide qualifications for the project manager and key staff. (Full resumes may be provided outside of the page count.) Describe

how the project manager is qualified to accomplish the Scope of Work and how the project manager will be made available to serve the Port of Oakland. No change in the assigned project manager will be allowed without prior written approval of the Port. Ideally the nominated project manager will have a minimum of 10 years of experience which will include both hands on expertise and progressive project management experiences with airport noise monitoring systems infrastructure and operational systems expertise.

6. Consultant's Detailed Scope of Work

The respondent must describe the plan for conducting and/or providing the services requested. Work Scope should address:

- 6.1 Understanding of Program Requirements
- 6.2 Proposed Project Methodology/Approach
- 6.3 Technical approach presented in sufficient detail to demonstrate the respondent's understanding and ability to produce and deliver the required work product.
- 6.4 QA/QC measures that will be utilized on this program
- 6.5 Any other information believed to be relevant

7. Statement of Agreement with Port's Professional Services Agreement

The respondent shall provide a statement that demonstrates the consultant firm's commitment to enter into a contract with the Port based upon a review of the sample Port's Professional Services Agreement. Any exceptions to the terms of the Agreement must be identified in this statement.

7. SELECTION PROCESS

A. Review and Screening of Statements of Qualifications

The Port of Oakland staff will evaluate the responses/proposals received and develop a short list. The Port of Oakland will then notify all the respondents of the short list, confirm interview schedule, and conduct interviews with the key team members from the respondent firms. The final selection will be made on the combined merits of both the respondent's Statement of Qualifications and the Interview.

B. Selection Criteria

Responses will be evaluated on the following criteria:

- 1. Responder's experience in completing similar work
- 2. The Responder's proposed team:
 - 2.1 The experience, qualifications, and availability of the Project Manager.

- 2.2 The experience of the project team.
- 3. Responder's work plan:
 - 3.1 Understanding of the program and technical project requirements and ability to produce and deliver the required work product within budget and on schedule.
 - 3.2 Proposed approach and methodology to accomplish the scope of work and program/project goals.
 - 3.3 The QA/QC plan.
 - 3.4 Organization and presentation of qualifications.
- 4. Proposed pricing – price will be used for comparison purposes.
- 5. Effectiveness in complying with Port policies and requirements as stated in this RFQ as measured by completion of attached forms.
- 6. Demonstrated commitment to enter into contract with the Port as evidenced by their response to the Port's Professional Services Agreement.

8. SCHEDULE

RFQ available:	April 8, 2009
Mandatory Pre-submittal conference:	April 22, 2009
Final date for submitting written questions	5:00 p.m. - April 23, 2009
Statement of Qualification Due:	May 6, 2009
Short list of qualified consultants:	May 13, 2009
Consultant Interviews/Presentations:	May 27, 2009
Staff recommendations:	June 8, 2009
Aviation Committee review:	June 29, 2009
Board Approval of Consultant:	July, 2009
Contract preparation and execution:	<i>Approximately 4 to 6 weeks</i>

9. COMPLIANCE WITH PORT POLICY REQUIREMENTS

The selected Consultant will be required to comply with the following Port policy requirements. The following forms should be provided as appropriate in the Appendix and will not be counted against the page limit:

A. Disadvantaged Business Enterprise Participation:

This project is partially funded by the Federal Aviation Administration (FAA) through the Department of Transportation (DOT), and must comply with DOT's Disadvantaged Business Enterprise (DBE) Program regulations (see 49 Code of Federal Regulations, Part 26). DBEs, as defined in 49 CFR Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement.

The Port strictly prohibits all unlawful discrimination and preferential treatment in contracting and purchasing, including the award and administration of this project. The successful Respondent shall comply with the Port's non-discrimination policy and the DBE Rules and shall not discriminate against any business owner because of the owners' race, color, sex, or national origin in the award or performance of the Agreement.

In furtherance of the Port's nondiscrimination policy and in order to comply with Federal Aviation Administration ("FAA") regulations, the Port has implemented, and the successful Respondent shall cooperate with a program of recruitment, training, technical assistance and workshops to ensure that contracting and purchasing opportunities including the opportunities offered through this RFQ, are accessible and available to all qualified businesses, including DBEs.

The Port has not established a contract-specific DBE goal for this project. The Port expects to meet its DBE participation goals entirely through race-neutral means. The Port is required to report DBE accomplishments to the FAA (Appendix A, Part 26 – Uniform

Report of DBE Participation) annually. The successful Respondent will be required to report DBE participation quarterly to the Port as part of this effort.

Additionally, the successful Respondent shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Specifically, and not by way of limitation, the successful Respondent will sign and return to the Port's Project Technical Manager the certification of compliance with DOT DBE requirements referenced and incorporated into the binding contract by reference. Failure by the Respondent to carry out these requirements will be a material breach of contract, which may result in the termination of the contract or such other remedy as the Port deems appropriate.

The Port of Oakland's Non-Discrimination and Small/Local Business Utilization Policy including preference points allocation for local business, does not apply to this project.

B. Insurance Requirements:

The selected Respondent shall comply with the Port's insurance requirements, as specified in Appendix E to Attachment III, Sample Professional Services Agreement, below.

C. Living Wage Policy:

On March 5, 2002, the voters in the City of Oakland passed Measure I, adding to the City Charter Section 728 ("§728") entitled "Living Wage and Labor Standards at Port-assisted Businesses." §728 requires Port Aviation and Maritime businesses that meet specified minimum threshold requirements to pay all nonexempt employees a Living Wage rate established by City Ordinance and adjusted annually based on the Consumer Price Index for the San Francisco, Oakland and San Jose area. The current Living Wage rate as of July 1, 2008 is at least \$10.83 with credit given to the employer for the provision to covered employees of health benefits, and \$12.45 without credit for the provision of health benefits. Specifically, §728 applies to Port contractors and financial assistance recipients with the Aviation or Maritime divisions that have contracts worth more than \$50,000 and that employ more than 20 employees who spend more than 25% of their time on Port-related work. §728 also provides covered employers with incentives to provide health benefits to employees, establishes a worker retention policy, requires covered employers to submit quarterly payroll reports and requires covered employers to allow Port representatives access to payroll records in order to monitor compliance and labor organization representatives access to workforces during non-work time and on non-work sites. Covered employers are responsible for complying with the provisions of §728 from the date the covered contract is entered into. When a contract is awarded, the contractor will be required to fill out the attached Employer Self Evaluation Form and Certificate of Compliance (see Attachment I) and return them to the Social Responsibility Division. (i.e., do not include these forms in your statement of qualification). For more information, please call Connie Ng-Wong in the Port's Social Responsibility Division at (510) 627-1390.

Submit a written statement indicating that Respondent has reviewed the Living Wage Requirements, included herein as Attachment I to this Request for Qualifications, and that Respondent will comply with said requirements.

D. Web-Accessed Monitoring System (WAMS):

Respondents are alerted that the Port of Oakland has adopted an electronic monitoring system to satisfy certain reporting requirements. The successful Respondent will be required to utilize WAMS to satisfy said requirements.

E. Maritime and Aviation Project Labor Agreement (MAPLA):

The provisions of the Maritime and Aviation Project Labor Agreement (MAPLA) do not apply to this Request for Qualifications.

10. **ADDITIONAL PROVISIONS**

The following provisions apply to this Request for Qualifications:

A. Ownership of Statement of Qualifications:

All rights to information developed, disclosed, or provided in a Statement of Qualifications and its attendant submissions are the property of Port, unless a Respondent makes specific reference to data that is considered proprietary. To the extent that a Respondent claims any copyright, patent, or other intellectual property right in any portion of its Statement of Qualifications, submission of a Statement of Qualifications constitutes the Respondent's express (a) grant and assignment of a perpetual, transferable (in whole or in part), non-exclusive royalty-free license to the Port for all such portions, and (b) agreement that the Port may use any such intellectual property without charge for any lawful purpose in connection with other Port development projects, including without limitation the creation of derivative works and issuance of sublicenses.

B. Public Records Act:

i. Per the Public Records Act (Gov. Code 6250 *et seq.*), the Port will make available to the public the submitted qualifications and all correspondence and written questions submitted during the Request for Qualifications process. However, such disclosure shall not be made prior to the date on which the Port publishes a final Board agenda report recommending award of the contract. Except as otherwise required by law, the Port will not disclose trade secrets or proprietary financial information submitted in response to the Request for Qualifications. Any such trade secrets or proprietary financial information, which a Respondent believes should be exempted from disclosure, shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections shall not be permitted and shall be invalid. The specific information must be clearly identified as such.

ii. Upon a request for records regarding a submitted Statement, the Port will notify the Respondent involved of a specific time when the records will be made available for inspection. If the Respondent, in a timely manner, identifies any "proprietary, trade secret, or confidential commercial or financial" information which the Respondent determines is not subject to public disclosure, the Respondent will be required fully to intervene, justify such exemption, and secure appropriate injunctive orders in all fora exempting such records from disclosure. The Port reserves the right to independently determine whether any document is subject to

disclosure and to make such information available to the extent required by applicable law, without any restriction.

C. Indemnification:

If Respondent is selected to receive a contract, it will be required to agree to the following indemnity clause:

To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782 and 2782.6), Consultant shall defend (with legal counsel reasonably acceptable to the Port), indemnify and hold harmless Port and its officers, agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Consultant or its Subconsultants), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, the negligence, recklessness, or willful misconduct of Consultant, any Subconsultant directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee.

If there is an obligation to indemnify under this Section, Consultant shall be responsible for incidental and consequential damages resulting directly or indirectly, in whole or in part, from Consultant's acts or omissions.

D. Reimbursable Expenses:

All expenses incidental to performing Consultant's Basic Services including, but not limited to, reproduction of documents and other materials associated with Consultant's deliverables and presentation materials; reproduction of construction contractor's submittals; reproduction of Design Completion Consultants' submittals; transportation and subsistence; telephone, computer, facsimile, or other similar costs; and the like, shall be included within the Contract Price.

E. Port's Right to Modify:

Respondents are advised that the Port has not incurred any obligations or duties in soliciting this Request for Qualifications. The Port reserves the right to reject any or all qualifications submitted in response to this RFQ; to request additional information or clarification of information submitted; to cancel or modify, in part or in its entirety, this RFQ; to request new RFQ's or pursue any other means for obtaining the desired services; to waive any informalities or minor irregularities in the Statement of Qualifications, and other inconsequential deviations from the RFQ's requirements. The Board of Port Commissioners retains the right to award this project in part or in total to the Respondent(s) of its choice, and to decide to undertake the project or to terminate the project at any time prior to approval of a formal contract.

F. Exceptions to Port's Standard Professional Services Agreement

Submission of a Statement of Qualifications will confirm that the Respondent fully understands the provisions of the Sample Professional Services Agreement included herein as Attachment III to this Request for Qualifications. To the extent that the Respondent takes exception to any part of the Professional Services Agreement, all such objections shall be stated in the Respondent, specifically identifying the objectionable section, and including any of the Respondent's proposed amendments to the Professional Services Agreement. The Port will consider the scope of these modifications in its determination of the responsibility and experience of the Respondent.

G. Conflict of Interest, Pending Litigation or Removal from Position

Describe any arrangements, formal or informal, that the firm has with any party that might interfere with the firm's ability to provide services under this RFQ. Describe any litigation, administrative proceeding, or investigation (actual or pending) in which the firm is involved or to which it is subject that might have an adverse effect on its ability to fulfill its engagements under this RFQ. Indicate if your firm has been removed by any organization during the last five years, and explain the reasons for that action.

H. Non-Collusion Affidavit

Submit a signed and properly executed copy of the Non-Collusion Affidavit included herein as Attachment V to this Request for Qualifications.

I. Regulatory Compliance Statement

Submit a signed and properly executed copy of the Regulatory Compliance Statement included herein as Attachment VI to this Request for Qualifications.

11. LIST OF ATTACHMENTS

- I. Port of Oakland Living Wage Requirements
 - i. Employer Self Evaluation Form
 - ii. Certificate of Compliance
- II. Sample of Professional Services Agreement
- III. Non-Collusion Affidavit
- IV. Regulatory Compliance Statement
- V. Draft Project Schedule
- VI. (not used)
- VII. (not used)

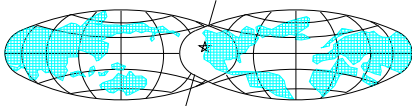
REQUEST FOR QUALIFICATIONS

ATTACHMENT I

PORT OF OAKLAND
LIVING WAGE REQUIREMENTS

Employer Self-Evaluation Form

Certificate of Compliance



PORT OF OAKLAND

Employer Evaluation for Port of Oakland Living Wage

COVERED BUSINESS CHECKLIST WRITE YES/NO ANSWER IN APPROPRIATE BOX

:

1. ☐ Is the Business entering into a contract, tenancy agreement or subordinate agreement (such as, subcontract, subtenancy, or sublicense) with the Port? *If no, go on to question 2. If yes, go on to question 3.*
2. ☐ Has the Business amended an existing contract, tenancy agreement or subordinate agreement at any time since April 2002? *If no to 1 and 2, stop here the business is not covered. If yes, go on to question 3.*
3. ☐ Is the contract with Aviation or Maritime divisions for a value of greater than \$50,000 over the life of the contract (over next five years if contract is for less than a year and expected to be renewed or extended)? *If no, stop here, the contract is not covered. If yes, go on to question 4.*
4. ☐ Is the contract for service other than the delivery of products, equipment or commodities? *If no, stop here the business is not covered. If yes, go on to question 5*
5. ☐ Does the Business employ more than 20 employees who spend at least 10 hours per week (4 hours per week if part time employees) working under the contract with the Port or on Port property? Indicate the number of employees that are employed by the Contractor _____. *If no, stop here the business is not covered. If yes, go on to question 6. Exemptions for specified employees of a covered employer*

All employees of a covered employer are required to be provided compensation and other benefits as provided under §728 of the Charter, except for specified employees exempt under the following exemptions. The following questions should be answered for each employee.

6. ☐ Does the employee work less than 25% of his/her time (10 hours per week for full time employee) under the contract with the Port? *If yes, stop here the specified employee is exempt. If no, go to question 7*
7. ☐ Is the employee under 21 years of age, employed by a government agency or nonprofit for after school or summer employment, or as a trainee for 90 days or less? *If yes, stop here the specified employee is exempt. If no, go to question 8.*

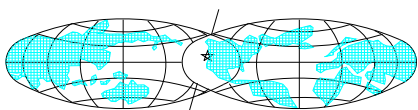
8. ☐ Has the Business obtained a waiver that covers the employee? *If yes, stop here the specified employee is exempt. If no, go to question 9.*
9. ☐ Is the employee participating in a bona-fide temporary job-training program in which a significant part of the compensation consists of acquiring specialized knowledge, abilities or skills in a recognized trade? *If yes, stop here the specified employee is exempt. If no, go to question 10.*
10. ☐ Is the employee a volunteer who is not compensated other than for incidental expenses or stipends? *If yes, stop here the specified employee is exempt. If no, go to question 11.*
11. ☐ Is the employee working for the Business less than 20 hours per week for a period of 6 months or less? *If yes, stop here the specified employee is exempt. If no, go to question 12.*
12. ☐ Of the remaining employees (employees for which no exemption applies as indicated by your answers to questions 6 through 11), are there 20 or fewer non-exempt employees working for the employer under the Port Contract? *If yes, stop here each of the remaining specified employee(s) is/are exempt. If no, each of the remaining specified employee(s) is covered by §728.*

The undersigned authorized representative of Contractor hereby certifies under penalty of perjury that all of the information on this form is true and accurate.

_____		_____
Company Name		Signature of Authorized Representative
_____		_____
Address		Type or Print Name
_____	_____	_____
Area Code/Phone	Date	Type or Print Title

Submit Completed Checklist to:

Connie Ng-Wong
 Port of Oakland
 Social Responsibility Division
 530 Water Street
 Oakland, CA 94607
 Phone: (510) 627-1390
 Fax: (510) 451-1656
 Email: cng-wong@portoakland.com



PORT OF OAKLAND

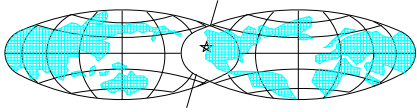
**City of Oakland City Charter §728 Living Wage
Compliance Checklist for Covered Employers**

**EMPLOYERS SUBJECT TO §728 OF THE CITY CHARTER MUST COMPLY WITH THE
FOLLOWING REQUIREMENTS:**

- 1) Pay all non-exempt employees the living wage rates (As of July 1, 2007, \$11.95 without health benefits or \$10.39, with health benefits. On July 1, 2008, these amounts will become \$12.45 without health benefits and \$10.83 with health benefits.) Port Ordinance No. 3666, as amended also requires that covered businesses provide employees at least twelve compensated days off per year, including holidays.
- 2) Pay at least \$1.56 per hour worked toward the provision of health care benefits for employees and/or their dependents, if the employer claims credit for health benefits.
- 3) **Provide written notification to each current and new employee, at time of hire, of his or her rights to receive the benefits under the provisions of these regulations.** The notification shall be provided in English, Spanish and other languages spoken by a significant number of the employees, and shall be posted prominently in communal areas at the work site. A copy of said notification is available from the Port Division of Social Responsibility.
- 4) Provide all employees earning less than \$12/hour notification in English, Spanish, and any other language spoken by a significant number of employees of their right to advance Earned Income Credit payments.
- 5) **Maintain a list of the name, address, date of hire, occupation classification, rate of pay, benefits paid for each of its employees and, compensated time off –and submit this list to the Port’s Social Responsibility Division, attention - Connie Ng-Wong, Living Wage Compliance Officer, by March 31, June 30, September 30, and December 31 of each year.** If a covered employer has obtained a waiver from the Port Board of Directors, then the employer must still submit an annual payroll report covering each of its employees by December 31 of each year. Failure to provide the list within five days of the due date will result in a penalty of \$500 per day. Covered employers shall maintain payrolls and basic records for all employees and shall preserve them for a period of at least three years after the close of the compliance period.
- 6) Require subcontractors, tenants and subtenants, or licensees who are covered by these requirements to comply with the provisions of these regulations. **Covered employers shall be responsible for including language committing the subcontractor’s, tenant’s or licensee’s agreement to comply, in the contract with the subcontractor.** Covered employers shall submit a copy of such subcontracts or other such agreements to the Port Division of Social Responsibility.
- 7) Permit authorized Port representatives access to work sites and, with employee consent, relevant payroll records for the purpose of monitoring compliance with these regulations, investigating employee complaints of non-compliance and evaluating the operation and effects of these regulations, including the production for inspection and copying of its payroll records for any or all of its employees for

the applicable compliance period. Permit a representative of the labor organizations in its industry to have access to its workforce at the Port during non-working time and in non-work areas to ensure compliance.

Employers who fail to submit documents, declarations or information required to demonstrate compliance with these regulations shall be deemed noncompliant or non-responsive and subject to the remedies as set forth in §728.



PORT OF OAKLAND
CERTIFICATE OF COMPLIANCE – LIVING WAGE

The City of Oakland Living Wage Charter §728 ("§728") and Port Ordinance No. 3666 ("Ordinance 3666") as amended, provide that certain employers that enter into a contract, lease, license (or a subcontract, sublease, sublicense, or other agreement) with the Port for \$50,000 or more over the term of the contract and certain recipients of Port financial assistance for \$50,000 or more shall pay a prescribed minimum level of compensation to their covered employees ("Employees").

(a) The undersigned ("Contractor") submits this certificate under penalty of perjury and as a condition of payment of its invoice(s) for service provided under the _____ agreement between the Port and Contractor.

- 1) Contractor hereby certifies that it is in compliance with §728 and Ordinance 3666 with respect to all non-exempt Employees of Contractor engaged in Port-related employment or work on Port property.
- 2) Contractor hereby acknowledges that the Port is relying on Contractor's certification of compliance with §728 and Ordinance 3666 as a condition of payment of Contractor's invoice(s).
- 3) Contractor understands that it may be subject to fines or penalties for noncompliance with §728 and Ordinance 3666 up to and including potential fines of \$500 per day until Contractor complies.
- 4) Contractor hereby certifies that claims, records and statements relating to Contractor's compliance with §728 and Ordinance 3666 are true and accurate, that such claims, records and statements are made with the knowledge that the Port will rely on such claims, records and statements, and that such claims, records and statements are submitted to the Port for the express benefit of Contractor's employees engaged in Port-related employment or work on Port property.

Please check the appropriate box and sign below

☐ Contractor hereby certifies its compliance with all of its obligations under §728 and Ordinance 3666;

or

☐ Contractor hereby certifies that all Employees of Contractor working under Contractor's contract with the Port are compensated at wage rate(s) greater than \$12.00 per hour;

or

☐ Contractor hereby certifies that it is not currently covered by §728 or Ordinance 3666. Contractor further certifies that should §728 or Ordinance 3666 become applicable, Contractor will comply with all of its Living Wage obligations.

All terms used herein and not defined shall have the meaning ascribed to such terms in §728.

The undersigned authorized representative of Contractor hereby certifies under penalty of perjury that all of the information on this form is true and accurate.

Company Name

Signature of Authorized Representative

Address

Type or Print Name

Area Code/Phone

Date

Type or Print Title

Submit to: Connie Ng-Wong
Port of Oakland
Social Responsibility Division
530 Water Street
Oakland, CA 94607
Email: cng-wong@portoakland.com

Revised June 2, 2008

REQUEST FOR QUALIFICATIONS

ATTACHMENT II

SAMPLE OF PROFESSIONAL SERVICES AGREEMENT

PROFESSIONAL SERVICES AGREEMENT

Between



And

«ConsultantnaMe»

[«ScopeofWork»]

(Contract No. «Resolution»)

Dated

«EffectiveDate»

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PORT OF OAKLAND

CONTRACT FOR PROFESSIONAL SERVICES

«ConsultantnaMe»
(«ScopeofWork»)

THIS CONTRACT FOR PROFESSIONAL SERVICES ("Contract") is entered into on «EffectiveDate», between the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners ("Port"), and «ConsultantnaMe» ("Consultant"), identified on Appendix D, who agree as follows:

1. SCOPE OF PROFESSIONAL SERVICES.

The Consultant shall perform all services described in Appendix A ("Services"), for the compensation set forth in Appendix B ("Payment"), which appendices are attached and made a part of this Contract.

2. TERM.

This Contract shall become effective upon its execution by Consultant and by Port (including approval by the Port Attorney). All Services whenever performed shall be deemed performed under this Contract, and all compensation paid to Consultant on account of the Services performed shall be deemed as payments of the Compensation.

3. STANDARD OF PERFORMANCE.

Consultant represents that it possesses all necessary training, licenses and permits to perform the Services, and that its performance of the Services will conform to the standard of practice of a professional that specializes in performing professional services of like nature and complexity of the Services.

4. SUBCONSULTANTS.

Consultant shall perform the Services using the persons and subconsultants listed in Appendix A. Consultant shall hire only qualified persons or firms who are experienced in performing work of like nature and complexity to the Services, and who agree to be bound to the terms of the Contract to the extent of this scope of services. Consultant may substitute personnel or subconsultants prior to any such subconsultants commencing work only upon the Project Manager's written consent, which may be withheld or delayed in Port's discretion.

5. INDEMNIFICATION AND LIABILITY.

5.1 To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782), Consultant shall defend (with legal counsel chosen or approved by the Port Attorney), indemnify and hold harmless Port and its officers, agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Consultant or its Subconsultants), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise from or relate to, directly or indirectly, in whole or in part, from: (1) the Services under this Agreement, or any part thereof, or (2) any negligent act or omission of Consultant, any Subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee, but shall apply

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to all other Liabilities.

5.2 Consultant shall defend (with legal counsel chosen or approved by the Port Attorney), indemnify and hold harmless the Indemnitees from all loss, cost, damage, expense, liability or claims, in law or in equity, including attorneys' fees, court costs, litigation expenses and fees of expert consultants or expert witnesses, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by Port, or any of the other Indemnitees, of articles or Services to be supplied in the performance of this Agreement.

6. NOTICES.

The Port and Consultant shall provide notices to the other in the form of a writing, sent by facsimile and by U.S. Mail. If to the Port, it shall be addressed to the Project Manager (identified on Appendix E) at:

**Port of Oakland
530 Water Street
Oakland, CA 94607**

or to such other place as the Port may such similar notice in writing designate. If to the Consultant, the same shall be addressed to the individual and address noted on Appendix D hereto or to such other place as the Consultant may by such similar notice in writing designate.

7. INSURANCE.

At its own expense, the Consultant shall maintain in force during the term of this Agreement the liability insurance of the type and in the amount required by Appendix C hereof. The Consultant agrees that the Port shall be named as an additional insured by endorsement under such liability insurance policy or policies. Port will not be named as an additional insured on the professional liability, workers' compensation or employer's liability insurance. Deductibles or self-insured retentions shall not exceed Ten Thousand and 00/100 Dollars (\$10,000.00) unless the Port's Risk Manager approves in writing a higher deductible or retention. Such insurance policy or policies must be issued by carriers financially acceptable to the Port. The Consultant's insurance shall be primary insurance as respects to the Port, its officers, officials, employees and agents. Any insurance or self-insurance maintained by the Port shall not be called to contribute in the event of loss.

All such policies shall be endorsed with a severability of interest or cross-liability endorsement, reading generally as follows:

Cross-Liability - In the event of one of the assureds incurring liability to any other of the assureds, this policy shall cover the assured against whom claim is or may be made in the same manner as if separate policies had been issued to each assured. Nothing contained herein shall operate to increase underwriters' limit of liability.

An originally executed certificate or certificates, in a form provided by the Port or reasonably satisfactory to the Port, evidencing such insurance coverage shall be filed with the Port's Risk Manager prior to the commencement of the term of this Agreement, and said certificate(s) shall provide that such insurance coverage will not be cancelled or reduced without at least thirty (30) days' prior written notice to the Port's Risk Manager. At the Port's request from time to time the Consultant promptly shall provide to the Port complete copies of liability insurance policies maintained pursuant to this Agreement. At least fifteen (15) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed or extended shall be filed with the Risk Manager. If such coverage is cancelled or reduced, the Consultant shall, within fifteen (15) days after receipt of written notice from the Port of such cancellation or reduction in coverage but in no event later than the effective date of cancellation or reduction, file with the Port's Risk Manager a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, the Port may without further notice and at its option either (1) exercise the Port's rights; or (2) procure such insurance coverage at the Consultant's expense and the

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Consultant shall promptly reimburse the Port for such expense.

8. INDEPENDENT CONTRACTOR.

Consultant shall at all times be deemed an independent contractor wholly responsible for the manner in which it performs the Services, and fully liable for the acts and omissions of its employees, subconsultants and agents. Under no circumstances shall this Contract be construed as creating an employment, agency, joint venture or partnership relationship between Port and Consultant, and no such relationship shall be implied from performance of this Contract. Terms in this Contract referring to direction from Port shall be construed as providing for direction as to policy and the result of services only, and not as to means and methods by which such a result is obtained. Consultant shall pay all taxes (including California sales and use taxes) levied upon this Contract, the transaction, or the Services and/or goods delivered pursuant hereto without additional compensation, regardless of which party has liability for such tax under applicable law, and any deficiency, interest or penalty asserted with respect thereto. Consultant represents that it will collect, report, and pay all sales and or use taxes to the State Board of Equalization. Upon full payment, the Consultant will issue the Port a receipt pursuant to California Revenue and Taxation Code Section 6203, relieving the Port of all liability for any tax relating to the scope of this Agreement. The Consultant shall pay all other taxes including but not limited to any applicable City of Oakland business tax, not explicitly assumed in writing by the Port hereunder. The Consultant shall comply with all valid administrative regulations respecting the assumption of liability for the payment of payroll taxes and contributions as above described and to provide any necessary information with respect thereto to proper authorities.

9. CONFLICT OF INTEREST; CONFIDENTIALITY.

9.1 Consultant represents that it is familiar with Section 1090 and Section 87100 et seq. of the Government Code of the State of California, and that it does not know of any facts that constitute a violation of said sections.

9.2 Consultant represents that it has completely disclosed to Port all facts bearing upon any possible interests, direct or indirect, which Consultant believes any member of Port, or other officer, agent or employee of Port or any department presently has, or will have, in this Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute ground for termination of this Agreement by Port for cause. Consultant agrees to comply with all conflict of interest codes adopted by the City of Oakland and Port of Oakland and their reporting requirements.

9.3 Consultant covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of Services required under this Agreement. Without limitation, Consultant represents to and agrees with the Port that Consultant has no present, and will have no future, conflict of interest between providing the Port the Services hereunder and any interest Consultant may presently have, or will have in the future, with respect to any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the Port, as determined in the reasonable judgment of the Port. The provisions of this Section 9 shall remain fully effective indefinitely after termination of Services to the Port hereunder.

9.4 Consultant acknowledges and agrees that, in the performance of the Services under this Agreement or in the contemplation thereof, Consultant may have access to private or confidential information which may be owned or controlled by Port and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Port. Consultant agrees that all information disclosed by Port to or discovered by Consultant shall be held in strict confidence and used only in performance of the Agreement. Consultant shall exercise the same standard of care to protect such information as a reasonably prudent Consultant would use to protect its own proprietary data, and shall not accept employment adverse to the Port's interests where such confidential information could be used adversely to the Port's interests. Consultant agrees to notify the Port immediately in writing if it is requested to disclose any information made known to or discovered by Consultant during the performance of or in connection with this Agreement.

9.5 Any publicity or press releases with respect to the Project or Services shall be under the Port's sole

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discretion and control. Consultant shall not discuss the Services or Project, or matters pertaining thereto, with the public press, representatives of the public media, public bodies or representatives of public bodies, without Port's prior written consent. Consultant shall have the right, however, without Port's further consent, to include representations of Services among Consultant's promotional and professional material, and to communicate with persons or public bodies where necessary to perform under this Agreement.

9.6 The provisions of this Section 9 shall remain fully effective indefinitely after termination of Services to the Port hereunder.

10. SUSPENSION AND TERMINATION OF SERVICES.

(i) Port may direct Consultant to suspend, delay or interrupt Services, in whole or in part, for such periods of time as Port may determine in its sole discretion. Port may issue such directives without cause. Port will issue such directives in writing. Suspension of Services shall be treated as an excusable delay. (ii) Port may terminate performance of the Services under this Contract in whole, or from time to time in part, for default, should Consultant commit a material breach of this Contract, or part thereof, and not cure such breach within ten (10) calendar days of the date of Port's written notice to Consultant demanding such cure. In the event Port terminates this Contract for default, Consultant shall be liable to Port for all loss, cost, expense, damage and liability resulting from such breach and termination. (iii) Port may terminate performance of the Services under this Contract in whole, or from time to time in part, for convenience, whenever Port determines that such termination is in Port's best interests. In the event Port terminates this Contract for convenience, Consultant shall be entitled to recover its costs expended up to the termination plus reasonable profit thereon to the termination date, but may recover no other cost, damage or expense.

11. OWNERSHIP OF WORK PRODUCT.

Any interest (including copyright interests) of Consultant or its subcontractors or subconsultants, in studies, reports, memoranda, computational sheets, drawings, plans or any other documents (including electronic media) prepared by Consultant or its subcontractors or subconsultants in connection with the Services, shall become the property of the Port. To the extent permitted by Title 17 of the United States Code, work product produced under this Contract shall be deemed works for hire and all copyrights in such works shall be the property of the Port. With Port's prior written approval, Consultant may retain and use copies of such works for reference and as documentation of experience and capabilities.

12. AUDIT/INSPECTION OF RECORDS.

12.1 Consultant shall maintain all documents and records prepared by or furnished to Consultant during the course of performing the Services for at least three (3) years following completion of the Services, except that all such items pertaining to hazardous materials shall be maintained for at least thirty (30) years. Such records include, but are not limited to, correspondence, internal memoranda, calculations, books and accounts, accounting records documenting its work under its Contract, and invoices, payrolls, records and all other data related to matters covered by this Contract. Consultant shall permit Port to audit, examine and make copies, excerpts and transcripts from such records. The State of California or any federal agency having an interest in the subject of Contract shall have the same rights conferred to Port by this section. Such rights shall be specifically enforceable.

12.2 The Consultant shall maintain full and adequate records in accordance with Port requirements to show the actual costs incurred by the Consultant in the performance of this Agreement. If such books and records are not kept and maintained by Consultant within a radius of fifty (50) miles from the offices of the Port at 530 Water Street, Oakland, California, Consultant shall, upon request of the Port, make such books and records available to the Port for inspection at a location within said fifty (50) mile radius or Consultant shall pay to the Port the reasonable, and necessary costs incurred by the Port in inspecting Consultant's books and records, including, but not limited to, travel, lodging and subsistence costs. Consultant shall provide such assistance as may be reasonably required in the course of such inspection. The Port further reserves the right to examine and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the Port, and the Consultant shall in no event dispose of, destroy, alter, or

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mutilate said books, records, accounts, and data in any matter whatsoever for three (3) years after the Port makes the final or last payment or within three (3) years after any pending issues between the Port and Consultant with respect to this Agreement are closed, whichever is later.

12.3 If the Consultant's books and records have been generated from computerized data, Consultant agrees to provide the Port or its representative extracts of data files in a computer readable format on data disks, e-mail with attached files or suitable alternative computer data exchange formats. The Consultant should not charge the Port for the reasonable use of the Consultant's photocopying machine while conducting the audit, nor for any cost of retrieving, downloading to diskette, and or printing any records or transactions stored in magnetic, optical, microform or other media.

13. NON-DISCRIMINATION.

Consultant acknowledges that it has received and reviewed a copy of the most current version of the Port of Oakland's Unlawful Harassment Policy and Procedures. The purpose of these procedures is to provide an effective and expedited system of resolving allegations of employment discrimination and prevention of unlawful harassment in the workplace. The Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry age (over 40), physical or mental disability, cancer-related medical condition, a known genetic pre-disposition to a disease or disorder, veteran status, marital status, or sexual orientation. Consultant shall take affirmative action to ensure that applicants and employees are treated fairly. Such action shall include, but not be limited to the following: hiring, upgrading, recruitment, advertising, selection for training, including apprenticeship, demotion, transfer, compensation, lay-off or termination, or any other term or conditions of employment.

14. DISPUTES.

Consultant shall continue its work throughout the course of any dispute, and Consultant's failure to continue work during a dispute shall be a material breach of this Contract.

15. CALIFORNIA LAW.

This Contract shall be deemed to have been executed in the City of Oakland, Alameda County, California. Enforcement of this Contract shall be governed by the laws of the State of California, excluding its conflict of laws rules. The exclusive venue for all litigation arising from or relating to this Contract shall be in Alameda County, California. Should any clause, provision or aspect of this Contract be determined at any time to be unenforceable or in contravention of law, then the remaining clauses and provisions of this Contract shall be enforceable to the fullest extent permitted by law and construed to give effect to fullest extent possible the intent of this Contract.

16. NO THIRD PARTY BENEFICIARIES.

Except as expressly provided in this Contract, nothing in this Contract shall operate to confer rights or benefits on persons or entities not party to this Contract. Time is of the essence in the performance of this Contract.

17. ENTIRE CONTRACT.

This Contract and any written modification shall represent the entire and integrated agreement between the parties hereto regarding the subject matter of this Contract, shall constitute the exclusive statement of the terms of the parties' agreement, and shall supersede any and all prior negotiations, representations or agreements, written or oral, express or implied, that relate in any way to the subject matter of this Contract or written modification. All prior negotiations are merged into this Contract and shall be inadmissible in any enforcement of this Contract.

18. NO WAIVER.

The granting of any progress payment, and any inspections, reviews, approvals or oral statements by any Port representative, or certification by any governmental entity, shall in no way limit Consultant's obligations under

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this Contract. Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require strict performance of any provision of this Contract, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every provision hereof. This Contract may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by fully authorized representatives of Port and Consultant.

19. STATUTES OF LIMITATION.

As between the parties to this Contract, any applicable statute of limitations for any act or failure to act shall commence to run on the date of Port's issuance of the final Certificate for Payment, or termination of this Contract, whichever is earlier, except for latent defects, for which the statute of limitation shall begin running upon discovery of the defect and its cause.

20. COVENANT AGAINST CONTINGENT FEES:

20.1 Consultant warrants that no person or agency has been employed or retained to solicit or obtain the Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Port, at its option, may annul the Agreement or deduct from the contract price or otherwise recover from Consultant the full amount of the contingent fee.

20.2 As used in this Section, "bona fide agency" means an established commercial or selling agency, maintained by Consultant for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence.

20.3 As used in this Section, "bona fide employee" means a person, employed by Consultant and subject to Consultant's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence.

20.4 As used in this Section, "contingent fee" means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Port contract.

20.5 As used in this Section, "improper influence" means any influence that induces or tends to induce a Port Commissioner, employee or officer to give consideration or to act regarding a Port contract on any basis other than the merits of the matter.

21. SEVERABILITY.

Any provision or portion thereof of this Contract prohibited by, or made unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions or portions thereof of this Contract. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Contract may be deemed to be a valid and binding agreement enforceable in accordance with its terms to the greatest extent permitted by applicable law.

22. COMPLIANCE WITH LAWS.

22.1 Consultant represents that it will comply with all applicable laws, ordinances, general rules or regulations, permits, or land use restrictions or limitations at any time applicable thereto of any public or governmental authority, including the City and the Port, including but not limited to The Charter of the City (including without limitation Section 728 entitled "Living Wage and Labor Standards at Port-Assisted Businesses" and Port Ordinance No. 3666 entitled "An Ordinance Establishing a Living Wage Requirement") in the performance of the Services, regardless of whether such laws are specifically stated in this Agreement and regardless of whether such laws are in effect on the date hereof. Consultant shall comply with all security

«ConsultantnaMe»

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requirements imposed by authorities with jurisdiction over the Project (including, but not limited to, Federal Aviation Administration, U.S. Department of Transportation, and other government agencies), and will provide all information, work histories and/or verifications as requested by such authorities for security clearances or compliance.

22.2 Consultant further represents that all plans, drawings, specifications, designs and any other product of the Services will comply with all applicable laws, codes and regulations, consistent with the standard of care in this Agreement.

22.3 Consultant, as a condition of execution of this Contract certifies under penalty of perjury and as a condition of payment of its invoice(s) for service provided under this Contract as follows:

- a. All Employees, as defined respectively under Port Ordinance No. 3666, and Section 728 of the Charter of the City of Oakland (Hereinafter "Living Wage laws"), as amended from time to time, engaged in Covered Activities (as defined in the respective Living Wage laws) shall be compensated in compliance with the requirements of the respective and applicable Living Wage laws;
- b. Claims, records and statements relating to Consultant's compliance with the Living Wage laws are true and accurate, and are made with the knowledge that the Port will rely on same, and that they are submitted to the Port for the express benefit of Consultant's employees engaged in Covered Activities;
- c. Should the Living Wage laws not apply to Consultant at the time this Contract is entered into, but thereafter become applicable, Consultant will comply with all of its obligations under the respective Living Wage laws, when applicable; and
- d. All terms used in this Section 22.3 and not defined shall have the meaning ascribed to such terms in the respective applicable Living Wage laws.

23. AGENT FOR SERVICE OF PROCESS.

Pursuant to California Code of Civil Procedure, Section 416.10, Consultant hereby designates an agent for service of process as identified in Appendix D hereto.

Consultant may at any time designate a new agent for service in the State of California by providing written notice, duly executed in the same manner as this Agreement, of the full name and address of its new agent. Unless otherwise agreed in writing by the Port of Oakland, no attempt to revoke the agent's authority to receive service shall be valid unless Port of Oakland has first received a duly executed designation of a new agent meeting the requirements of California law.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day first mentioned above.

CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port Commissioners,

By: _____
Omar R. Benjamin
Executive Director

«ConsultantnaMe»,
a _____

By: _____

Print Name and Title
(If Corporate: Chairman, President or Vice President)

Attest _____

Print Name and Title
(If Corporate: Secretary, Assistant Secretary,
Chief Financial Officer, or Assistant Treasurer)

Approved as to form and
legality this _____ day of
_____ 2008.

DAVID L. ALEXANDER
Port Attorney

Port Resolution No. «Resolution»

P.A.#: _____

**THIS AGREEMENT SHALL NOT BE VALID
OR EFFECTIVE FOR ANY PURPOSE
UNLESS AND UNTIL SIGNED BY THE PORT
ATTORNEY.**

APPENDIX A – SCOPE OF SERVICES

This is an appendix attached to, and made a part of, the Contract dated «EffectiveDate», between the City of Oakland acting through its Board of Port Commissioners (“Port”) and «ConsultantnaMe» (“Consultant”) for the provision of professional services.

SCOPE OF WORK

APPROVED SUBCONSULTANTS: Consultant shall use only the following personnel and subconsultants in performing Services.

«ConsultantnaMe»

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APPENDIX B – PAYMENT

This is an appendix attached to, and made a part of, the Contract dated «EffectiveDate» between the City of Oakland acting through its Board of Port Commissioners (“Port”) and «ConsultantnaMe» (“Consultant”) for the provision of professional services.

1. **Basic Services.** The Port will pay Consultant for Basic Services, a maximum compensation of «Compensation» (Contract Price”), which sum includes costs for reimbursable expenses as identified below. Such payment shall be full compensation for all Basic Services required, performed or accepted under this Contract. If Port and Consultant previously executed a purchase order for services within the scope of the Services of this Contract, then the services performed and the compensation paid under that purchase order shall be subject to the terms of this Contract and the previous payments deemed payments against the Contract Price established in this Appendix. Such maximum compensation may only be increased as follows:

- ☐ With the prior written approval of the Executive Director for an additional amount not to exceed the limit authorized by the Board in Resolution No. «Resolution». Increase in maximum compensation with additional changes in scope of work shall be documented by a supplemental agreement to this contract.
- ☐ With the adoption of authorizing resolution by the Board of Port Commissioners.

2. **Payment Schedule.** Progress payments for Basic Services for each phase of the work shall be made as follows:

- ☐ upon completion of the work
- ☐ as invoiced
- ☐ monthly
- ☐ as set forth in the attached schedule.

3. **Reimbursable Expenses.** Reasonable expenses to be reimbursed upon approval of Project Manager.

- ☐ Yes (IDENTIFY)
- ☐ No
- ☐ Limits:

4. **Invoices.** All payments shall require a written invoice from Consultant in a form acceptable to Port. Port shall make payment on approved amounts within each invoice within 30 days of receipt. **Original invoices shall be sent directly to the Technical Manager.**

«ConsultantnaMe»

45894.v2

Revised: 7/19/06



PORT OF OAKLAND

INSURANCE REQUIREMENT

<u> X </u>	Premises and Operations
<u> X </u>	Blanket Contractual
<u> X </u>	Product Liability including Completed Operations
<u> X </u>	Broad Form Property Damage
<u> X </u>	Personal Injury
<u> X </u>	Independent Contractor's Coverage
<u> X </u>	Owned, Non-owned and Hired Automobile Liability \$1,000,000 Limit (\$5,000,000 Limit if operating on AOA)
<u> </u>	Pollution Legal Liability

One Million And 00/100 (\$1,000,000.00)
Three Million And 00/100 (\$3,000,000.00)

<u> X </u>	Statutory Workers' Compensation coverage under California law.
<u> X </u>	Employer's Liability coverage for no less than One Hundred Thousand Dollars (\$100,000)
_____	Endorsements evidencing Longshoreman and Harbor Workers' coverage and Jones Act coverage (if applicable).
<u> X </u>	Subrogation Waiver.

 X Consultant shall obtain, at no expense to the Port, Professional Liability insurance for no less than the sum of \$1,000,000

 In the event that the Consultant is able to obtain, at no expense to the Port, Professional Liability insurance for whatever limit is available, the Port will be provided with evidence of such coverage.

 X Port of Oakland, it's Board of Port Commissioners, Officers, Agents and Employees as Additional Insured **BY**
ENDORSEMENT TO THE GENERAL LIABILITY POLICY.

- X 30-day advance Notice of Cancellation.
- X Cross-Liability (Severability of Interest) Clause.
- X Coverage is Primary & Non-Contributory.
- X Deductibles or Self-Insured Retentions Over \$10,000.00 **Must** be Approved by Risk Manager.

Port of Oakland
Attn: Risk Management Department
530 Water Street
Oakland, CA 94607
Fax #: 510-627-1626
scaplan@portoakland.com

Insurance Requirements SAC 3/2005

APPENDIX D

CONSULTANT AND CONSULTANT'S NOTICE ADDRESS

Full Legal Name of Consultant:

«ConsultantnaMe»

Corporate Address:

Form of Business Entity (Check one)

- ☐ Sole proprietorship
☐ Corporation: State of _____
☐ Partnership: ☐ General ☐ Limited
☐ Limited Liability Company
☐ Other: _____

If Corporation: (*Required Information*)
Agent for Service of Process (Name and Address)

Contact Individual / Position:

Telephone No.:

Facsimile No.:

E-Mail Address (if any):

Website (if any):

«ConsultantnaMe»

45894.v2

Revised: 7/19/06



APPENDIX E
PROJECT MANAGER

Division Director

Technical Manager

«ConsultantnaMe»

45894.v2

Revised: 7/19/06



PORT OF OAKLAND

REQUEST FOR QUALIFICATIONS

ATTACHMENT III

NON-COLLUSION AFFIDAVIT

NON COLLUSION AFFIDAVIT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

Executed under penalty of perjury under the laws of the State of California.

(Signature of Principal)

Notary Public of the State of _____ (Seal)
In and for the County of _____
My Commission expires _____

Non-Collusion Affidavit - 1

(If Proposer [including any partner or venturer of a partnership or joint venture Proposer] is a corporation, this affidavit must be signed by the Chairman, President or Vice President and by the Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer.)

(If Proposer's affidavit on this form is made outside the State of California, the official position of the person taking such affidavit shall be certified according to law.)

REQUEST FOR QUALIFICATIONS

ATTACHMENT IV

REGULATORY COMPLIANCE STATEMENT

REGULATORY COMPLIANCE STATEMENT

Contractor shall submit a complete and fully executed copy of this Regulatory Compliance Statement for the Port's review with its proposal. The failure to submit this document as specified may be grounds for rejecting the proposal as non-responsive. If the Contractor is a corporation, provide the following information for each person who is either (a) an officer of the corporation (president, vice president, secretary, treasurer), or (b) the owner of at least ten percent of the corporation's stock. If the Contractor is a partnership, provide the following information for each partner who owns 10 percent or more of the firm. If the Contractor is a joint venture, provide the following information for each firm that is a member of the joint venture.

1. At the time of submitting this form, is your firm ineligible to bid on or be awarded a public works contract, or perform as a subcontractor on a public works contract, pursuant to either Labor Code section 1777.1 or Labor Code section 1777.7?

☐ Yes ☐ No

If the answer is "Yes," state the beginning and ending dates of the period of debarment:

2. Has CAL OSHA cited and assessed penalties against your firm for any "serious," "willful" or "repeat" violations of its safety or health regulations in the past five years?

NOTE: If you have filed an appeal of a citation, and the Occupational Safety and Health Appeals Board has not yet ruled on your appeal, you need not include information about it.

☐ Yes ☐ No

If "yes," attached a separate signed page describing the citations, including information about the dates of the citations, the nature of the violation, the project on which the citation(s) was or were issued, the amount of penalty paid, if any. If the citation was appealed to the Occupational Safety and Health Appeals Board and a decision has been issued, state the case number and the date of the decision.

3. Has the federal Occupational Safety and Health Administration cited and assessed penalties against your firm in the past five years?

NOTE: If you have filed an appeal of a citation and the Appeals Board has not yet ruled on your appeal, or if there is a court appeal pending, you need not include information about the citation.

☐ Yes ☐ No

If "yes," attach a separate signed page describing each citation.

4. Has the EPA or any Air Quality Management District or any Regional Water Quality Control Board cited and assessed penalties against either your firm or the owner of a project on which your firm was the contractor, in the past five years?

NOTE: If you have filed an appeal of a citation and the Appeals Board has not yet ruled on your appeal, or if there is a court appeal pending, you need not include information about the citation.

☐ Yes ☐ No

If "yes," attach a separate signed page describing each citation.

5. Within the last five years has there ever been a period when your firm had employees but was without workers' compensation insurance or state-approved self-insurance?

☐ Yes ☐ No

If "yes," please explain the reason for the absence of workers' compensation insurance on a separate signed page. If "No," please provide a statement by your current workers' compensation insurance carrier that verifies periods of workers' compensation insurance coverage for the last five years. (If your firm has been in the construction business for less than five years, provide a statement by your workers' compensation insurance carrier verifying continuous workers' compensation insurance coverage for the period that your firm has been in the construction business.)

Prevailing Wage and Apprenticeship Compliance Record

6. Has there been more than one occasion during the last five years in which your firm was required to pay either back wages or penalties for your own firm's failure to comply with the **state's** prevailing wage laws?

NOTE: This question refers only to your own firm's violation of prevailing wage laws, not to violations of the prevailing wage laws by a subcontractor.

☐ Yes ☐ No

If "yes," attach a separate signed page or pages, describing the nature of each violation, identifying the name of the project, the date of its completion, the public agency for which it was constructed; the number of employees who were initially underpaid and the amount of back wages and penalties that you were required to pay.

7. During the last five years, has there been more than one occasion in which your own firm has been penalized or required to pay back wages for failure to comply with the **federal** Davis-Bacon prevailing wage requirements?

☐ Yes ☐ No

If "yes," attach a separate signed page or pages describing the nature of the violation, identifying the name of the project, the date of its completion, the public agency for which it was constructed; the number of employees who were initially underpaid, the amount of back wages you were required to pay along with the amount of any penalty paid.

8. At any time during the last five years, has your firm been found to have violated any provision of California apprenticeship laws or regulations, or the laws pertaining to use of apprentices on public works?

NOTE: You may omit reference to any incident that occurred prior to January 1, 1998, if the violation was by a subcontractor and your firm, as general contractor on a project, had no knowledge of the subcontractor's violation at the time they occurred.

☐ Yes ☐ No

If "yes," provide the date(s) of such findings, and attach copies of the Department's final decision(s).

Criminal Matters and Related Civil Suits

9. Has your firm or any of its owners, officers or partners ever been found liable in a civil suit or found guilty in a criminal action for making any false claim or material misrepresentation to any public agency or entity?
☐ Yes ☐ No
If "yes," explain on a separate signed page, including identifying who was involved, the name of the public agency, the date of the investigation and the grounds for the finding.
10. Has your firm or any of its owners, officers or partners ever been convicted of a crime involving any federal, state, or local law related to construction?
☐ Yes ☐ No
If "yes," explain on a separate signed page, including identifying who was involved, the name of the public agency, the date of the conviction and the grounds for the conviction.
11. Has your firm or any of its owners, officers or partners ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty?
☐ Yes ☐ No
If "yes," identify on a separate signed page the person or persons convicted, the court (the county if a state court, the district or location of the federal court), the year and the criminal conduct.
12. Did your firm earn average gross revenues equal to or greater than \$50 million in the last three years?
☐ Yes ☐ No

* * * * *

I, the undersigned, certify and declare that I have read all the foregoing answers to this Regulatory Compliance Statement and know their contents. The matters stated in the questionnaire answers are true of my own knowledge and belief, except as to those matters stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California, that the foregoing is correct.

Dated:

(Name)

PORT OF OAKLAND
Regulatory Compliance Statement

Rating Guidelines

This document establishes the guidelines for evaluating a contractor's responses to the Port's Regulatory Compliance Statement ("RCS"). The Port will review the contractor's RCS upon receipt to determine whether it contains any responses that would render the contractor non-responsible. A satisfactory rating, in accordance with these guidelines, is a necessary prerequisite for a contractor to be found responsible. A satisfactory rating, however, is not in itself sufficient for a contractor to be found responsible. The RCS addresses only a portion of the issues which may be indicative of contractor non-responsibility. Many other issues, such as experience, technical capacity, and financial capacity, may also reflect on a contractor's responsibility. The Port may find a contractor non-responsible for any reason that is supported by substantial evidence.

Scoring the Responses

The Port will apply the following scores to each contractor's RCS:

Question 1: Any answer other than an unqualified "no" establishes that the contractor is non-responsible.

Question 2:

Has CAL OSHA cited and assessed penalties against your firm for any "serious," "willful" or "repeat" violations of its safety or health regulations in the past five years?

If the firm's average gross revenues for the last three years was less than \$50 million, scoring is as follows:

5 points for either "No" or "Yes" indicating 1 such instance.

3 points for "Yes" indicating 2 such instances.

0 points for "Yes" if more than 2 such instances.

If the firm's average gross revenues for the last three years was more than \$50 million, scoring is as follows:

5 points for either "No" or "Yes" indicating 1, 2, or 3 such instances.

3 points for "Yes" indicating either 4 or 5 such instances.

0 points for "Yes" if more than 5 such instances.

Question 3:

Has the federal Occupational Safety and Health Administration cited and assessed penalties against your firm in the past five years?

If the firm's average gross revenues for the last three years was less than \$50 million, scoring is as follows:

5 points for either “No” or “Yes” indicating 1 such instance.
3 points for “Yes” indicating 2 such instances.
0 points for “Yes” or if more than 2 such instances.

If the firm’s average gross revenues for the last three years was more than \$50 million, scoring is as follows:

5 points for either “No” or “Yes” indicating 1, 2, or 3 such instances.
3 points for “Yes” indicating either 4 or 5 such instances.
0 points for “Yes” if more than 5 such instances.

Question 4:

Has the EPA or any Air Quality Management District or any Regional Water Quality Control Board cited and assessed penalties against either your firm or the owner of a project on which your firm was the contractor, in the past five years?

If the firm’s average gross revenues for the last three years was less than \$50 million, scoring is as follows:

5 points for either “No” or “Yes” indicating 1 such instance.
3 points for “Yes” indicating 2 such instances.
0 points for “Yes” or if more than 2 such instances.

If the firm’s average gross revenues for the last three years was more than \$50 million, scoring is as follows:

5 points for either “No” or “Yes” indicating 1, 2, or 3 such instances.
3 points for “Yes” indicating either 4 or 5 such instances.
0 points for “Yes” if more than 5 such instances.

Question 5:

Within the last five years, has there ever been a period when your firm had employees but was without workers’ compensation insurance or state-approved self-insurance?

☐ Yes ☐ No

5 points for either “No” or “Yes” indicating 1 such instance.
0 points for any other answer.

Question 6:

Has there been more than one occasion during the last five years on which your firm was required to pay either back wages or penalties for your own firm’s failure to comply with the **state’s** prevailing wage laws?

☐ Yes ☐ No

NOTE: This question refers only to your own firm’s violation of prevailing wage laws, not to violations of the prevailing wage laws by a subcontractor.

If your firm's average gross revenues for the last three years was less than \$50 million, scoring is as follows:

5 points for either "No," or "Yes" indicating either 1 or 2 such instance.

3 points for "Yes" indicating 3 such instances.

0 points for "Yes" and more than 3 such instances.

If your firm's average gross revenues for the last three years was more than \$50 million, scoring is as follows:

5 points for either "No" or "Yes" indicating no more than 4 such instances.

3 points for "Yes" indicating either 5 or 6 such instances.

0 points for "Yes" and more than 6 such instances.

Question 7:

During the last five years, has there been more than one occasion on which your own firm has been penalized or required to pay back wages for failure to comply with the **federal** Davis-Bacon prevailing wage requirements?

If your firm's average gross revenues for the last three years was less than \$50 million, scoring is as follows:

5 points for either "No," or "Yes" indicating either 1 or 2 such instance.

3 points for "Yes" indicating 3 such instances.

0 points for "Yes" and more than 3 such instances.

If your firm's average gross revenues for the last three years was more than \$50 million, scoring is as follows:

5 points for either "No" or "Yes" indicating no more than 4 such instances.

3 points for "Yes" indicating either 5 or 6 such instances.

0 points for "Yes" and more than 6 such instances.

Question 8:

At any time during the last five years, has your firm been found to have violated any provision of California apprenticeship laws or regulations, or the laws pertaining to use of apprentices on public works?

If your firm's average gross revenues for the last three years was less than \$50 million, scoring is as follows:

5 points for either "No," or "Yes" indicating either 1 or 2 such instance.

3 points for "Yes" indicating 3 such instances.

0 points for "Yes" and more than 3 such instances.

If your firm's average gross revenues for the last three years was more than \$50 million, scoring is as follows:

**5 points for either “No” or “Yes” indicating no more than 4 such instances.
3 points for “Yes” indicating either 5 or 6 such instances.
0 points for “Yes” and more than 6 such instances.**

Question 9:

Has your firm, or any of its owners, officers, or partners ever been found liable in a civil suit, or found guilty in a criminal action, for making any false claim or material misrepresentation to any public agency or entity?

☐ Yes ☐ No

No = 5 points Yes = subtract 5 points

Question 10:

Has your firm, or any of its owners, officers or partners ever been convicted of a crime involving any federal, state, or local law related to construction?

☐ Yes ☐ No

No = 5 points Yes = subtract 5 points

Question 11:

Has your firm or any of its owners, officers or partners ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty?

☐ Yes ☐ No

No = 5 points Yes = subtract 5 points

Question 12:

No score.

Determination of Non-Responsibility

After tabulating the contractor's score in accordance with these guidelines, the Port staff will make a recommendation to the Board or other decision-maker as to whether the contractor should be determined to be non-responsible based on its responses to the RCS. A contractor whose RCS yields a score equal to or less than 65% of the maximum available points should be deemed non-responsible. However, the RCS form does not address each and every issue that bears on the question of contractor responsibility. Therefore, the Port reserves the right to determine that any contractor is non-responsible on other grounds. The Port will provide a contractor notice and an opportunity to respond to the extent required by law prior to making a final determination that a contractor is non-responsible.

REQUEST FOR QUALIFICATIONS

ATTACHMENT V

DRAFT PROGRAM SCHEDULE