



**PORT OF TACOMA**  
**REQUEST FOR QUALIFICATIONS**  
**SECURITY IMPROVEMENT SERVICES**

Issued by  
Port of Tacoma  
One Sitcum Plaza  
P.O. Box 1837  
Tacoma, WA 98401-1837

| RFQ INFORMATION  |                                                                                |
|------------------|--------------------------------------------------------------------------------|
| Contact:         | Nadine Bonds, Procurement                                                      |
| Email Addresses: | <a href="mailto:procurement@portoftacoma.com">procurement@portoftacoma.com</a> |
| Phone:           | (253) 383-5841                                                                 |
| Submittal Date   | <b>FEBRUARY 22, 2011 @ 4:00 PM (PST)</b>                                       |

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



**RECOVERY.gov**

**PORT OF TACOMA**  
**Request for Qualifications (RFQ)**  
**Security Improvement Services**

**A. BACKGROUND**

Port of Tacoma is soliciting proposals from qualified firms with expertise in providing services to plan and design security enhancements at two existing Port terminals. New security improvements will integrate with existing security systems and modify existing infrastructure to allow improved protection, response and recovery capabilities at primary points of ingress and egress to Port facilities.

The proposed work is the result of grants from the Department of Homeland Security, FEMA Port Security Grants Program and will conform to Port of Tacoma Security Department policy for controlling access to any information generated as part of the work. The cost of construction is estimated at \$2,785,900.00.

**B. SCOPE OF SERVICES**

The qualified firm is responsible for planning, design, preparation of construction documents and construction support services that provide functional security improvements at two terminal entry points. All work shall be coordinated with the Port's Security and Information Technology Departments, plus ongoing work covered by the Landside Protective Barriers and TWIC Infrastructure project. Work includes:

**East Blair One Security Improvements:**

Security improvements include perimeter lighting, infrared cameras, fiber optic communications, permanent security gate house, automated entry gate, pedestrian turnstile gates with magnetic card reader, intercom system, and camera surveillance, plus Transportation Worker Identification Card (TWIC) controls. All systems to be integrated with software upgrades to existing Port systems.

**Main Gate Security Improvements:**

Security Improvements to the Main Entry Gate include a new automated vehicle gate, fencing with magnetic controls, pedestrian turnstile gate with magnetic card reader and camera surveillance, intercom system, PTZ high definition camera and integration with software upgrades to existing Port systems.

**Bid and Construction Support Services**

- Provide bidding and construction support services.
- Respond to bidder questions and attend pre-bid conference.
- Review and provide action on submittals, shop drawings, RFIs and change order proposals.

- Attend regularly scheduled construction meetings.
- Review of contractor's redlined drawings and preparation of final record drawings.

### Schedule

Design and construction documents shall be completed by December 2011.

### **C. DELIVERABLES**

The firm must have the tools and ability to prepare plans in AUTOCAD Release 2009 or later, prepare specifications following the 2004 CSI MasterFormat™ (preferably using BSD SpecLink), and also produce reliable cost estimates employing dedicated software or Excel based spreadsheets.

- Detailed design and bid documents consisting of:
  - o Plans, technical specifications and cost estimates
  - o Assemble as required, permit drawings
  - o One interim design submittal, plus 90% and 100% review sets
  - o Issued-for-Bid plans and contract provisions

### **D. PROPOSAL ELEMENTS:**

Interested firms are encouraged to submit qualifications and experience in a brief, concise Statement of Qualifications (SOQ). Submittals are limited to 10 numbered pages **excluding** the cover letter. Resumes are not included in the page count but may be added as an appendix using a maximum of one page per team member. At a minimum, proposals should address:

1. A written expression of interest and availability of the proposed Project Team along with technical expertise and competence in engineering services for security projects and Information Technology (IT) services;
2. Name of Principal-in-Charge, Project Manager, staff and sub-consultants proposed for this project, including education, registration and years of experience of key personnel proposed to work on the project;
3. Identify recent experience (within the past five years) performing similar work on both large and small-scale projects. Also provide firm's knowledge of TWIC and fiber infrastructure systems;
4. Working knowledge of public Ports, environmental permitting, and local permitting requirements;
5. Ability of the firm and the Project Team to communicate and work effectively with client firms, regulators, and other stakeholders involved in the work;
6. Commitment of the firm to meet scope, schedule, and budget;
7. Product quality history and current practice for maintaining a high quality product;

8. List of recent projects in the last three years, to include a point of contact and contact information (including phone number and e-mail address) and brief description for services relevant to the items listed in the Scope of Services as performed by the firm and proposed project team;
9. The firm's claim history. Describe any claim submitted by the firm to any client, or submitted by any client against the firm, within the past two years related to the professional services provided by the firm or its key personnel. For purposes of this request, "claim" means a sum of money in dispute in excess of 10% of the firm's fee for the services provided;
10. List any exceptions your firm may have to accepting the Port's standard Terms and Conditions, which are identified in Attachment A. Describe the nature of any exceptions to these Terms and Conditions and firm's proposed alternative.

#### **E. PROCUREMENT PROCESS**

|                             |                                           |
|-----------------------------|-------------------------------------------|
| Issuance of RFQ             | January 20, 2011                          |
| <b>Proposal packets due</b> | <b>February 22, 2011 by 4:00 PM (PST)</b> |
| Short List Consultants      | March 1, 2011                             |
| Interviews (if required)    | March 7 & 8, 2011                         |
| Vendor Selection            | March 9, 2011                             |
| Execute Contract            | May 6, 2011                               |

#### **VENDOR OBLIGATION**

Port of Tacoma Requests for Bids, Requests for Proposals and Requests for Qualifications can be accessed on the Port's website, [www.portoftacoma.com](http://www.portoftacoma.com) under 'Business Opportunities'; Professional & Personal Services; RFPs/RFQs.

To document interest in a project, the Port strongly encourages prospective Respondents to email the Port at [procurement@portoftacoma.com](mailto:procurement@portoftacoma.com) (Firm Name and Solicitation Name in subject line) to request placement on the solicitation's holders list. Provide the Main Contact Name, Address, Email, and Phone number to be included on the Holders list. Firms requesting to be placed on the holders list will receive electronic notification regarding any issued addenda or other important information concerning the solicitation.

#### **COMMUNICATION / INQUIRIES**

All communication and inquiries shall be sent to [procurement@portoftacoma.com](mailto:procurement@portoftacoma.com). Proposer's who, relative to this scope of work, contact any individuals or Commission members representing the Port other than [procurement@portoftacoma.com](mailto:procurement@portoftacoma.com), may be disqualified from consideration. No oral answers will be binding by the Port.

## INTERPRETATIONS

Written questions about the meaning or intent of the Solicitation Documents shall only be submitted to Nadine Bonds, [procurement@portoftacoma.com](mailto:procurement@portoftacoma.com). Prospective Respondents who may have questions about provisions of these documents are to email their questions at least **five (5) calendar days** prior to the deadline for submission. The Port will respond to all written questions timely submitted. Question and Port Responses which do not modify the solicitation documents will be posted to the Port's web site and conveyed to those prospective Respondents who have requested placement on the solicitation's Holder's List.

## ADDENDA

The Port may make changes to this Solicitation. Oral or other interpretations, clarifications or submittal instructions will be without legal effect. If at any time, the Port changes, revises, deletes, clarifies, increases, or otherwise modifies the Solicitation, the Port will issue an Addendum to the Solicitation. Addenda will be posted to the Port's web site and conveyed to those prospective Respondents who have requested placement on the solicitation's Holder's List.

## EVALUATION CRITERIA AND AWARD PROCESS

An evaluation team will review the Statements of Qualifications (SOQ's) and evaluate the submittals received against the criteria listed herein. The Port may request clarifications or additional information, if needed. The criteria outlined below will be used to evaluate the proposals and determine the most qualified Consultant. A total of 100 points (excluding the potential for references and interviews) has been assigned to the Evaluation Criteria.

The evaluation team will use the SOQ's to narrow the field to a short list of firms. The short-listed firms may have references checked and be scheduled for an interview by the Port, or the selection may be made based solely on the SOQ's. Reference checks and interviews will be scored as outlined below. Failure to participate in the interview process will result in disqualification from further consideration.

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

The selected Consultant will be invited to enter into contract negotiations with the Port. Should the Port and the selected firm not reach a mutual agreement, the Port will terminate negotiations and move to the next most qualified firm and proceed with negotiations.

| <b>Evaluation Criteria</b>       |                                                                                                                | <b>Points Possible</b> |
|----------------------------------|----------------------------------------------------------------------------------------------------------------|------------------------|
| 1.                               | Experience, ability and capacity of the firm and staff to perform the services requested in the scope of work. | 20                     |
| 2.                               | Firm's experience and commitment to meeting scope, schedule and budget for work assigned.                      | 20                     |
| 3.                               | Quality control practices both past and present for maintaining a high quality product.                        | 20                     |
| 4.                               | Firm's ability to begin working immediately.                                                                   | 10                     |
| 5.                               | Ability of the firm and staff to communicate effectively with all stakeholders.                                | 10                     |
| 6.                               | Firm and key personnel project references.                                                                     | 10                     |
| 7.                               | Accuracy and completeness of the SOQ submitted by the firm.                                                    | 10                     |
| <b>Total</b>                     |                                                                                                                | <b>100 Points</b>      |
| <b>Finalists (if applicable)</b> |                                                                                                                |                        |
| 1                                | Results of interviews for finalists                                                                            | 100                    |
| 2                                | Results of reference checks for finalists                                                                      | Pass/Fail              |
| <b>Total</b>                     |                                                                                                                | <b>100 Points</b>      |

#### **F. SUBMITTAL PROCESS**

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

[procurement@portoftacoma.com](mailto:procurement@portoftacoma.com).

Name of Firm, Security Improvement Services (Subject Line)

Please submit an electronic copy in Adobe Acrobat PDF format, including all appendices. Submittals need to be limited to **8 MB in total email size**. It is the Consultant's responsibility to verify the receipt of the submittal. Electronic verification will be provided upon request.

## **G. GENERAL INFORMATION**

### **TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL (TWIC)**

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

The Consultant shall have a minimum of one TWIC compliant employee trained as an escort for every five workers not possessing TWIC cards working on a secured or restricted site. Each escort will be required to receive Terminal Operator provided escort training.

### **EQUAL OPPORTUNITY EMPLOYER**

The Port of Tacoma is an equal opportunity employer. We do not discriminate in our employment practices on the basis of race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or status as a disabled veteran or Vietnam era veteran in accordance with Port policy and applicable federal and state statutes and regulations.

### **PUBLIC DISCLOSURE**

Proposals submitted under this Solicitation will be considered public documents and, with limited exceptions, will become public information and may be reviewed by appointment by anyone requesting to do so following the conclusion of the evaluation, negotiation, and award process. This process is concluded when a signed contract is completed between the Port and the selected Consultant.

If a vendor considers any portion of its response to be protected under the law, the vendor shall clearly identify each such portion with words such as "CONFIDENTIAL", "PROPRIETARY" or "BUSINESS SECRET". If a request is made for disclosure of such portion, the Port will determine whether the material should be made available under the law. If the material is not exempt from public disclosure law, the Port will notify the vendor of the request and allow the vendor five (5) days to take whatever action it deems necessary to protect its interests. If the vendor fails or neglects to take such action within said period, the Port will release the portions of the Qualifications deemed subject to disclosure. By submitting a response the vendor assents to the procedure outlined in this paragraph and shall have no claim against the Port on account of actions taken under such procedure.

**ATTACHMENT A – PORT OF TACOMA FEDERAL TERMS AND CONDITIONS**

**ATTACHMENT B – LOBBYING CERTIFICATE**

**ATTACHMENT C – CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
PROPOSED DEBARMENT AND OTHER RESPONSIBILITY  
MATTERS**

## Terms And Conditions

### Federally Funded Professional Services Agreement

|                                                                                                                                  |                                                                                                         |   |
|----------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|---|
| 1.                                                                                                                               | Representatives.....                                                                                    | 1 |
| 2.                                                                                                                               | Key Personnel.....                                                                                      | 1 |
| 3.                                                                                                                               | Relationship of the Parties.....                                                                        | 1 |
| 4.                                                                                                                               | Conflicts of Interest.....                                                                              | 1 |
| 5.                                                                                                                               | Compliance with Laws.....                                                                               | 1 |
| 6.                                                                                                                               | Records and other Tangibles.....                                                                        | 1 |
| 7.                                                                                                                               | Ownership of Work.....                                                                                  | 1 |
| 8.                                                                                                                               | Disclosure.....                                                                                         | 1 |
| 9.                                                                                                                               | Deliverables.....                                                                                       | 1 |
| 10.                                                                                                                              | Compensation.....                                                                                       | 2 |
| 11.                                                                                                                              | Payment Schedule.....                                                                                   | 2 |
| 12.                                                                                                                              | Costs and Disbursements.....                                                                            | 2 |
| 13.                                                                                                                              | Insurance - Assumption of Risk.....                                                                     | 2 |
| 14.                                                                                                                              | Standard of Care.....                                                                                   | 3 |
| 15.                                                                                                                              | Competitive Specification.....                                                                          | 3 |
| 16.                                                                                                                              | Time.....                                                                                               | 3 |
| 17.                                                                                                                              | Assignability.....                                                                                      | 3 |
| 18.                                                                                                                              | Term of this Agreement.....                                                                             | 3 |
| 19.                                                                                                                              | Disputes.....                                                                                           | 3 |
| 20.                                                                                                                              | Extent of Agreement.....                                                                                | 3 |
| 21.                                                                                                                              | Federal Requirements.....                                                                               | 3 |
| 22.                                                                                                                              | Written Approval of Federal Government ..                                                               | 3 |
| 23.                                                                                                                              | Sole Source Methods.....                                                                                | 4 |
| 24.                                                                                                                              | Open and Fair Participation.....                                                                        | 4 |
| 25.                                                                                                                              | Open and Fair Opportunities.....                                                                        | 4 |
| 26.                                                                                                                              | Conflicts of Interest.....                                                                              | 5 |
| 27.                                                                                                                              | Program Fraud and False or Fraudulent<br>Statements or Related Acts.....                                | 5 |
| 28.                                                                                                                              | Lobbying Certification And Disclosure .....                                                             | 6 |
| 29.                                                                                                                              | Consultant's Certification Regarding<br>Debarment, Suspension And Other Responsibility<br>Matters ..... | 6 |
| 30.                                                                                                                              | Subconsultant's Certification Regarding<br>Debarment, Suspension Or Ineligibility .....                 | 6 |
| 31.                                                                                                                              | Audit.....                                                                                              | 6 |
| 32.                                                                                                                              | Small Business And Small Disadvantaged<br>Business Opportunities.....                                   | 6 |
| 33.                                                                                                                              | Metric Conversion.....                                                                                  | 6 |
| <b>ATTACHMENT B - Lobbying Certificate</b>                                                                                       |                                                                                                         |   |
| <b>ATTACHMENT C - Certification Regarding<br/>Debarment, Suspension, Proposed Debarment<br/>And Other Responsibility Matters</b> |                                                                                                         |   |

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

#### **1. Representatives**

The Port's Project Manager and Consultant's Representative for this Agreement are as specified. Alternate representatives may be appointed by either party with written notice to the other party.

#### **2. Key Personnel**

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

#### **3. Relationship of the Parties**

Consultant, its subconsultants and employees, is an independent Contractor. Nothing contained

herein shall be deemed to create a relationship of employer and employee or of principal and agent.

#### **4. Conflicts of Interest**

Consultant warrants that it has no direct or indirect economic interest which conflicts in any manner with its performance of the services required under this Agreement. Consultant warrants that it has not retained any person to solicit this Agreement and has not agreed to pay such person any compensation or other consideration contingent upon the execution of this Agreement.

#### **5. Compliance with Laws**

Consultant agrees to comply with all local, state, tribal and federal laws and regulations applicable to the project, including building codes and permitting regulations existing at the time this Agreement was executed and those regarding employee safety, the work place environment, and employment eligibility verifications as required by the Immigration and Naturalization Service. Consultant shall obtain all professional licenses and permits required to complete the scope of work as defined.

The Port shall furnish Consultant with the information required by the Hazard Communication standard for materials preexisting on the project site. Consultant will ensure that this information is made available to the Consultant's personnel and subconsultants, and incorporated into the contract documents as appropriate.

#### **6. Records and other Tangibles**

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

#### **7. Ownership of Work**

The services to be performed by Consultant shall be deemed instruments of service for purposes of the copyright laws of the United States. The Port has ownership rights to the plans, specifications, and other products prepared by the Consultant. Consultant shall not be responsible for changes made in the plans, specifications or other products by anyone other than the Consultant. Consultant shall have free right to retain, copy and use any tangible materials or information produced but only for its own internal purposes. Use of documents or other materials prepared under this Agreement for promotional purposes shall require the Port's prior consent.

#### **8. Disclosure**

All information developed by the Consultant and all information made available to the Consultant by the Port, and all analyses or opinions reached by the Consultant shall be confidential and shall not be disclosed by the Consultant without the written consent of the Port.

#### **9. Deliverables**

All tangible materials produced as a result of this Agreement shall be prepared as specified by the

Port's Project Manager. Delivery of materials produced shall consist both of the tangible materials and one copy of any computer file used in the creation of the tangible product on floppy disk or CD-Rom in a PDF format or other format specified by the Port. Deliverable drawings shall be prepared in accordance with the Port's "Consultant Drawing Submittal Procedure" and "Technical Specification Development Procedure". The Port may offset from the Consultant's fee expenses incurred by the Port in correcting drawings or specifications not prepared in accordance with the Port's procedure.

#### **10. Compensation**

As full compensation for the performance of its obligations of this Agreement and the services to be provided, the Port shall pay Consultant as specified in the Agreement. Compensation for vehicle usage will be paid at the current Internal Revenue Service allowable mileage reimbursement rate. Consultant's expenses will be reimbursed at cost, with the exception of all third party costs which will be reimbursed at cost plus the negotiated percentage markup.

#### **11. Payment Schedule**

Consultant shall submit detailed numbered invoices showing description of work items being invoiced, work order number, title of project, total authorized, total current invoice, balance of authorization, individual's names and titles, hours, hourly rate and all authorized expenses itemized, with backup, in accordance with the Port's "Guidelines for Consultant Fees and Reimbursable Items", by the 10<sup>th</sup> of the month to be paid by the end of the current month, unless other terms are agreed to by the parties.

#### **12. Costs and Disbursements**

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

#### **13. Insurance - Assumption of Risk**

As a further consideration in determining compensation amounts, the Consultant shall procure and maintain, during the life of this Agreement, such commercial general liability insurance as shall protect Consultant and any subconsultant performing work under this Agreement from claims for damages from bodily injury, including death, resulting therefrom as well as from claims for property damage which may arise under this Agreement, whether arising from operations conducted by the Consultant, any subconsultant, or anyone directly or indirectly employed by either of them.

With respect to claims other than professional liability claims, Consultant and its subconsultants agree to defend, indemnify and hold harmless the Port of Tacoma, its appointed and elective officers and its employees from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatever kind and nature, including attorney fees and costs by reason of any and all

claims and demands on it, its officers and employees, arising from the negligent acts, errors or omissions by the Consultant in the performance of the Consultant's professional services.

With respect to professional liability claims only, and not commercial general liability claims, Consultant and its subconsultants agree to indemnify and hold harmless the Port of Tacoma, its appointed and elective officers and its employees from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatever kind and nature, including attorney fees and costs by reason of any and all claims and demands on it, its officers and employees, arising from the negligent acts, errors or omissions by the Consultant in the performance of the Consultant's professional services.

Consultant shall submit to the Port of Tacoma, prior to the commencement of services, certificates of insurance evidencing:

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

Automobile Liability covering owned, non-owned and hired vehicles of \$1,000,000 combined single limit per accident; and

Professional Liability not less than \$1,000,000 per claim and in the aggregate. Coverage shall remain in effect for the term of this Agreement plus three years.

All policies shall be issued by a company having an A. M. Best rating of A:VI or better. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled or reduced in coverage or limits except after 45 days prior written notice has been given to the Port. Except for professional liability, the Port shall be named as an additional insured on all policies on ISO Form CG 20 10 Form B.

The certificates of insurance shall specify the project name, project number, and contract number.

#### **14. Standard of Care**

Consultant shall perform its work to conform to generally accepted professional standards. Consultant shall be responsible for the professional quality, technical adequacy and accuracy, timely completion and coordination of all plans, designs, drawings and specifications prepared under this Agreement. Consultant shall, without additional compensation, correct or revise any errors or omissions in such work.

The Port's approval of plans, drawings and specifications shall not relieve Consultant of responsibility for the adequacy or accuracy thereof. The Consultant shall remain liable for damages and costs incurred by the Port arising from the Consultant's errors, omissions or negligent performance of services furnished under this Agreement.

#### **15. Competitive Specification**

If the scope of work includes development of specifications:

- a) Consultant shall provide for the maximum use of materials, equipment, construction methods and products that are readily available through competitive procurement, or through standard or proven production techniques.
- b) Consultant shall not produce a design or specification which would be restrictive or written in a manner as to contain proprietary requirements other than those based on performance, unless such requirements are necessary to demonstrate a specific outcome or to provide for necessary interchangeability of parts and equipment. Consultant shall justify in writing the use of any sole source. Where brand names are identified, they shall be followed by the salient product performance characteristics and the words "or approved equal" so that comparable quality or utility may be determined.

#### **16. Time**

Time is of the essence in the performance by the Consultant of the services required by this Agreement. The Consultant shall complete its services within the milestones set forth in the project schedule. At the end of each month the Consultant shall submit a copy of the current schedule and a written narrative description of the work accomplished, identifying scheduled milestones and the status thereof. The Consultant shall also address issues which may result in completion beyond the established schedule or budget.

#### **17. Assignability**

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

#### **18. Term of this Agreement**

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

#### **19. Disputes**

If a dispute arises relating to this Agreement and cannot be settled through direct discussions, the parties agree to endeavor to settle the dispute through a mediation firm acceptable to both parties, the cost of which shall be divided equally. The Port reserves the right to join any dispute under this Agreement with any other claim in litigation or other dispute resolution forum, and the Consultant agrees to such joinder, so that all disputes related to the project may be consolidated and resolved in one forum. Venue for any litigation shall be the Pierce County Superior Court of the state of Washington and the prevailing party shall be entitled to recover its costs and reasonable attorneys fees.

#### **20. Extent of Agreement**

This Agreement represents the entire and integrated understanding between the Port and Consultant and may be amended only by written instrument signed by both the Port and Consultant.

#### **21. Federal Requirements**

Services provided under this scope of work are funded by the Transportation Security Administration and are subject to the following provisions. By submitting a proposal Consultants shall agree to comply with these provisions and shall include the cost of compliance in the cost proposal. The Port and the Consultant agree that such federal laws, regulations and other requirements supersede any conflicting provisions of this Agreement. Consultant shall at all times comply with all applicable regulations, policies, procedures and directives. Consultant's failure to so comply shall constitute a material breach of this Agreement.

#### **22. Written Approval of Federal Government**

The Consultant acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the Consultant or any other party pertaining to any matter resulting from this Agreement. The Consultant agrees to include the above clause in each subcontract.

### **23. Sole Source Methods**

The Consultant shall not, in the performance of the work under this Agreement, produce a design or specification which would require the use of structures, machines, products, materials, construction methods, equipment, or processes which the Consultant knows to be available only from a sole source, unless the Consultant has provided a written justification the use of a sole source in writing and the Port concurs.

### **24. Open and Fair Participation**

The Consultant shall not, in the performance of the work under this Agreement, produce a design or specification which would be restrictive or written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing, or to provide for necessary interchangeability of parts and equipment. When one or more brand names or trade names of comparable quality or utility are listed, they must be followed by the words "or approved equal." With regard to materials, if a single material is specified, the Consultant must substantiate in writing, and to the Port's satisfaction, the basis for the selection of the material.

### **25. Open and Fair Opportunities**

During the term of this Agreement, the Consultant shall not create barriers to open and fair opportunities to participate in Port contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. During the performance of this Agreement, neither the Consultant nor any party subcontracting under the authority of this Agreement shall discriminate nor tolerate harassment on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability in the employment or application for employment or in the administration or delivery of services or any other benefits under this Agreement.

The selected Consultant shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit such discrimination including RCW Chapter 49.60. The Consultant further agrees to comply with all applicable civil rights statutes and implementing regulations including, but not limited to the following:

#### **Nondiscrimination in Federal Programs.**

The selected Consultant agrees to comply with the provision of 49 U.S.C. § 5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

#### **Nondiscrimination -- Title VI of the Civil Rights Act.**

The selected Consultant agrees to comply with, and assure compliance by each subconsultant under this Agreement, with all requirements prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, and U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21, and any implementing requirements.

#### **Equal Employment Opportunity.**

The selected Consultant agrees to comply with, and assures the compliance of each subconsultant under this Agreement with all requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and 49 U.S.C. § 5332 and any implementing requirements.

#### **Equal Employment Opportunities for Construction Activities.**

With respect to construction activities, the selected Consultant agrees to comply with all applicable EEO requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000(e), and any Federal statutes, executive orders, regulations, and Federal policies pertaining to construction undertaken as part of the Project

#### **Nondiscrimination on the Basis of Sex.**

To the extent applicable, the selected Consultant agrees to comply with Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681, 1683, and 1685 through 1687, which prohibit discrimination on the basis of sex, and any Federal requirements that may be promulgated.

#### **Nondiscrimination on the Basis of Age.**

The selected Consultant agrees to comply with the applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 through 6107, and implementing regulations, which prohibits discrimination on the basis of age.

#### **Nondiscrimination on the Basis of Disability.**

The Consultant agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires the provision of accessible facilities and services, and with the following federal regulations, including any amendments thereto:

U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part

37; U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27; Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles." 36 C.F.R. Part 1192 and 49 C.F.R. Part 38.

U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35; U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36; U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19; U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630; and U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F.

## **26. Conflicts of Interest**

### Contingent Fees

The Consultant warrants and covenants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach of violation of this warranty the Port shall have the right to terminate this Agreement and/or in its discretion to deduct from the Consultant's compensation or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

### Gratuities

The Consultant warrants and covenants that no gratuities, in the form of entertainment, gifts or otherwise, have been or will be offered or given by the Consultant or any of its agents, employees or representatives to any official member or employee of the Port in an attempt to secure a contract or favorable treatment in awarding, amending or making any determination related to the performance of this Agreement.

### Conflict of Interest

The Consultant warrants and covenants it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any such interest, which conflicts in any manner or degree with the performance of the work and services required to be performed under this Agreement and that it shall not employ any person or agent having any such interest. In event that the Consultant or its agents, employees or representatives hereafter acquires such a conflict of interest, the Consultant shall immediately disclose such interest to the Port and take action immediately to eliminate the

conflict or to withdraw from the Agreement as the Port may require.

### Breach of Covenants

If the Port has reason to believe that the covenants set forth in subparagraphs A., B, or C of this section have been breached, it shall so notify the Consultant in writing. The Consultant shall respond to said notice within ten days of receipt with a detailed written explanation or answer to any facts, allegations or questions contained or referenced in said notice. The Consultant may request a hearing on the matter by the Port which shall be conducted by the Executive Director or designee. The decision of the Executive Director shall be a prerequisite to appeal thereof to the Superior Court of Pierce County, state of Washington. If, after consideration of the Consultant's response and any hearing, the Executive Director determines that the covenants have been breached, the Executive Director shall have the discretion to exercise those remedies provided by any applicable federal or state laws or regulations or by this Agreement in the event of said breach and/or prohibited conflicts of interest.

## **27. Program Fraud and False or Fraudulent Statements or Related Acts.**

The Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Section 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the DOT assisted project for which this work is being performed. In addition to other penalties that may be applicable, the Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Consultant to the extent the Federal Government deems appropriate.

The Consultant also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Consultant, to the extent the Federal Government deems appropriate.

The Consultant agrees to include the above two clauses in each of its subconsulting contracts.

## **28. Lobbying Certification And Disclosure**

The Consultant shall execute and return to the Port the certification required by 49 CFR part 20, "New Restrictions on Lobbying," found in Attachment B and shall require its sub-consultants and subcontractors (if any) to also execute the certificate. Such disclosures are forwarded from tier to tier up to the Port. Each tier shall certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. Section 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. Section 1352.

## **29. Consultant's Certification Regarding Debarment, Suspension And Other Responsibility Matters**

The Consultant agrees to comply, and assures the compliance by each of its sub-consultants and subcontractors at any tier, with the provisions of Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. Section 6101 note, and U.S. DOT regulations on Debarment and Suspension at 49 C.F.R. Part 29. The Consultant shall submit its certificate on the form found in Attachment C.

This certification is a material representation of fact. If at any time the Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, it shall immediately provide written notice to the Port. If it is later determined that the Consultant knowingly rendered an erroneous certification, the Port may terminate the Agreement for cause of default, in addition to other remedies available including federal suspension and/or debarment.

## **30. Subconsultant's Certification Regarding Debarment, Suspension Or Ineligibility**

The Consultant shall not knowingly enter into any subcontract exceeding \$25,000 with an entity or person who is debarred, suspended or has been declared ineligible by the federal government from obtaining federal assistance funds. The Consultant's knowledge and information regarding any sub-consultant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business.

The Consultant shall include in each subcontract, regardless of tier, a clause requiring each lower tiered sub-consultant to provide the certification set forth in Attachment C. Each subcontract, regardless of tier, shall contain a provision that the sub-consultant shall not knowingly enter into any

lower tier subcontract with a person or entity who is debarred, suspended or declared ineligible from obtaining federal assistance funds. The Consultant shall require each sub-consultant, regardless of tier, to immediately provide written notice to the Consultant if at any time the sub-consultant learns that its, or a lower tier, certification was erroneous when submitted or has become erroneous by reason of changed circumstances, which the Consultant shall immediately forward on to the Port. The Consultant may rely upon the certifications of the sub-consultant unless it knows that the certification is erroneous.

## **31. Audit.**

The Comptroller General and the Inspector General of the Department of Transportation shall have direct access to sufficient records and information of the Recipient, as they determine to ensure accountability for Federal Funds. Audits will be conducted in accordance with OMB Circular A-133.

## **32. Small Business And Small Disadvantaged Business Opportunities.**

It is a national policy to place a fair share of purchases with small, minority, and woman-owned business firms. The funding agency and Port are strongly committed to the objectives of this policy and encourage all Recipients of its grants to take affirmative steps to ensure such fairness. In particular, Recipients should:

Place small, minority, and woman-owned business firms on bidders mailing lists;

Solicit these firms whenever they are potential sources of supplies, equipment, construction, or services;

Where feasible, divide total requirements into smaller needs, and set delivery schedules that will encourage participation by these firms;

Use the assistance of the Small Business Administration and the Office of Small and Disadvantaged Business Utilization, Department of Transportation, and similar state and local offices, where they exist.

## **33. Metric Conversion**

All progress and final reports, other reports, or publications produced under this award shall employ the metric system of measurements to the maximum extent practicable. Both metric and inch-pound units (dual units) may be used if necessary during any transition period(s). However, the Port may use non-metric measurements to the extent the Port has supporting documentation that the use of metric measurements is impracticable or is likely to cause significant inefficiencies or loss of markets to the Port, such as when foreign competitors are producing competing products in non-metric units.

# Terms And Conditions

## Federally Funded Professional Services Agreement

### ATTACHMENT B - LOBBYING CERTIFICATE

The undersigned certifies to the best of its knowledge or belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions, [as amended by “Government wide Guidance for New Restrictions on Lobbying,” 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. Section 1352 (c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to amend a required certification or disclosure form shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Consultant certifies or affirms that truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_  
(Type or Print Company Name)

By: \_\_\_\_\_

(Signature)

\_\_\_\_\_  
(Title)

Print Name: \_\_\_\_\_

NOTE: CONSULTANTS ARE REQUIRED, PURSUANT TO FEDERAL LAW, TO INCLUDE THE ABOVE LANGUAGE IN SUBCONTRACTS OVER \$100,000, AND TO OBTAIN THIS CERTIFICATE FROM EACH SUBCONTRACTOR BEING PAID \$100,000 OR MORE UNDER THIS CONTRACT.

END OF FORM

**ATTACHMENT C**  
**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT AND**  
**OTHER RESPONSIBILITY MATTERS**

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that-

(i)The Offeror and/or any of its Principals-

(A) Are ☐ are not ☐ presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency; Are ☐ are not ☐, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(B)Are ☐ not ☐ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a) (1)(i)(B) of this provision.

(ii)The Offeror has ☐ has not ☐, within a three-year period preceding this offer, had one or more contracts terminated for default by a Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager, head of subsidiary, division, or business segment, and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The Offeror shall provide immediate written notice to the Port if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Port may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Port may terminate the contract resulting from this solicitation for default.

I certify under penalty of perjury that the above statements are true.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date