

# **REQUEST FOR QUALIFICATIONS (RFQ)**

for

**Technical Consulting Services  
for  
the Oakland Turning Basins Army Corps of  
Engineers Feasibility Study**

**RFQ Number 19-20/11**



**PORT OF OAKLAND**

PURCHASING DEPARTMENT  
530 WATER STREET  
OAKLAND, CA 94607



## REQUEST FOR QUALIFICATIONS

### **RFQ No.: (19-20/11) Technical Consulting Services for the Oakland Turning Basins Army Corps of Engineers Feasibility Study**

The Port of Oakland (Port), through its Purchasing Department, is hereby soliciting competitive statements of qualifications for the completion of various technical studies and services related to the above-mentioned Oakland Turning Basins Army Corps of Engineers Feasibility Study. The successful Respondent will be required to furnish all labor, expertise, technical skills, material, equipment, supplies, and pay all applicable taxes, insurance, bonding, and licenses to complete the technical studies and services requested.

#### **Qualification Information**

<b>Qualification Title</b>	Technical Services for the Oakland Turning Basins Army Corps of Engineers Feasibility Study
<b>Qualification Type</b>	Professional Services
<b>Qualification Number</b>	19-20/11
<b>Qualification Issued</b>	April 10, 2020
<b>Requesting Departments</b>	Maritime
<b>Optional Pre-Qualification Meeting</b> (Attendance is strongly recommended)	April 22, 2020 at 10:00 a.m.  To join via conference call, dial: (888) 585-9008 Enter conference room #: 690-360-583
<b>Scheduled Newspaper Publication Date</b>	April 10, 2020
<b>Qualification Due Date</b>	<b>May 21, 2020 until 11:00 a.m.</b>
<b>Interview (If Necessary)</b>	June, 2020

#### **Instructions for Submitting Qualifications**

<b>Submittal Address</b>	Port of Oakland Purchasing Department Attn: <b>Rebecca Gibson</b> 530 Water Street Oakland, CA 94607
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<b>Submittal Copies</b>	One (1) Original copy clearly marked "Original" and seven (7) Copies marked "Copy" and (1) electronic copy provided on USB drive.
<b>Submittal Envelope Requirements</b>	Qualifications must be <u>sealed</u> and have the following information <u>clearly marked</u> and visible on the outside of the envelope: <ul style="list-style-type: none"> <li>• Qualification Number 19-20/11</li> <li>• Name of Your Company</li> <li>• Address</li> <li>• Phone Number</li> <li>• Primary Contact Name; Phone Number; E-mail</li> </ul>
<b>Late Submittals</b>	Qualifications received after the time and date stated above will be returned unopened to the Respondent.

### How to Obtain Qualification Documents

Copies of the Qualification documents may be obtained at:

<b>Location</b>	<b>Address</b>
<b>Physical &amp; Electronic</b>	Port of Oakland – Purchasing Department 530 Water Street, Oakland, CA 94607  Attention: Rebecca Gibson Advance Coordination is Required <a href="mailto:rgibson@portoakland.com">rgibson@portoakland.com</a> (preferred correspondence) (510) 627-1104
<b>Website</b>	<a href="http://www.portofoakland.com/business/bids-RFQs/">http://www.portofoakland.com/business/bids-RFQs/</a>  Or navigate to the Port of Oakland's main website at: <a href="http://www.portofoakland.com/">http://www.portofoakland.com/</a> , then click on "Bids/RFQs" from the banner on the top of the page, and then scroll down to download the RFQ.

## Questions about the Qualification

Questions and/or Requests for Information (RFI) must be submitted in writing and can be submitted by email as follows:

<b>Primary Contact</b>	Rebecca Gibson Phone: (510) 627-1104 Email: <a href="mailto:rgibson@portoakland.com">rgibson@portoakland.com</a>
<b>Question/RFI Due Date</b>	<b>April 28, 2020 until 4:00 p.m.</b> Please submit questions as soon as possible. No questions regarding this solicitation for qualification will be responded to after the above date. All pertinent questions will be responded to and answered in writing no later than the Response Date listed below.
<b>Response Date</b>	<b>May 06, 2020</b> All pertinent questions will be responded to <b>via addendum</b> emailed to all prospective Respondents and placed on the Port's website. Respondents who did not receive a copy of the addendum should download it from the Port's website. See the "How to Obtain Qualification Documents" section of this RFQ. All addenda must be acknowledged on the RFQ Acknowledgement and Signature form.

Once the RFQ is issued, and until a recommendation for award is made to the Board of Port Commissioners at a public Board of Port Commissioners meeting (or in cases where a recommendation for award does not require a public Board meeting, that is, when Respondents are notified by Port staff of the recommendation for award), each Respondent and its representatives, agents, and affiliates, shall not contact members of the Evaluation Committee, Port staff or the Board of Port Commissioners to discuss or ask questions about the contents of this RFQ or the selection process. All questions shall be submitted in writing as described in this RFQ. Any inappropriate contact by a Respondent, its representatives, agents, and/or affiliates may result in the Respondents' Qualification being disqualified.

### Full Opportunity

The Port's policy prohibits discrimination or preferential treatment 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. It is the policy of the Port of Oakland to encourage and facilitate full and equitable opportunities for small local businesses to participate in its contracts for the provision of goods and services. It is further the Port's policy that no discrimination shall be permitted in small local business participation in Port contracts or in the subcontracting of Port contracts. The successful Respondent shall comply with the Port's non-discrimination policy.

**Title VI Solicitation Notice:** The Port of Oakland, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds

of race, color, or national origin in consideration for an award.

The Port reserves the right to reject any or all Qualifications, to waive any irregularities or informalities not affected by law, to evaluate the Qualifications submitted, and to award the contract according to the Qualification which best serves the interests of the Port.

John Banisadr,  
Port Purchasing Manager

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### **Attachments:**

Title		Must Be Returned with Qualification
1	Non-Collusion Declaration	Yes
2	Statement of Equal Employment Opportunity	Yes
3	RFQ Acknowledgement and Signature Form	Yes
4	Proposed Fee Schedule	No
5	Port of Oakland Non-Discrimination and Small Local Business Utilization Policy A. Chart for Submitting Data for Calculation of Preference Points B. Local Participation Questionnaire C. Monthly Utilization of Local and Small Business Enterprises D. Final Utilization of Local and Small Business Enterprises	Yes Attachment 5-A and 5-B are required with the Qualification.  (Note: If you are submitting a new Certification Application for preference points, then your completed application is due 7 business days prior to the Qualification due date.)  Attachments 5-C and 5-D are required after contract award and final completion of the project.
6	Non-Discrimination and Small Local Business Utilization Policy Program Affidavit	Yes

Title		Must Be Returned with Qualification
7	City of Oakland City Charter §728 Living Wage Information A. Employer Self-Evaluation for Port of Oakland Living Wage B. Certificate of Compliance—Living Wage	No  (Attachment 7-A and 7-B are required after contract award.)
8	Statement of Living Wage Requirements	Yes
9	Insurance Acknowledgement Statement	Yes
10	Standard Professional Services Agreement	No  (Note: If awarded contract, the successful Respondent will execute a revised version of the Port's standard Professional Services Agreement, which will be consistent with the provisions of this RFQ.)

**Exhibits:**

Title	
A	Map of Port of Oakland
B	Map of Port of Oakland Deep Draft Vessel Federal Navigation Area

## **I. Solicitation Overview**

### **A. Port Overview**

The Port of Oakland (Port) was established in 1927 and oversees the Oakland Seaport, Oakland International Airport, Commercial Real Estate, and 20 miles of waterfront located on the Eastern Shore of the San Francisco Bay, in the City of Oakland, California.

The Oakland Seaport serves as the principal ocean gateway for import and export goods in Northern California, and is one of the top ten busiest container ports in the U.S. The Seaport is comprised of approximately 1,300 acres, including approximately 770 acres of marine terminals. The Seaport complex is served by two Class I railroads that reach over 50% of the U.S. population: Burlington Northern Santa Fe (BNSF) Railway and Union Pacific (UP) Railroad.

In 2019, the Seaport moved a total of 2.5 million TEUs (twenty-foot equivalent units); this represented a 3.7% increase in loaded exports and a 1% increase in loaded imports compared to 2018. The seaport handled 1,393 container vessels in 2019, many of which were vessels with capacities of 14,000 TEUs.

The Oakland Seaport deep draft federal navigational waterways and most berths are maintained to a depth of minus 50 feet at mean lower low water. The United States Army Corps of Engineers (USACE) is responsible for improvements to and maintenance dredging of the channel. The Port is responsible for maintenance dredging at each berth.

Together, through Port operations and those of its tenants and users, the Port supports nearly 84,000 jobs in the region and over 1 million jobs across the United States. The Port is an independent department of the City of Oakland.



Figure 1: Vicinity Map



## **B. Background**

To remain competitive, the Port and its tenants have made significant investments over time including the deepening of navigation channels/waterways, berths, marine terminals, cargo handling equipment, rail, and other facilities in the Port area that support trade and commerce. Recently, the size (length and width) and container capacity of cargo vessels deployed in global trade and calling the Port has dramatically increased.

The Port is served by the Oakland Harbor, which generally consists of the Entrance Channel, the Outer Harbor and its Outer Harbor Turning Basin (OHTB), and the Inner Harbor and its Inner Harbor Turning Basin (IHTB). The Oakland Harbor is a federal-sponsored channel in that the navigation features (depth and width of channels/turning basins) are maintained (payment and performance) by the USACE, via direct appropriations from the Federal Government.

The Oakland Harbor was last improved to provide a water depth of minus 50 feet and expanded the width of the turning basins. This most recent construction effort concluded in 2009 and is further referred to herein as the “-50 Foot Project”. In addition to deepening the Oakland Harbor, the -50 Foot Project expanded the OHTB to 1,650 feet in diameter and the IHTB was expanded to 1,500 feet in diameter. Any additional modifications to the Oakland Harbor -50 Foot Project improvements requires federal authorization and is subject to cost sharing between the Port and the USACE. The present-day Oakland Harbor federal navigation features are depicted in Exhibit B.

The -50 Foot Project was designed and constructed based on a maximum vessel size of 6,500 TEUs, 1,139 feet in length, and a maximum draft of 48 feet. Currently, the Port routinely receives Ultra Large Container Vessels (ULCVs) that have a 14,000 TEU capacity and a length of 1,210 feet. A vessel with an overall length of 1,210 feet is the maximum size vessel that can turn in the Port's IHTB.

Additionally, the Port has received ULCVs with capacities greater than 14,000 TEU. Most notably, the CMA CGM Benjamin Franklin, which has an 18,000 TEU capacity and a length of 1,310 feet, called marine terminals in both the Inner and Outer Harbor. Vessel movements for the Benjamin Franklin were heavily restricted and required extensive consultation and coordination with the San Francisco Bar Pilots (SFBP), including computer aided maneuvering simulations and modeling. For the Benjamin Franklin these restrictions included: (a) daylight only transit, (b) limitation to only berthing portside to Berth 55 in the Inner Harbor, and (c) required precision timing for a slack water stern first departure and turn-around near the Entrance Channel. The Entrance Channel is not a designated turning basin.

In February 2020, the USACE released their fiscal year (FY) 2020 workplan authorizing a “New Start” investigation to review widening the Oakland turning basins. With an approved budget of \$1.5 million, the USACE, through its South Pacific Division (SPD) and local San Francisco District (SPN), is now initiating a deep-draft navigation feasibility study (FS) to examine potential improvements and their potential environmental impacts for widening Oakland's turning basins to more efficiently handle ULCVs.

The USACE will lead the FS. The Port, as the non-federal interest, is considering ways to assist the USACE in the FS, including the possibility of providing technical studies/services and in-kind contributions under a Feasibility Cost Share Agreement (FCSA). At this time, the Port Board of Commissioners (Board) has not approved or authorized Port participation in a FCSA or expenditures for the technical services that are the subject of this RFQ.

Generally, in-kind contributions are products and analyses that are integral to the FS and would otherwise have been undertaken by the USACE for the FS. The Port's in-kind contributions, if any, will be identified and performed in accordance with the USACE Project Management Plan (PMP).

### **C. Electronic Data Room**

The Port has made certain information available to the Respondents in an Electronic Data Room (EDR) accessed from a read-only SharePoint link. Access to view documents in the EDR can be made by contacting Justin Taschek, at (805) 443-7341 or [jtaschek@portoakland.com](mailto:jtaschek@portoakland.com).

### **D. Solicitation Summary**

The Port is seeking qualified firms to submit qualifications to provide technical studies/services in support of the USACE-led Oakland FS that will analyze constraints and opportunities to improve turning basin navigational features for more efficient handling of ULCVs at the Port. This includes the potential widening of both Oakland turning basins.

Generally, a FS is comprised of three main categories which include: (1) engineering; (2) environmental; and (3) economics. This RFQ solicits firms that have the capabilities and experience to conduct various technical studies for all three main categories that comprise a FS. The Port will decide which, if any, technical studies a selected consultant will perform.

It is required the selected firm has experience integrating technical studies and respective narrative reports into a USACE FS. Responding firms need to explicitly demonstrate their understanding and abilities to effectively and efficiently integrate non-USACE conducted technical studies into a USACE led FS. This will be evidenced in each firm's project approach.

The USACE is the lead agency on preparing a National Environmental Policy Act (NEPA) document and the Port is the lead agency on preparing the California Environmental Quality Act (CEQA) document. The Port is responsible to conduct all necessary CEQA analyses and the USACE will conduct all necessary NEPA analyses; however, in certain circumstances the same analyses may be utilized for both CEQA and NEPA. The intention is to conduct both the NEPA and CEQA analysis concurrently. It is anticipated that the CEQA document will be an Environmental Impact Report (EIR). The CEQA and NEPA document(s) will comprehensively assess environmental impacts on a broad range of topics, including but not limited to, air quality, public health, noise, soil, water pollution, and biological resources.

Qualified firms shall submit a Statement of Qualifications that include at a minimum: (a) qualifications that meet the minimum requirements as further detailed in the below Section I.E.; (b) no less than two (2) examples (3-5 examples preferred) of prior experience with planning studies (coordinated studies with SPN preferred) that are similar in scope, size, and complexity to this solicitation for technical services; and (c) project approach including a proposed schedule.

### **E. Respondent's Minimum Qualifications**

The Port intends to negotiate an agreement with the firm selected by the Port through this competitive RFQ process to provide all, some, or none of the consultant technical services related to the USACE Oakland FS as described herein. Respondents to this RFQ may form a team with other firms to perform the required tasks. The best qualified firm will have a Consultant Project Manager (CPM), as well as key technical leads, best able to serve the Port in a consistent and efficient manner. In addition, the best qualified firm will have evidenced in their project approach, with supporting prior project experience, an understanding that demonstrates the firm's ability to meet the Port's specific needs for this

solicitation and experience coordinating with key stakeholders, such as the USACE, BCDC, DTSC, RWQCB, maritime industry stakeholders and Oakland/Alameda community members.

#### **Minimum Respondent (Prime Consultant) Qualifications**

- a) Five (5) or more years of experience in USACE, design, planning, and construction projects; and,
- b) management of at least two (2) (3-5 preferred) prior navigation planning studies and related technical services (in similar size and scope to this RFQ) that were or are in process of receiving funding for design and construction.

#### **Minimum Qualifications for the Consultant Project Manager**

- a) Five (5) or more years of experience in USACE, design, planning, and construction projects; and,
- b) five (5) or more years of experience on projects with a similar degree of complexity to the scope of the technical services described in this RFQ. The Respondent must demonstrate the CPM's ability to manage scope, schedule, and budget for the technical services described in this RFQ.

#### **Minimum Qualifications for the Technical Leads on Technical Service Tasks**

- a) Five (5) or more years of experience with providing technical analysis, design, and planning services in similar complexity respective to the technical services anticipated in this RFQ;
- b) five (5) or more years of experience in performing technical tasks related to the collection of data, data analysis, preparation of reports, and report integration within large planning studies; and,
- c) five (5) or more years of experience, where applicable, in construction estimating, conceptual engineering design drafting, and economic analysis for deep draft navigation improvements to meet USACE funding justification requirements.

#### **F. Projected Length of Contract**

The scheduled completion date for the selected firm, if any, to provide technical service(s), at Port's sole discretion, is in coordination with the USACE schedule to finalize a compliant FS in less than three (3) years once commenced. The anticipated FS commencement is third quarter 2020.

## **II. Scope of Services**

### **A. General Services**

The Port anticipates that the best qualified firm will support the Port in providing various technical studies/services for the USACE-led FS. As such, there is a possibility that only a few of the technical studies/services listed below will be performed by the selected consultant.

The selected firm is expected to demonstrate knowledge and proficiency of all USACE standards and guidance, as well as local San Francisco Bay agencies and jurisdictional standards, regardless of the fact they are not listed exhaustively in this RFQ. Further, the selected firm is required to have experience with the USACE SMART (Specific, Measurable, Attainable, Risk Informed, Timely) planning process and must have been involved in prior USACE general investigation planning studies.

All work products developed by the selected firm will be subject to USACE document review requirements that will be further defined in the Port of Oakland Deep Draft Navigation Feasibility Study Review Plan once drafted by the USACE. The selected firm will still be required to have its own robust quality assurance and quality control plan for document controls and peer reviews.

The scope of work may include, but is not limited to, the following tasks typically performed as sections of a deep draft navigation FS:

## **TASK 1: Technical Service Project Management**

### **a) Project Controls**

Provide document control and filing services for all project documents contracted for including any revisions or updates. Consultant shall, at its sole cost and without request, provide complete files to the Port by the end of the contract, which will include hard copies and electronic copies (in commonly accessible formats) of all documents.

### **b) Project Meetings**

Plan, schedule, and conduct Port and Consultant coordination meetings. Prepare and distribute meeting agenda, meeting materials, and minutes or notes of discussions and meetings. Key issues and questions will be documented with supporting materials supplied two days prior to meetings. Schedules will be agreed to for resolving issues and all decisions will be documented and circulated to the internal team for concurrence. Documentation or other communication to external stakeholders must be approved by the Port prior to dissemination. Consultant shall implement a system to track key technical service project activities and action items during the technical service project duration.

### **c) Project Coordination**

Coordinate, as directed by the Port Project Manager (PPM), with the Port, USACE (District, Division, Headquarters, Project Delivery Team (PDT)), local SF Bay Agencies, and external stakeholders.

### **d) Project Organization**

Consultant will have a project manager (CPM) who, as of the Effective Date of the respective contract, will be physically domiciled in the Northern California region with an office located within 40 miles of the Port. The CPM will serve as the direct liaison with the PPM. The CPM will be in frequent contact with the PPM and will be readily available to meet with Port staff.

### **e) Project Schedule**

Develop a Work Breakdown Structure (WBS) for each technical service; and,

Develop and update a detailed Critical Path Method (CPM) Master Project Schedule (MPS) based on the WBS.

### **f) Project Budget**

Consultant shall use Earned Value Project (EVP) management to track costs incurred to date with percent work completed and schedule for each technical service task that is contracted for. Consultant will maintain and provide monthly: invoice, cash flow forecast schedule, and a budget progress report which is to include at a minimum the following key metrics:

*Schedule Variance (SV):* This is a measure of the difference between the work completed against the amount of work that was planned to be completed. This shows if the project is on schedule or not.

*Cost Variance (CV):* This is the measure of the difference between the amount that was budgeted for the work planned to be performed and the amount that was incurred for the work performed. This shows if the project is on budget or not.

*Schedule Performance Index (SPI):* This is the ratio between the budget that is approved for the work that is performed to the budget that is approved for the work that was originally planned. This is a relative measure of the project's time efficiency.

*Cost Performance Index (CPI):* This is the ratio between the approved budget for the work that is performed to the budget that was incurred for the stipulated work. This is a relative measure of the cost efficiency of the project and can be used to estimate the cost of the remainder of the task.

#### **g) Project Quality**

Consultant shall prepare and execute work in accordance to a Quality Management Plan (QMP) that details the internal QA/QC procedures that will be implemented by the Consultant, subconsultants, and the Port.

The QMP shall detail the Consultant and subconsultant's internal QA/QC review processes of basic science and engineering work products. Processes shall include peer review/checking of the documents, quality checks, computation checks, graphics/plan checks, certifications, and control of documents/record of design.

The QMP shall detail the involvement and frequency of Port technical staff in review and development of work products.

### **TASK 2: Preliminary Design for Project Alternatives**

- a)** Consultant shall identify the project datum and projection attributes, most likely the latest realization of the National Spatial Reference System (NSRS), and describe how surveying data based on other realizations or other reference systems will be properly aligned with the project datum and projection.
- b)** Consultant shall develop 10% design<sup>1</sup> for initial array of alternatives for the widening of the IHTB and OHTB.
- c)** Consultant shall develop 30% design<sup>2</sup> for the NED Plan and the Locally Preferred Plan (LPP) for both the IHTB and OHTB.

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<sup>1</sup> Design Definition (10%)

This submittal represents approximately 10% to 15% of the design effort and shall be used to document and validate projects requirements and the construction cost. The submittal shall include preliminary schematic plans and a narrative describing each aspect of the project.

<sup>2</sup> Concept Design Definition (30%)

This submittal represents approximately 30% to 35% of the design effort and shall be of sufficient detail to show how the users' functional and technical requirements will be met, indicate the designer's approach to the solution of technical problems and show compliance with design criteria or provide justification for noncompliance. The Concept Design consists of:

(a) Design Analysis:

- (1) Design narrative, and design calculations for all disciplines.
- (2) Intended (outline) specifications list.

The NED and the LPP Plans for the IHTB are anticipated to include significant shoreline and upland excavations necessitating the installation of containment wall(s) or bulkhead(s). As part of the 30% Designs, the Port anticipates the inclusion of, but not limited to, the following elements:

- Dredging prisms, volumes, material types, etc.;
- utility locations and plans for relocation;
- retaining structures including bulkhead(s), with consideration to static and seismic loads, support of future uses (maritime/public access), need for containment or treatment of groundwater (if deemed necessary), prevention of saltwater intrusion into groundwater (if deemed necessary);
- long-term performance and maintenance, including erosion protection from ship movement, propwash, tug activity and bow thrusters, etc.;
- impacts to adjacent structures, vessels docked at adjacent facilities, and ferry operations;
- additional hydraulic structures that will increase safety or mitigate any possible impacts; and,
- other relevant details that will impact project cost, design and permitting.

### **TASK 3: Cost Engineering**

- a) All Cost Engineering work and products shall conform to the latest edition of related USACE guidance.
- b) Consultant shall develop Class 4 cost estimates<sup>3</sup> for initial array of alternatives for the widening of the IHTB and OHTB.
- c) Consultant shall develop Class 3 cost estimates<sup>4</sup> for the NED plan and the LPP for both the IHTB and OHTB using Micro-Computer Aided Cost Estimating System (MCACES) software (Generation II or as agreed upon with the USACE San Francisco District and South Pacific Division). Consultant shall write narratives to accompany

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(b) Concept drawings.

<sup>3</sup> Class 4 Cost Estimate: Early concept technical information (5-10%). There is still substantial lack of technical information and scope clarity resulting in major estimate assumptions in technical information and quantities, heavy reliance on cost engineering judgment, cost book, parametric, historical, and little specific crew-based costs. While certain construction elements can be estimated in detail, there is still a great deal of uncertainty relative to major construction components. Although Class 4 estimates may be more accurate than Class 5 estimates, they are based on a very limited technical information. The PDT must identify areas of risk and uncertainty in the project and describe them to determine the amount of contingency that must be added to a cost estimate to reduce the uncertainty to an acceptable level of cost confidence. Typical Contingency Range could be 30% to 100%

<sup>4</sup> Class 3 Cost Estimate: Technical information (including designs) are approaching a 10%-60% quality of project definition. There is greater confidence in project planning and scope, construction elements and quantity development. The estimates rely less on generic cost book items, greater reliance on quotes, recent historical and site-specific crew based details. Class 3 estimates are a reflection of improved technical documents. The estimates must be supported by a technical information (scope, design, acquisition and construction methods, etc.) discussion within the estimate and the uncertainties associated with each major cost item in the estimate. Special attention must be given to large construction elements and items that are sensitive to technical information change. Typical Contingency Range could be 20% to 50%.

cost estimates describing data inputs, assumptions, and all relevant information so the model could be run by others.

#### **TASK 4: Coastal and Hydraulic Engineering Report**

- a) Consultant shall prepare a Coastal and Hydraulic Engineering Report at a level of detail necessary to support construction cost estimates and other component studies that outlines the results of all coastal/hydraulic engineering investigations conducted for the FS.
- b) Consultant shall review all existing data available related to coastal and hydraulic engineering in the Oakland Harbor. Consultant shall collect field data as needed to support the development of waves and currents for use in modeling.
- c) Consultant shall prepare a numerical hydrodynamic model for the Oakland Harbor that provides best estimates of waves and currents for use as input for other component studies.
- d) Consultant shall evaluate the hydrodynamic response between a vessel berthed at Howard Terminal (for alternatives that would not modify Howard Terminal's existing footprint), Schnitzer Steel, Bay Ship and Yacht and a vessel utilizing or passing through a widened IHTB including ferries and pleasure craft. A dynamic mooring analysis shall be performed to evaluate the resulting impacts on berthed vessels and drydocks at Schnitzer Steel, Bay Ship and Yacht and Howard Terminal and on the wharf mooring and berthing infrastructure from the loads imposed by passing vessels. From this analysis, Consultant shall recommend the minimum channel/turning basin dimensions required to mitigate any negative impacts to moored vessels or equipment (e.g. drydocks).

#### **TASK 5: Dredged Sediment Disposal Alternatives Analysis Report**

- a) Consultant shall evaluate all potential dredged sediment placement sites (ocean disposal, in-bay disposal, and beneficial re-use) and prepare narrative report listing advantages and disadvantages of each. For each site, Consultant shall consider the cost of placement, ecological benefits, permitting process, and the site's capability to accept dredged sediment during the anticipated construction timeframe during analysis. Consultant shall contact representatives of various potential dredged sediment placement sites and facilitate discussions with the Port. Consultant shall compile testing requirements including methods and frequency for each disposal site to be used in designing the soil and sediment testing program. Consultant shall also consider disposal options for contaminated dredged sediment (if applicable).
- b) The Port has a 5-year Integrated Alternatives Analysis (AA) for Disposal of Maintenance Dredged Material Report approved by the Dredged Material Management Office (DMMO) agencies for berth maintenance dredging. Although the AA was developed for maintenance dredging and does not necessarily translate to new work dredging, the consultant shall review this report and use applicable sections as basis for the Dredged Sediment Disposal Alternatives Analysis Report.

## **TASK 6: Soil, Sediment, and Groundwater Sampling Analysis Plan and Report(s)**

- a) Consultant shall prepare a Soil, Sediment and Groundwater Sampling and Analysis Plan (SAP). This purpose of this plan is to coordinate all the soil and sediment sampling efforts associated with the development of the USACE FS and environmental documentation. The plan shall detail the depths and locations of soil and sediment samples required to execute the Preliminary Design for Project Alternatives, Construction Cost Estimates, Geotechnical Investigation Report, Hydrogeological Investigation Report, and NEPA/CEQA reporting and permitting. The Plan shall include sampling methods, constituents, detection levels required, elutriate and bioassay testing methods and species consistent with phasing and methods required for in-bay and ocean disposal (in-bay protocols include beneficial reuses of material for cover and non-cover in wetlands and as levee material). Testing frequency must be consistent with the disposal site and permitting agency requirements. Data must be adequate for analysis of dredging/excavation construction impacts and determination of any mitigation (if required). A plan for archiving samples (with maximum usable storage durations) should be included in the SAP. The sampling program will be coordinated with the Geotechnical Investigation. Basic sediment and fill strata will be identified and mapped (fill, marsh crust, old bay mud, young bay mud, Merritt Sands, etc.). Strata will be used to justify Tier I exclusion for material that meet the criteria.

A groundwater sampling program will be designed capable of determining any potential impacts to surface water from shoreline excavation. The Groundwater Sampling element of the SAP should use the minimum number of wells to determine groundwater flow direction, the influence of estuary water to groundwater, and concentrations of potential contaminants (based on site history) in and originating from groundwater and upland soils. Data should be adequate to design mitigation methods if required. Any temporary structures such as wells or test borings will include closure plans and the project cost will include closure of these features.

The SAP will be coordinated with the Port during development to ensure consistency with other Port programs (maintenance dredging, site remedial activities, etc.) and to ensure all available data is considered while developing the SAP. There are many soils, sediment and groundwater quality reports available for the Port's Howard Terminal property. All existing data will be obtained and reviewed by the Consultant. While some data and/or reports will be available from the Port, the Consultant will be responsible to coordinate with other agencies including, but not limited to, the San Francisco Regional Water Quality Control Board (RWQCB) and Department of Toxic Substance Control (DTSC) for all available data.

Cooperating with the Port, the Consultant shall schedule a multi-Agency meeting with the DMMO for dredging and a separate meeting with DTSC for soils and fill to describe the potential navigation improvements and to obtain comments or concerns on the SAP from the Agencies. A separate meeting will be scheduled with the RWQCB to discuss groundwater sampling. Additional meetings may be required if requested by the RWQCB, DTSC, and/or DMMO.

Once the SAP has been approved by the Port and Agency comments are addressed, the Consultant shall execute the SAP. The SAP must be executed with all required permits, approvals, rights-of-entry furnished by the Consultant. The Port will support the Consultant in obtaining all approvals and access, but it is the responsibility of the Consultant to obtain access and to conduct sampling consistent with all regulations and permits.



Fifteen (15) calendar days prior to initiating field activities, the Consultant shall provide the Port a Health and Safety Plan (HASP). The Port will review and may supply comments but will not approve the Consultant HASP. Sampling, especially over water work is inherently dangerous. The Consultant takes full responsibility for the safety of their employees, subconsultants and approved visitors/observers. Any spills or other accidents that may result from carrying out the Consultant sampling program are the sole responsibility of the Consultant.

The Consultant will collect, handle, archive, ship and ultimately dispose of all samples in accordance with all state and federal laws as well as the approved SAP. The Consultant will dispose of any samples collected and determined to be a waste in accordance with state and federal Laws. The Port will sign manifests as the waste generator for materials from Port property only.

The Consultant will prepare a schedule for sampling and analysis that meets the goals of the overall FS schedule.

#### **TASK 7: Geotechnical Engineering Report**

- a) Consultant shall prepare a Geotechnical Engineering Report (GER) at a level of detail necessary to support construction cost estimates and other study components that outlines any geotechnical concerns/factors associated with the tentatively selected plan, assesses shoreline and offshore slope stability impacts associated with the potential proposed improvements, and provides geotechnical recommendations for the tentatively selected plan.
- 1) Consultant shall compile and review all existing geotechnical data.
  - 2) Consultant shall perform preliminary slope stability analyses in the dredged footprint of the alternative or tentatively selected plan using existing data to identify areas of the shoreline and channel that potentially will be impacted most significantly by the proposed dredging/excavation.
  - 3) Consultant shall perform additional field investigation and laboratory testing as needed to fill in data gaps while concentrating new exploration in areas of potential impact. Consultant shall coordinate soil sampling efforts with other related soil/sediment sampling tasks in this RFQ.
  - 4) Consultant shall perform detailed engineering analyses for the NED and LPP using revised strength data developed from additional field investigation.
  - 5) Consultant shall develop design level geotechnical recommendations for the LPP and NED Alternatives and present results in a written GER.
  - 6) For the OHTB, Consultant shall analyze the static stability and seismic capacity of all impacted embankments and provide recommendations for dredge slope configurations and static slope stability factors of safety for the LPP and NED alternatives.
  - 7) For the IHTB, Consultant shall determine lateral forces for static and seismic load conditions for use in design of the shoreline bulkhead for the LPP and NED alternatives.
  - 8) The GER shall describe all assumptions, design criteria, methods, calculations and shall be stamped by a registered California Geotechnical Engineer.

#### **TASK 8: Hydrographic Surveying**

- a) Consultant shall furnish all labor, materials, tools, instruments, transportation, service, and supervision to hydrographically survey the top of mud at and surrounding the existing IHTB and OHTB. Consultant shall employ multibeam swath survey technology for all hydrographic survey work. At a minimum, all survey work will be in accordance with the USACE Manual EM 1110-2-1-3, dated November 30, 2013.
- b) Condition soundings survey line plan will be sufficient in that 50% overlap (200% bottom coverage) will be obtained using an acoustic pulse not to exceed a 120-degree total beam angle.
- c) Contract shall compute dredged material quantities based on hydrographic survey data.
- d) The Consultant's model will be used to calculate dredge cell quantities that result from the SAP.
- e) Within the footprint of the LPP and NED alternatives, upland and intertidal contours will be generated with sub 5mm relative accuracy and tied into the hydrographic survey data using Port Datum. Utilities will be surveyed and included in the upland and intertidal surveys.
- f) Consultant can assume that two separate sets of condition soundings will be required at each turning basin.
- g) A sub bottom survey may be required to determine the existence and location of unknown utilities, obstructions, paleochannels or other geologic formations that would impact dredging.
- h) In general, soundings shall be provided in pdf, ACAD, and xyz data file formats.

#### **TASK 9: Vessel Maneuvering Simulation Study**

- a) Consultant shall plan, facilitate, and manage a vessel maneuvering simulation exercise to identify viable geometrics for the turning basin alternatives with written acceptance of the alternatives from the San Francisco Bar Pilots (SF Bar Pilots).
  - 1) Consultant shall assume that twenty (20) different plan alternatives, with varying environmental conditions, will be performed and evaluated by Consultant with a desktop vessel maneuvering simulation program.
  - 2) Consultant shall coordinate a five (5) day full mission bridge vessel simulation session at California State University Maritime Academy or approved equivalent simulation facility. Consultant shall perform all work necessary to set-up the simulation sessions at the simulation facility, including contracting with the simulation facility, scheduling the work, and providing all the data inputs required for the simulation software. It is anticipated that the sessions will be attend by Port staff, USACE staff, the SF Bar Pilots, and a representative from a shipping line.
  - 3) Consultant shall simulate tidal currents in the Oakland Inner and Outer Harbors for existing and each alternative design scenario in support of the desktop and full bridge simulation studies. Each model shall be regenerated within the Inner and Outer Harbors and utilize new bathymetry data. This

task includes the digital delivery of depths, current velocities, and water levels to be used by the simulation facility.

- 4) Consultant shall facilitate and direct the full bridge simulation sessions. Consultant shall act as the Port's advisor and coordinate discussion meetings at the start and end of each day that simulations take place.
- 5) Consultant shall work with the simulation facility representative to set-up each of the simulation exercises to allow for execution by the SF Bar Pilots. Simulation exercises and associated environmental conditions (e.g. day, night, maximum ebb tide, maximum flood tide, varying wind conditions, combinations of previously mentioned conditions) shall be determined during daily meetings with the SF Bar Pilots.
- 6) Consultant shall prepare a Simulation Results Report (SRR) that details at a minimum the following information: screen captures of history and track of run, heading, speed over ground (SOG), course over ground (COG), rate of turn (ROT), lateral speed of bow and stern, tug forces applied to the assisted vessel, true wind direction and velocity, apparent wind direction and velocity, height of tide and under keel clearance, rudder angle and engine order, engine revolutions per minute (RPMs), and bow thruster use. The Report shall also compile and document comments and findings had by the SF Bar Pilots and other participants during the simulation sessions and provide general recommendations related to turning basin geometrics and navigational operation requirements.
- 7) Consultant shall analyze the findings of the vessel simulations and identify potential operational issues or constraints resulting from the proposed geometrics of the design alternatives. Consultant shall use this information to inform the design of engineered hydraulic structures, navigational aid systems, or other features to improve operational safety and reliability of the turning basins.

#### **TASK 10: Estimate of Incremental Maintenance Dredging Quantities**

- a) Operation and Maintenance (O&M) dredging of the federal channel is and will remain the responsibility of the Federal Government. An estimate of future O&M dredging requirement is necessary for the optimization calculations because the plan formation must reflect the impact from future O&M dredging.
  - 1) Consultant shall estimate the additional annual cost of O&M dredging resulting from the widened turning basin footprints.
  - 2) Consultant shall evaluate over ninety years of historic survey data from the USACE's Oakland Harbor O&M dredging project to determine the average annual shoaling rates.
  - 3) Consultant shall also take into consideration changes in accretion rates that have occurred because of prior channel deepening or widening projects at the Oakland Harbor.
  - 4) Consultant shall utilize a sediment bed model that represents the dynamic process of erosion, bedload transport, bed sorting, armoring, consolidation, settling, and deposition to simulate the suspended sediment load and sedimentation rates in the alternative and tentatively selected plan.

#### **TASK 11: National Economic Development Analysis**

- a) Consultant shall conduct a National Economic Development (NED) Analysis for the USACE Oakland FS. The NED Analysis, resulting in an Economic Analysis Report (EAR), will serve as the economic support for the proposed Oakland Harbor improvements. Consultant will analyze and compare total project costs and total project benefits (net benefits) for turning basin alternatives.

Consultant shall use the latest economic model required and approved by USACE Headquarters for the NED Analysis. Consultant will prepare and submit a record with written approval or concurrence from USACE on the model proposed to be utilized.

The Port will support the Consultant to collect the latest data on current cargo throughput, job creation, and other required data that the Port currently tracks. The Consultant will be responsible for generating trade statistics (e.g. commodity forecasts) required for the model that is currently not tracked and/or available from the Port.

The Consultant will schedule a meeting in accordance with the Consultant's MPS with the Port to discuss Consultant's sensitivity analyses identifying key issues that are driving the evaluation.

#### **TASK 12: Real Estate Plan for Lands, Easements, Rights-of-way, Relocation, and Disposal**

- a) Consultant shall evaluate and appraise real estate requirements for the lands, easements, rights-of-way, relocations and disposal areas (LERRDs) that will be required, at a minimum, for the NED Plan and the LPP. Consultant is responsible to ensure property evaluations and appraisals meet the requirements of the USACE for verification of value for LERRDs cost share.

Consultant shall meet the current standards as described in the Uniform Standards of Professional Appraisal Practice (USPAP). The Financial Institutions Reform, Recovery and Enforcement Act of 1989 recognizes USPAP as the generally accepted real property appraisal standards and requires USPAP compliance for appraisers in federally related transactions.

- b) Consultant is responsible for the coordination and execution of rights-of-entry or surveys. This includes at a minimum Appraisal and Right-of-Way Acquisition Surveys and environmental inspections. The Port will assist in obtaining rights-of-entry, but it will be the Consultant's responsibility to meet the requirements for access onto properties of interest.
- c) Consultant shall identify and describe the real estate requirements for the LPP and NED for both turning basins in a Real Estate Plan (REP).

#### **TASK 13: Environmental Analysis Consultations and Permitting**

- a) **California Environmental Quality Act**

Consultant shall produce CEQA Environmental Impact Report (EIR) documents for the USACE Oakland FS, including technical studies required to support conclusions in the EIR. The CEQA document and supporting studies must meet the latest State

and Port Specific guidelines for CEQA analyses. The Document must be consistent with current case law. Consultant shall provide document control, creation of the Administrative Record and filing services for the environmental Administrative Record as required and allowable by Law and in accordance with any additional Port specific protocols. Upon completion of the CEQA document and no later than the end of the contract, Consultant shall provide complete files to the Port, in accordance with the Port's file retention and archiving procedures, which include hard copies and electronic copies (in commonly accessible formats) of all documents. The Consultant will, at consultant's cost, provide copies of all files and documents requested by the Port consistent with RFQ Section II:A:a.

Wherever possible, technical studies prepared to support CEQA analysis could satisfy both CEQA and NEPA document requirements. For instance, the cultural resources section could be written to also address Section 106 of the National Historic Preservation Act (NHPA) and the Air Quality Section could address the National Ambient Air Quality Standards (NAAQS) and other Clean Air Act standards relevant to the NEPA document.

### **Endangered Species and Essential Fish Habitat Consultation**

Consultant shall prepare Biological Assessments for all federally listed species. This will include species listed by the United States Fish and Wildlife Service (USFWS) as well as the National Oceanic and Atmospheric Administration (NOAA). In addition, the NOAA assessment will include an evaluation of Essential Fish Habitat. Consultant shall participate in Section 7 consultation process supporting the USACE as necessary and directed by the Port.

### **b) Permitting**

Consultant shall prepare all permit applications associated with impacts to waters of the U.S. and waters of the state that are inside and outside of the federal channel. This includes a USACE Least Environmentally Damaging Project Alternative Report (LEDPA Report) and a Regional Water Quality Control Board Section 401 permit. For areas outside of the federal channel, the consultant shall prepare a Bay Conservation and Development Commission (BCDC) major permit. A State Lands Commission permit may be required for certain alternatives. Consultant shall participate in agency consultation as requested including preparing permit applications, presentation materials and participating in meetings to help discuss results of studies and analyses.

The Consultant, at the direction of the Port, will support the USACE in the preparation of a Consistency Determination (CD) with the Coastal Zone Management Act (CZMA) and the McAteer/Petris Act as implemented by the Bay Conservation and Development Commission (BCDC). The USACE does not obtain BCDC permits for their projects but must demonstrate consistency with the CZMA as implemented by BCDC through the CD process.

### **III. Port Policy and Other Requirements**

The selected Respondent will be required to comply with the following Port Policy and Other Requirements:

**1. Non-Discrimination and Small Local Business Utilization Policy (NDSLBUP):**

The Port desires to maximize the participation of small local business and has instituted a Non-Discrimination and Small Local Business Utilization Policy (NDSLBUP). The NDSLBUP consists of two parts:

- Non-Discrimination policy which all Suppliers (Respondents) must adhere to, by providing the enclosed "Non-Discrimination and Small Local Business Utilization Policy Program Affidavit" (**Attachment 6**) with their Qualifications
- Preference points are awarded to small local businesses who qualify under the Port's definition of a small local business. In order to qualify for preference points, Suppliers (Respondents) must be either certified by the Qualification due date or may apply online at: <http://srd.portofoakland.com/>. The application and any supporting documentation must be submitted to the Port's Social Responsibility Division seven (7) business days prior to the Qualification due date. To apply, please click on the above link and then on the link titled "Register New Company?" and follow the instructions.

A summary of the Port's Non-Discrimination and Small Local Business Utilization Policy is included herein as **Attachment 5**. The entire policy is available at:

[http://www.portofoakland.com/files/PDF/responsibility/NDSLBUP\\_00810.pdf](http://www.portofoakland.com/files/PDF/responsibility/NDSLBUP_00810.pdf)

Suppliers already certified with the Port do not need to submit proof of certification, but still need to check the Port's certification database at: <http://srd.portofoakland.com/> to ensure their certification has not expired and must fill out the Chart for Submitting Data for Calculation of Preference Points (**Attachment 5-A**), and the Local Participation Questionnaire (**Attachment 5-B**), and submit them with your Qualification. All Suppliers (Respondents) must still provide proof of adhering to the Port's Non-Discrimination policy by submitting the NDSLBUP Program Affidavit.

A copy of the Port-certified Small Local Business Enterprises can also be downloaded at: <http://srd.portofoakland.com/>

For questions or assistance regarding NDSLBUP, contact Ms. Donna Cason, Contract Compliance Officer, (510) 627-1252; [dcason@portoakland.com](mailto:dcason@portoakland.com), at the Port's Social Responsibility Division, or fax requests to (510) 451-1656.

**2. Insurance Requirements:**

All Respondents who plan on submitting a Qualification in response to this RFQ must meet the Port's Insurance requirements listed in **Attachment 10**, Port's Standard Professional Services Agreement (see **Appendix C – Insurance**), and must provide proof of insurance at the time of project award. Respondents must include a statement (**Attachment 9**) with their Qualification agreeing to the Port's insurance requirements and indicate they will be able to obtain the proper insurances at the time of project award.

**3. Security Sensitive Information:**

By submitting a Qualification, Respondent acknowledges that in the course of performing services under the Agreement, the selected Consultant/Contractor will come into possession of sensitive information subject to Port of Oakland regulation. The selected Consultant/Contractor will be required to comply strictly with the Port of Oakland's policies and practices for sensitive information.

4. **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, 2019 is at least \$14.35 with credit given to the employer for the provision to covered employees of health benefits, and \$16.47 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 Respondent will be required to fill out the attached Employer Self-Evaluation for Port of Oakland Living Wage Form (see **Attachment 7-A**) and Certificate of Compliance—Living Wage (see **Attachment 7-B**) and return them to the Social Responsibility Division. (i.e., do not include these forms in with your Qualification). For more information, please call Connie Ng-Wong in the Port of Oakland's Social Responsibility Division at (510) 627-1390.

Respondent shall acknowledge reviewing the Port's Living Wage program and compliance, by submitting the Statement of Living Wage Requirement (**Attachment 8**) with their Qualification.

5. **Prevailing Wages License and Sub-contracting Requirements:** (will only apply to the environmental testing and sampling aspects of the project)

Respondent submitting a Qualification for a "public works" project (defined below) are required to pay prevailing wages pursuant to California Labor Code, Section 1720, et seq, and to abide by all subcontracting and subletting practices as defined by California Public Contract Code section 4100 et seq., and to abide by any Contracting Licensing requirements as defined by California Business and Profession Code. All Contractors performing work on Port property are required by law to be licensed and regulated by the Contractors State License Board.

California Labor Code Section 1720, (a)(1) provides that the term "public works" means:

Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority. For purposes of this paragraph, "construction" includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

General prevailing rate of per diem wages in the locality in which the work is to be performed for each craft, classifications or type of worker needed to execute the contract, including employer payments for health and welfare, pension, vacation,

apprenticeship and similar purposes is available at the Department on Industrial Relations Internet site accessible at:

[http://www.dir.ca.gov/DLSR/statistics\\_research.html](http://www.dir.ca.gov/DLSR/statistics_research.html).

The schedule of per diem wages is based upon a working day of eight hours. The rate for holiday and overtime work shall be at least time and one half.

It shall be mandatory upon the Contractor to whom the contract is awarded, and upon any Subcontractor under him/her, to pay not less than the specified rates to all workers employed by them in the execution of the contract. It is the Contractor's responsibility to determine any rate change, which may have or will occur during the intervening period between each issuance of published rates by the Director of Industrial Relations.

In addition, any Contractor or Subcontractor performing Public Works for this project must be registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

No Contractor or Subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations

**6. Web-Accessed Monitoring System (WAMS)**

The Port has adopted an electronic monitoring system to satisfy certain certified payroll reporting requirements. The successful Respondent will be required to utilize WAMS to satisfy said requirements. Weekly certified payroll reports must be input into the Port of Oakland's Web Accessed Monitoring System (WAMS) within one (1) week after a subject payroll date. All firms are required to register with Elations Systems to submit certified payroll reports. Instructions for using Elations Systems will be given to the selected Respondent.

**7. Maritime and Aviation Project Labor Agreement (MAPLA):**

The Port has entered into a Maritime and Aviation Project Labor Agreement (MAPLA) with the Building and Construction Trades Council of Alameda County, AFL-CIO that covers all capital construction in the Port area, whether funded by the Port or by tenants. MAPLA is included as Document 00823R1 in the Port's project manuals for public works projects. MAPLA has resulted in a Substance Abuse Prevention Policy on drug testing (Document 00824R2), a Social Justice Labor Management Cooperation Trust Fund (Document 00825R1), and requirements for Utilization of Off-Site Apprentice Work Force (Document 00826R2), local hiring (Document 00827R1) and utilization of disadvantaged and new hire apprentices (Document 00828R1). Copies of the MAPLA documents in pdf format may be obtained by contacting Bill Russell at [brussell@portoakland.com](mailto:brussell@portoakland.com). MAPLA will apply to the construction aspects of this project.

**8. Port's Standard Professional Services Agreement:**

Submission of a Qualification will confirm that the Respondent fully understands the provisions of the Port's Standard Professional Services Agreement (**Attachment 10**) which will be revised as necessary to be consistent with the provisions of this RFQ, and will execute such revised agreement if awarded the contract. Any objections to any provisions in the Port's Standard Professional Services Agreement and/or this RFQ must clearly be identified in your Qualification. Changes are discouraged.



#### **IV. Submission Requirements**

The Port has scheduled an optional pre-qualification meeting on the date indicated in the table labeled "Qualification Information" (on the first page of the invitation for this RFQ), to review the scope of services and the submission requirements. Attendance is strongly recommended.

Please respond to the following 10 submission requirements (Qualifications Statement) in a straightforward, concise delineation of your capabilities proposed to satisfy the requirements of the RFQ. The Port will use your responses to objectively determine your capabilities and experience. Please label your responses 1 through 10, in the order presented below. Please limit your total response to the number of pages indicated below (excludes the required attachment forms provided with this RFQ).

##### **Submittal Format**

Responses must not be longer than 30 pages for qualification sections 1-5 (one sided or 15 pages double sided), printed on **8 ½" x 11" paper** and formatted in no smaller than **10-point font**. Each section shall be labeled according to the sections below. All submitted material for sections 1-5 must be bound with only **one staple or binder clip** in the upper left corner. All submitted material for sections 6-10 must be bound with only **one staple or binder clip** in the upper left corner. It is permissible that one large clip binds sections 1-10 if each grouping is stapled. Please no binders or any other type of binding. Submittals must be able to fit into a 9 x 11.5-inch folder.

##### **Qualifications**

The Statement of Qualifications shall include the following items to document the Respondent's qualifications:

##### **1. Company Information**

A cover letter highlighting the prime consulting firm's qualifications, indicating:

*(4 pages maximum)*

- (a)** The name of your company (including the name of any parent company), business address, email address, Federal Tax ID number, telephone and fax numbers, and names and titles of key management personnel;
- (b)** whether the prime consultant is a single entity, partnership, corporation, or other legal entity recognized in the State of California;
- (c)** brief history of your company;
- (d)** the primary locations (office) from where the work will be performed;
- (e)** provide documentation that your firm meets the minimum qualifications listed in this RFQ; and,
- (f)** provide documentation that any partnership or technical leads meet the minimum qualifications listed in this RFQ.

The cover letter shall be signed and dated in ink by an officer or employee having the authority to bind the company by his/her signature. Signatures by anyone other than the president, vice president or general partner should have accompanying documentation that the individual is empowered to bind the company or partnership. Indicate if the proposing firm will take any exceptions to the Port's Standard Professional Services Agreement **(Attachment 10)** and/or this RFQ and enumerate these exceptions in this section. Exceptions are discouraged and may result in lower evaluation points during the Port's evaluation.

## **2. Experience and Expertise of the Prime Consultant and Subconsultants**

A brief introduction of all participating firms, including the following required information:

*(5 pages maximum)*

- (a) general background, capabilities, and available resources;
- (b) years in business;
- (c) total number of staff and number of staff in the location where work will be performed; and,
- (d) the firms' experience working together as a team.

## **3. Personnel and Team Organization**

A summary of each of the key personnel's professional expertise and experience, including but not limited to Consultant Project Manager (CPM) and designated Technical Leads. Identify and describe the CPM's direct experience leading the technical and managerial disciplines associated with previous USACE planning studies.

*(5 pages maximum)*

Each Respondent shall explain why its team should be selected for this solicitation. This section should include an organizational chart identifying the prime consultant's and any subconsultants' proposed key personnel that will be working on each of the technical services. Describe the team structure and each key member's roles and responsibilities, including how the Respondent anticipates each of its key members will interact with Port personnel.

Detailed resumes for the proposed staff shall be submitted under "Additional Supplemental Information and Forms", below, and not as part of this section or page count.

## **4. Referenced Projects**

Descriptions of relevant, recent experience (up to five projects) of the prime consultant involving planning studies that are similar in scope, size, and complexity to this solicitation for technical services with emphasis on those studies that involved the same proposed key members from the prime and subconsultants. Include the following information for each referenced project:

*(6 pages maximum)*

- (a) The client/owners' names, address and phone number for the owner/client's project manager. The person identified as a reference should have detailed knowledge about the consultant's performance on the project. By providing such information, you authorize us to contact such client;
- (b) the project's name, location, a brief description of the project, the duration, and its current status;
- (c) your firm's role in the project;
- (d) names and roles of the personnel assigned to the project; and,
- (e) a description of the "value added" by the consultant team. What particularly noteworthy challenges were encountered and how did the consultant address them?

Please note that our ability to validate the information submitted as "relevant projects" is critical to the determination of whether the proposing firm's and their proposed staff's qualifications meet the needs of the project. It is therefore extremely important that the information submitted be as accurate as possible.

## 5. **Project Approach**

Provide an overview describing the general approach and methodology of conducting the general services and technical studies identified in this RFQ, detailed in Section II: Scope of Services, and successfully integrating the studies into the USACE led Oakland FS. Please use this section to describe any services above and beyond Section II that your firm believes are important to completing this FS.

*(10 pages maximum)*

Discuss the methods for completing the work, coordination of the team, and issues and challenges to consider during the planning, scheduling, technical analysis, and report generation process. Include a list of all analyses expected to be needed under CEQA along with a brief description of potential issues and approach to each analysis.

In addition, prepare a project schedule illustrating the firm's approach on successfully integrating the technical service reports identified in this RFQ into the USACE-led Oakland FS, anticipated outcomes, and expected review process and times based on experience (ranges are acceptable).

### **Additional Required Supplemental Information and Forms (the following sections are not included in the 30-page maximum)**

6. **Debarment Statement:** Provide a written statement that your company has not been debarred from providing services to any State or Federal Agency within the last five (5) years. Sign and date your statement. If your company has been debarred, you will need to provide background information and the reason(s) for the debarment. Provide the name and contact information for the agency that debarred your company. The Port must review the reason(s) and duration for the debarment before it can determine if your company can be considered for this project.
7. **Litigation and Other Information:** Provide information describing any litigation, arbitration, investigations, or any other similar actions that your company, its principals, directors, and/or employees have been involved in during the last five (5) years relating to your company's services. Please list (a) name and court case or other identification number of each matter, (b) jurisdiction in which it was filed, and (c) outcome of matter (e.g. whether the case is pending, a judgment was entered, a settlement was reached or the case was dismissed). The Port will review the reason and timing of the action before it can determine if your company can be considered for this project. Failure to provide the litigation information may disqualify your Qualification.
8. **Conflict Disclosure:** Pursuant to Section VI.H, "Conflicts of Interest," below, the Respondent must disclose all facts that may constitute a violation of Government Code Section 1090 or Section 87100 et. Seq., which prohibit self-dealing. Respondent must disclose any influence it may have had over the development of this RFQ or the resulting Agreement, including services provided under any prior, related agreement with the Port. Each qualification must also disclose all known facts bearing upon any possible interests, direct or indirect, which Respondent believes any member of the Port, or other officer, agent, or employee of the Port or any Port department may have or will have in any agreement arising from this RFQ, or in the performance thereof, or in any of the profits thereunder. These conflict disclosures will not count against the maximum page count (indicated above) for your response.
9. **Staff Resumes:** The Respondent should provide detailed resumes of the proposed staff for this solicitation. These resumes will not count against the maximum 30-page limit (indicated above) for your response. (no individual resume is to exceed 2 pages one sided or 1 page double sided)

- 10. Required Forms and Adherence to Port Policy and Other Requirements:** The Respondent must fill out all the forms included in this RFQ (listed under the "Attachments" section and marked with a "Yes" in the column titled "Must Be Returned with Qualification"), and return them with your qualification. By returning the listed forms, your company is supporting and agreeing to the Port Policy and Other Requirements (listed in Section III, "Port Policy and Other Requirements" of this RFQ). Failure of the Respondent to provide any of the required forms may result in your Qualification being rejected for non-responsiveness. These required forms will not count against the maximum page count (indicated above) for your response.

## **V. Evaluation Criteria**

Prior to contract award, the Port must be assured that the Respondent selected has all of the resources required to successfully perform under the contract. This includes, but is not limited to, personnel with skills required, equipment/materials and financial resources sufficient to provide services called for under this contract. If during the evaluation process, the Port is unable to assure itself of the Respondent's ability to perform under the contract, if awarded, the Port has the option of requesting from the Respondent any information that the Port deems necessary to determine the Respondent's capabilities. If such information is required, the Respondent will be notified and will be permitted five (5) working days to submit the requested information.

In awarding the contract, the Port will evaluate a number of factors in combination. Please make sure you have submitted responses to all items listed in the Submission Requirements section, as your responses will be evaluated based on the weights listed below.

## A. Evaluation Weights

Item	Criteria	Weights
1	<p><u>Adherence to Port Policy and Other Requirements, Debarment Statement, Conflict Disclosure and Minimum Qualifications</u></p> <p>Qualifications from companies who have not or will not adhere to the Port Policy and Other Requirements, who have been debarred and have not provided sufficient reasons/justification for the Port to review the circumstances surrounding the debarment, or who have a conflict of interest and have not provided sufficient reasons/justification for the Port to review the circumstances surrounding the conflict, will not be forwarded to the evaluation committee for review. (Submission Requirements Sections: Items 6, 8, and 10 of the Additional Supplemental Information and Forms Section, and Item 1 of the Qualifications Section.</p>	Pass/Fail
2	<p><u>Overall Experience and Expertise of the Consultant and Subconsultants</u></p> <p>This includes demonstrated knowledge and experience in completing complex technical services for a deep draft navigation planning feasibility study similar in the scope outlined herein and directly related to providing the services specified in this RFQ and demonstrated ability to work together as a team and perform all aspects of the proposed technical services scope of work.</p> <p>The Port will also consider any potential (disclosed or undisclosed) litigation against the firms and part of its evaluation.</p>	20%
3	<p><u>Personnel and Team Organization</u></p> <p>This includes experience, education, knowledge, professional affiliations and degrees, professionalism, communication skills, and demonstrated leadership capabilities of key personnel, particularly of the individuals who will be in contact with the Port during the term of the contract.</p>	20%
4	<p><u>Referenced Projects</u></p> <p>This includes the listing of projects performed by the prime consultant under the direct leadership of the prime consultant that are similar in scope, size, and complexity, to the USACE Oakland Turning Basins Feasibility Study.</p>	20%
5	<p><u>Project Approach</u></p> <p>Respondents will be awarded points based on their demonstrated understanding of the requirements, scope of services, methodology, and approach to coordinate, complete, and integrate technical services into a USACE-led deep draft navigation feasibility study.</p>	25%
6	<p><u>Non-Discrimination and Small Local Business Utilization Policy</u></p> <p>Does your company meet the Port's definition of Small Local Business? The Port will evaluate companies that have provided substantiating documentation to prove they meet the Port's definition of Small Local Business, and award qualifying companies up to the maximum 15 points.</p>	15%
	Total	100%

## **B. Selection Procedure:**

All qualifications received by the deadline which meet the RFQ's requirements will be presented to the evaluation committee comprised of Port of Oakland staff and possibly external members. The evaluation committee will evaluate the Qualifications and score all submissions according to the evaluation criteria above. The selection process may include interviews (at the discretion of the evaluation committee) for the top-scoring submissions. If interviews are to take place, the Port will notify the top scoring Respondents. Interview details and scoring requirements will be provided to selected Respondents prior to the interviews.

## **C. Compensation and Fees:**

Following the qualification-based selection process, the Port will begin contract negotiation with the highest ranked, most qualified firm, on compensation and fees for the services listed, if any, in this RFQ that the Port elects to contract for. Subsequently, if an agreement on compensation and fees cannot be reached in a timely manner with the highest qualified firm, the Port will seek to reach an agreement with the next best qualified firm, and so on, until compensation and fees for the services can be reached with one of the subsequent highest ranked firms.

Should the Port not be able to reach an agreement with any of the top-scoring submissions, the Port shall select additional firms for interviews in order of their competence and qualifications and continue negotiations with the next highest ranked firm.

## **VI. Additional Provisions**

The terms "Company", "Consultant", "Contractor", "Proposer", "Respondent", "Seller", "Supplier", and "Vendor" whenever appearing in this RFQ or any attachments, are used interchangeably to refer to the company or firm submitting a Qualification in response to this RFQ.

### **A. Port's Legal Name and Jurisdiction**

The Port of Oakland (the "Port") is legally known as the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners. The Port is an independent department of the City of Oakland. The Port has exclusive control and management of all Port facilities and properties. Port facilities and properties consist of marine terminals, a railway intermodal terminal and container storage areas (collectively, the "Seaport"); the Oakland International Airport (the "Airport"); and commercial and industrial land and properties (collectively, "Commercial Real Estate"); and other recreational land, other land, undeveloped land, and water areas, all located in Oakland, CA. The Port issues Purchase Orders under the name "Port of Oakland".

### **B. Ownership of Qualification**

All rights to information developed, disclosed, or provided in a Qualification 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 does not make specific reference to data that is considered "confidential" and proprietary, submission of an RFQ 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 copyright, patent, or other intellectual property right (collectively referred to as "intellectual property"), 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.

### **C. Deadline for Receipt of Qualification**

Qualifications must be sealed and delivered to the Submittal Address listed in the Request for Qualification (RFQ) no later than the time specified in the RFQ. The Port will place a clock ("Clock") in a conspicuous location at the place designated for submittal of Qualifications. For purposes of determining the time that a Qualification is submitted, the Clock shall be controlling (unless at the time of the receipt the Clock malfunctions, then the Port's clock on its network phone system shall be controlling). The Port suggests that Qualifications be hand delivered to the Submittal Address in order to ensure their timely receipt. Any Qualifications mailed via an express mail service, US Postal Service, or other courier service shall not be considered timely received until date and time stamped by the controlling Clock. Any Qualifications received after the time stated (regardless of the cause of the delay, including whether caused by the express mail service, US Postal Services, other courier service, or the Port's mail handling personnel) shall not be opened and shall be returned, sealed, to the Respondent.

### **D. Public Records Act**

Under the Public Records Act (Gov. Code § 6250 et seq.), the Port may be obligated to make available to the public the submitted Qualification and all correspondence and written questions submitted during the Request for Qualification 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.

If Respondent believes portions of its Qualification contain trade secrets or proprietary financial information that should be exempt from disclosure under the Public Records Act, **Respondent shall submit a separate copy of its entire qualification with the protected material redacted with black boxes, which each redaction specifically marked as "CONFIDENTIAL".** Such separate copy shall not constitute the qualifications, but shall be used, if needed and appropriate, in response to an applicable Public Records Act request. If Respondent does not submit such a separate redacted Qualification, Respondent shall be deemed as not claiming that any portion of its Qualification contains trade secrets or proprietary financial information.

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 or notice to Respondent.

### **E. Indemnification**

If Respondent is selected to receive a contract, it will be required to agree to the indemnification clause contained in the Port's Standard Professional Services Agreement. **See Section 5** of the Port's Standard Professional Services Agreement (**Attachment 10**).

### **F. Reimbursable Expenses**

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

## **G. 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, at its sole discretion, 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 RFQs or pursue any other means for obtaining the desired services; to waive any informalities or minor irregularities in the RFQ, 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.

## **H. Conflicts of Interest**

By submitting a Qualification, the Respondent represents that it is familiar with Section 1090 and Section 87100 et seq. of the California Government Code, and that it does not know of any facts that constitute a violation of said sections in connection with its Qualification. **Respondent also represents that its Qualification has completely disclosed to the Port all facts bearing upon any possible interests, direct or indirect, which Respondent believes any member of the Port, or other officer, agent or employee of the Port or any department presently has, or will have, in any agreement arising from this RFQ, or in the performance thereof, or in any portion of the profits there under.** Willful failure to make such disclosure, if any, shall constitute ground for rejection of the Qualifications or termination of any agreement by the Port for cause. Respondent agrees that if it enters into a contract with the Port, it will comply with all applicable conflict of interest codes adopted by the City of Oakland and Port of Oakland and their reporting requirements.

## **I. Cost of Preparing a Response**

All costs for developing a response to this RFQ and attending any Qualification meetings or selection meetings are entirely the responsibility of the Respondent and shall not be chargeable to the Port.

## **J. Compliance with Law**

The Respondent must comply with all laws, ordinances, regulations and codes of the Federal, State, and Local Governments, which may in any way affect the preparation of Qualifications or the performance of the contract.

## **K. Respondent's Relationship**

The Respondent's (and Respondent's employees' and contractors') relationship to the Port shall be that of independent contractor and not deemed to be an employee or agent of the Port.

## **L. Qualification Considerations and Legal Proceeding Waiver**

The Port has absolute discretion with regard to acceptance and rejection of Qualifications. In order to be considered the party submitting a Qualification waives the right to bring legal proceedings challenging the Board of Port Commissioners choice of the award.

## **M. False Statements**

False statements in a Qualification will disqualify the Qualification.

## **N. Taxes**

The Respondent will be responsible for all Federal, State, and Local taxes.



**O. Grade of Service**

The Respondent must provide professional service and maintain appropriate personnel to provide expedient and courteous service.

**P. The Respondent's Liability**

The Respondent shall be responsible for any and all damages to the Port's premises resulting from the negligent acts or willful misconduct of the Respondent's agents or employees.

**Q. Amendments**

The Port may, at its sole discretion, issue amendments to this RFQ at any time before the time set for receipt of Qualifications. The Respondents are required to acknowledge receipt of any amendments (addenda) issued to this RFQ by acknowledging the Addendum in the space provided on the RFQ Acknowledgement and Signature Form. The Port shall not be bound by any representations, whether oral or written, made at a pre-Qualification, pre-contract, or site meeting, unless such representations are incorporated in writing as an amendment to the RFQ or as part of the final contract. All questions or requests for clarification concerning material terms of the contract should be submitted in writing for consideration as an amendment.

**R. Withdrawal or Modification of Offers**

The Respondent may modify or withdraw an offer in writing at any time before the deadline for submission of an offer.

**S. Acceptance**

Any offer received shall be considered an offer which may be accepted or rejected, in whole or in part, by the Port based on initial submission with or without discussions or negotiations.

**T. Representations**

No representations or guarantees of any kind, either made orally, or expressed or implied, are made with regard to the matters contained in this document, including any attachments, letters of transmittal, or any other related documents. The Respondent must rely solely on its own independent assessment as the basis for the submission of any offer made.

**U. Award Consideration and Length of Contract**

The Port will award the contract (if any) to the company/firm selected through the competitive process (and any subsequent interviews) outlined in this RFQ.

The Port, at its sole discretion, may award a (3) three-year contract (if any).

**V. Contract Termination**

The Port may terminate the agreement (and or contract) with the Respondent on thirty days' notice for the failure of the Respondent to comply with any term(s) of the agreement/contract between the Port and the Respondent.

**W. Protest Procedures**

Any party that has timely submitted a responsive Qualification that contends or claims that the Port's proposed award of the subject contract fails to comply with the Port's rules and regulations or with law must file a protest in accordance with the provisions set forth below:

1. Any protest must be submitted in writing to Daria Edgerly, Secretary of the Board, and received by the Port no later than 5:00 p.m. by the third (3rd) business day

following publication of the identity of the apparent successful Respondent (or of Notice of Intent to Award, if such notice is issued).

2. The protest must include the name, address and telephone number of the person representing the protesting party.
3. The initial protest document must contain a complete statement of the basis for the protest, including in detail, all grounds for protest including referencing the specific portion of the solicitation document that forms the basis for the protest, and including without limitation all facts, supporting documentation, legal authorities and argument in support of the grounds for the protest. Any matters not set forth in the written protest shall be deemed waived. All factual contentions must be supported by competent, admissible and credible evidence.

Any protest not conforming to the foregoing shall be rejected by the Port without recourse.



## Non-Collusion Declaration

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### **RFQ No.: (19-20/11) Technical Consulting Services for the Oakland Turning Basins Army Corps of Engineers Feasibility Study**

(To Be Executed By Respondent and Submitted With Qualification)

I, \_\_\_\_\_, declare as follows:

That I am the \_\_\_\_\_ of \_\_\_\_\_, the party making the attached Qualification; that the attached Qualification is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the Qualification is genuine and not collusive or sham; that the Respondent has not directly or indirectly induced or solicited any other Respondent to put in a false or sham Qualification, or that anyone shall refrain from proposing; that the Respondent has not in any manner, directly or indirectly, sought by agreement, communication, or to fix any overhead, profit, or cost element of the Qualification price, or that of any other Respondent, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the Qualification are true; and further, that the Respondent has not, directly or indirectly, submitted his or her Qualification price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, Qualification depository, or to any member or agent thereof to effectuate a collusive or sham Qualification.

Any person executing this declaration on behalf of a Respondent that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, at

\_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Signature

Authority: Public Contract Code 7106  
CCP 2015.5



**PORT OF OAKLAND**

**Statement of Equal Employment Opportunity**

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**RFQ No.: (19-20/11) Technical Consulting Services for the Oakland Turning Basins  
Army Corps of Engineers Feasibility Study**

I hereby certify that I \_\_\_\_\_ (Legal Name of Respondent/Supplier/Consultant/Contractor), will 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.

I declare under penalty of perjury under the laws of the State of California that the information I have provided herein is true and correct and is of my own personal knowledge.

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



**PORT OF OAKLAND**

**RFQ Acknowledgement and Signature Form**

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**RFQ No.: (19-20/11) Technical Consulting Services for the Oakland Turning Basins Army Corps of Engineers Feasibility Study**

The undersigned having carefully examined the location of the proposed work, the local conditions of the place where the work is to be done, the Invitation, the General Conditions, the Specifications and all of the documents for this project, proposes to enter into a contract with the Port of Oakland to perform the work listed in this RFQ, including all of its component parts, and to furnish any and all required labor, materials, equipment, insurance, bonding, taxes, transportation and services required for this project in strict conformity with the plans and specifications prepared, including any Addenda, within the time specified.

**Addendum Acknowledgement:**

The following addendum (addenda) is (are) acknowledged in this RFQ: \_\_\_\_\_

**Acknowledgement and Signature:**

1. No Qualification is valid unless signed in ink by the person authorized to make the Qualification.
2. I have carefully read, understand and agree to the terms and conditions on all pages of this RFQ. The undersigned agrees to furnish the services stipulated in this RFQ.
3. I represent that I am familiar with Section 1090 and Section 87100 et seq. of the California Government Code, and that I do not know of any facts that constitute a violation of said Sections in connection with the Qualification.

Respondent's Name and Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_ Cell Number: \_\_\_\_\_

Contractor License # (if applicable): \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Federal Tax Identification Number: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_



**PORT OF OAKLAND**

## Qualification Proposed Fee Schedule

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**RFQ No.: (19-20/11) Technical Consulting Services for the Oakland Turning Basins Army Corps of Engineers Feasibility Study**

**Note:** Respondents will be required to provide their proposed fee schedule and rates after the Port has ranked the qualified firms and has begun the contact negotiation process. (See section V. C. of the RFQ.)

**DO NOT INCLUDE ANY FEE OR RATES WITH YOUR SUBMISSION OF YOUR QUALIFICATION.**

**Non-Discrimination:** Port of Oakland (Port) policy prohibits discrimination or preferential treatment 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.

**Local Business Utilization:** On October 7, 1997, the Board of Port Commissioners initiated a formal policy to encourage full participation of firms from its Local Business Area ("LBA"), the counties of Alameda and Contra Costa, particularly those in its Local Impact Area ("LIA"), in its work. The LIA includes the cities of Oakland, Alameda, Emeryville and San Leandro. The LBA includes all cities within the counties of Alameda and Contra Costa. The Port will also take into consideration efforts the prime and sub-consultants make to assist in the community, e.g., assigning meaningful work to small and/or very small local sub-consultants, mentor protégé relationships, participation in job/trade fairs, hiring interns, pro bono work, and working with local schools, etc.

**Consultant Preference Points:** The Port allots preference points for the percentage of work being performed by consultants/sub-consultants located in either the LBA or the LIA and for community involvement (i.e. mentoring, intern programs, job fairs, community rehabilitation groups and re-entry programs) for a maximum total of up to 15 points. These points are added to a maximum of 85 technical points for a composite maximum of 100 points in evaluating consultant Qualifications as follows:

- Up to 5 points will be credited proportionately (counting the whole team, prime consultant and sub-consultant(s)) for LIA certified firms, and 2.5 for LBA certified firms.  
Note: LIA/LBA credit is given only for certified firms which have had established active offices in the respective area for at least a year at the time of Qualification due date, and NOT for outside firms which plan to do the project work at a LIA/LBA office;
- An additional 3 points will be credited for an LIA certified prime consultant (proportionate to the share of prime consultant work in the case of a joint venture) and 1.5 points for an LBA certified prime consultant;
- Up to 4 points will be credited proportionately (counting the whole team, prime consultant and sub-consultant(s)) for Very Small Business Enterprise (VSBE) certified firms, and 2 points for Small Business Enterprise (SBE certified firms); and
- Up to 3 points for commitment to the Port's values and programs, e.g., mentoring small and/or very small local businesses and providing meaningful work for small and/or very small local sub-consultants; utilization of college and high school interns from the LIA; participation in job fairs and trade fairs targeted to LIA residents and businesses; and other work showing the consultant's efforts to contribute to the economic development of the LIA.

In summary, please submit the following attachments in each copy of your Qualification:

1. Attachment 5-A, Chart for Submitting Data for Calculation of Preference Points. List the team members' (prime and subs) names, roles, location and LIA/LBA/SBE/VSBE status in the format shown in Attachment 5-A. Be specific as to the nature and estimated percentage of the work to be performed by the prime, any joint venture partners and/or sub-consultants.

2. Attachment 5-B, Local Participation Questionnaire. Complete for each sub-consulting firm or individual, as well as for the prime consultant.
3. Attachment 5-C and 5-D, Monthly and Final Utilization of Local and Small Business Enterprises are required after contract award. Attachment 5-C is required after contract award and a final report attachment 5-D, is required after completion of the project.

Any Qualification that fails to complete and submit the above two items (Prime and sub-consultants) will not be considered. For firms headquartered outside the LIA/LBA wishing to obtain credit for their local office, for the purpose of this project shall utilize personnel from this local office. Additionally, mail, correspondence and telephone calls will be made to this local office.

To obtain credit for these factors and for any preference points on this RFQ, consultants or any team member must be certified by the Qualification due date or submit an application:

- Consultants or any team members wishing to be certified by the Port must submit a Certification Application, with all supporting documentation seven (7) business days prior to the Qualification due date. The questionnaire and checklist of necessary supporting documents for certification may be obtained at: <http://www.portofoakland.com/srd/>. For questions regarding certification, you may contact Social Responsibility Division (SRD) at (510) 627-1627 or email [SRDAdmin@portoakland.com](mailto:SRDAdmin@portoakland.com). Firms certified by the Port of Oakland do not need to submit proof of certification.

(Please note Port certification must be current and not expired to count for preference points. Certification is valid for a two-year period.)

For questions or assistance regarding this section, contact Ms. Donna Cason (510) 627-1252, or [dcason@portoakland.com](mailto:dcason@portoakland.com) in the Port's Social Responsibility Division.





Chart for Submitting Data  
for Calculation of Preference Points

Company	Nature of Work to be Performed	Prime or Sub?	Location of Firm	*LIA/LBA SBE/VSBE Certification Status	Percent of Total Contract	Percent of Sub-consulting Work
(Name of Prime)		Prime				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
Total (must add up to 100%)					100%	100%

\* In order to qualify for preference points, the firm must be certified by the Port of Oakland. Local Impact Area (LIA), Local Business Area (LBA), Small Business Enterprise (SBE), Very Small Business Enterprise (VSBE)

Notes:

- Please make sure the column labeled "Percent of Total Contract" adds up to 100%
- Please make sure the column labeled "Percent of Sub-consulting Work" adds up to 100% of the Sub-consulting work.



(Use additional paper if necessary)

1. Is the consultant or large sub-consultant mentoring or providing a professionally meaningful share of the project to small and/or very small LIA firms on this project? Yes\_\_\_ No\_\_\_

If the response is "yes", please provide specific details on how the mentoring or sharing will be performed. In addition, be specific as to the nature of the relationship and the persons responsible for implementing it.

2. (A) Do any team members regularly use local students as interns in their work? Yes\_\_\_ No \_\_\_  
(B) Do any team members currently use local students as interns in their work? Yes\_\_\_ No \_\_\_  
(C) Have any team members used local students as interns in past work? Yes \_\_\_ No\_\_\_  
(D) If planning to use interns on this project, how will you utilize them?

If you answered "yes" to any of these questions, please state from what schools or programs the interns were obtained, what type of work was performed by them, and any other details that might be relevant, i.e. paid internship, length of service, number of interns.

3. Have firms in the team participated in other community projects, e.g., job fairs targeted to local neighborhoods, youth or school programs, community rehabilitation groups, etc.? Yes\_\_\_ No\_\_\_  
If so, please give details:



## Monthly Utilization of Local and Small Business Enterprises

PRIME CONTRACTOR		BUSINESS ADDRESS				CONTRACT BID AMOUNT		DATE OF THIS REPORT	
PORT Project Name				PORT Project Number	WORK authorization #	TOTAL CONTRACT AMOUNT INCLUDING CHANGE ORDERS		project COMPLETION DATE	
(1) Name and Address of Small/Local Firm [Prime, Subcontractor, Supplier or Trucking Broker]	(2) Description of Work Performed and or Materials Supplied	(3) Prime and Sub(s) Original Bid Amount	(4) Port Certification Number	CONTRACT PAYMENTS					
				(5a) * LIABE Dollars	(5b) * LBABE Dollars	(5c) * SBE Dollars	(5d) * VSBE Dollars	(6) Date Work Completed	(7) Date of Final Payment
TOTAL				\$	\$	\$	\$		

List all certified local/small prime and subs regardless of tiers throughout the life of the project, whether or not firms were listed on the original bid. Xerox this page if additional sheets are needed. If actual sub dollars were different than the approval amount at time of award, provide comments on back of form. List actual amount paid to each sub at the above chart.

\* LIABE (Local Impact Area Business Enterprise), LBABE (Local Business Area Business Enterprise), SBE (Small Business Enterprise), and VSBE (Very Small Business Enterprise).

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE, TRUE AND CORRECT		
AUTHORIZED CONTRACTOR REPRESENTATIVE SIGNATURE and TITLE	BUSINESS PHONE NUMBER	DATE

Distribution:

Original – SRD

Copy To – Engineering Construction / Resident Engineer

Instructions--Monthly Utilization of Local and Small Business Enterprises

- (I) Enter the project information requested on the first two rows on page 00816-1 (Prime Contractor, Business Address, Contract Bid Amount, etc.)
- (II) Provide the following information for each portion of the contract work performed by (and for each amount of materials supplied by) a Port-certified small and/or local business, including the prime contractor if the prime is a Port-certified small/local business:

- Column 1: Name and address of the firm performing work and/or supplying materials.
- Column 2: Description of the work performed and/or materials supplied by said firm.
- Column 3: For subcontractor, supplier or trucker: dollar amount of the bid submitted by the firm to prime bidder, as listed in the Subcontractor and Supplier List Form submitted by prime bidder with its bid. If the subcontractor, supplier or trucker was not listed in the Subcontractor and Supplier List Form, enter "0". For small/local prime bidder: dollar amount of the prime bidder's bid excluding all subcontractor/supplier/trucking broker bid amounts, as listed in the Subcontractor and Supplier List Form.
- Column 4: Port Certification Number of firm. (Port-certified small/local subcontractors, suppliers and truckers should provide their certification number to the Prime Bidder and notify Prime Bidder in writing with the date of the decertification if their status changes during the course of the project.)
- Columns 5a-5d Enter the dollar amount of the work performed and/or materials supplied by the firm in either Column 5a, 5b, 5c or 5d, depending on the firm's certification status. Firm certification status must be certified and determined at the time of bid by Port of Oakland. The certified firm is issued a letter by the Port of Oakland that states their certification status as well as the expiration date of the certification. Firms' certification status may be obtained by accessing the Port of Oakland website (<http://srd.portofoakland.com/> or by calling (510) 627-1627. Refer to the following table for a description of the certification status:

Certification Status	Description
LIABE (Local Impact Area Business Enterprise)	firm located in Oakland, Alameda, Emeryville, or San Leandro
LBABE (Local Business Area Business Enterprise)	firm located in Alameda County or Contra Costa County
SBE (Small Business Enterprise)	business with 3 year average annual gross revenue not to exceed \$36,000,000
VSBE (Very Small Business Enterprise)	business with 3 year average annual gross revenue not to exceed \$5,000,000

If the firm was decertified before completing its portion of the work of this contract, enter the dollar amount of ALL work performed/ materials supplied by the firm, INCLUDING WORK PERFORMED/MATERIALS SUPPLIED AFTER THE DATE OF DECERTIFICATION. If the amount listed in Column 5 differs from the amount listed in Column 3, provide an explanation in the 'COMMENTS' section as provided.

- Column 6: Date on which the firm listed in Column 1 completed the work described in Column 2.
- Column 7: Date on which prime contractor made the 'final payment' for the work described in Column 2 to subcontractor/supplier/trucking broker.

- (III) In the 'TOTAL' row, enter the column sums of the dollar amounts listed in Columns 5a through 5d.
- (IV) The authorized contractor representative shall certify the information supplied by signing in the space provided. Per Port of Oakland provisions, Final Payment WILL NOT be made until this form is properly filled out and submitted to the Port of Oakland.

COMMENTS:



# PORT OF OAKLAND

## Final Utilization of Local and Small Business Enterprises

PRIME CONTRACTOR		BUSINESS ADDRESS				CONTRACT BID AMOUNT		DATE OF THIS REPORT	
PORT Project Name				PORT Project Number		WORK authorization #		TOTAL CONTRACT AMOUNT INCLUDING CHANGE ORDERS	
(1) Name and Address of Small/Local Firm [Prime, Subcontractor, Supplier or Trucking Broker]		(2) Description of Work Performed and or Materials Supplied		(3) Prime and Sub(s) Original Bid Amount		(4) Port Certification Number		CONTRACT PAYMENTS	
								(5a) * LIABE Dollars	(5b) * LBABE Dollars
TOTAL				\$	\$	\$	\$		

List all certified local/small prime and subs regardless of tiers throughout the life of the project, whether or not firms were listed on the original bid. Xerox this page if additional sheets are needed.

If actual sub dollars were different than the approval amount at time of award, provide comments on back of form. List actual amount paid to each sub at the above chart.

\* LIABE (Local Impact Area Business Enterprise), LBABE (Local Business Area Business Enterprise), SBE (Small Business Enterprise), and VSBE (Very Small Business Enterprise).

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE, TRUE AND CORRECT		
AUTHORIZED CONTRACTOR REPRESENTATIVE SIGNATURE and TITLE		DATE

--	--	--

Distribution: Original – SRD Copy To – Engineering Construction / Resident Engineer

Instructions--Final Utilization of Local and Small Business Enterprises

- (I) Enter the project information requested on the first two rows on page 00816-1 (Prime Contractor, Business Address, Contract Bid Amount, etc.)
- (II) Provide the following information for each portion of the contract work performed by (and for each amount of materials supplied by) a Port-certified small and/or local business, including the prime contractor if the prime is a Port-certified small/local business:

- Column 1: Name and address of the firm performing work and/or supplying materials.
- Column 2: Description of the work performed and/or materials supplied by said firm.
- Column 3: For subcontractor, supplier or trucker: dollar amount of the bid submitted by the firm to prime bidder, as listed in the Subcontractor and Supplier List Form submitted by prime bidder with its bid. If the subcontractor, supplier or trucker was not listed in the Subcontractor and Supplier List Form, enter "0". For small/local prime bidder: dollar amount of the prime bidder's bid excluding all subcontractor/supplier/trucking broker bid amounts, as listed in the Subcontractor and Supplier List Form.
- Column 4: Port Certification Number of firm. (Port-certified small/local subcontractors, suppliers and truckers should provide their certification number to the Prime Bidder and notify Prime Bidder in writing with the date of the decertification if their status changes during the course of the project.)
- Columns 5a-5d Enter the dollar amount of the work performed and/or materials supplied by the firm in either Column 5a, 5b, 5c or 5d, depending on the firm's certification status. Firm certification status must be certified and determined at the time of bid by Port of Oakland. The certified firm is issued a letter by the Port of Oakland that states their certification status as well as the expiration date of the certification. Firms' certification status may be obtained by accessing the Port of Oakland website (<http://srd.portofoakland.com/>) or by calling (510) 627-1627. Refer to the following table for a description of the certification status:

Certification Status	Description
LIABE (Local Impact Area Business Enterprise)	firm located in Oakland, Alameda, Emeryville, or San Leandro
LBABE (Local Business Area Business Enterprise)	firm located in Alameda County or Contra Costa County
SBE (Small Business Enterprise)	business with 3 year average annual gross revenue not to exceed \$36,000,000
VSBE (Very Small Business Enterprise)	business with 3 year average annual gross revenue not to exceed \$5,000,000

If the firm was decertified before completing its portion of the work of this contract, enter the dollar amount of ALL work performed/ materials supplied by the firm, INCLUDING WORK PERFORMED/MATERIALS SUPPLIED AFTER THE DATE OF DECERTIFICATION. If the amount listed in Column 5 differs from the amount listed in Column 3, provide an explanation in the 'COMMENTS' section as provided.

- Column 6: Date on which the firm listed in Column 1 completed the work described in Column 2.
- Column 7: Date on which prime contractor made the 'final payment' for the work described in Column 2 to subcontractor/supplier/trucking broker.

- (III) In the 'TOTAL' row, enter the column sums of the dollar amounts listed in Columns 5a through 5d.
- (IV) The authorized contractor representative shall certify the information supplied by signing in the space provided. Per Port of Oakland provisions, Final Payment WILL NOT be made until this form is properly filled out and submitted to the Port of Oakland.

COMMENTS:



**PORT OF OAKLAND**

Non-Discrimination and Small Local  
Business Utilization Policy Program Affidavit

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RFQ No.: 19-20/11 Technical Consulting Services for the Oakland Turning Basins Army Corps of  
Engineers Feasibility Study

I hereby certify that I \_\_\_\_\_ (Legal Name of Respondent/Supplier/Consultant/Contractor), shall carry out applicable requirements in the award and administration of this contract and cooperate with the Port of Oakland in meeting its commitments and objectives with regard to ensuring nondiscrimination, and shall use best efforts to ensure that barriers to participation of Small Local Businesses do not exist.

Upon execution of an Agreement, the selected consultant will be required to complete Small and Local attainment reports and a final report at contract completion, and submit them to the Social Responsibility Division.

I declare under penalty of perjury under the laws of the State of California that the information I have provided herein is true and correct.

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

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, 2019, \$16.47 without health benefits or \$14.35 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 \$2.12 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) Submit name, address, date of hire, occupation classification, rate of pay, benefits paid for each of its employees, and compensated time off in a web accessed monitoring system at <https://www.elationsys.com/app/Registration/> by March 31st, June 30th, September 30th, and December 31st 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 31st 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.



**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 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 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 the 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 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 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 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 & Title
_____ Area Code and Phone	_____ Email Address
_____ Name of Primary Contact	_____ Date
_____ Project Name (Be Specific)	

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](mailto:cng-wong@portoakland.com)



## 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").

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;
- ☐ 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;
- ☐ 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 and Ordinance 3666.

**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 & Title
_____ Phone and Email	_____ Date
_____ Project Name (Be Specific)	

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



**PORT OF OAKLAND**

Statement of Living Wage Requirements

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RFQ No.: 19-20/11 - Technical Consulting Services for the Oakland Turning Basins Army Corps of Engineers Feasibility Study

I hereby certify that I \_\_\_\_\_ (Legal Name of Respondent/Supplier/Consultant/Contractor), has reviewed the Living Wage Requirements, included herein as Attachment 7 to this Request for Qualification and will comply with said Requirements. Upon execution of an Agreement, the selected consultant will be required to complete the Employer Self-Evaluation Form and Certificate of Compliance – Living Wage Form of this Request for Qualification, and submit them to the Social Responsibility Division.

I declare under penalty of perjury under the laws of the State of California that the information I have provided herein is true and correct.

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



**PORT OF OAKLAND**

Insurance Acknowledgement Statement

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RFQ No.: 19-20/11 - Technical Consulting Services for the Oakland Turning Basins Army Corps of Engineers Feasibility Study

I hereby certify that \_\_\_\_\_ (Legal Name of Respondent) agrees to meet all of the Port's Insurance requirements included in this Request for Qualification as specifically found in the Professional Services Agreement attached to this Request for Qualification and Respondent will be able to evidence such insurance when and if awarded the contract and will provide proof of insurance at the time of project award if awarded the contract.

I declare under penalty of perjury under the laws of the State of California that the information I have provided herein is true and correct and is of my own personal knowledge.

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## **ATTACHMENT 10**

### PROFESSIONAL SERVICES AGREEMENT

**ATTACHMENT 10**

**PROFESSIONAL SERVICES AGREEMENT  
("PSA")**

**Between**

**CITY OF OAKLAND, A MUNICIPAL CORPORATION,  
ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS  
("Port of Oakland")**

**And**

\_\_\_\_\_  
**("Consultant")**

**[brief description of Services; Contract No., if any]**

**Effective Date**

\_\_\_\_\_

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## Appendices

A	Services
A-1	Software
B	Payment
C	Insurance
D	Parties
E	FAA AIP Grant-Required Provisions
F	Indemnification



**THIS PROFESSIONAL SERVICES AGREEMENT** ("Agreement") is entered into between the Port and Consultant (as defined below, and collectively referred to as the "Parties"), who agree as follows. All Appendices described herein are attached and made part of this Agreement.

## **1. Parties**

- 1.1 Consultant.** Consultant is identified in **Appendix D (Parties)** ("Consultant"). 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 Agreement be construed as creating an employment, agency, joint venture, or partnership relationship between the Port and Consultant, and no such relationship shall be implied from performance of this Agreement. References in this Agreement to direction from the 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.
- 1.2 Port.** This Agreement is entered into by the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners ("Port of Oakland" or "Port"). The Port's Project Manager ("Project Manager") is identified in **Appendix D (Parties)**.

## **2. Term**

- 2.1 Term.** The term of this Agreement ("Term") is described in **Appendix A (Services)**. Unless otherwise provided in this Agreement, this Agreement shall be effective during the Term, provided it has been signed by the Parties and approved as to form and legality by the Port Attorney.
- 2.2 Suspension and Early Termination.**
- 2.2.1 Suspension.** The Port may (in writing and without cause) direct Consultant to suspend, delay, or interrupt the Services, in whole or in part, for such periods of time as the Port may determine in its sole discretion. Such suspension of Services shall be treated as an excusable delay.
- 2.2.2 Port Termination for Cause.** The Port may (in writing) terminate this Agreement in whole, or from time to time in part, for cause, should Consultant commit a material breach of all or part of this Agreement and not cure such breach within ten (10) calendar days of the date of the Port's written notice to Consultant demanding such cure. Upon such Port termination for cause, Consultant shall be liable to the Port for all loss, cost, expense, damage, and liability resulting from such breach and termination.
- 2.2.3 Port Termination for Convenience.** The Port may (in writing) terminate this Agreement in whole, or from time to time in part, for convenience as the Port may determine in its sole and reasonable discretion. Upon such Port termination 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.

### 3. Services

- 3.1 Scope of Services.** Consultant shall perform all services ("Services") described in **Appendix A (Services)**. All Services whenever performed shall be deemed performed under this Agreement.
- 3.2 Standard of Performance.** Consultant represents that it possesses all necessary training, licenses, permits, and approvals to perform the Services, and that its performance of the Services will conform to the standard of practice of a person (or persons) specializing in performing professional services of a like nature and complexity to the Services.
- 3.3 Subconsultants.** Consultant shall perform the Services using any persons and subconsultants listed in **Appendix A (Services)**. Consultant shall hire only qualified persons or firms who are experienced in performing work of a like nature and complexity as the Services, and who agree to be bound to the terms of the Agreement to the extent of the scope of Services. Consultant may substitute personnel or subconsultants prior to any such personnel or subconsultants commencing work only upon the Project Manager's written consent, which may be withheld or delayed in the Port's sole discretion. When using any person who has retired from a California Public Employees' Retirement System ("CalPERS") agency, Consultant and any subconsultants shall comply with all laws and regulations applicable to CalPERS.
- 3.4 Ownership of Non-Software 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 (but not including any Software, unless otherwise provided in this Agreement), shall become the property of the Port. To the fullest extent permitted by Title 17 of the United States Code, work product produced under this Agreement shall be deemed works for hire and all copyrights in such works shall be the Port's property. With the Port's prior written approval, Consultant may retain and use copies of such works for reference and as documentation of experience and capabilities.

If the Services include any Software, any licensing or ownership matters shall be addressed in **Appendix A-1 (Software)**.

### 4. Payment

- 4.1 Payment Terms.** Consultant shall perform the Services for compensation only set forth in **Appendix B (Payment)** ("Payment"). All compensation paid to Consultant on account of the Services performed shall be deemed payments under this Agreement.
- 4.2 Taxes.** Consultant shall, without additional compensation, pay all applicable taxes (including California sales and use taxes and the City of Oakland business tax), deficiency, interest, or penalty levied upon or asserted with respect to this Agreement, the Services performed thereunder, or the goods delivered hereunder, regardless of which Party has liability for such payment under applicable law. Consultant shall collect, report, and pay all applicable California sales and use taxes and shall, in accordance with California Revenue and Taxation Code Section 6203, issue the Port a receipt relieving the Port of all liability for any tax relating to this Agreement. Consultant shall comply with all applicable administrative regulations relating to the assumption of liability for the payment of payroll taxes and contributions under this Section and shall provide all necessary information with respect thereto to the proper authorities.

## 5. Insurance; Indemnification

- 5.1 Insurance.** Consultant shall, at its own expense and during the Term, maintain in force the insurance in the types and amounts required by **Appendix C (Insurance)**.
- 5.2 Indemnification.** Consultant shall comply with all provisions set forth in **Appendix F (Indemnification)**.

## 6. Compliance With Laws

- 6.1 Compliance With All Laws.** Consultant shall comply with all laws, regulations, ordinances, rules, permits, or land use restrictions or limitations at any time applicable to the Services ("All Laws"), including those applicable to any public or governmental authority (including the City of Oakland and the Port, such as the City Charter), regardless of whether All Laws are specifically stated in this Agreement or are in effect at the beginning of the Term. Consultant further represents that all plans, drawings, specifications, designs and any other product of the Services will comply with All Laws, consistent with the standard of care in this Agreement.

Consultant's compliance with All Laws shall include, but not be limited to, compliance with the following, to the fullest extent applicable:

- 6.1.1** Oakland Living Wage provisions, including Section 728 of the Oakland City Charter and Port Ordinance Nos. 3666 and 3719.
- 6.1.2** Security requirements imposed by authorities with jurisdiction over the Services (such as the Federal Aviation Administration and U.S. Department of Transportation), which may include providing information, work histories, and/or verifications requested by such authorities for security clearances or compliance.
- 6.1.3** If the Services are part of a "public works" or "maintenance" project, California Department of Industrial Relations ("DIR") requirements, which include compliance with California Labor Code Sections 1725.5 and 1771.1, Consultant and subconsultant registration with DIR and licensing by the California Contractors State License Board, and compliance with all laws, regulations, and other requirements for public works of improvement. In addition, Contractor and any subcontractors who will be performing the public works aspect of this project are required by law to be licensed and regulated by the Contractor's State License Board. Contractor must be properly licensed for the particular public works aspects called for in this Agreement and must agree to comply with all applicable laws, regulations and requirements for public works of improvement.

- 6.2 Non-Discrimination.** Consultant shall not discriminate against or harass 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, 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 with respect to all terms and conditions of employment, which include (without limitation): hiring, upgrading, recruitment, advertising, selection for training or apprenticeship, demotion, transfer, compensation, layoff, or termination. Consultant acknowledges it has reviewed, or had a full opportunity to review, the current version of the Port's Discrimination Complaint Procedures/Unlawful Harassment Policy

and Complaint Procedures, which provide an effective and expedited method of resolving employment discrimination allegations and prevent unlawful workplace harassment.

- 6.3 Conflicts of Interest.** Consultant shall comply with all applicable laws and regulations relating to conflicts of interest, including any requirements adopted by the City of Oakland or the Port. Consultant represents that it is familiar with California Government Code Sections 1090 and 87100 et seq., and that it does not know of any facts that may constitute a violation of said sections.

Consultant represents that, to the best of its knowledge, it has disclosed to the Port all facts bearing upon any possible interests, direct or indirect, Consultant believes that any employee, officer, or agent of the Port presently has, or will have, in this Agreement, in the Services, or in any portion of the profits hereunder. Willful failure to make such disclosure, if any, shall constitute grounds for termination of this Agreement by the Port for cause.

Consultant covenants that it shall never have any interest (direct or indirect) that would conflict in any manner with the performance of the Services under this specific Agreement, including an interest Consultant has (or may have in the future) with a person or entity that has an interest adverse or potentially adverse to the Port with respect to this specific Agreement, as determined in the reasonable judgment of the Port.

Provided that this Agreement or the performance thereof does not violate any applicable conflict of interest laws, nothing in this Section shall serve to prevent Consultant from providing services similar to the Services to other entities. The provisions of this Section shall survive the termination of this Agreement.

- 6.4 FAA AIP Grant-Required Provisions.** Consultant shall comply with all provisions in Appendix E (FAA AIP Grant-Required Provisions).

## **7. Confidentiality; Publicity**

- 7.1 Confidentiality.** Consultant acknowledges that, in the performance of the Services or in the contemplation thereof, Consultant may have access to private or confidential information that may be owned or controlled by the Port, the disclosure of which to third parties may be damaging to the Port. Consultant agrees that all information disclosed by the 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 shall notify the Port immediately in writing if Consultant is requested to disclose any information made known to or discovered by Consultant during the performance of the Services. The provisions of this Section shall survive the termination of this Agreement.

- 7.2 Publicity.** Any publicity or press releases with respect to the Project or Services shall be under the Port's sole discretion and control. Consultant shall not, without the Port's prior written consent, discuss the Services or Project, or matters pertaining thereto, with the public press, representatives of the media, or public bodies or representatives of public bodies. Consultant shall have the right, however, to include representations of Services among Consultant's promotional and professional material, and to communicate with persons or public bodies where necessary to perform the Services. The provisions of this Section shall survive the termination of this Agreement.

## 8. Audit and Inspection

**8.1 Retention.** Consultant shall maintain unaltered all Records during the Retention Period.

**8.1.1** “Retention Period” means the Term and an additional three (3) years following the later of: (a) termination of this Agreement, (b) the Port’s final payment under this Agreement, or (c) resolution of pending issues between the Parties under this Agreement.

**8.1.2** “Records” means full and adequate records, in electronic and other mediums, related to this Agreement or prepared by or furnished to Consultant during the course of performing the Services or which show the actual costs incurred by Consultant in the performance of this Agreement, including (without limitation) documents, correspondence, internal memoranda, calculations, books and accounts, accounting records documenting work under this Agreement, invoices, payrolls, and data.

**8.2 Audit and Tolling.** During the Retention Period, the Port may Audit the Records. Consultant agrees to toll all applicable periods of any statutes of limitations: (a) commencing on the first day of an Audit and ending four (4) years after the Port delivers to Consultant the final Audit findings; (b) commencing on the first day of an Audit and ending four (4) years after the Port’s completion of the Audit, if no final Audit findings are produced; and (c) commencing on the day the Port’s claim or right or cause of action arises with regard to any matter under this Agreement and ending four (4) years thereafter.

**8.2.1** “Audit” means to audit, inspect, make copies of, and obtain excerpts and transcripts from the Records.

**8.3 Production.** During an Audit or as otherwise requested by the Port, Consultant shall Produce Records to the Port or the Port’s designated representatives. If Consultant fails to Produce Records to the Port within ten (10) business days of the Port’s written request, Consultant shall pay the Port a delinquency charge of \$25 for each day it does not Produce Records. The Parties agree that such delinquency charges are liquidated damages that represent a reasonable estimate of expenses the Port will incur because of Consultant’s failure to Produce Records, and that such charges shall be deducted from the Port’s next payment to Consultant.

**8.3.1** “Produce” means to, at no cost to the Port and within ten (10) business days of the Port’s written request, provide the Port (or the Port’s representatives): (a) copies of Records requested by the Port; (b) the ability for the Port to inspect the Records at a location within a fifty (50) mile radius from the Port offices at 530 Water Street, Oakland, California, or if the Records are not located within said fifty mile radius, the ability for the Port to inspect the Records at another location after Consultant pays the Port all reasonable and necessary costs incurred (including, without limitation, travel, lodging, and subsistence costs); and (c) copies of Records in electronic format through extracts of data files in a computer readable format, such as email attachments, data storage devices, or another adequate electronic format.

## 9. Notices; Agent for Service of Process

**9.1 Notices.** The Port’s and Consultant’s Notice Addresses are set forth in **Appendix D (Parties)**, unless otherwise amended in writing with notice to the other Party. All notices

or other communications given or required to be given under this Agreement shall be effective only if given in writing to the Party's Notice Address and: (a) sent by certified mail with return receipt requested, (b) sent by overnight delivery service, or (c) delivered personally. Any such notice shall be deemed to have been given: (x) five calendar days after the date it was sent by certified mail; (y) one business day after the date it was sent by overnight delivery service; or (z) on the date personal delivery was made. The Parties shall also endeavor to send courtesy copies of all notices and communications electronically.

- 9.2 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 (Parties)**. Consultant may at any time designate a new agent for service in the State of California by providing written notice in compliance with this Agreement of the full name and address of its new agent. No attempt to revoke the agent's authority to receive service shall be valid unless the Port has first received a duly executed designation of a new agent meeting the requirements of California law.

## **10. Disputes; Statutes of Limitation; Governing Law**

- 10.1 Dispute Resolution.** In the event of any dispute between the Parties under this Agreement, the Parties shall make their best efforts to meet and confer in good faith to resolve the dispute amicably. 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 Agreement.
- 10.2 Attorneys' Fees.** If either Party commences an action against the other in connection with this Agreement, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees and costs of suit.
- 10.3 Statutes of Limitation.** As between the Parties, any applicable statute of limitations for any act or failure to act shall commence to run on (a) the date of the Port's issuance of the final Certificate for Payment or termination of this Agreement, or (b) termination of this Agreement, whichever is earlier, except for latent defects, for which the statute of limitation shall begin running upon discovery of the defect and its cause.
- 10.4 Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of California, without regard to principles of conflict of law. Consultant hereby consents to the exclusive jurisdiction of the state and federal courts in Alameda County, California and/or the United States District Court for the Northern District of California, and any actions arising out of or filed in connection with this Agreement shall be filed solely in such courts.

## **11. Miscellaneous**

- 11.1 No Third Party Beneficiaries.** Except as expressly provided in this Agreement, nothing in this Agreement shall confer rights or benefits on persons or entities not party to this Agreement.
- 11.2 Time of the Essence.** Time is of the essence in the performance of this Agreement.
- 11.3 No Waiver.** Any progress payments, approvals, inspections, reviews, oral statements, or certifications by any Port representative or by any governmental entity with respect to this Agreement shall in no way limit Consultant's obligations under this Agreement. 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 Agreement, 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.

**11.4 Covenant Against Contingent Fees.** As required by the Port's Purchasing Ordinance No. 4321 (as it may be amended from time to time), 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. The following definitions apply to this Section:

**11.4.1** "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 the Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence.

**11.4.2** "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 the Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence.

**11.4.3** "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.

**11.4.4** "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.

**11.5 Warranty of Signatories.** Every person signing this Agreement on behalf of Consultant represents and warrants that such person has sufficient authority to sign this Agreement and create a valid and binding obligation on Consultant.

**11.6 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original instrument and all such counterparts, taken together, shall constitute one and the same instrument. Signatures delivered by facsimile or electronic mail shall be deemed effective as originals.

**11.7 Severability.** If any provision (or portion thereof) of this Agreement is found to be invalid by a court, arbitrator, or government agency of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect. If any provision (or portion thereof) of this Agreement is prohibited by, or made unlawful or unenforceable under any applicable law of any jurisdiction, such provision shall, as to such jurisdiction, be ineffective without affecting the remainder of this Agreement, which shall be enforceable to the fullest extent permitted by law. To the greatest extent permitted by law, the provisions of such applicable law are hereby waived so that this Agreement may be deemed to be a valid and binding agreement.

**11.8 Entire Agreement.** This Agreement contains the entire, exclusive, and integrated agreement between the Parties regarding the subject matter of this Agreement and shall supersede any and all prior negotiations, representations, understandings, or agreements, written or oral, express or implied, that relate in any way to the subject matter of this Agreement. All prior negotiations are merged into this Agreement and shall be inadmissible in any enforcement of this Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by mutual written agreement by the Parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

<p><b>PORT OF OAKLAND</b></p> <p><b>CITY OF OAKLAND,</b> a municipal corporation, acting by and through its Board of Port Commissioners,</p> <p>By: _____</p> <p style="text-align: center;">DANNY WAN Executive Director</p> <p>Date: _____</p>	<p><b>CONSULTANT</b></p> <p>By: _____</p> <p>Name: _____</p> <p>Title: <input type="checkbox"/> CEO / President    <input type="checkbox"/> Vice President  <input type="checkbox"/> Principal / Owner    <input type="checkbox"/> Managing Member  <input type="checkbox"/> Other: _____</p> <p>Date: _____</p>
<p><b>THIS AGREEMENT SHALL NOT BE VALID OR EFFECTIVE FOR ANY PURPOSE UNLESS AND UNTIL SIGNED BY THE PORT ATTORNEY .</b></p> <p>Approved as to form and legality this _____ day of _____, 20____.</p> <p>_____</p> <p style="text-align: center;">MICHELE HEFFES Port Attorney</p> <p><b>Port Resolution No.</b> _____</p> <p><b>P.A. #:</b> _____</p>	<p><b>ATTEST</b> (if corporation)</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: <input type="checkbox"/> Secretary    <input type="checkbox"/> CFO / Treasurer  <input type="checkbox"/> Other: _____</p> <p>Date: _____</p>



## APPENDIX A

### SERVICES

*Consultant and Port agree that the terms and conditions set forth in the body of this Agreement or in the other Appendices supersede any term, condition, or other language in this Appendix A (or any other document attached to this Appendix A, other than Appendix A-1) that conflicts with or is inconsistent with those terms and conditions.*

#### A. SCOPE OF WORK

[Insert]

#### B. APPROVED SUBCONSULTANTS

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

\_\_\_\_\_.

#### C. TERM OF AGREEMENT

The term of this Agreement shall be for 3 year(s) commencing [ ] (Effective Date) and terminating [ ].

**APPENDIX A-1**  
**SOFTWARE**

1. **License.** Consultant hereby grants to the Port a fully-paid, non-exclusive, and non-transferable license to access and use the software described in **Appendix A** (the “**Software**”), during the Term, without any limitation as to the number or nature of users, machines, devices, or platforms, subject to any limitations described in **Appendix A**.
  - a. **Back-Up Copies.** The Port may make copies of the Software as reasonably necessary for back-up disaster recovery purposes only.
  - b. **No Other License.** Except as expressly set forth in this Agreement, no license is granted and none shall be deemed granted by implication, estoppel, or otherwise.
  - c. **License Restrictions.** Any use of the Software not expressly permitted by this Agreement is prohibited. Without limiting the generality of the foregoing, the Port shall not commit any of the following:
    - i. Sublicense use or access to any Software.
    - ii. Remove or modify any Software markings or any notice of Consultant’s or its licensors’ proprietary rights.
    - iii. Cause or permit reverse engineering (unless required by law for interoperability), disassembly, or decompilation of the Software.

Except for the licenses granted herein and rights to data as set forth herein, all right, title, and interest in and to the Software, including (without limitation) all tangible or intangible material of any nature produced by Consultant related to the Software shall remain exclusively with Consultant and its licensors, as applicable. The Software is licensed, not sold.

2. **Equipment.** If the Services include any “**Equipment**” (as defined in **Appendix A**), then, unless otherwise agreed in writing by the Port, Consultant will be responsible for installing the Equipment and installing the Software on the Equipment or on the Port’s systems. Consultant will be responsible for ensuring compatibility and that the Software and Equipment are functioning as intended.
3. **Delivery and Installation.** To the extent possible, Consultant will deliver Software to the Port electronically, unless otherwise requested by the Port in writing. Unless otherwise agreed in writing by the Port, and only to the extent applicable, Consultant will be responsible for installing the Software on the Port’s systems and for ensuring compatibility and that the Software is functioning as intended.
4. **Data.** As between the Port and Consultant, the Port owns all right, title, and interest in any data that the Port, or others acting on behalf of the Port, have entered into, have associated with, or have otherwise prepared for use in or with the Software (“**Port Data**”).

☐ Port Data shall include (without limitation): \_\_\_\_\_.

Within thirty (30) days of the expiration or termination of the Agreement for any reason, Consultant shall, at no charge to the Port and without the Port’s request:

- a. Export and deliver to the Port all data input into the Software, including (without limitation) the Port Data. Consultant shall provide such data to the Port in a format reasonably requested by the Port.
- ☐ Acceptable data formats shall include (without limitation): \_\_\_\_\_.

- b. Certify to the Port that all Port Data has been destroyed or removed from Consultant's possession and control.

**5. Additional Warranties.** Cumulative to any representations and warranties in the Agreement:

- a. The Software is compatible for access and use on the Port's systems and devices. The Software (and, if applicable, the Equipment) will operate in all material respects as described in its product descriptions and/or documentation provided or published by Consultant. For all Equipment, Consultant will ensure that any manufacturer warranties are in the name of the Port, or transferred promptly to the Port, such that the Port has all benefits of any such warranties.
- b. The Software (and, if applicable, the Equipment) will not contain or deliver any viruses, Trojan horses, worms, time bombs, trap doors, or other undisclosed code, program routine, device, or other feature or hidden file designed to damage, delete, disable, deactivate, interfere with or otherwise harm the Software or any hardware, software, data, or other programs of the Port.
- c. Consultant will use all commercially reasonable best practices to ensure the security, safety, and integrity of all Port Data.
- d. Consultant has all right, title, and authority necessary to grant any licenses or provide any Software, the Equipment (if applicable), or related services under this Agreement, including (without limitation) the absence of any contractual or other obligations that conflict with this Agreement or limit, restrict, or impair the rights granted under this Agreement.
- e. The Software (and, if applicable, the Equipment) will not infringe or otherwise violate the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other intellectual property or proprietary right of any person or persons.

**6. Additional Bankruptcy Provisions.** All rights and licenses granted under or pursuant to this Agreement are and shall be deemed to be, for purposes of 11 U.S.C. § 365(n), licenses of rights to "intellectual property," as defined under 11 U.S.C. § 101. The Parties agree that the Port, as a licensee of such rights under this Agreement, will retain and may fully exercise all of its rights and elections under the U.S. Bankruptcy Code; however, nothing in this Agreement may be deemed to constitute a present exercise of such rights and elections.

Consultant hereby agrees and consents that, in the event an order for relief under the U.S. Bankruptcy Code has been entered with respect to the Port, the Port will be permitted to assume this Agreement and all licenses set forth herein pursuant to 11 U.S.C. § 365, notwithstanding any right Consultant may have pursuant to 11 U.S.C. § 365(c)(1) to object to such assumption. This consent will constitute an irrevocable consent pursuant to 11 U.S.C. § 365 (c)(1)(B), but only with respect to the Port's assumption of the License (and not with respect to any assignment of this Agreement and the licenses set forth herein).

## **APPENDIX B**

### **PAYMENT**

1. **Services.** The Port will pay Consultant for Services, a Maximum Compensation defined below, which sum includes costs for reimbursable expenses, if any.

<b>Maximum Compensation</b>	<b>Not to exceed \$ _____</b>
-----------------------------	-------------------------------

The Maximum Compensation shall be full compensation for all Services required, performed or accepted under this Agreement.

The 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. \_\_\_\_\_. Increase in maximum compensation with additional changes in scope of work shall be documented by a supplemental agreement to this Agreement.
- ☐ With the prior written approval of the Executive Director for an additional amount not to exceed the limit authorized by the Port's Purchasing Ordinance. Increase in maximum compensation with additional changes in scope of work shall be documented by a supplemental agreement to this Agreement.

Any other increases to the Maximum Compensation shall only be allowed with a duly adopted authorizing resolution by the Board of Port Commissioners.

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

- 0.1 Consultant shall be paid for its Services (and for services of its Subconsultants) rendered based upon the hourly "Billing Rates" of each employee as described in the Rate Schedule attached as Attachment 1 to Appendix B hereto. Consultant will not exceed a markup of \_\_\_\_% for any and all services of its Subconsultants.
- 1.2 Consultant may not invoice or receive payment for greater than Consultant's percentage completion of the Services, as determined by Port based on Services performed.
- 1.3 Consultant shall ensure that "current" (latest) invoiced amounts include all costs incurred by Consultant (including Subconsultants) for Services performed up to the date identified on the "current" invoice. The Port will not compensate Consultant (or its Subconsultants) for costs identified on a subsequent invoice when said costs are prior costs which were to be reflected on a prior invoice. Consultant shall receive prior approval from the Port should Consultant wish to hold for payment any Services performed up to the date identified on the "current" invoice.
- 1.4 Consultant shall submit monthly invoices with reasonable detail of the daily time incurred by personnel assigned to the Project, along with a schedule of Subconsultant and Reimbursable Expenses incurred, supported by invoices and appropriate backup documentation. Each invoice shall report on Consultant's total billings and Reimbursable Expenses to date.
- 1.5 Consultant shall submit to the Port in their monthly invoice, an updated cash flow forecast schedule and a budget progress report with percentage figures denoting the

percent complete for each *task* budgeted in accordance with Earned Value Project (EVP) management. Invoice shall show cost variances from the “Prorated Budget” figures and reasons therefore, whenever they are exceeded. Prior to the payment of any submitted invoice, the Port must first approve the Consultant’s submitted percentage figures. The Consultant shall not, under any circumstance, submit an invoice where the total amount of that invoice, when added to the “Previously Billed” amount, exceeds the sum total of the “Prorated Budget” amount. The amount in excess, if any, will be withheld.

1.6 Port shall pay Consultant in monthly payments on or before the last day of each month for Services in an amount which the Port, in its sole discretion, concludes is the value of the Services which have been properly performed as of the last day of the immediately preceding month and is due under this Appendix B.

1.7 Port will not withhold entire payment if a questioned amount is involved, but will issue payment in the amount of the total invoice less any questioned amount(s). Port will make payment for questioned amounts(s) upon Port’s receipt of any requested documentation verifying the claimed amount(s) and Port’s determination that the amount is due under the terms of this Agreement. Port shall advise Consultant, in writing, within 15 days of receipt of the requested documentation. Final payment will be made when all Services required under this Agreement have been completed to the reasonable satisfaction of Port including, without limitation, Consultant’s transmittal of all deliverables to Port required by this contract.

1.8 Work Breakdown Structure

To assist Port in determining progress payments, Consultant shall provide Port with an itemization of its fee under this Agreement according to a Work Breakdown Structure (WBS) that defines all project tasks, along with a project schedule defining the time line for each task, a project budget defining the planned staff-hours and costs for each task, estimated monthly budget (“Prorated Budget”), and a schedule of deliverables defining each deliverable to be provided to the Port. The WBS shall further define which tasks are to be performed by each sub-consultant. *[The WBS is attached as Attachment 2 to Appendix B. In making its determination of Consultant’s percentage completion of the Services, Port may refer to Attachment 2 to Appendix B.]*

3. **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 to:**

**Port of Oakland, Accounts Payable, P.O. Box 28413, Oakland, CA 94604**

**Or emailed to accountspayable@portoakland.com, referencing the purchase order number and/or contract number in the subject line.**

**In addition, an electronic copy is to be sent to:**

**Project Manager**

**Justin Taschek at jtaschek@portoakland.com**

## APPENDIX C

### INSURANCE

#### 1. Commercial General Liability Insurance

- **Coverage:** Standard ISO Commercial General Liability form.
- **Limits:** \$1,000,000 per occurrence; \$2,000,000 annual general aggregate; \$2,000,000 products and completed operations aggregate; \$1,000,000 each offense for personal and advertising injury.
- **Deductible/Self-Insured Retention:** Not more than \$25,000 per occurrence unless otherwise approved by Port Risk Management.
- **Additional Insured:** The City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its commissioners, officers, agents and employees.
- Cross liability/separation of insureds.
- Waiver of subrogation in favor of additional insured.
- If the Services involve construction activities, completed operations coverage must remain in force until at least 5 years after completion and acceptance of the Services.

#### 2. Business Automobile Liability Insurance

- **Coverage:** Standard ISO Business Automobile Liability form for all owned, non-owned and hired automobiles.
- **Limits:** \$1,000,000 each accident.
- **Deductible/Self-Insured Retention:** Not more than \$25,000 per accident unless otherwise approved by Port Risk Management.
- **Additional Insured:** The City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its commissioners, officers, agents and employees.
- Waiver of subrogation in favor of additional insured.

#### 3. Contractor's Pollution Legal Liability Insurance

- **When Required:** If the Services involve any construction activities, or any grading, excavating, underground utilities, piping, trenching, or any work below the surface of the ground, or involves the hauling or disposal of hazardous or regulated materials.
- **Coverage:** Contractor's Pollution Legal Liability occurrence or claims made form.
- **Limits:** \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
- **Deductible/Self-Insured Retention:** Not more than \$100,000 per occurrence unless otherwise approved by Port Risk Management.
- **Additional Insured:** The City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its commissioners, officers, agents and employees.
- Waiver of subrogation in favor of additional insured.
- **Additional Term if Claims Made Form:** 2 years following completion and acceptance of the Services.
- **Definition of "Covered Operations"** shall include All work performed by Consultant or its contractors or subcontractors.

#### 4. Workers' Compensation and Employer's Liability Insurance

- **Coverage:** Statutory Workers' Compensation and Side B Employer's Liability form.
- **Limits:** Statutory for workers' compensation and \$1,000,000 per accident, \$1,000,000 bodily injury each employee, and \$1,000,000 policy limit for bodily injury by disease, for Employer's Liability.

- **Deductible/Self-Insured Retention:** Not more than \$25,000 per occurrence for Employer's Liability unless otherwise approved by Port Risk Management.
- Waiver of subrogation in favor of the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its commissioners, officers, agents and employees.

#### 5. **Professional Liability Insurance**

- **Coverage:** For errors and omissions arising out of the Services.
- **Limits:** \$2,000,000 per claim and annual aggregate.
- **Deductible/Self-Insured Retention:** Not more than \$100,000 per claim unless otherwise approved by the Port Risk Management.
- **Additional Term:** 2 years after completion and acceptance of the Services.
- If the Services involve software or technology services, Technology Liability coverage, including coverage for privacy liability.
- If the Services involve outsourced technology or internet services, Network and Media Liability coverage.
- Waiver of subrogation in favor of the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its commissioners, officers, agents, and employees.

#### **Other Insurance Requirements:**

- **Notice of Cancellation.** Consultant or Consultant's agent must provide 30-days prior written notice to the Port Risk Management Department of any insurance policy cancellation, except 10-days prior written notice for non-payment of premium.
- **Proof of Insurance/Insurer Rating.** Consultant must deliver to the Port Risk Management Department, prior to the commencement of the Services, certificates of insurance evidencing all required insurance and additional insured status for the Port. All required insurance shall be provided by insurance companies with current A.M. Best ratings of A- VII or better. Upon failure to so file such insurance 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 Consultant's expense and Consultant shall promptly reimburse the Port for such expense (Services may be interrupted without proper evidence). In addition to the certificate of insurance, Consultant shall provide copies of the actual insurance policies if requested by the Port.
- Please send certificates and other required insurance information to:  
 Port of Oakland  
 Attn: Risk Management Dept.  
 530 Water Street  
 Oakland, CA 94607  
 Email: [risktransfer@portoakland.com](mailto:risktransfer@portoakland.com)

**APPENDIX D**

**PARTIES**

**CONSULTANT**

**Full Legal Name of Consultant:**

**Corporate Address:**

**Form of Business Entity (Check one)**

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

**If Corporation, LLC, LP, LLP:**

***(Required Information)***

**Agent for Service of Process  
(Name and Address)**

**Contact Individual / Position:**

**Telephone No.:**

**Facsimile No. (if any):**

**E-Mail Address:**

**Website (if any):**

**Tax Identification No.:**

**PORT**

<b>Division Director</b>	John C. Driscoll
<b>Project Manager</b>	Justin Taschek
<b>Port's Notice Address</b>	John C. Driscoll Port of Oakland 530 Water Street Oakland, CA 94607

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**[CONSULTANT]**

Professional Services Agreement

APPENDIX D  
LEGAL-393563794-217



## **APPENDIX E**

### **FAA AIP GRANT-REQUIRED PROVISIONS**

The following provisions are required in all Port contracts because of the Port's participation in the FAA Airport Improvement Program (AIP). Consultant shall fully comply with all of the following provisions and shall also include each these provisions in all of its contracts and subcontracts related to this Agreement.

**Note:** Consultant is sometimes hereinafter referred to as "Contractor" and the Port is sometimes hereinafter referred to as "Sponsor". These provisions, as worded below, are required as a result of the AIP and may not be amended.

#### **A. General Civil Rights Provisions.**

The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision binds the Contractor and subtier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

#### **B. Compliance With Nondiscrimination Requirements.**

During the performance of this Agreement, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

- 1. Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 2. Non-Discrimination:** The Contractor, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- 3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- 4. Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal

Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the Non-discrimination provisions of this Agreement, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
- Withholding payments to the Contractor under the Agreement until the Contractor complies; and/or
  - Cancelling, terminating, or suspending an Agreement, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs 1 through 5 above in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

**C. Title VI List of Pertinent Nondiscrimination Acts and Authorities.**

During the performance of this Agreement, the Contractor agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR Part 21 (Non-discrimination in Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing

entities (42 U.S.C. §§ 12131–12189) as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38;

- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 et seq).

#### **D. Fair Labor Standards Act.**

This Agreement incorporates by reference the provisions of 29 U.S.C. § 201, et seq (the Federal Fair Labor Standards Act or “FLSA”), and its implementing regulations, with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping and child labor standards for full and part time workers. Consultant has full responsibility to monitor compliance to the referenced statute and regulation. Consultant must address any claims or disputes that arise from this requirement directly with the US Department of Labor – Wage and Hour Division.

#### **E. Occupational Safety and Health Act.**

This Agreement incorporates by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Consultant must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Consultant retains full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 U.S.C. §651, et seq; 29 CFR Part 1910). Consultant must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

**APPENDIX F**  
**INDEMNIFICATION**

- A. To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782, 2782.6, and 2782.8), Consultant shall defend (with legal counsel chosen or approved by the Port Attorney), indemnify and hold harmless the Port and its officers, agents, departments, officials, representatives, and employees (collectively, “Indemnitees”) from and against the Liabilities.

“Liabilities” means 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, paralegal and attorneys’ fees (including costs attributable to in-house paralegals and attorneys), Port staff costs, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that:

- (1) Arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, any Subconsultant, or anyone directly or indirectly employed or controlled by Consultant or any Subconsultant, who provide design professional services governed by California Civil Code Section 2782.8; and
- (2) For Services not governed by California Civil Code Section 2782.8, arise from or relate to, directly or indirectly, in whole or in part:
  - (a) the Services, or any part thereof,
  - (b) any negligent act or omission of Consultant, any Subconsultant, or anyone directly or indirectly employed or controlled by Consultant or any Subconsultant,
  - (c) any claim of infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other intellectual property or proprietary right of any person or persons in consequence of the use by the Port, or any of the other Indemnitees, of any of the articles or Services to be supplied in the performance of this Agreement (including any Software or Equipment, as defined in the Services), and/or
  - (d) any claim of unauthorized collection, disclosure, use, access, destruction, or modification, or inability to access, or failure to provide data, by any person or persons in consequence of any act or omission by Consultant or any Subconsultant.

Such obligations to defend, hold harmless, and indemnify any Indemnitees 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 to all other Liabilities.

Consultant shall cause its Subconsultants to agree to indemnities and insurance obligations in favor of Port and other Indemnitees in the exact form and substance of those contained in this Agreement.

**B.** *The following provision shall only apply to the extent that Consultant, any Subconsultant, or anyone directly or indirectly employed or controlled by Consultant or any Subconsultant, who provide design professional services governed by California Civil Code Section 2782.8:*

- (1) Port shall include a provision in the construction contract with the general contractor on the Project requiring the general contractor to indemnify Consultant for damages resulting from the negligence of the general contractor and its subcontractors. Port shall also include a provision in the construction contract with the general contractor on the project requiring the general contractor to name Consultant as an additional insured on its CGL insurance coverage. The risk of an inadvertent omission of such provisions is on Consultant. Therefore, Consultant shall review the construction contract prior to bidding to ensure that such provision has been included in the draft of the bid documents.
- (2) If there is an obligation to indemnify under this Agreement, Consultant shall be responsible for incidental and consequential damages resulting directly or indirectly, in whole or in part, from Consultant's negligence, recklessness, or willful misconduct.

# EXHIBIT A

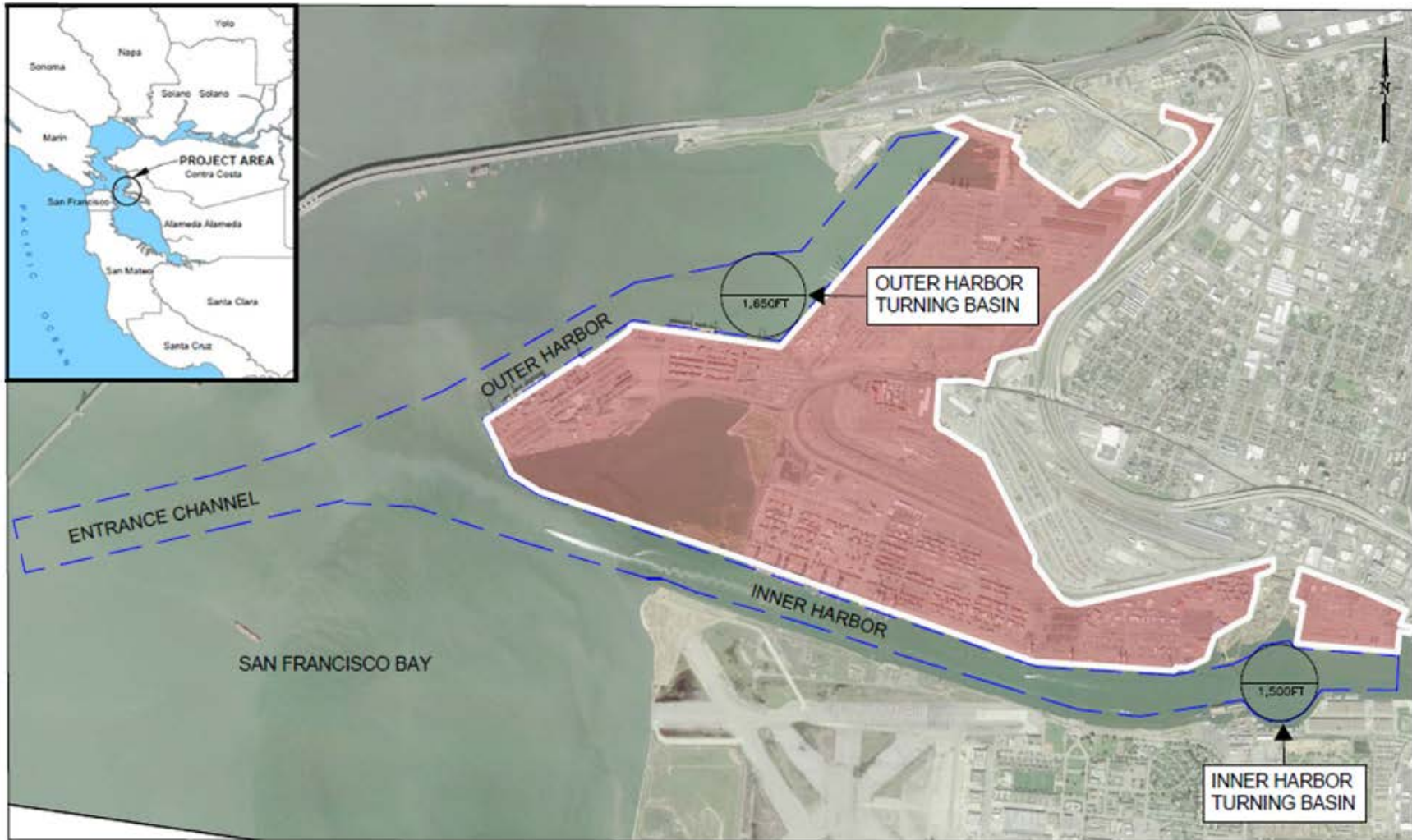
## Port of Oakland Map





## EXHIBIT B

### Port of Oakland Deep Draft Navigation Area



### OAKLAND HARBOR DEEP DRAFT CHANNEL LIMITS

- Approximate Federal Channel Limits
- General Port of Oakland Seaport Area

Project Location/Vicinity Map  
(No Scale)