



REQUEST FOR PROPOSALS
January 27, 2023

PORTS OF INDIANA – JEFFERSONVILLE

PROFESSIONAL CONSULTING SERVICES
FOR
PROJECT DEVELOPMENT AND CONSTRUCTION MANAGEMENT
PORTS OF INDIANA-JEFFERSONVILLE:
BARGE SHUTTLE STORAGE FACILITY
MARAD FY 2020 AMERICA’S MARINE HIGHWAY Grant No. 693JF72040047

Notice is hereby given that the Ports of Indiana (“POI”) is issuing this request for proposals (“RFP”) for professional consulting services for which POI is seeking well-qualified individuals and/or consulting firms for the partially federally-funded project at the Ports of Indiana-Jeffersonville (“Port”) located in Jeffersonville, IN, described more specifically herein (“Project”), and that **POI will accept Letters of Interest (“LOIs”) at the Indianapolis office, 150 W. Market Street, Ste. 450, Indianapolis, IN 46204, or via email to asedam@portsofindiana.com, from consultants until 10:00 a.m., Eastern Standard Time by March 3, 2023.** (“Response Due Date and Time”), after which time the LOIs will be evaluated and the applicants ranked utilizing a qualification-based selection process in accordance with Public Law 92-582 (Brooks Act) and in accordance with the consultant selection procedures described in this RFP.

The overall scope of the project includes development and construction management services related to the construction of a 1.2-acre outdoor storage area, at the Port, Jeffersonville (“Port”) located in Jeffersonville, IN. The scope of work for professional consulting services includes preliminary and final engineering design services to produce construction contract documents. The selected firm shall complete topographic survey, permit applications and processing, geotechnical engineering, utility coordination, hydraulic or drainage design, and provide project management phase services. The scope of work for professional consulting services also includes construction inspection and management phase services, wherein materials testing, and observation services for all the project work are necessary.

A professional services agreement for this work shall be awarded or rejected upon conclusion of negotiations with the selected consulting firm in accordance with procedures described in the RFP and at the sole discretion of POI. POI reserves the right to reject any and all LOIs and to waive any technicalities and informalities at its sole discretion.

Documents supporting this RFP are included as part of the Appendix attached hereto, and which include the following: (A) Standard Form of Professional Consulting Services Agreement, including exhibits; (B) Profit Rate Matrix; (C) Selection Rating Sheet; and (D) DBE Participation

Certification Form. For more information, contact Travis Kohl, Direct of Project Delivery, at (317) 749-0704 or by email at tkohl@portsofindiana.com.

All respondents are subject to the instructions communicated in this RFP and are cautioned to completely review the entire RFP and the attachments hereto and follow the instructions carefully to submit a fully responsive LOI. Failure of a consultant to follow these instructions may result in disqualification of the consultant from consideration for a contract to be awarded pursuant to the RFP.

POI is the sole distributor of this RFP and all addenda and changes or supplements to the RFP Documents. POI will document its responses to inquiries and provide any supplemental instructions or additional documents pertaining to the RFP in the form of written addenda to the RFP. POI will post all addenda and other information pertaining to this RFP at <http://www.portsofindiana.com>.

It is the sole responsibility of each consultant to review the website prior to submitting a LOI to ensure that the consultant has obtained all available instructions, addenda, changes, supporting documents, and any other information pertaining to this RFP. POI is not responsible for any solicitations issued through subscriber, publications, or other sources not connected with POI and consultants should not rely on such sources for information regarding this RFP.

POI may issue addenda at any time prior to the receipt of LOIs. Issued addenda will be promptly posted to <http://www.portsofindiana.com> prior to the date fixed for the opening of LOIs, except where such addendum withdraws the RFP or postpones the date for receipt of LOIs. Failure of any consultant to receive or review any such addendum shall not relieve any consultant from any obligation under its LOI as submitted. All addenda so issued shall become part of the RFP. Consultants shall indicate receipt of addenda in their LOI. Failure to do so may result in rejection of the LOI. Consultants shall not rely upon interpretations, clarifications, and/or approvals made in any other way.

I. PROJECT DESCRIPTION

The U.S. Department of Transportation's Maritime Administration (MARAD) has awarded a Marine Highway Grant to the Ports of Indiana for developing a steel barge shuttle with Nucor Steel at its Jeffersonville port. The grant award of \$545,136 will support a project cost of \$778,766 that includes the construction of a 1.2-acre outdoor storage area and the purchase of a forklift to be used for handling steel coils. The planned barge shuttle storage facility will facilitate barge shipment of coils from Nucor Gallatin's steel mill in Ghent, Ky., to Ports of Indiana-Jeffersonville.

The new storage facility will consist of two components: 1) the construction of a 1.2 acre outdoor laydown area for storage of steel coils and, 2) the purchase of a forklift to unload truckloads of coils from the dock, and load trucks for just-in-time delivery to customers. Component 2 is not part of this RFP but is included for description as a requirement of the grant.

II. SCOPE OF SERVICES AND SCHEDULE

The scope of services for the project will be further defined following award of contract, but is anticipated to include, but not be limited to, the following:

- Topographic survey
- Geotechnical Investigation
- Utility Evaluation
- Drainage Evaluation
- Determination of Operational Constraints
- Coordination of Environment Elements
- Detailed Cost Estimates
- Development of Plans and Specifications for Bidding and Construction
- Bidding Services, including recommendation
- Construction Administration
- Coordination with the other engineering teams associated with project throughout the duration of the project (i.e. Construction Management, Project Management, GIS Systems...etc).

Deliverables will be further defined during project scoping. They are anticipated to include, but not be limited to:

1. 30% Design Documents, including planning level cost estimates
2. 90% Design Documents with detailed engineering cost estimates
3. 100% Design Documents including plans, specifications and bid proposal packet
4. Electronic CAD Drawing Submittal

The Final Design Engineering services shall be performed in a timely manner according to the following schedule. The NTP for this project is expected on April 15, 2023.

Deliverable No.	Deliverable Name	Deliverable Timeline:
1	30% Design Documents	42 Calendar Days following (1)
2	90% Design Documents	35 Calendar Days following (3)
3	100% Design Documents	14 Calendar Days following (4)
4	Electronic CAD Submittal	7 Calendar Days following (5)

Allowable profit rate for this Project is 10.90% plus the overhead factor. See Ports of Indiana Profit Matrix included within the Appendix. Please note that the actual overhead rate of the selected consultant shall be used when determining the fee schedule.

For more information, contact Travis Kohl, Direct of Project Delivery, at (317) 749-0704 or by email at tkohl@portsofindiana.com. Additional information is also provided in the Supporting Documents.

III. PREQUALIFICATION AND OTHER QUALIFICATIONS

All services shall be completed by professionals licensed in their respective fields, if applicable. All consultants (prime and all subconsultants) must be prequalified with the Indiana Department of Transportation (“INDOT”) or the Indiana Department of Administration as required below. All consultants must be prequalified by the Response Due Date and Time.

The scope of services for the Project includes work specified and included within INDOT’s Consultants’ Prequalification Program and some items of work that are not. Items of work for this Project that are included within INDOT’s Prequalification Program and which require precertification by INDOT and which likewise require precertification for this Project include:

REQUIRED PREQUALIFICATION CATEGORIES

PRE-QUAL REF. NO.	WORK CATEGORY
INDOT 6.1	Topographic Survey Data Collection
INDOT 7.1	Geotechnical Engineering Services
INDOT 8.1	Non-complex Roadway Design
INDOT 13.1	Construction Inspection
INDOT 16.1	Utility Coordination

The applicant consultant submitting the LOI must be prequalified in at least one of the aforementioned Required Prequalification Categories, but not each category, provided that at least one subconsultant is prequalified in each category. Under all circumstances all services that require prequalification according to INDOT’s Consultant’s Prequalification Program must be performed by a prequalified consultant.

IV. INSTRUCTIONS TO APPLICANTS

A. Limited Communications During RFP and Selection Process

Please submit all questions/comments related to this RFP to the following email address: asedam@portsofindiana.com. Memorandums of clarifications with responses to all questions/comments will be distributed to all parties who requested an RFP package.

The Ports of Indiana will not participate in communications with consultants (or their agents) regarding the status of the selection process, or entertain any communications related to marketing, etc., during the time period between advertisement of this RFP and the announcement of final consultant selections for this RFP. Consultants shall not contact, communicate with or discuss any matter relating to this RFP during the procurement process with any member of POI, other than as noted herein. No oral interpretation or clarification will be made to any consultant as to the meaning of the RFP or attachments thereto, or other information furnished by POI with this RFP. Any such communication initiated by a consultant may be grounds for disqualifying the consultant from consideration of this engagement at POI’s sole discretion.

Communications that are always permissible include project administration activities for awarded contracts, scope and negotiation activities for projects selected but not under contract and training or related activities.

B. Electronic LOI Submittals

In lieu of paper submission delivered to the Port’s administrative office in Burns Harbor, Indiana, consultants interested in being considered for selection may submit their LOI and all required PDF documents via e-mail to asedam@portsofindiana.com. Note: All e-mails shall be limited to a maximum of 20 MB in size. A consultant may submit an LOI multiple times for the same RFP item, as long as the e-mail is received no later than the Response Due Date and Time. Only the latest submittal will be used for selection purposes.

C. LOI Requirements

The LOI shall comply with the following requirements:

1. LOIs shall be limited to twelve (12) 8½” x 11” pages that include Identification, Qualifications and Key Staff, and Project Approach. Hyperlinks within a LOI, to additional item specific information, are not allowed.
2. Provide the information requested in item 1 above and have it signed by an officer of the firm. Scanned signed documents or electronically applied signatures are both acceptable.
3. LOIs shall NOT contain hourly rates, overhead rates nor other specific cost amounts.

D. LOI Content -- Identification, Qualifications, and Key Staff

The content of Consultant’s LOI must include at a minimum the following information:

1. Provide the firm name, address of the responsible office from which the work will be performed, and the name and email address of the contact person authorized to negotiate for the associated work.
2. List all proposed subconsultants, including DBE status, a description of work to be performed by the subconsultant and the percentage of work to be performed by the prime consultant and each subconsultant (See, DBE Participation Certification Form requirements below.)
3. Describe the proposed project team and organizational structure, including designation of the individuals who will be responsible for the performance and delivery of each task component and deliverable. Include title, education, current responsibilities, and experience of key staff whom the consultant will assign to perform under the contract.
4. Describe other projects performed by consultant and key personnel pertinent to the services to be provided by consultant for the Project. Include reference contact information.
5. Provide examples of knowledge, expertise and/or experience with specific aspects of services to be provided for the Project, highlighting specific experiences in those items of work discussed in Section II of this RFP.
6. Describe the capacity of consultant’s staff and their ability to perform the work in a timely manner relative to present workload and the availability of the assigned staff.

7. Provide a description of your approach to the advertised services. For all items address your firm's technical approach, understanding of the project or services, cost containment practices, innovative ideas and any other relevant information concerning your firm's qualifications for the project.

E. Confidentiality and the Indiana Public Records Act

Once submitted, the LOIs shall become the property of POI, may not be returned to consultants and are subject to the Indiana Public Records Act, Indiana Code §5-14-3 *et seq.* and federal law (the "Public Records Act"). In the event a consultant submits any documents which it believes are not subject to disclosure pursuant to the Public Records Act, it must conspicuously mark each document and the specific information such consultant seeks to protect from disclosure as "CONFIDENTIAL" or "CONFIDENTIAL AND PROPRIETARY", as appropriate, in the header or footer of each such page and specific information affected. Blanket designations that do not identify the specific information shall not be acceptable and may be cause for POI to treat the entire LOI as public information. Consultants must also cite by statutory citation the statutory exemption which consultant asserts protects such information from disclosure under the Public Records Act.

POI will not advise a submitting party as to the nature or content of documents entitled to protection from disclosure under the Public Records Act or other applicable laws, as to the interpretation of such laws, or as to definition of trade secret. Nothing contained in this provision shall modify or amend requirements and obligations imposed on POI by the Public Records Act or other applicable law. POI reserves the right to disagree with consultant's assessment regarding confidentiality of information in the interest of complying with the Public Records Act. The provisions of the Public Records Act or other laws shall control in the event of a conflict between the procedures described above and the applicable law.

In no event shall POI, or any of its agents, representatives, consultants, directors, officers or employees be liable to a consultant for the disclosure of all or a portion of a LOI submitted under the RFP.

F. LOIs to Remain Open

LOIs shall remain valid for a period of at least ninety (90) days after the LOIs are submitted and opened.

V. CONTRACT, FEDERAL LAW REQUIREMENTS AND CERTIFICATIONS

A. Contract Form and Mandatory Terms

Submittal of a LOI constitutes an affirmative statement that the consultant, or any member of the consultant's team, is ready, willing, qualified, and able to perform the scope of work within the designated time requirements. Enclosed is a copy of the standard form of Professional Consulting Services Agreement and general conditions. The final contract terms will be substantially similar to those included in the attached form of agreement. If a standard contract clause is not acceptable

as worded, consultants shall note this in their LOI, and shall include specific suggested alternative wording. If additional contract terms are required, they shall also be documented in the LOI. The Ports of Indiana reserves it right to reject any and all suggested changes in contract terms.

Moreover, because the Project is being funded by both State funds and federal grant funds, specifically FY 2017 FASTLANE Discretionary Grants, there are certain mandatory (non-negotiable) terms and conditions that must be included in the final contract awarded. The mandatory contract terms are as follows:

- Compliance with Laws
- Non-Discrimination Certifications and Compliance with Laws
- DBE Requirements
- Drug-Free Workplace Certification
- Certification Regarding Debarment
- Certification/Disclosure Lobbying Activities
- Certification Delinquent Tax Liability/Felony Conviction
- Governing Laws
- Indemnification
- Non-Collusion
- State Required Provisions

Submittal of a LOI constitutes an affirmative statement that the consultant is willing to accept the mandatory contract terms identified above and shall make all of the required certifications as stated in the Professional Consulting Services Agreement.

B. Non-Discrimination and DBE Requirements

POI, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and applicable regulations, hereby notifies all applicants that it will affirmatively ensure that disadvantaged business enterprises (“DBEs”) will be afforded full and fair opportunity to submit an LOI in response to this RFP (or participate as subconsultants) and that DBEs will not be discriminated against on the grounds of race, color, or national origin in consideration for a contract award.

The Ports of Indiana has set a DBE Goal of 10% for this Project and applicants must complete the DBE Participation Certification Form included as part of this RFP. As part of its DBE Participation Certification Form, the consultant must identify the DBE or MBE/WBE firms (whichever applies) with which it intends to subcontract. On the DBE Certification Participation Form, include the contract participation percentage of each DBE or MBE/WBE (whichever applies), and list what the DBE or MBE/WBE (whichever applies) will be subcontracted to perform. If the consultant does not meet the DBE or MBE/WBE goal the consultant must provide documentation in additional pages after the form that evidences that it made good faith efforts to achieve the DBE, MBE/WBE goal.

VI. SELECTION PROCEDURES AND RATING SHEET AND SCORING

A. Selection Procedures

Evaluation of the LOIs and ranking of consulting firms begins promptly following the Ports of Indiana's receipt of the LOIs and the passage of the Response Due Date and Time. The LOIs will be evaluated and scored by a three-member Selection Committee utilizing the selection rating sheet included as an attachment to this RFP. The Selection Committee will be led by the Ports of Indiana's Project Delivery Director and two other members familiar with the Project and having expertise in administering engineering services, and capable of providing unbiased reviews of the LOIs and the qualifications of the submitting consultants.

The Ports of Indiana will prepare a final tabulation of the scoring ranking in order from the highest to the lowest qualified consultant for this RFP. This final tabulation shall be prepared by the Project Delivery Director, who shall also serve as the selecting official as needed. If a scoring tie exists among the highest ranked firms, the selecting official shall determine which of the tied firms is to be treated as the most qualified firm and shall provide a documented explanation of the basis of the decision. The Selection Committee shall conduct discussions with at least 3 firms to consider anticipated concepts and compare alternative methods for furnishing services. From the firms with which discussions have been conducted, the Selection Committee shall re-evaluate and score utilizing the same selection rating sheet included as attachment to this RFP, then rank, in order of preference, at least 3 firms that the Selection Committee considers most highly qualified to provide the services required based on the criteria identified herein.

The Ports of Indiana will then negotiate with the highest ranked consultant to resolve any differences in opinion regarding the scope, level of effort, schedule and cost of the requested services. If the Ports of Indiana and the highest ranked consultant cannot come to a negotiated agreement, the next ranked firm shall be notified, and the Ports of Indiana shall commence negotiations with the next ranked firm. If negotiations fail again, the Ports of Indiana shall enter negotiations with the next firm. This process shall continue as described until an agreement is finalized with a selected consultant or until POI elects to withdraw this RFP prior to finalizing an agreement. Once the Ports of Indiana discontinues negotiations with a firm and moves to the next ranked firm, the Ports of Indiana cannot reenter negotiations with the higher ranked firm. POI will negotiate compensation for the preliminary engineering services which the POI determines is fair and reasonable. In determining fair and reasonable compensation, the POI will consider the scope, complexity, professional nature, and estimated value of the services to be rendered.

B. Selection Rating Sheet and Scoring

The Selection Committee will evaluate and score each of the LOIs utilizing the Consultant Selection Rating Sheet attached to this RFP. Evaluation factors must be applied to all LOIs in a uniform, fair and consistent manner. Location ratings will be assigned by the Selection Committee based on the location of the consulting applicant's designated project management office for the Project relative to the Project site. Consultant applicant's successful experience with distinctive aspects of the scope of work will be awarded higher ratings than non-specific experience. By way of example, specific experience in the following may receive a higher rating:

1. Experience performing construction inspection services on projects in southern Indiana and/or in port environments.
2. Experience completing geotechnical and materials testing for similar projects in southern Indiana and/or in port environments.

Project efficiency is critical to the Ports of Indiana to ensure the project maintains the aggressive work schedule documented in the Marine Highway grant agreement between Ports of Indiana and MARAD. Documentation should be provided demonstrating the Consultant can complete the work in a reasonable time period. Information requested to make this determination includes estimated time to complete each Segment from Notice to Proceed to delivery of the final product in terms of total calendar days. For example, Segment A might be estimated to be completed in 60 calendar days. Please note, these estimates will be non-binding and will be used by the Selection Committee to determine the ability of the Consultant(s) to complete the project in a reasonable timeframe.

C. Reserved Rights and Disclaimers

This RFP does not commit or bind POI to enter into a contract or proceed with the procurement described herein. In connection with this procurement, POI reserves to itself all rights (which rights shall be exercisable by POI in its sole discretion) available to it under applicable law, including without limitation, with or without cause and with or without notice, the right to:

- (a) Modify the procurement process to address applicable law and/or the best interests of POI.
- (b) Revise the scope, type, structure and specific terms of this procurement.
- (c) Modify the scope of the Project during the procurement process.
- (d) Develop the Project, including any portion thereof, in any manner that it, in its sole discretion, deems necessary. If POI is unable to negotiate an agreement to its satisfaction with a preferred consultant, it may terminate this procurement and pursue other development or solicitations relating to the Project or exercise such other rights under provisions of the law, as it deems appropriate.
- (e) Cancel this RFP in whole or in part at any time prior to the execution by POI of an agreement, without incurring any cost obligations or liabilities.
- (f) Issue a new RFP after withdrawal of this RFP.
- (g) Not short-list any consultant responding to this RFP.
- (h) Reject any and all submittals, responses and LOIs received at any time.
- (i) Modify all dates set or projected in this RFP.

- (j) Terminate evaluations of LOIs received at any time.
- (k) Suspend and terminate contract negotiations at any time or elect not to commence contract negotiations with any consultant.
- (l) Issue addenda, supplements and modifications to this RFP.
- (m) Require confirmation of information furnished by a consultant, require additional information from a consultant concerning its LOI and require additional evidence of qualifications to perform the work described in the RFP, regardless of whether the information or evidence was explicitly required by the RFP.
- (n) Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to this RFP, including personal experience of evaluators.
- (o) Add or delete consultant responsibilities from the information contained in the RFP or any subsequent RFP.
- (p) Negotiate with a qualified consultant without being bound by any provision in its LOI.
- (q) Waive deficiencies, nonconformities, irregularities, and apparent clerical mistakes in a LOI, accept and review a non-conforming LOI or permit clarifications or supplements to a LOI.
- (r) Disqualify any consultant that changes its submittal after the Response Due Date and Time without POI approval.
- (s) Disqualify any consultant under the RFP for violating any rules or requirements of the procurement set forth in this RFP or in any other communication from POI.
- (t) Add to the short list of qualified consultants any consultant that submitted a LOI in order to replace a previously qualified consultant that withdraws or is disqualified from participation in this procurement.
- (u) Not issue any notice to proceed after execution of an agreement.
- (v) Design and construct some of or the entire Project.

Exercise any other right reserved or afforded to POI under the RFP or applicable laws and regulations.

RFP APPENDIX

APPENDIX A

STANDARD FORM OF PROFESSIONAL CONSULTING SERVICES AGREEMENT

PROFESSIONAL SERVICES AGREEMENT

This Agreement ("Agreement"), entered into by and between the **Ports of Indiana** (the "POI") and _____ (the "Consultant"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. **SERVICES BY CONSULTANT.** The CONSULTANT will provide the services and deliverables described in **Appendix A** which is attached and made an integral part of this Agreement.
2. **INFORMATION AND SERVICES TO BE FURNISHED BY POI.** The information and services to be furnished by POI is set out in **Appendix B** which is attached and made an integral part of this Agreement.
3. **TERM.** The term of this Agreement shall commence as of _____ and shall remain in effect until _____ unless terminated earlier as permitted in this Agreement.
4. **NOTICE TO PROCEED AND SCHEDULE.** The CONSULTANT shall begin the work to be performed under this Agreement only upon receipt of the written notice to proceed from POI and shall deliver the work to POI in accordance with the schedule contained in **Appendix C** attached and made an integral part of this Agreement.
5. **COMPENSATION.** POI shall pay the CONSULTANT for the services performed under this Agreement in accordance with **Appendix D** which is attached and made an integral part of this Agreement. The maximum amount payable under this Agreement shall not exceed \$_____.
6. **Audit.** The CONSULTANT acknowledges that it may be required to submit to an audit of funds paid through this Agreement. Any such audit shall be conducted in accordance with IC 5-11-1, et seq. and audit guidelines specified by POI and/or in accordance with audit requirements specified elsewhere in this Agreement.
7. **Condition of Payment.** The CONSULTANT must perform all Services under this Agreement to POI's reasonable satisfaction, as determined at the discretion of POI and in accordance with all applicable federal, state, local laws, ordinances, rules, and regulations. POI will not pay for work not performed to POI's reasonable satisfaction, inconsistent with this Agreement or performed in violation of federal, state, or local law (collectively, "deficiencies") until all deficiencies are remedied in a timely manner.
8. **Prompt Payment.** The CONSULTANT agrees to pay each subconsultant under this Agreement for satisfactory performance of its contract no later than ten (10) business days from the receipt of each payment the CONSULTANT receives from POI. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of POI. The explanation from the CONSULTANT shall be made in writing to POI. This clause applies to both DBE and non-DBE subcontractors. Failure to comply with this clause shall constitute a material breach of this Agreement and may result in sanctions under this Agreement.
9. **Payments.** All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the CONSULTANT in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or Services that are the subject of this Agreement except as permitted by IC 4-13-2-20.

10. **Penalties, Interest and Attorney's Fees.** POI will in good faith perform its required obligations hereunder, and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law in part, IC 5-17-5, I. C. 34-54-8, and I. C. 34-13-1.
11. **Status of Claims.** The CONSULTANT shall give prompt written notice to POI any claims made for damages against the CONSULTANT resulting from Services performed under this Agreement and shall be responsible for keeping POI currently advised as to the status of such claims.
12. **Taxes.** POI is exempt from most state and local taxes and many federal taxes. POI will not be responsible for any taxes levied on the CONSULTANT because of this Agreement.
13. **Travel.** No expenses for travel will be reimbursed unless specifically permitted under the scope of Services or consideration provisions of this Agreement. Expenditures made by the CONSULTANT for travel will be reimbursed at the current rate paid by POI and in accordance with the State of Indiana Travel Policies and Procedures as specified in the current Financial Management Circular.
14. **Changes in Work.** The CONSULTANT shall not commence any additional work or change the scope of the work until authorized in writing by POI. The CONSULTANT shall make no claim for additional compensation or time in the absence of a prior written approval and amendment executed by all signatories hereto. This Agreement may be amended, supplemented or modified only by a written document executed in the same manner as this Agreement. The CONSULTANT acknowledges that no claim for additional compensation or time may be made by implication, oral agreements, actions, inaction, or course of conduct.
15. **Delays and Extensions.** The CONSULTANT agrees that no charges or claim for damages shall be made by it for any minor delays from any cause whatsoever during the progress of any portion of the Services specified in this Agreement. Such delays, if any, shall be compensated for by an extension of time for such period as may be determined by POI subject to the CONSULTANT's approval, it being understood, however, that permitting the CONSULTANT to proceed to complete any services, or any part of them after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of POI of any of its rights herein. In the event of substantial delays or extensions, or change of any kind, not caused by the CONSULTANT, which causes a material change in scope, character or complexity of work the CONSULTANT is to perform under this Agreement; POI at its sole discretion shall determine any adjustments in compensation and in the schedule for completion of the Services. CONSULTANT must notify POI in writing of a material change in the work immediately after the CONSULTANT first recognizes the material change.
16. **Disputes** Consultant shall carry on all work required under this Agreement and maintain the schedule for services during all disputes or disagreements with POI. No work shall be delayed or postponed pending resolution of any disputes or disagreements except as Consultant and POI may otherwise agree in writing. Should Consultant fail to continue to perform its responsibilities as regards all non-disputed work without delay, any additional costs incurred by POI or Consultant as a result of such failure to proceed shall be borne by Consultant, and Consultant shall make no claim against POI for such costs. POI may withhold payments on disputed items pending resolution of the dispute.
17. **Progress Reports.** The CONSULTANT shall submit progress reports to POI upon request. The report shall be oral, in person or by phone, unless POI, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring POI that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

- 18. Funding Cancellation Clause.** When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of the performance of this Agreement, this Agreement shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive. The CONSULTANT may seek recovery from POI for any amounts unpaid for Services rendered or goods delivered through the date of cancellation.
- 19. Substantial Performance.** This Agreement shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification or Amendment thereof.
- 20. Assignment; Successors.**
- a. The CONSULTANT binds its successors and assignees to all the terms and conditions of this Agreement. The CONSULTANT shall not assign or subcontract the whole or any part of this Agreement without POI's prior written consent, except that the CONSULTANT may assign its right to receive payments to such third parties as the CONSULTANT may desire without the prior written consent of POI, provided that the CONSULTANT gives written notice (including evidence of such assignment) to POI thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Agreement and shall not be made to more than one party.
 - b. Any substitution of Subcontractors and/or disadvantaged business enterprises must first be approved and receive written authorization of POI's the Consultant Selection Review Committee and POI's Economic Opportunity Division Director, respectively, or their respective designee.
- 21. Authority to Bind Consultant.** The CONSULTANT warrants that it has the necessary authority to enter into this Agreement. The signatory for the CONSULTANT represents that he/she has been duly authorized to execute this Agreement on behalf of the CONSULTANT and has obtained all necessary or applicable approval to make this Agreement fully binding upon the CONSULTANT when his/her signature is affixed hereto.
- 22. Employment Option.** If POI determines that it would be in POI's best interest to hire an employee of the CONSULTANT, the CONSULTANT will release the selected employee from any non-compete agreements that may be in effect. This release will be at no cost to POI or the employee.
- 23. Force Majeure.** In the event that either party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of fire, natural disaster, acts of God, acts of war, terrorism, civil disorders, decrees of governmental bodies, strikes, lockouts, labor or supply disruptions or similar causes beyond the reasonable control of the affected party (hereinafter referred to as a Force Majeure Event), the party who has been so affected shall immediately give written notice to the other party of the occurrence of the Force Majeure Event (with a description in reasonable detail of the circumstances causing such Event) and shall do everything reasonably possible to resume performance. Upon receipt of such written notice, all obligations under this Agreement shall be immediately suspended for as long as such Force Majeure Event continues and provided that the affected party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. If the period of nonperformance exceeds thirty (30) days from the receipt of written notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.
- 24. Governing Laws.** This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana. The

CONSULTANT consents to the jurisdiction of and to venue in any court of competent jurisdiction in the State of Indiana.

- 25. Indemnification.** The Consultant agrees to indemnify, defend, and hold harmless POI, its Commissioners, officers, employees, agents, contractors, subcontractors, licensees, invitees, successors, transferees and assigns from all third-party claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Consultant and/or its subcontractors, if any, in the performance of this Agreement. POI will not provide indemnification to the Consultant.
- 26. Failure to Comply with Federal Requirements.** If Consultant or any of its subconsultants fail to comply with any federal requirements which results in POI's repayment of federal funds, Consultant shall be responsible to POI for repayment of such funds to the extent such funds are caused by Consultant or its subconsultants.
- 27. Independent Contractor.** Both parties hereto, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or of the other party. The CONSULTANT shall be responsible for providing all necessary unemployment and workers' compensation insurance for its employees.
- 28. Insurance** The Consultant shall secure and keep in force during the term of this Agreement the following insurance coverages (if applicable) covering the Consultant for any and all claims of any nature which may in any manner arise out of or result from Consultant's performance under this Agreement:
- a. All Risk Property for the full replacement cost of any of Consultant's personal property.
 - b. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
 - c. Automobile liability for owned, non-owned and hired autos with minimum liability limits not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
 - d. Errors and Omissions liability with minimum liability limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
 - e. Workers' compensation insurance for the Consultant's employees as required by Indiana law.

The Consultant shall provide proof of such insurance coverage by providing POI a certificate of insurance prior to the commencement of this Agreement. All such insurance shall be provided by companies having a policyholder rating of not less than "A-VII" in the most current edition of Best's Insurance Reports or its equivalent. All such insurance (except Workers' Compensation) shall name POI as an additional insured and such insurance shall be provided on a primary, non-contributory basis and shall include a waiver of subrogation in favor of POI.

- 29. Merger and Modification.** This Agreement constitutes the entire agreement between the parties. No understandings, agreements or representations, oral or written, not specified within this Agreement will be valid provisions of this Contact. This Agreement may not be

modified, supplemented or amended, in any manner, except by written agreement signed by all necessary parties.

30. Notice to Parties. Any notice, request, consent or communication (collectively a "Notice") under this Agreement shall be effective only if it is in writing and (a) personally delivered; (b) sent by certified or registered mail, return receipt requested, postage prepaid; or (c) sent by a nationally recognized overnight delivery service, with delivery confirmed and costs of delivery being prepaid, addressed as follows:

a. Notices to POI shall be sent to:

Ports of Indiana
150 W. Market Street, Suite 450
Indianapolis, IN 46204

b. Notices to the CONSULTANT shall be sent to:

or to such other address or addresses as shall be furnished in writing by any party to the other party. Unless the sending party has actual knowledge that a Notice was not received by the intended recipient, a Notice shall be deemed to have been given as of the date

- i. when personally delivered;
- ii. three (3) days after the date deposited with the United States mail properly addressed; or
- iii. the next day when delivered during business hours to overnight delivery service, properly addressed and prior to such delivery service's cut off time for next day delivery. As required by IC 4-13-2-14.8, payments to the CONSULTANT shall be made via electronic funds transfer in accordance with instructions filed by the CONSULTANT with the Indiana Auditor of State.

31. Order of Precedence; Incorporation by Reference. Any inconsistency or ambiguity in this Agreement shall be resolved by giving precedence in the following order: (1) This Agreement, (2) attachments prepared by POI, (3) RFP document, (4) the CONSULTANT's response to the RFP document, and (5) attachments prepared by the CONSULTANT. All of the foregoing is incorporated fully by reference.

32. Severability. The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Agreement.

33. Termination for Convenience.

a. POI may terminate, in whole or in part, whenever, for any reason POI determines that such termination is in its best interests. Termination or partial termination of Services shall be effected by delivery to the CONSULTANT of a Termination Notice at least fifteen (15) days prior to the termination effective date, specifying the extent to which performance of Services under such termination becomes effective. The CONSULTANT shall be compensated for Services properly rendered prior to the effective date of termination. POI will not be liable for Services performed after the effective date of termination.

- b. If POI terminates or partially terminates this Agreement for any reason regardless of whether for convenience or for default in such event, all data, reports, drawings, plans, sketches, sections and models, all specifications, estimates, measurements and data pertaining to the project, prepared under the terms or in fulfillment of this Agreement, shall be delivered within ten (10) days to POI. In the event of the failure by the CONSULTANT to make such delivery upon demand, the CONSULTANT shall pay to POI any damage (including costs and reasonable attorneys' fees and expenses) it may sustain by reason thereof.

34. Termination for Default.

- a. With the provision of thirty (30) days' notice to the Consultant, POI may terminate this Agreement in whole or in part if the Consultant fails to:
 - i. Correct or cure any breach of this Agreement; the time to correct or cure the breach may be extended beyond thirty (30) days if POI determines progress is being made and the extension is agreed to by the parties;
 - ii. Deliver the supplies or perform the services within the time specified in this Agreement or any extension;
 - iii. Make progress so as to endanger performance of this Agreement; or
 - iv. Perform any of the other provisions of this Agreement.
- b. If POI terminates this Agreement in whole or in part, it may acquire, under the terms and in the manner POI considers appropriate, supplies or services similar to those terminated, and the Consultant will be liable to POI for any excess costs for those supplies or services. However, the Consultant shall continue the work not terminated.
- c. POI shall pay the contract price for completed supplies delivered and services accepted. The Consultant and POI shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. POI may withhold from these amounts any sum POI determines to be necessary to protect POI against loss because of outstanding liens or claims of former lien holders.
- d. The rights and remedies of POI in this clause are in addition to any other rights and remedies provided by law or equity or under this Agreement.

35. Waiver of Rights. No rights conferred on either party under this Agreement shall be deemed waived, and no breach of this Agreement excused, unless such waiver or excuse is approved in writing and signed by the party claimed to have waived such right. Neither POI's review, approval or acceptance of, nor payment for, the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and the CONSULTANT shall be and remain liable to POI in accordance with applicable law for all damages to POI caused by the CONSULTANT's negligent performance of any of the Services furnished under this Agreement.

36. No Third-Party Beneficiaries. This Agreement is solely for the benefit of the parties hereto. Other than the indemnity rights under this Agreement, nothing contained in this Agreement is intended or shall be construed to confer upon any person or entity (other than the parties hereto) any rights, benefits or remedies of any kind or character whatsoever.

- 37. Assignment of Antitrust Claims.** The CONSULTANT assigns to POI all right, title and interest in and to any claims the CONSULTANT now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Agreement.
- 38. Access to Records.** The CONSULTANT and any Subcontractors shall maintain all books, documents, papers, correspondence, accounting records and other evidence pertaining to the cost incurred under this Agreement, and shall make such materials available at their respective offices at all reasonable times during the period of this Agreement and for five (5) years from the date of final payment under the terms of this Agreement, for the purpose of making inspection, audit, examination, excerpts and transcriptions by the recipient and sub recipient, as those terms are defined in 2 CFR §200.86 and §200.93 respectively, POI, the Federal Highway Administration, the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States or any of their duly authorized representatives, and copies thereof shall be furnished free of charge, if requested. The CONSULTANT agrees that, upon request by any agency participating in federally-assisted programs with whom the CONSULTANT has contracted or seeks to contract, POI may release or make available to the agency any working papers from an audit performed by POI of the CONSULTANT and its Subcontractors in connection with this Agreement, including any books, documents, papers, correspondence, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.
- 39. Confidentiality of POI Information.**
- a. The CONSULTANT understands and agrees that data, materials, and information disclosed to the CONSULTANT may contain confidential and protected information. Therefore, the CONSULTANT covenants that data, material, and information gathered, based upon or disclosed to the CONSULTANT for the purpose of this Agreement, will not be disclosed to others or discussed with third parties without POI's prior written consent.
 - b. The parties acknowledge that the Services to be performed by the CONSULTANT for POI under this Agreement may require or allow access to data, materials, and information containing Social Security numbers and maintained by POI in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the CONSULTANT and POI agree to comply with the provisions of IC 4-1-10 and IC 4-1-11. If any Social Security number(s) is/are disclosed by the CONSULTANT, the CONSULTANT agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this Agreement.
- 40. Ownership of Documents and Materials.** All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the CONSULTANT prior to execution of this Agreement, but specifically developed under this Agreement shall be considered "work for hire" and the CONSULTANT assigns and transfers any ownership claim to POI and all such materials ("Work Product") will be the property of POI. The CONSULTANT agrees to execute and deliver such assignments or other documents as may be requested by POI. Use of these materials, other than related to contract performance by the CONSULTANT, without POI's prior written consent, is prohibited. During the performance of this Agreement, the CONSULTANT shall be responsible for any loss of or damage to any of the Work Product developed for or supplied by POI and used to develop or assist in the Services provided herein while any such Work Product is in the possession or control of the CONSULTANT. Any loss or damage thereto shall be restored at the CONSULTANT's expense. The CONSULTANT shall provide POI full, immediate, and unrestricted access to the Work Product during the term of this Agreement. The CONSULTANT represents, to the best of its knowledge and belief after diligent inquiry and other than as disclosed in writing prior to or contemporaneously with the execution of this

Agreement by the CONSULTANT, that the Work Product does not infringe upon or misappropriate the intellectual property or other rights of any third party. The CONSULTANT shall not be liable for the use of its deliverables described in **Appendix A** on other projects without the express written consent of the CONSULTANT or as provided in **Appendix A**. POI acknowledges that it has no claims to any copyrights not transferred to POI under this paragraph.

41. Work Standards. The CONSULTANT shall understand and utilize all relevant POI standards including the Design Manual, where applicable, and other appropriate materials and shall perform all Services in accordance with the standards of care, skill and diligence required in **Appendix A** or, if not set forth therein, ordinarily exercised by competent professionals doing work of a similar nature.

42. Certification for Federal-Aid Contracts Lobbying Activities.

- a. The CONSULTANT certifies, by signing and submitting this Agreement, to the best of its knowledge and belief after diligent inquiry, and other than as disclosed in writing to POI prior to or contemporaneously with the execution and delivery of this Agreement by the CONSULTANT, the CONSULTANT has complied with Section 1352, Title 31, U.S. Code, and specifically, that:
 - i. No federal appropriated funds have been paid, or will be paid, by or on behalf of the CONSULTANT to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contracts, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - ii. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- b. The CONSULTANT also agrees by signing this Agreement that it shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000, and that all such sub-recipients shall certify and disclose accordingly. Any person who fails to sign or file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

43. Compliance with Laws.

- a. The CONSULTANT shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. If the CONSULTANT violates such rules, laws, regulations and ordinances, the CONSULTANT shall assume full responsibility for such violations and shall bear any and all costs attributable to the original performance of any correction of such acts. The enactment of any state or federal statute, or the promulgation of regulations thereunder, after execution of this Agreement shall be reviewed by POI and the CONSULTANT to determine whether formal modifications are required to the provisions of this Agreement.

- b. The CONSULTANT represents to POI that, to the best of the CONSULTANT'S knowledge and belief after diligent inquiry and other than as disclosed in writing to POI prior to or contemporaneously with the execution and delivery of this Agreement by the CONSULTANT:
- i. *Required State of Indiana Payments.* Neither the CONSULTANT nor the CONSULTANT'S principal(s) are presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. Further, the CONSULTANT agrees that any payments in arrears and currently due to the State of Indiana may be withheld from payments due to the CONSULTANT. Additionally, further work or payments may be withheld, delayed, or denied and/or this Agreement suspended until the CONSULTANT becomes current in its payments and has submitted proof of such payment to POI.
 - ii. *State of Indiana Actions.* The CONSULTANT has no current or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana pending and agrees that it will immediately notify POI of any such actions. During the term of such actions, CONSULTANT agrees that POI may delay, withhold, or deny work under any supplement or amendment, change order or other contractual device issued pursuant to this Agreement.
 - iii. *Professional Licensing Standards.* The CONSULTANT, its employees and Subcontractors have complied with and shall continue to comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the CONSULTANT pursuant to this Agreement.
 - iv. *Work Specific Standards.* The CONSULTANT and its Subcontractors, if any, have obtained, will obtain and/or will maintain all required permits, licenses, registrations and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for POI.
 - v. *Secretary of State Registration.* If the CONSULTANT is an entity described in IC Title 23, it is properly registered and owes no outstanding reports with the Indiana Secretary of State.
 - vi. *Debarment and Suspension of CONSULTANT.* Neither the CONSULTANT nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency or political subdivision of the State of Indiana and will immediately notify POI of any such actions. The term "principal" for purposes of this Agreement means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the CONSULTANT or who has managerial or supervisory responsibilities for the Services.
 - vii. *Debarment and Suspension of any Subcontractors.* The CONSULTANT'S Subcontractors are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency or political subdivision of POI. The CONSULTANT shall be solely responsible for any recoupment, penalties of costs that might arise from the use of a suspended or debarred Subconsultant. The CONSULTANT shall immediately notify POI if any Subconsultant becomes

debarred or suspended, and shall, at POI's request, take all steps required by POI to terminate its contractual relationship with the Subconsultant for work to be performed under this Agreement.

- viii. *Fraud.* Neither the CONSULTANT nor its principals have within a three-year period preceding this Agreement been convicted of or had a civil judgment, including a civil settlement, rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - ix. *Indictments.* Neither the CONSULTANT nor its principals are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b.) of this certification; and
 - x. *Past Termination for Default.* Neither the CONSULTANT nor its principals have within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default
 - xi. *Tax Delinquency of Felony Convictions.* Neither the CONSULTANT nor its principals have tax delinquencies or Federal felony convictions. "Tax Delinquency" for this Agreement is defined as: An unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. "Felony Conviction" for this agreement is defined as: A conviction within the preceding 24 months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the United States Code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. 3559.
- c. *Ethics.* The CONSULTANT and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with POI as set forth in IC §4-2-6, *et seq.*, IC §4-2-7, *et seq.* and the regulations promulgated thereunder. **If the CONSULTANT has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Agreement, the CONSULTANT shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this Agreement.** If the Contractor is not familiar with these ethical requirements, the CONSULTANT should refer any questions to the Indiana State Ethics Commission or visit the Inspector General's website at <http://www.in.gov/ig/>. If the CONSULTANT or its agents violate any applicable ethical standards, POI may, in its sole discretion, terminate this Agreement immediately upon notice to the CONSULTANT. In addition, the CONSULTANT may be subject to penalties under IC §§4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.
- d. *Violations.* In addition to any other remedies at law or in equity, upon CONSULTANT'S violation of any of Section 7(A) through 7(D), POI may, at its sole discretion, do any one or more of the following:
- i. terminate this Agreement; or

- ii. delay, withhold, or deny work under any supplement or amendment, change order or other contractual device issued pursuant to this Agreement; or
 - iii. bar the CONSULTANT from contracting with the State of Indiana.
- e. *Disputes.* If a dispute exists as to the CONSULTANT's liability or guilt in any action initiated by the State of Indiana or its agencies, and POI decides to delay, withhold, or deny work to the CONSULTANT, the CONSULTANT may request that it be allowed to continue, or receive work, without delay. The CONSULTANT must submit, in writing, a request for review to POI. A determination by POI under this Section shall be final and binding on the parties and not subject to administrative review. Any payments POI may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.

44. DBE Requirements.

- a. Notice is hereby given to the CONSULTANT and any Subconsultant, and both agree, that failure to carry out the requirements set forth in 49 CFR Sec. 26.13(b) shall constitute a breach of this Agreement and, after notification and failure to promptly cure such breach, may result in termination of this Agreement or such remedy as POI deems appropriate. The referenced section requires the following assurance to be included in all subsequent contracts between the CONSULTANT and any Subconsultant:
 - i. The CONSULTANT, sub recipient or Subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as POI, as the recipient, deems appropriate.
- b. The CONSULTANT shall make good faith efforts to achieve the DBE percentage goal that may be included as part of this Agreement with the approved DBE Subcontractors identified on its Affirmative Action Certification. Any changes to a DBE firm listed in the Affirmative Action Certification must be requested in writing and approved by POI's Economic Opportunity Division.

45. Drug-Free Workplace Certification.

- a. The CONSULTANT hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace, and that it will give written notice to the Ports of Indiana and the Indiana Department of Administration within ten (10) days after receiving actual notice that an employee of the CONSULTANT in the State of Indiana has been convicted of a criminal drug violation occurring in the CONSULTANT's workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of Agreement payments, termination of this Agreement and/or debarment of contracting opportunities with the State of Indiana for up to three (3) years.
- b. In addition to the provisions of the above paragraphs, if the total Agreement amount set forth in this Agreement is in excess of \$25,000.00, the CONSULTANT hereby further agrees that this Agreement is expressly subject to the terms, conditions and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana

Department of Administration is requiring the inclusion of this certification in all contracts with and grants from the State of Indiana in excess of \$25,000.00. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the CONSULTANT and made a part of the contract or agreement as part of the contract documents.

- c. The CONSULTANT certifies and agrees that it will provide a drug-free workplace by:
- i. Publishing and providing to all of its employees a statement notifying their employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the CONSULTANT's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
 - ii. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the CONSULTANT's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
 - iii. Notifying all employees in the statement required by subdivision c.i of this paragraph that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the CONSULTANT of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
 - iv. Notifying in writing POI within ten (10) days after receiving notice from an employee under subdivision c.iii(2) of this paragraph or otherwise receiving actual notice of such conviction;
 - v. Within thirty (30) days after receiving notice under subdivision c.iii(2) of this paragraph of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency; and
 - vi. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs c.i through c.v of this paragraph.

46. Nondiscrimination

- a. This Agreement is enacted pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964 as amended, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. Breach of this covenant may be regarded as a material breach of this Agreement, but nothing in this covenant shall be construed to imply or establish an employment relationship between POI and any applicant or employee of the CONSULTANT or any Subconsultant.

Under IC 22-9-1-10 CONSULTANT covenants that it shall not discriminate against any employee or applicant for employment relating to this Agreement with respect to the hire,

tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, or status as a veteran.

- b. The CONSULTANT understands that POI is a recipient of federal funds. Pursuant to that understanding, the CONSULTANT agrees that if the CONSULTANT employs fifty (50) or more employees and does at least \$50,000.00 worth of business with POI and is not exempt, the CONSULTANT will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The CONSULTANT shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of Agreement.

It is the policy of POI to assure full compliance with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act and related statutes and regulations in all programs and activities. Title VI and related statutes require that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (POI's nondiscrimination enforcement is broader than the language of Title VI and encompasses other State and Federal protections. POI's nondiscrimination enforcement shall include the following additional grounds: sex, sexual orientation, gender identity, ancestry, age, income status, religion, disability, income status, limited English proficiency, or status as a veteran.)

- c. During the performance of this Agreement, the CONSULTANT, for itself, its assignees and successors in interest (hereinafter referred to as the "CONSULTANT") agrees to the following assurances under Title VI of the Civil Rights Act of 1964:
 - i. Compliance with Regulations: The CONSULTANT shall comply with the regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49 CFR Part 21, and the Federal Highway Administration Title 23, CFR Part 200 as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement. See **Appendix E** for pertinent nondiscrimination authorities.
 - ii. Nondiscrimination: The CONSULTANT, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, sexual orientation, gender identity, age, national origin, religion, disability, ancestry, income status, limited English proficiency or status as a veteran in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix "B" of the Regulations.
 - iii. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential Subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this Agreement, and the Regulations relative to nondiscrimination on the grounds of race, color, sex, sexual orientation, gender identity, age, national origin, religion, disability, ancestry, income status, limited English proficiency, or status as a veteran.

- iv. Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, documents, papers, correspondence, records, accounts, other sources of information, and its facilities as may be determined by the recipient, the subrecipient, the Ports of Indiana, the Federal Highway Administration, the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States or any of their duly authorized representatives, to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses furnish this information, the CONSULTANT shall so certify to the recipient, the subrecipient, the Ports of Indiana, the Federal Highway Administration, the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States or any of their duly authorized representatives as appropriate, and shall set forth what efforts it has made to obtain the information.
- v. Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this Agreement, the Ports of Indiana shall impose such contract sanctions as it, the Federal Highway Administration, the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives may determine to be appropriate, including, but not limited to: (a) withholding payments to the CONSULTANT under the Agreement until the CONSULTANT complies, and/or (b) cancellation, termination or suspension of the Agreement, in whole or in part.
- vi. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraph c, Section i. through v. in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subcontract or procurement as the Ports of Indiana or the Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the CONSULTANT becomes involved in, or is threatened with, litigation with a Subconsultant or supplier as a result of such direction, the CONSULTANT may request the Ports of Indiana to enter into such litigation to protect the interests of the Ports of Indiana, and, in addition, the CONSULTANT may request the United States of America to enter into such litigation to protect the interests of the United States of America.

47. Pollution Control Requirements. If this Agreement is for \$100,000 or more, the CONSULTANT:

- a. Stipulates that any facility to be utilized in performance under or to benefit from this Agreement is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;
- b. Agrees to comply with all of the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder; and
- c. Stipulates that, as a condition of federal aid pursuant to this Agreement, it shall notify POI and the Federal Highway Administration of the receipt of any knowledge indicating that a

facility to be utilized in performance under or to benefit from this Agreement is under consideration to be listed on the EPA Listing of Violating Facilities.

48. Prohibited Telecommunications and Video Surveillance Equipment and Services. In accordance with federal regulations (including 2 CFR 200.216 and 2 CFR 200.471), CONSULTANT is prohibited from purchasing, procuring, obtaining, using, or installing any telecommunication or video surveillance equipment, services, or systems produced by:

- a. Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), or
- b. Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities), for any purpose to fulfill its obligations under this Contract.

The CONSULTANT shall be responsible to ensure that any subcontractors are bound by and comply with the terms of this provision. Breach of this provision shall be considered a material breach of this Agreement.

49. Non-Collusion. The undersigned attests, subject to the penalties for perjury, that the undersigned is the CONSULTANT, or that the undersigned is the properly authorized representative, agent, member or officer of the CONSULTANT. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the CONSULTANT, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face hereof. Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Agreement, the CONSULTANT attests to compliance with the disclosure requirements in IC 4-2-6-10.

[Remainder of Page Intentionally Left Blank]

In Witness Whereof, CONSULTANT and POI have, through duly authorized representatives, entered into this Agreement. The parties having read and understand the forgoing terms of the Agreement do by their respective signatures dated below hereby agree to the terms thereof.

[Consultant]

By: _____

Name and Title, Printed

Date: _____

In Witness Whereof, CONSULTANT and POI have, through duly authorized representatives, entered into this Agreement. The parties having read and understand the forgoing terms of the Agreement do by their respective signatures dated below hereby agree to the terms thereof.

Ports of Indiana

By: _____

Name and Title, Printed

Date: _____

APPENDIX B

PORTS OF INDIANA PROFIT MATRIX

January 2023
POI's Consultant Contracts
Profit Calculation Worksheet

<u>Additives</u>	% Add On	Select	Base 7.00%
Complexity			
Low	0.0	X	
Low/Mid	0.5		
Mid	1.0		1.00%
Mid/High	1.5		
High	2.0		
Cost			
>\$10,000,000	0.0		
>\$2,000,000 & <=\$10,000,000	0.5		
>\$500,000 & <= \$2,000,000	1.0	X	
>=\$500,000	1.5		1.50%
Duration			
<3 years	0.0	X	0.00%
>=3 years & <5 years	0.3		
>=5 years	0.7		
Overhead			
>190%	0.0		
>180% & <=190%	0.7		
>160% & <=180%	1.4	X*	1.40%
>120% & <=160%	2.1		
<=120%	2.8		
		Calculated Total =	10.90%

*Use Actual Rate

Minimum Possible Rate 7.0%

Maximum Possible Rate 14.0%

APPENDIX C

SELECTION RATING SHEET

Consultant Name: _____

Evaluation Criteria Rated by Scorers:

Category	Scoring Criteria	Scale	Score	Weight	Weighted Score
Capacity of Team to Do Work	Evaluation of the team's personnel and equipment to perform on time			20	
	Availability of more than adequate capacity that results in added value to POI	2			
	Adequate capacity to meet the schedule	1			
	Insufficient available capacity to meet the schedule	-2			
Team's Demonstrated Qualifications & Experience Related to Completion of Design of Similar Projects	Technical expertise: Unique Resources & Equipment that yield a relevant added value or efficiency to the deliverable			15	
	Demonstrated outstanding expertise and resources identified for required services for value added benefit	2			
	Demonstrated high level of expertise and resources identified for required services for value added benefit	1			
	Expertise and experience at appropriate level	0			
	Failure to provide verification of two (2) similar projects in the last five (5) years	-5			
Teams Demonstrated Qualifications & Field Surveying and Mapping	Technical expertise: Unique Resources & Experience that yield a relevant added value or efficiency to the deliverable			15	
	Demonstrated outstanding expertise and experience identified for required services for value added benefit	2			
	Demonstrated high level of expertise and experience identified for required services for value added benefit	1			
	Expertise and experience at appropriate level	0			
	Failure to provide verification of two (2) similar projects in the last five (5) years	-5			
Team Structure	Stability, strength, and likelihood of success of proposed management structure and team. Team member roles and lines of accountability are appropriate. Team lead is experienced in delivering major projects.			5	
	Demonstrated outstanding experience in similar type and complexity	2			
	Demonstrated high level of experience in similar types and complexity	1			
	Experience in similar type and complexity shown in resume	0			
	Experience in different type or lower experience	-1			
	Insufficient Experience	-3			
Approach to Project	Understanding and Innovation that gives POI cost and/or time savings			10	
	High level of understanding and viable innovative ideas proposed.	2			
	High level of understanding of the project.	1			
	Basic understanding of the project.	0			
	Lack of project understanding	-3			

APPENDIX C

Category	Scoring Criteria	Scale	Score	Weight	Weighted Score
Project Efficiency	Ability to complete project components within a reasonable amount of time to meet the project schedule			15	
	Demonstrates outstanding ability to complete project within reasonable amount of time	2			
	Demonstrates high level ability to complete project within reasonable amount of time	1			
	Does not provide adequate information to demonstrate an ability to complete project within reasonable amount of time	0			
	Demonstrates does not have the ability to complete the project within a reasonable amount of time	-2			
Location	Location of assigned staff office relative to project			20	
	Within 50 mi.	3			
	51 to 150 mi	1			
	151 to 500 mi	0			
	Greater than 500 mi	-1			
			Weighted Total		

The scores assigned above represent my best judgment of the consultant's abilities for the rating categories.

Signed: _____

Title: _____

Date: _____

APPENDIX D
DBE PARTICIPATION CERTIFICATION FORM

Request for Proposal Number: _____

RFP Item Description: _____

Affirmative Action Certification (AAC) for Disadvantaged Business Enterprises (DBE)

I hereby certify that my company intends to affirmatively seek out and consider Disadvantaged Business Enterprises (DBEs) certified in the State of Indiana to participate as part of this proposal. I acknowledge that this certification is to be made an integral part of this proposal. I understand and agree that the submission of a blank certification may cause the proposal to be rejected. I certify that I have consulted the following DBE website to confirm that the firms listed below are currently certified DBEs: <http://www.in.gov/indot/2732.htm>.

I certify that I have contacted the certified DBEs listed below, and if my company becomes the CONSULTANT, these DBEs have tentatively agreed to perform the services as indicated. I understand that neither my company nor I will be penalized for DBE utilization that exceeds the goal. After contract award, any change to the firms listed in this Affirmative Action Certification to be applied toward the DBE goal must have prior approval by the Ports of Indiana.

I. DBE Subconsultants to be applied toward DBE goal for the RFP item:

Certified DBE Name to DBE	Service Planned	Estimated Percentage to be Paid*
		%
		%
		%
		%

II. DBE Subconsultants to be utilized beyond the advertised DBE goal for the RFP item:

Certified DBE Name to DBE	Service Planned	Estimated Percentage to be Paid*
		%
		%
		%
		%

Estimated Total Percentage Credited toward DBE Goal: _____

Estimated Percentage of Voluntary DBE Work Anticipated over DBE Goal: _____

Company Name: _____

Signature: _____ **Date:** _____

*It is understood that these individual firm percentages are estimates only and that percentages paid may be greater or less as a result of negotiation of the contract scope of work. My firm will use good faith efforts to meet the overall DBE goal through the use of these or other certified and approved DBE firms.

Appendix E Nondiscrimination Authorities

During the performance of this Agreement, CONSULTANT, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non- discrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities:

- 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); and 49 C.F.R. Part 21.
- 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);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- 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 C.F.R. 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 U.S.C. § 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, 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 C.F.R. 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 nondiscrimination 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.*).