

PROTEST PROCEDURES

1. PURPOSE

These protest procedures are included in this Solicitation to provide a prompt, fair and equitable administrative remedy to all interested parties regarding alleged substantive errors or omissions in the Solicitation or any decision by the Port of Seattle (hereinafter "Port") to award the contract, to declare a proposal non-responsive, or to find a Proposer not responsible.

2. DEFINITIONS

Filed: Complete receipt of any document by the Port prior to the specified time indicated in these procedures. Documents received after the specified time indicated in these procedures shall be considered received the following business day.

Interested Party: An actual or prospective Bidder or Proposer whose direct, substantial economic interest would be affected by award of a contract or by the failure to award a contract.

3. TIMING

Any interested party for the purpose of filing a Protest under this Solicitation may Protest to the Port only in accordance with the procedures set forth below:

A. Protests Based on the Form or Content of the Solicitation: Any Protest based on the form or content of the Solicitation or any addendum thereto (including, but not limited to, any terms, requirements and/or restrictions therein) must be filed with the Port via email to Protests@portseattle.org. The email subject line must clearly identify the Solicitation number and be labeled as a "Protest." No protest based on the content of the Solicitation will be considered if filed later than 5PM Pacific Time (i) five (5) business days prior to the specified proposal due date. Failure to timely file the protest will result in its rejection. It is the sole responsibility of the protestor to ensure the protest is timely filed.

B. Other Protests: Protests based on circumstances other than those included in Section 3.A above must be filed with the Port via email to Protests@portseattle.org no later than 5PM Pacific Time two (2) business days after the Proposer knew or should have known of the facts and circumstances upon which the protest is based. The email subject line must clearly identify the Solicitation number and be labeled as a "Protest." No protest will be considered by the Port if all bids/proposals are rejected or if the protest is received after award of the Contract. Failure to timely file the protest will result in its rejection. It is the sole responsibility of the protestor to ensure the protest is timely filed.

4. CONTENTS OF PROTEST

To be considered, a Protest shall be timely, in writing, and shall include: (1) the name, street address, phone number and email address of the aggrieved party; (2) the Solicitation title and number under which the Protest is filed; (3) the direct economic interest of the aggrieved party in the contract to be awarded under the Solicitation; (4) a detailed

description of the specific grounds for the Protest and any supporting legal and/or factual documentation; and (5) the specific ruling or relief requested. In the event the protesting party asserts the responsibility of any other Proposer as a ground for Protest, it must address in detail the specific responsibility criteria identified in the Solicitation.

5. ADMINISTRATIVE REVIEW

The Protest shall be promptly considered on the written submittal by the Port. In its sole discretion, the Port may give notice of the Protest to other entities and/or interested parties, including other Proposers. The Port reserves the right to resolve or to attempt to resolve any timely Protest that concerns the content of the Solicitation through written addenda thereto.

The Port will issue a written decision on the Initial Administrative Review following the timely filing of the Protest, stating the reasons for the action taken. In making its decision, the Port may consult with others and consider information relating to the Protest from any source, including other interested parties. A copy of the decision shall be provided to the aggrieved party, and any other party in the Port's sole discretion, via email.

6. ADMINISTRATIVE APPEAL

- A. Right of Appeal. For any Solicitation in which the value of the contract to be awarded is expected to exceed \$200,000, the aggrieved party may appeal the decision of the Port by filing a Notice of Administrative Appeal via email to Protests@portseattle.org not later than 5PM Pacific Time two (2) business days after filing the initial Administrative Review decision. The Notice of Administrative Appeal shall be timely, in writing and clearly labeled in the email subject line as a "Notice of Administrative Appeal." A copy of the initial Protest shall be attached to the Notice of Administrative Appeal. The Port will provide a copy of the Notice of Administrative Appeal to other interested parties at the Port's sole discretion. Failure to timely file the Administrative Appeal will result in its rejection. It is the sole responsibility of the appellant to ensure the Administrative Appeal is timely filed.
- B. Hearing. Promptly following the filing of the Notice of Administrative Appeal, an appeal hearing shall be conducted before a panel of at least two Port representatives ("the Panel") normally consisting of the Director, Central Procurement Office (or designee) and a representative of the Port's legal department. The hearing will generally be conducted within five (5) business days of the filing of the Notice of Administrative Appeal, and the aggrieved party and any other interested parties will be notified of the time and place of the hearing.
- C. Conduct of Hearing. Except as the Panel may allow in its discretion, no discovery shall be available. At the Administrative Appeal Hearing, the aggrieved party will be given a reasonable opportunity to present relevant testimony and evidence and to make legal arguments. Other interested parties may also be given the opportunity to do so. The hearing will be recorded, and the Panel shall maintain an official record of all documentary evidence presented at the hearing. The Panel shall issue a written Final Decision. A copy

of the Final Decision shall be provided to the aggrieved party, and any other party at the Port's sole discretion, via email.

- D. Standard of Review on Administrative Appeal: On Administrative Appeal the Panel will consider the Protest, de novo. The aggrieved party shall, however, be restricted from raising any matter or ground not reasonably within the scope of the materials placed before the Port.

7. STAY OF AWARD OF THE CONTRACT

The Port will stay award of the contract for two (2) business days following the issuance of its Final Decision.

8. JUDICIAL PROCEEDINGS

All judicial proceedings must be filed within two (2) business days of the issuance of the Port's Final Decision. The stay provided by Section 7 is specifically intended to ensure that any request for judicial relief proceeds orderly and that the Port is provided advance notice thereof. Therefore, an aggrieved party that intends to commence judicial proceedings shall specifically provide notice to the Port prior to the commencement of such proceedings. The notice shall be provided via email to Protests@portseattle.org and shall be clearly labeled in the email subject line as "Request for Judicial Relief."

9. STRICT COMPLIANCE

Strict compliance with these protest procedures is essential in furtherance of the public interest. Any aggrieved party that fails to comply strictly with these protest procedures is deemed, by such failure, to have waived and relinquished forever any right or claim with respect to alleged irregularities in connection with the Solicitation or award of the Contract. No person or party may pursue any judicial or administrative proceedings challenging this Solicitation or award of any Contract resulting from this Solicitation without first exhausting the administrative procedures specified herein.

10. REPRESENTATION

An aggrieved party may participate personally in an Administrative Hearing or by a duly authorized representative. Whether or not participating in person, an aggrieved party may be represented, at the party's own expense, by counsel.

11. COMPUTATION OF TIME

In computing any period of time prescribed by this procedure, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period shall be included. The term "business day" shall mean any day on which the Port of Seattle is open for regularly conducted business.

12. ACKNOWLEDGEMENT

By submitting a bid or proposal in response to this Solicitation, the interested party acknowledges that it has reviewed and acquainted itself with the protest procedures herein and agrees to be bound by such procedures as a condition of submitting a Bid or Proposal.