

Commission and that if ratification does not follow, the contract shall terminate, and the Contractor shall be compensated for work and materials used up to the date of termination.

D. When Commission Approval Required. The Commission retains sole authority to waive the competitive bidding requirements under this Section VII in excess of the limits contained within this Section. In such instances where the Chief Executive Officer waives the competitive bidding requirements pursuant to the authority in this Section VII, then in addition to the requirements of Section VII. C. applicable to emergency contracts, the Chief Executive Officer shall brief the Commission on all such contracts, make such contracts available for public inspection prior to their proposed commencement date, and provide the Commission with justification for the contract and evidence that the Port attempted to identify other potential consultants/providers. The Chief Executive Officer shall ensure that costs, fees, or rates negotiated in such contracts are reasonable.

IX. POLICY GOVERNING PROTEST PROCEDURES

A. Who May Protest. The term "Bidder" excludes subcontractors, suppliers or any person contracting with or intending to contract with an actual bidder and includes any actual bidder or prospective bidder who may protest based on specifications. Protests following a proposal or bid submittal are limited to any actual Bidders.

B. Form of Protest. In order to be considered, a protest shall be in writing, addressed to the Port's Purchasing Department, and include:

1. The name, address, and phone number of the Bidder protesting, or the authorized representative of the Bidder; and
2. The solicitation number and title under which the protest is submitted; and
3. A detailed description of the specific grounds for protest and any supporting documentation. It is the responsibility of the protesting Bidder to supplement its protest with any subsequently discovered information prior to the procurement coordinator's decision; and
4. The specific ruling or relief requested; and
5. Evidence that all persons with a financial interest in the procurement have been given notice of the protest or if such persons are unknown, a statement to that effect; and
6. Contain the following statement signed by a responsible party of the protester, "I declare under penalty of law for perjury or falsification that the information contained in the protest is true and correct to my personal knowledge, that this protest is filed in good faith and without any intent of delaying the procurement, and that I reasonably believe the protest to be meritorious." Such a statement shall be subscribed and sworn before a notary public. A protestor must strictly comply with this requirement.

C. Delivery Method. Delivery of protests shall be made during regular Port business hours in a manner requiring a receipt signed by a Port staff member such as United States Postal Service certified first class mail with return receipt request, or commercial document courier who obtains a receipt upon delivery. Electronic submission of protests will not be considered.

D. Timing of Protest. Protests based on specifications or other items in the solicitation documents which are apparent on the face of said document must be received by the Port no later than seven calendar days prior to the date established for submittal of proposals or bids. Protests based on other circumstance must be received by the Port within two calendar days after the protesting Bidder knows or should have known of the facts and circumstance upon which the protest is based. In no event shall a protest be considered if all proposals or bids are rejected or after award of the contract. A calendar day means a working business day and does not include weekends or government recognized holidays.

E. Determination of Protest. When the procurement is to be made or awarded by the Commission, the Commission shall decide the protest. When the procurement is to be made or awarded without Commission action, the Chief Executive Officer shall decide the protest and may determine, in their sole discretion, that a meeting or conference with the protestor would materially assist them in making the decision. In both cases the decision shall be final and binding.

F. Remedies. A decision on the protest may include, but is not limited to, upholding or denying, in a whole or in part. Remedies may include rejection of one or more proposals or bids, a call for new proposals or bids, acceptance of the proposals or bids in the event the protest is denied, and such other relief as may be appropriate. No protester shall be entitled to damages of any kind whatsoever.

G. 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 the solicitation or award of the contract to be awarded by a solicitation, without first exhausting the above-specified procedures.

H. Compliance with RCW 39.04.105 Related to Public Works. In addition to the above protest procedures, the Port shall comply with the requirements of RCW 39.04.105 related to written protests for public works projects.

X. POLICY GOVERNING CONSULTANT ROSTER PROCEDURES

A. Consulting services are professional services that have a primarily intellectual output or product and include Architectural and Engineering services or Professional Services as defined in RCW 39.80.020 and Personal Service as defined in RCW 53.19.010.