



QUESTIONS & RESPONSES #01

RFP or RFQ / TITLE 070594 | Electrical Equipment Testing and Maintenance

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PROPOSER QUESTIONS	PORT RESPONSES	RFP/ RFQ Section
<p>Per the Bid Requirement Item #1.</p> <p>Does the Bidder need to have (Both) a Washington State Electrical Contractor's License and a NETA Accreditation?</p> <p>Or be a NETA Accredited Testing Firm?</p> <p>Or be a Washington State Electrical Contractor?</p>	<p>Yes, both a NETA certified firm and a Licensed Washington State Contractor are required.</p>	
<p>Will the Port of Tacoma consider revising the Terms and condition wording as outlined below.</p> <ul style="list-style-type: none"> • "Intellectual Property"- The Solicitation Item 6 "Ownership of Work" requires POWER to give POT all ownership rights to plans, specifications and other products prepared by POWER. <p>6. Ownership of Work</p> <p>The services to be performed by Consultant shall be deemed instruments of service for purposes of the copyright laws of the United States. Notwithstanding any other provision of the agreement to the contrary, Port of Tacoma shall not gain ownership of materials developed by Consultant which are of general applicability in its industry or of any pre-existing information proprietary to the Consultant or a Consulting Party, together with all derivative works, developments, improvements, modifications, additions and enhancements thereto made by Consultant or a Consulting Party pursuant to this agreement (collectively the Consultant Intellectual Property") which shall remain the exclusive property of the Consultant as applicable; provided however Consultant assigns Port of Tacoma a nonexclusive, fully paid royalty free, lifetime license to use any and all submitted or otherwise provided Consultant Intellectual Property that comprises or is integrated with, the work for use exclusively at Port of Tacoma and shall be transferable to any subsequent owner of the Port of Tacoma without notice to Consultant to the extent that any subsequent owner is not a direct competitor with Consultant in the field that comprises the Work."</p> <ul style="list-style-type: none"> • "Insurance Assumption of Risk Indemnification"- The Solicitation Item 11© includes a duty to "defend" and we would be responsible for any losses or damages caused by an indemnified party. 	<p>We disagree with your reading of the referenced sections and the suggested language will not be adapted.</p>	

<p>11(b) does not contain a provision of liability cap which is no greater than the contract price or a broad waiver of consequential damages.</p> <p>(iii) "Limitation of Liability" The Solicitation does not contain a liability cap. It is a POWER "deal breaker" for a contract to not include a cap on liability which is no greater than the contract price (or, in the case of a master agreement such as the Agreement, the amount of each Purchase Order). Therefore, I recommend that the following provision be included in the Solicitation:</p> <p>"NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, PORT OF TACOMA AGREES TO LIMIT CONSULTANT'S LIABILITY TO PORT OF TACOMA AND TO ALL PERSONS HAVING CONTRACTUAL RELATIONSHIPS WITH CONSULTANT TO THE TOTAL FEE OR COMPENSATION RECEIVED BY CONSULTANT FOR THE AGREEMENT UNDER WHICH THE LIABILITY ARISES."</p> <p>Neither Port of Tacoma nor the Consultant nor either party's suppliers, agents, officers, and directors shall have any liability regardless of the theory of recovery, including breach of contract or negligence, to the other party or any other person or entity for any indirect, incidental, special, or consequential damages, cost or expense whatsoever, including but not limited to loss of revenue or profit, whether actual or anticipated, loss of use, failure to realize anticipated savings, loss of or damage to data or other commercial or economic loss. This waiver of consequential damages is made regardless that (i) either party has been advised of the possibility of such damages and (ii) that such damages may be foreseeable."</p>	<p>This language will not be adapted.</p>	
<p>SPECIFIC COMMENTS AND RECOMMENDATIONS</p> <p>(a) Page 3, Port of Tacoma T&Cs- "Term of this Agreement" states "This Agreement may be terminated by the Port of Tacoma for cause when the Port deems continuation to be detrimental to its interest or of failure of the consultant to perform the services specified in the agreement. The Port may terminate this agreement at any time for government convenience in which case it shall provide notice to the Consultant and reimburse the Consultant for its costs and fees incurred prior to the notice of termination." I recommend you add the following to the provision:</p> <p>"Consultant shall have the right to terminate the work upon ten (10) days written notice if the Port of Tacoma fails to make payment in accordance with the terms of this agreement, or otherwise is in material breach of the Port of Tacoma's obligations hereunder</p>	<p>The Port of Tacoma has statutory payment requirements that it must adhere to and therefore this language will not be adapted.</p>	

<p>J. Site Construction Observation and Safety. There does not appear to be a provision in the Agreement clarifying that POWER has no responsibility for construction related work or for construction safety at the project site. If POWER will be performing any work at the site, it would be advisable to include the following provision in the Agreement:</p> <p>“Site Observation; Construction Safety. If required within the scope of the Work, Consultant shall make visits to the Site at intervals appropriate to the various stages of construction as Consultant deems necessary in order to observe the progress of the work (“Port of Tacoma Contractor’s Work”) of the Port of Tacoma’s contractor(s) (hereinafter referred to as “Construction Contractor”, whether one or more). Consultant shall not, during such visits or as a result of such observations of Construction Contractor’s Work in progress, supervise, direct or have control over Construction Contractor’s Work. Consultant shall not have any authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Construction Contractor, for safety precautions and programs incident to Construction Contractor’s Work or for any failure of Construction Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Construction Contractor furnishing and performing Construction Contractor’s Work. Accordingly, Consultant can neither guarantee the performance under the documents that establish the rights and obligations of the parties engaged in construction, including but not limited to the construction contract between Consultant and Construction Contractor and all addenda, amendments and exhibits thereto (hereinafter collectively referred to as the “Construction Contract Documents”), nor assume</p>	<p>The Scope of Work contained in the Bid does not contemplate construction work and this language is unnecessary and will not be adapted.</p>	