Port of Corpus Christi Authority

Procurement Policy

Approved by Commission 08/16/2016

I. Purpose

The Port Commission of the Port of Corpus Christi Authority (the "Port Authority") hereby establishes this policy (the "Procurement Policy") for the procurement of goods and services.

II. Policy Statement

It is the policy of the Port Authority that its procurement of goods and services should conform to the Port Authority's mission and applicable law in a deliberate, fair, and ethical manner while providing every qualified provider with an equal opportunity to compete for Port Authority procurements.

III. Policy Authority

This procurement-related policy is in compliance with the following statutes:

A. Texas Water Code, Chapters 60 and 62

B. Texas Government Code, Chapter 2254, Subchapter A

C. Texas Government Code, Chapter 2054

D. Texas Local Government Code, Chapter 271, Subchapters D, F, and G

IV. Definitions

A. "Best Bid" means the lowest responsive, responsible bid.

B. "Best Value" means, with respect to any bid, proposal or procurement method, the bid, proposal or procurement method that is determined to be the most advantageous to the Port Authority when compared to other bids, proposals or procurement methods based on price and non-price factors.

C. "Bidders/Proposers" means actual and prospective respondents (including their authorized representatives acting on their behalf) to a Formal Procurement solicitation.

D. "Competitive Sealed Bids" means an advertised procurement method in which the award is made to the lowest responsive, responsible bidder. The use of competitive

sealed bids is a method of contracting for goods and nonprofessional services. In open competitive bidding, the sealed bids are opened in full view of all who may wish to witness the bid opening. Competitive bidding aims at obtaining goods and services at the lowest prices by stimulating competition and by preventing favoritism.

E. "Competitive Sealed Proposals" means an advertised procurement method in which a selection is made of the proposal that offers the best value based on the published selection criteria and ranking evaluation, followed by contract negotiation. This method permits the consideration of non-price criteria and negotiation of scope of services.

F. "Formal Procurement" means the procurement of goods or services for more than $50,000.

G. "Informal Procurement" means the procurement of goods or services for not more than $50,000.

H. "Misconduct" means a violation of law or Port Authority's procurement policy, standards, or procedures, by a Port Commissioner, employee, or third-party acting in connection with the Port Authority.

I. "No-Contact Period" means the period commencing on public issuance by the Port Authority of a solicitation for Formal Procurement, and ending when the Port Authority publicly posts notice of the agenda for the Port Commission meeting during which award of the Formal Procurement is scheduled for action.

J. "Professional Services" means services that are predominantly mental or intellectual, rather than physical or manual, in nature. Professional Services, include, without limitation, services performed by members of disciplines requiring special knowledge or attainment of a high order of learning, skill, and intelligence.

K. "Request for Proposals" means an advertised procurement method in which the award is made to the lowest and best evaluated offer resulting from negotiation based on the published evaluation criteria.

L. "Subchapter N" means Subchapter N of Chapter 60 of the Texas Water Code, which is entitled *Competitive Bidding Requirements*.

M. "Subchapter O" means Subchapter O of Chapter 60 of the Texas Water Code, which is entitled *Purchase Contracts*.

V. Authority of the Port Commission

A. Port Authority procurement is under the control of the Port Commission, which oversees and approves Port Authority expenditures in conformity with the Texas Water Code, the Texas Government Code, the Texas Local Government Code, and this Procurement Policy. The Procurement Policy is not intended to restrict the authority of the Port Commission to act as may be permitted by law.

B. The Port Commission must approve all Formal Procurements by the Port Authority.

VI. Adoption of Applicable Procurement Laws

A. This policy supersedes all previous purchasing guidelines and/or purchasing policies adopted by the Port Commission. The Port Commission hereby reaffirms its prior adoption of Subchapter N "Competitive Bidding Requirements" for all Formal Procurements, unless the Port Commission approves one of the purchasing methods described in Subchapter O for a particular procurement.

B. Notwithstanding anything to the contrary contained herein, the Port Authority may participate in cooperative purchasing programs approved by the State of Texas, other Texas local governments, or the United States General Services Administration without seeking competitive bids. Similarly, the Port Authority may purchase information technology products and services under the Texas Department of Information Resources Cooperative Contracts without the need for competitive bidding.

VII. Methods of Making Formal Procurements

A. Customary Formal Procurement Methods. Each Formal Procurement by the Port Authority which is not exempt from the requirements of Subchapter N will be made in accordance with the competitive bidding or request for proposal requirements set forth in Subchapter N, unless the Port Commission determines that making the procurement under one the following purchasing methods described in Subchapter O (each an "Alternative Procurement Method") will provide the best value to the Port Authority:

1. Solicitation of "Competitive Sealed Bids," for construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property and repair of facilities, including as may be required following damage caused by third parties.

2. Solicitation of "Requests for Proposals," for procurement of high technology items, insurance, services, and other intangible items, other than construction services.

3. Solicitation of "Requests for Qualifications," where price is negotiated following selection. The selection and award must be based on demonstrated competence and qualification to perform the services for a fair and reasonable price. RFQ is used for certain professional services only.

4. Solicitation of "Competitive Sealed Proposals," for construction, repair, rehabilitation, or alteration of facilities (except as provided above), and for non-construction items.

B. Use of an Alternative Procurement Method. The Port Authority will not make any Formal Procurement of goods or services utilizing an Alternative Procurement Method unless the Port Commission has authorized the use of an Alternative Procurement Method for such procurement in advance.

C. Procedure for Using an Alternative Procurement Method. The Port Commission may approve in advance the use of an Alternative Procurement Method for making a Formal Procurement. In such cases the following processes shall be adhered to:

1. Port Authority staff shall request Port Commission Action at a Port Commission meeting authorizing the use of a particular Alternative Procurement Method for the Formal Procurement.

2. The Port Commission shall determine at a Port Commission meeting whether the recommended Alternative Procurement Method offers the best value to the Port Authority for the specified Formal Procurement.

3. If the Port Commission approves an Alternative Procurement Method for a Formal Procurement, the staff shall utilize the approved Alternative Procurement Method in making the procurement.

VIII. Formal Procurement Communications

A. Bidder/Proposer Restrictions. Except as provided below, during the No-Contact Period, Bidders/Proposers are prohibited from communicating with members of the Port Commission and Port Authority employees regarding a Formal Procurement.

B. Port Commission and Port Authority Staff Restrictions. Except as provided below, during the No-Contact Period, any Port Commissioner and any Port Authority employee contacted by a Bidder/Proposer regarding a Formal Procurement shall instruct the Bidder/Proposer to contact the Manager of Procurement Services and shall not otherwise communicate with the Bidder/Proposer regarding such Formal Procurement.

C. Exceptions. Notwithstanding the foregoing, the following types of communications are permitted during the No-Contact Period:

1. Formal responses to the Port Authority's solicitation;

2. Publicly-made communications at the Port Authority's pre-bid/pre-proposal conferences, and public meetings of the Port Commission and Port Commission committees;

3. Written questions or clarification requests made to the Manager of Procurement Services or designee during the period designated by the Port Authority for such purpose, including questions or requests presented via electronic means;

4. Communications during oral interviews and presentations conducted at the request of the Port Authority to assist with its evaluation of Formal Procurement proposals;

5. Authorized negotiation of the contract that is the subject of the Formal Procurement, engaged in by designated Port Authority employees; and

6. A report of Misconduct to a Port Commissioner and/or Port Authority employees.

IX. Formal Procurement Made by Competitive Sealed Bids

The following award procedure applies to Formal Procurements using the Competitive Sealed Bids purchasing method as described in Subchapter N:

A. Customary Staff Responsibilities Upon Opening Competitive Sealed Bids

1. Sealed bids are date stamped and logged by Procurement Services on or before the deadline specified in the solicitation. When the time for opening bids has arrived, the Manager of Procurement Services, or designee, shall (1) personally and publicly open all bids received before that time, (2) read the bids (name and price) aloud to the persons present, and (3) record the bids.

2. Once the bid is opened, the Manager of Procurement Services, or designee, will determine responsiveness, share the results, and will distribute copies of the bids to the evaluation team.

3. The evaluation team shall always seek to award the contract to the responsible bidder submitting the lowest and best bid pursuant to the Texas Water Code, Section 60.408.

B. Port Commission Action.

1. The Port Commission may:

a. Award the contract to the responsible bidder submitting the lowest and "best bid"; or

b. Reject any and all bids and the matter will be returned to the originating department for appropriate action.

2. If two responsible bidders submit the lowest and "best bid", the Port Commission shall decide between the two bids by drawing lots.

3. A contract may not be awarded to a bidder who does not submit the lowest dollar bid meeting specifications unless, before the award, each person with a lower bid is given notice of the proposed award and an opportunity to appear before the Port Commission and present evidence concerning his/her responsibility.

X. Formal Procurements Made by Requests for Proposals, Requests for Qualifications or Competitive Sealed Proposals

Approval to Advertise or Solicit Proposals. The Port Commission shall approve in advance a Formal Procurement made using any of the following purchasing methods described in Subchapter O -- Request for Proposals, Request for Qualifications, or Competitive Sealed Proposals:

A. Customary Staff Responsibilities for Evaluation of Proposals/Qualifications.

1. Unless the Port Commission determines otherwise, Port Authority staff should evaluate, in relation to the published selection criteria, the proposals/qualifications received by the Port Authority in response to the RFP, RFQ, or Competitive Sealed Proposals.

2. Thereafter, the staff should:

a. Select the highest-ranked proposer that it believes may offer the "best value" to the Port Authority,

b. Rank all additional proposers that it believes may also offer "best value" to the Port Authority, and

c. Otherwise rank proposers as required by law.

3. Staff should submit its recommended ranking to the Port Commission for action at a public meeting.

4. Staff may also request that the Port Commission consider taking action to award the contract at that time, in the event that it determines in good faith that:

   a. Only one proposal/qualification offers "best value," or

   b. It is in the best interest of the Port Authority to immediately award the contract.

5. Staff may terminate the Formal Procurement by an Alternative Procurement Method in the event that it determines that no proposal offers "best value" to the Port Authority, provided staff shall notify the Port Commission of such termination and obtain its concurrence.

B. Port Commission Action.

1. The Port Commission may:

   a. Approve the ranking and (i) authorize negotiation of a contract, or (ii) award the contract (as applicable);

   b. Reject all proposals and terminate the Formal Procurement; or

   c. Reject all proposals and require that staff conduct a new solicitation.

2. In the event the Port Commission has only authorized negotiation of a contract, subsequent Port Commission action is required to award such contract following negotiation by staff.

XI. Informal Procurements

Informal Procurements. Except as may otherwise be provided by the Port Commission from time to time, the Executive Director or designee shall have the authority to make Informal Procurements in accordance with the following general purchasing guidelines:

1. Purchases less than $5,000. No minimum number of quotes required. All purchases must be approved by the Department Director or designee.

2. Purchases of $5,000 but less than $20,000 (except marine and rail construction). A minimum of three quotes required. All purchases must be approved by the Department Director and Chief Operating Officer.

3. Purchases for Construction or Repair of Port Facilities and Equipment of $20,000 but less than $50,000 (except marine and rail construction). A minimum of three quotes required. All purchases must be approved by the Department Director, Chief Operating Officer, and Executive Director.

4. Purchases for Marine and Rail Construction less than $50,000. Exempt from a minimum of three quotes due to limited availability of local marine and rail contractors. All purchases must be approved for the dollar limits as outlined in items 1, 2, and 3 above.

5. Purchases of Cars, Truck, Boats, and Other Major Mobile Equipment (i.e., Tractors, Forklifts, Sweepers, Man Lifts, etc.). Sealed bids required unless they can be purchased directly from state or federally approved purchasing programs. All purchases must be approved by the Port Commission.

XII. Emergency Purchases

Except as may otherwise be provided by the Port Commission from time to time, the Executive Director shall have the authority to make emergency purchases or contracts or emergency amendments to existing purchase orders or contracts as permitted by Texas Water Code Section 60.4035, including the Executive Director's spending authority for Pre-Readiness and Post-Storm Recovery Hurricane Expenditures.

XIII. Professional Services Selection & Authorization.

A. Authorization. The Port Commission shall approve each contract for Professional Services with fixed or projected fees and expenses in excess of $50,000. The executive director shall have the authority to approve any contract for Professional Services with fixed or projected fees and expenses of not more than $50,000.

B. Formal Selection Process. Unless otherwise approved by the Executive Director, a formal selection process will be used to procure high cost (i.e., $150,000 or more in anticipated fees and expenses) Professional Services subject to the Professional Services Procurement Act (Chapter 2254, Subchapter A of the Texas Government Code). A formal selection process shall be followed to ensure that all interested and qualified firms are permitted an opportunity to be considered and that the best qualified firm is selected. A Request for Qualifications (RFQ) statement shall be prepared identifying the services needed and the selection process to be used. A notice shall be published in a newspaper of general circulation for two (2) consecutive weeks prior to the opening date. A selection committee shall determine the most qualified firm and negotiate contract terms.

C. Informal Selection Process. An informal selection process will be used to procure routine, low cost (i.e., under $150,000 in fees and expenses anticipated) Professional Services subject to the Professional Services Procurement Act (Chapter 2254, Subchapter A of the Texas Government Code). The selection will

be made on the basis of demonstrated competence and qualifications to perform the required services for a fair and reasonable price.

XIV. Contract Participation for Historically Underutilized and/or Disadvantaged Businesses

It is the policy of the Port Authority that reasonable opportunities are afforded to historically underutilized and/or disadvantaged businesses to participate in the performance of contracts awarded by the Port Authority, subject to federal and state laws. In furtherance of this Contract Participation policy, the Port Authority's objective will be to develop procedures to conduct outreach programs to encourage and maximize participation by historically underutilized and/or disadvantaged businesses, establish objectives and initiatives for such participation, and monitor the progress and effectiveness of such objectives.

XV. Policy Responsibility

A. Staff Procurement Standards and Procedures.

1. The Procurement Services Department shall prepare and from time-to-time update a Procurement Manual designed as a resource of standards and procedures consistent with this Procurement Policy to be used as a resource of best practices by the Port Authority staff in the procurement of goods and services.

2. Standards and procedures developed by staff shall not contain restrictions on the authority of the Port Commission or impose obligations on the Port Commission.

B. Periodic Procurement Reports. The Executive Director or his designees shall periodically report to the Port Commission regarding Port Authority procurement and supply management activities.

C. Procurement Policy Updates. The Audit Committee shall evaluate this Procurement Policy's effectiveness at least annually and recommend updates as needed to the Port Commission for possible action at regularly scheduled meetings.

D. Staff Responsibility. The Manager of Procurement Services is responsible for implementation of this Procurement Policy, and is the contact for staff members seeking its interpretation.