

**Port of Houston Authority
Amended Vendor Protest Procedure
September 2019**



Purpose. The purpose of the Amended Port of Houston Authority Vendor Protest Procedure (“Vendor Protest Procedure”) is to provide a formal avenue for resolving the protest of a Port Authority solicitation, evaluation, or award. The Vendor Protest Procedure is intended to promote fairness in Port Authority procurement decisions.

Procedure.

Section 1. Definitions. For the purposes of this Vendor Protest Procedure, capitalized terms used herein shall have the following meanings:

- (a) **Contract** – A contract, including purchase order, for the purchase by the Port Authority of any Items.
- (b) **Designee** – The person acting in the capacity of the Executive Director or General Counsel, as applicable.
- (c) **Executive Director** – The Port Authority’s Executive Director or senior-most staff executive.
- (d) **Interested Party** – Any bidder, proposer, respondent, offeror, vendor, service provider, or contractor, other than a Protesting Party, who has submitted a bid, proposal, or other expression of interest for the Contract at issue.
- (e) **Items** – any service, equipment, goods, or other tangible or intangible personal property.
- (f) **General Counsel** – the Port Authority’s senior-most staff attorney.
- (g) **Port Authority** – The Port of Houston Authority of Harris County, Texas, a political subdivision of the State of Texas.
- (h) **Port Commission** – The governing body of the Port Authority.
- (i) **Protest** – A Protest hereunder relating to the solicitation, evaluation, or award of a Contract.
- (j) **Protesting Party** – An actual or prospective bidder, proposer, respondent, offeror, vendor, service provider or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a Contract.
- (k) **Purchasing Executive** – The Port Authority’s senior-most purchasing executive.

Section 2. Protest Circumstances.

- (a) A Protesting Party may Protest a Contract under the following circumstances:

(1) the solicitation, evaluation, or award was made under a publicly-advertised solicitation process, and the Protesting Party submitted a bid or proposal that was not selected; or

(2) the solicitation, evaluation, or award was for a sole source Contract or emergency procurement of a Contract, and the Protesting Party was therefore unable to submit a bid or proposal.

(b) This Vendor Protest Procedure does not apply to Contracts for:

(1) the award of grants;

(2) activities permitted with respect to the Promotion and Development Fund under Subchapter H, Chapter 60, Texas Water Code;

(3) subcontracts supporting the performance of a Contract;

(4) Items procured pursuant to the Interagency Cooperation Act, Chapter 771, Texas Government Code, or Interlocal Cooperation Act, Chapter 791, Texas Government Code; or

(5) Items procured under processes administered by the Texas Comptroller's Office, the Department of Information Resources, or other Texas state agencies.

Section 3. Debriefing; Access to Evaluation Materials

(a) Within ninety (90) calendar days following the Port Authority award of a Contract, an Interested Party or a Protesting Party may request a debriefing on the Port Authority's evaluation of its bid or proposal. The Port Authority will provide the debriefing within three business days or as soon as reasonably possible after the request for debriefing, taking into consideration the size and scope of the procurement and number of debriefing requests received.

(b) The Port Authority will handle requests for access to evaluation materials and other vendors' proposals in accordance with the Texas Public Information Act, Chapter 552 of the Texas Government Code.

(c) Requests for oral briefings about the Port Authority's evaluation of a bid or proposal must be sent to the Port Authority Purchasing Executive. Requests for records pursuant to this section must be sent to the Port Authority Public Information Officer.

Section 4. Notice of Protest.

(a) Any Protesting Party may Protest an action relating to the solicitation, evaluation, or award of a Contract by submitting such Protest within one-hundred (100) calendar days following the date the award or action is made or taken in a public meeting.

(b) Unless the Executive Director, the Executive Director's Designee, or the Port Commission determines that a Protest or Protest appeal raises issues significant to Port Authority procurement

practices or Vendor Protest Procedures, a Protest or appeal that is not filed timely and in accordance with these Vendor Protest Procedures shall not be considered by the Port Authority hereunder.

- (c) A Protesting Party shall submit its Protest to the Port Authority Purchasing Executive.
- (d) A Protest shall not be considered by the Port Authority, unless it is:
 - (1) in writing, and sworn to and signed by the Protesting Party or the Protesting Party's authorized representative;
 - (2) delivered by hand, by certified mail, or other verifiable delivery service; and
 - (3) limited to matters relating to the Protesting Party's qualifications to perform the Contract, the suitability of the Items offered by the Protesting Party procured by the Contract, or alleged irregularities in the procurement process for the subject Contract.

Section 5. Content of Protest.

- (a) A Protest should contain:
 - (1) the Protesting Party's name and identification of the specific Contract that is being Protested;
 - (2) a precise statement of the relevant facts;
 - (3) identification of the issue(s) to be resolved;
 - (4) the argument and authorities in support of the Protest; and
 - (5) the action the Protesting Party is requesting to address its Protest.
- (b) To the extent known by the Protesting Party, the Protest should also contain the legal and factual basis for the Protest with specific supporting information, and how the Protesting Party alleges the award or action regarding the Contract violated the relevant federal or state statutory or regulatory provision(s) governing the procurement, including, for each act that is complained of:
 - (1) a specific description of the action alleged to have violated the federal or state statutory or regulatory provision(s); and
 - (2) a specific identification of the federal or state statutory or regulatory provision(s) that the action complained of is alleged to have violated;
- (c) The Port Authority reserves the right to waive formalities in the requirements for Protest submissions and evaluations.

Section 6. Suspension of Award.

(a) If a Protest or appeal of a Protest (as described in Section 8 below) has been submitted in accordance with this Vendor Protest Procedure and the Contract has not been awarded, then the Port Authority shall not proceed with the solicitation or the award of the Contract until there has been a final written determination of the Protest in accordance with Section 9.

(b) The above-described suspension of solicitation or award of a Contract may be waived by the Executive Director or his or her Designee, after consulting with the Purchasing Executive, and making a written determination that award without delay is required: (i) by state or federal law, (ii) to protect substantial interests of the Port Authority, or (iii) to address a bona fide emergency.

Section 7. Review and Disposition of Protest.

(a) Informal resolution. The Purchasing Executive may informally resolve the Protest by written agreement with the Protesting Party.

(b) Written determination.

(1) If the Protest is not resolved by agreement, the Purchasing Executive may forward copies of the Protest and solicit written response to the Protest from Interested Parties and from other parties. After reviewing the responses, the Purchasing Executive shall issue a written determination on the Protest. Upon written request to the Public Information Officer, the Protesting Party shall be provided with copies of any request for written responses solicited under this section and any responses received.

(2) The General Counsel or his or her Designee shall review the Protesting Party's allegation that the award or action regarding the Contract violated the relevant federal or state statutory or regulatory provision(s) governing the procurement.

(i) If the General Counsel determines no violation of federal or state statutory or regulatory provision(s) governing the procurement occurred, the Purchasing Executive shall so inform the Protesting Party and each Interested Party in a writing that sets forth the reasons for the determination.

(ii) In instances in which the Contract has not been awarded, if the General Counsel determines that a violation of the federal or state statutory or regulatory provision(s) governing the procurement has occurred, the Purchasing Executive shall so inform the Protesting Party and each Interested Party. Such written response shall set forth the reasons for the determination and the appropriate remedial action.

(iii) In instances in which the Contract has been awarded, if the General Counsel determines that a violation of the federal or state statutory or regulatory provision(s) governing the procurement has occurred, the Purchasing Executive shall so inform the Protesting Party and each Interested Party. Such written response shall set forth the reasons for the determination and may declare the Contract void, set aside the award, order advertising with a revised solicitation, recommend that the Port Commission do the same, and/or take other remedial action.

(3) No setting aside, voiding, re-advertising, or other remedial action shall be required if a violation is determined to be harmless.

Section 8. Appeal.

(a) The determination of the Purchasing Executive regarding a Protest may be appealed by the Protesting Party to the Executive Director or his or her Designee. The appeal shall be limited to a review of the determination.

(b) An appeal of the Purchasing Executive's determination must be written and must be received in the Executive Director's office no later than seven (7) calendar days after the date of the determination referenced in Section 8(a). A copy of the appeal must be delivered or mailed by the Protesting Party to the Purchasing Executive. The Purchasing Executive shall provide copies to all Interested Parties.

(c) Failure of the Protesting Party to appeal the Purchasing Executive's determination within seven (7) calendar days after the date of the determination renders the determination the final administrative action regarding the Protest.

(d) The Port Authority's General Counsel or his or her Designee shall review the Protest, the determination, and the appeal, and prepare a written opinion with recommendations to the Executive Director, provided however, that the attorney conducting such review shall not have participated in the review provided for in Section 7 above.

(e) The Executive Director or his or her Designee may issue a final written determination, or refer the matter to the Port Commission for consideration at a regularly scheduled open meeting.

(f) When an appeal has been referred to the Port Commission under subpart (e), above:

(1) Copies of the Protest, the determination, and the appeal shall be provided by the General Counsel to the Port Commission.

(2) The Port Commission may consider oral presentations and written documents presented by staff and any interested party, including the Protesting Party. The Port Commission Chair shall determine the order and length of time allowed for presentations.

(3) Any Interested Party, including the Protesting Party, who wishes to make an oral presentation at the open meeting at which the Port Commission is scheduled to consider the appeal, shall submit a Witness Affirmation Form (as maintained by the Port Authority) to the General Counsel at least thirty (30) minutes before the start of the meeting. Any Interested Party presenting written testimony shall provide ten (10) copies thereof to the Purchasing Executive at least thirty (30) minutes before the start of the meeting, which identifies the Interested Party submitting such materials, for distribution to the Port Commission, Executive Director, General Counsel, and Purchasing Executive. Written testimony received in response to a Protest is considered a public record.

(4) Any Port Commission determination of a Protest appeal shall be adopted by formal action reflected in the minutes of the meeting.

Section 9. Final Action.

- (a) A determination of a Protest appeal by the Port Commission in open meeting is final.
- (b) If the matter is not referred to the Port Commission by the Executive Director or his or her Designee, the written determination of the Executive Director or his or her Designee is final.
- (c) A written determination by the Purchasing Executive that is not appealed in a timely manner and in accordance with these Vendor Protest Procedures is final.
- (d) The Port Authority shall provide the Protesting Party, and any Interested Party requesting the same, with a written copy of the final determination within ten (10) days after determination that the Protest is final.

Section 10. Records. The Port Authority shall maintain all records on the purchasing process that is the subject of a Protest in accordance with applicable retention schedules.

Section 11. General Provisions.

- (a) These Vendor Protest Procedures shall be construed to supplement existing laws governing the Port Authority in procurement matters, including Chapter 60.408(d) of the Texas Water Code dealing with competitive sealed bids, and nothing in these Vendor Protest Procedures shall be interpreted in a manner contrary to any applicable federal or state statute. The Port Authority may alter any provision herein to the extent necessary to meet a grant requirement.
- (b) These Vendor Protest Procedures, and any standards and guidelines established to implement it, are a nonbinding statement of intent, which does not create a property interest in any person, does not constitute a contractual obligation of the Port Authority to others, and does not waive any of the Port Authority's immunities under law, including the Port Authority's immunity from suit and its immunity from liability. Nothing in these Vendor Protest Procedures prohibits the Port Authority from rejecting any and/or all offers received in response to a procurement solicitation. The Port Authority reserves the right to assert every defense to any claim that is available to it under law.
- (c) Except as otherwise provided herein, all written communications required under these Vendor Protest Procedures must be addressed and delivered to:

**Purchasing Executive
Port of Houston Authority
111 East Loop North
Houston, Texas 77029**

- (d) This Vendor Protest Procedure describes the procedure to be used by any actual or prospective bidder, proposer, respondent, offeror, vendor, service provider, or contractor desiring to Protest or appeal a Contract procurement decision of the Port Authority.

(e) This Vendor Protest Procedure does not constrain the discretion of the Port Commission, which may amend it at any time for any reason. In the absence of a contrary directive by the Executive Director, the Purchasing Executive is responsible for the implementation of this Vendor Protest Procedure, and is the contact for its interpretation.

(f) This Amended Vendor Protest Procedure supersedes and replaces any prior policies and procedures adopted by the Port Commission regarding vendor protest, including the one adopted by the Port Commission as evidenced by Minute 2012-1023-23, and the Amended Vendor Protest Procedure adopted by the Port Commission as evidenced by Minute 2018-0517-10.

Section 12. Adoption.

This Amended Vendor Protest Procedure was adopted by the Port Commission on September 24, 2019 as evidenced by Minute No. 2019-0924-09, and is effective as of the day of its adoption.

Policy Owner: Procurement Services
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