



# Port of Houston Authority



## Procurement Manual

October 29, 2024

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# **Article 1**

## **Port of Houston Authority Contracting**

### **1.1 The Purpose of the Manual**

The Procurement Manual (“Manual”) of the Port of Houston Authority of Harris County, Texas (“Port Authority” or “PHA”) is designed as a resource of procurement best practices for Port Authority staff so that they may acquire goods and services for the Port Authority in a deliberate, fair, and ethical manner.

This Manual furnishes standards for processing purchases, including contracts and purchase orders, to ensure that materials and services are obtained timely, efficiently and economically, while adhering to principles of good public policy and practices and sound business judgment.

As such, this Manual supersedes previous editions of the Port Authority’s manuals, memos, statements, and other formats relating to procurement matters. However, this Manual does not supersede pre-existing contract provisions or existing laws applicable to the Port Authority.

The Procurement Policy (“Procurement Policy”) was adopted by the Port Commission, as governing body of the Port Authority on January 27, 2014, as evidenced by Minute No. 2014-0127-01; amended by its action dated December 16, 2014, Minute No. 2014-1216-04(C); amended by its action dated September 27, 2016, Minute No. 2016-0927-16; and amended by its action dated March 26, 2019, Minute No. 2019-0326-13. This Manual does not supersede the Procurement Policy, and in the event of any conflict between a provision of this Manual and a provision of the Procurement Policy, the Procurement Policy provision shall control.

### **1.2 The Objective of the Manual**

The primary objective of the Procurement Manual is to contribute to the efficiency of the overall operation of the Port Authority. In support of this prime objective, the Procurement Services department will:

- Procure the appropriate goods and services to meet the needs of the Port Authority;
- Obtain the best possible price in procuring required goods or services;

- Obtain the best value for public dollars expended;
- Comply, in all respects, with all applicable laws and regulations without qualification or evasion;
- Ensure a continuing supply of needed goods and services;
- Give prime consideration to the Port Authority's interest while seeking to maintain and further long-term and ethical supplier relationships;
- Allow responsible bidders a fair opportunity to compete for the Port Authority's business, through statutory requirements for competitive bids and proposals combined with the Port Authority's purchasing procedures;
- Provide small, minority- and woman-owned businesses an opportunity to compete in the Port Authority contract award process; and
- Maintain a procurement manual outlining the Port Authority policies and procedures by which goods and services are to be procured throughout the entity and ensure that all departments operate according to these policies.

### **1.3 Overview of the Procurement Manual**

The Texas Water Code provides that the Port Authority may enter into a contract for expenditures of \$100,000 or more only if it complies with certain procurement procedures and methods. These methods include competitive sealed bidding, competitive sealed proposals, request for proposals, design-build, job order, interlocal agreements, and other more specialized mechanisms. This Manual discusses these procurement methods in detail.

The Texas Water Code does, however, provide a number of exceptions to requirements for competitive and advertised procurements. For example, professional service procurement sets out a special process for selecting architects, engineers, and land surveyors. As another example, a competitive process is not required when certain health or safety issues are involved. These and additional exceptions will be covered in this Manual.

This Manual also discusses guidelines for purchases up to \$100,000. Although the Texas Water Code does not mandate a set process for these types of procurements, good governance requires the Port Authority to obtain the best price and best value possible while conducting the procurement in a deliberate and ethical manner.

## **1.4 Structure of the Procurement Manual**

This Manual is structured as follows:

- Article 1 describes the purpose and structure of the Manual, an overview of procurement, ethical standards and other procurement considerations;
- Article 2 outlines procurement guidelines for drafting specifications and handling mistakes in bids/proposals;
- Article 3 describes the guidelines for professional and personal procurements;
- Article 4 provides general guidelines for service and supply contracts, from getting started to selecting the appropriate method of procurement to appointing an evaluation team;
- Article 5 describes procurement processes for small purchases (less than \$100,000) and check requests;
- Article 6 provides the procurement process for competitive sealed bids;
- Article 7 provides the procurement process for competitive sealed proposals;
- Article 8 provides the procurement process for request for proposals;
- Article 9 provides the procurement process for request for qualifications;
- Article 10 describes the guidelines for special cases (e.g., emergency purchases, sole source, etc.);
- Article 11 describes the procurement process for construction-related contracts;
- Article 12 provides procurement guidelines for resolving vendor protest of Port Authority solicitations, evaluations, and awards;
- Article 13 provides procurement guidelines for vendor debarment and suspension;
- Article 14 describes the guidelines for the administration of contracts, encompassing the full realm of implementation and oversight;
- Article 15 outlines procurement guidelines for the disposition of waste property and surplus.

## **1.5 Responsibility of Procurement Services**

Procurement Services department is responsible for the administration of procurement standards created to implement Port Authority procurement policies adopted by the Port Authority Board of Commissioners ("Port Commission"), the Port Authority's governing

body, in accordance with local, state and federal law.

The Director of Procurement Services or designee, in consultation with the Chief Operating Officer and/or the Chief Financial Officer, is responsible for recommending procurement policies and for maintaining and enforcing the standards, procedures and guidelines that implement the adopted Port Authority procurement policies.

All Procurement Services personnel and other Port Authority personnel involved in the procurement process are responsible for understanding and complying with these standards and Port Authority policies. Any situation requiring the consideration of an exception or variation from these standards or Port Authority policies shall be brought to the attention of the Director of Procurement Services or designee.

Procurement Services is charged with the following responsibilities:

1. Procure goods and services for the Port Authority;
2. Inform Port Authority departments of reliable alternate sources of supply to meet Port Authority needs;
3. Assist Port Authority departments in the procurement process;
4. Expedite delivery of urgently needed goods and services when feasible;
5. Dispose of, to the best advantage and in compliance with applicable laws, all material and equipment declared to be surplus or obsolete. All disposal activities shall be conducted in a manner that does not compromise the environment;
6. Maintain good vendor relationships;
7. Provide accurate and complete information about procurement decisions to the Port Commission, the Executive Director, the Chief Operating Officer, the Chief Financial Officer, and other Port Authority administrators with purchasing authority;
8. Establish and maintain effective communication channels to develop a supply culture which fosters a learning and growth environment, promotes a team concept that crosses functional departments, and values an individual's skills, knowledge and performance of responsibilities;
9. Perform contract administration duties;
10. Maintain a form bank of procurement-related documents;
11. Maintain a database and/or collection of approved specifications and scope of services; and

12. Report to the Chief Financial Officer any suspected anticompetitive practices by contractors and employees, as well as any other violations of Port Authority procurement policies and procedures.

## **1.6 The Port of Houston Small Business Development and Minority- and Woman-Owned Business Enterprise Program**

The Port Authority promotes business opportunities for all sectors of the community, and recognizes the importance of vendor and supplier diversity in its contracts. In support of that effort and to encourage participation of diverse businesses, the Port Authority has established an organizational goal of 35% small business participation in its Small Business Development Program (SBDP) and an aspirational goal of 30% minority- and woman-owned business enterprise (MWBE) participation in its MWBE Program in Port Authority prime contracts and subcontracts. The SBDP and the MWBE Program are collectively referred to herein as “Program.”

All dollars awarded and committed to Enrolled small businesses count toward the Port Authority’s SBDP organizational goal, regardless of whether the individual solicitation includes evaluation credit for small business status or participation. All dollars awarded and committed to Enrolled MWBEs count toward the Port Authority’s annual aspirational MWBE goal, regardless of whether the individual solicitation includes evaluation credit for MWBE status or participation.

The Programs are governed by the Port Authority’s Minority- and Woman-Owned Business Enterprise Development Policy, its Small Business Development Policy, and the Procedures Manual for Business Equity Programs. Information about the SBDP and the MWBE policies and programs may be found on Port Houston’s website (<https://porthouston.smwbe.com/>).

### **Aspirational Efforts**

In procuring items (goods and/or services), Port Authority staff are encouraged to:

- a. Attempt to solicit small, minority- and/or woman-owned businesses (S/MWBEs) whenever such S/MWBEs are potential providers of the goods or services needed;
- b. Endeavor to use qualified Enrolled Small Business Enterprises (SBEs) to provide goods and services when reasonably possible;
- c. Divide total work requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by S/MWBEs;
- d. Establish delivery schedules, where requirements permit, which encourage participation by S/MWBEs; and
- e. Use the services and assistance, as appropriate, of the Port Authority’s Business

Equity Division in such aspirational efforts.

Similarly, Port Authority staff shall encourage potential Vendors to:

- a. Place qualified S/MWBEs on subcontractor and supplier solicitation lists, to the extent applicable;
- b. Attempt to solicit S/MWBEs whenever they are potential participants in the services or providers of the goods, to the extent applicable;
- c. Divide total Work requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by S/MWBEs;
- d. Establish delivery schedules, where requirements permit, which encourage participation by S/MWBEs; and
- e. Use the services and assistance, as appropriate, of the Port Authority's Business Equity Division in such aspirational efforts.

### Reporting Requirements

Reporting Requirements for All Contracts. The Port Authority's Business Equity department collects informational data and monitors Vendors' payments regarding all subcontractors and suppliers, including Port Authority-enrolled small businesses and MWBEs (such small, minority- and woman-owned businesses, collectively, S/MWBEs) performing any part of work or services under Port Authority contracts (including Purchase Orders). Business Equity reporting requirements apply to all contracts, not just to those with S/MWBE contract participation goals. B2GNow is the online system used by the Port Authority for collecting information about and monitoring payments to all subcontractors and suppliers.

A Vendor providing goods and/or services to the Port Authority is responsible for providing contact information for itself and (if applicable) its subcontractors and suppliers to Business Equity, and for keeping this information updated during the term of the contract. Such Vendor shall comply with all applicable Port Authority subcontractor and supplier payment reporting requirements, including providing information and reporting payments in the form and at the time specified in the solicitation, the Purchase Order or contract, and as otherwise directed by the Port Authority.

Reporting requirements extend to contract extensions, amendments, and contract work covered by change orders during the entire performance of the contract.

The failure by a Vendor to provide the informational data and payment reporting requested by Port Authority may: (i) be a breach of the contract; (ii) result in termination of the contract; (iii) result in debarment or suspension from future Port Authority contract opportunities; and/or (iv) result in other remedies.

## Non-Discrimination Mandate

It is the long-standing policy of the Port Authority to prohibit discrimination based on race, color, sex, religion, national or ethnic origin, age, or disability, and including any other status protected by applicable law, in all operations at the Port Authority, including the award of, or participation in, Port Authority contracts. The Port Authority will not participate in any program, award contracts to, nor conduct business with, any individual or entity that is found to knowingly discriminate against persons on the basis of race, color, sex, religion, national or ethnic origin, age, or disability, and including any other status protected by applicable law.

## NIGP Codes, Industry Categories, and the MWBE Program

### Disparity Studies

A governmental entity such as the Port Authority, in order to determine whether a legally-defensible race- and/or gender-conscious procurement program is justified (in other words, to determine whether an MWBE program is justified, and to ensure that such a program will stand up to legal challenges), must first examine the extent to which minority contractors are underutilized in the particular industries used by that entity, in the specific geographic location of that entity. To conduct such a detailed examination, the entity typically hires a consultant to perform what is known as a “disparity study.” Disparity studies perform comprehensive evidence collection and analysis using the entity’s procurement data, information on winning bidders, and reviews of actual and potential bidders.

### Industry Categories

Port Authority purchases made after July 1, 2021, are classified in the electronic procurement system into one of six possible “Industry Categories”:

- Construction Services
- A&E [Engineers, Architects, Land Surveyors, Construction Materials Testing; Bond Counsel; Government Code 2254.004]
- Professional (other than A&E)
- Other services (other than Construction, A&E, Professional)
- Goods
- “Special” [Donations; Sponsorships; Employee Reimbursements; Utilities; Settlements; Funding Agreements]

### NAICS Code; NIGP Code

The North American Industry Classification System (NAICS) Code and the National

Institute of Governmental Purchasing Commodity Services (NIGP) Code are separate and distinct coding taxonomies used primarily to classify products and services procured by governmental entities. Typically a governmental entity will use one system or the other, but not both. Agencies use the NIGP or the NAICS system to properly code products or services in the agency's electronic procurement system, so that invitations for bids will reach potential vendors that have indicated they are capable of furnishing the goods and/or services corresponding to the particular code. The Port Authority used the NAICS system until June 2016, after which it began using the NIGP system. NIGP provides a "Crosswalk" that "translates" a NAICS code to an NIGP code. The Crosswalk is needed because the "certifications" of firms as Small Businesses (SBEs), Minority-Owned Businesses (MBEs), and Woman-Owned Businesses (WBEs) are done using the NAICS (not the NIGP) system.

### MWBE Program and NIGP Codes

The results of the disparity study are organized into multiple data sets, which show, among other things, the number of firms to which the entity made payments to contractors, and can be broken out in two ways: by "Industry Category" (i.e., construction services, goods, professional services, other services, and A&E) and by the race and gender of the prime and subcontractors.

The disparity study results, broken out by Industry Category, are used to determine whether participation goals for minority- and/or woman-owned firms may be set on a particular procurement, and if such goal are indicated, then are used in the calculation of what percentage that participation goal should be. Any MBE or WBE goal that is set on a procurement MUST be based on the results of the disparity study, and must be specific to the Industry Category. Disparity study consultants use the NIGP/NAICS codes from the governmental entity's solicitations/contracts to determine into which Industry Category a contract award will be placed, thereby impacting the analysis.

The introduction above is to explain why the correct NIGP Code (described below), which is directly related to the Industry Category in disparity studies, is critical to the accuracy of our future disparity studies, and ultimately the success of our MWBE program. Requesting departments should ensure that the appropriate people in their division/department (i.e., those who are involved with procuring goods and services) are involved in the discussion and are aware of the importance of using: (a) the correct BuySpeed "Industry Category," and (b) the correct NIGP code.

As stated above, disparity study consultants base parts of their analysis on the NIGP or NAICS codes used in the procurement, therefore, whichever system is used by the agency (NIGP or NAICS), it is extremely important that the agency uses the correct code in the electronic procurement system for the product or service needed. It is equally important that every potential vendor is registered in the electronic procurement system with the



correct code(s) for the product or service that it provides. This may not be as simple as it sounds, since there is often more than one code that seem to fit a given product or service.

The first step is for the requesting department, in conjunction with Procurement Services, to consider and carefully select the best NIGP code(s) for each procurement to ensure consistency and accuracy. The other step is for the requesting department to work with Procurement Services and Business Equity to verify that the potential vendors are registered (in the electronic procurement system) with the correct NIGP code.

## **1.7 Circumventing Procurement Laws**

The procurement policies and procedures discussed in this Manual have been developed in conformance with standards and limitations established by state and federal law, as well as Port Authority policies. Criminal penalties are associated with attempts to avoid compliance with the state procurement laws. Examples of purchasing scenarios that could be viewed as attempts to circumvent procurement laws are detailed below:

**1.7.1 Separate Purchasing:** Purchases, made separately, of items that in normal purchasing practices would be acquired in one purchase.

**1.7.2 Sequential Purchasing:** Purchase of the same items or type of items over the course of a 12-month calendar period that, in the aggregate, exceed the statutory competitive procurement dollar amount threshold. Sequential purchasing usually results from needs that were not properly planned or anticipated. It may also result from lack of centralization of the purchasing function.

**1.7.3 Component Purchasing:** Purchasing an item through multiple purchase orders for the component parts of the item versus issuing a single purchase order for the entire item. Repeated purchases of additional optional equipment or parts after an initial purchase may be, or may create the perception of component purchasing.

**1.7.4 Sequential Purchase Orders:** If items or services would be bought from the same provider in a single purchase under normal purchasing procedure, the purchases may not be made under separate purchase orders to avoid the requirements for obtaining Port Commission approval or to avoid using a competitive solicitation process. For example, it is not consistent with Port Authority policy and procedures to issue a \$100,000 (maximum) purchase order to the ABC Consulting Company to perform a study of fleet management in the police department and a subsequent purchase order for an amount under \$100,000 (maximum) to the same company to do a study of fleet management in the maintenance department. Nor is it consistent with Port Authority policy and procedures for a department to issue a \$100,000 (maximum) purchase order to a software vendor to buy Phase I of a document management

system and a subsequent \$100,000 (maximum) purchase order to buy Phase II of the same system from the same vendor. In each of the examples, proper procedure is to obtain Port Commission approval of the second purchase order. If there is any doubt about whether Port Commission approval is needed for a subsequent purchase, employees should consult the Director of Procurement Services or designee.

## **1.8 Contracting Ethics**

The competitive nature of the public procurement arena and the expenditure of public funds require strong ethical standards at all levels of the procurement function. Procurement Services staff and Port Authority departmental staff face the challenge of developing good vendor relations and encouraging vendor competition while avoiding even the appearance of favoritism or other ethical misconduct.

It is imperative that the Port Authority family (Commissioners and employees) refrain from directly or indirectly accepting for themselves, or for another, any gift, favor, or item (tangible or intangible) that provides a personal benefit, which exceeds \$50.00, from a person or firm that does business or seeks to do business with the Port Authority. It is highly recommended that the Port Authority family adhere to the following principles and standards of ethical procurement practices as defined by the Institute of Supply Management:

1. Avoid the intent and appearance of unethical or compromising practice in relationships, actions, and communications.
2. Demonstrate loyalty to the employer by diligently following the lawful instructions of the employer, using reasonable care and granted authority.
3. Avoid any personal business or professional activity that would create a conflict between personal interests and the interests of the Port of Houston Authority.
4. Avoid soliciting or accepting money, loans, credits, or preferential discounts, and the acceptance of gifts, entertainment, favors, or services from present or potential suppliers that might influence or appear to influence supply management decisions.
5. Handle confidential or proprietary information with due care and proper consideration of ethical, legal ramifications, and governmental regulations.
6. Promote positive supplier relationships through courtesy and impartiality.
7. Avoid improper reciprocal agreements.
8. Know and obey the letter and spirit of laws applicable to supply management.
9. Encourage support for small, disadvantaged, and minority-owned businesses.
10. Acquire and maintain professional competence.

If Port Commissioners or employees are aware of any ethical violations related to procurement, contracting, or vendor relationships, please notify the Director of Procurement Services or designee or the Legal department and/or follow the reporting procedures of the Port of Houston Authority Whistleblower program.

## **1.9 Code of Ethics & Standards for Commissioner and Employee Interaction with Interested Parties**

All Port Authority Commissioners and Port Authority Employees, but particularly procurement staff, should be familiar with the Code of Ethics and Standards for Port Commission and Employee Interaction with Interested Parties, because the Port Authority imposes higher standards on Port Authority employees than required by Texas law.

In this regard, the Port Authority procurement processes shall be conducted in a fair and transparent manner, delivering the best value to the Port Authority while maintaining its integrity and public accountability. In order to best carry out this policy:

1. Any Port Commissioner or employee who becomes aware of his or her conflict of interest relating to the subject of procurement shall immediately report that conflict to the Legal department and withdraw from participating in any discussion, deliberation, vote, or decision concerning the matter.
2. No Port Commissioner or employee shall disclose confidential information related to such procurement while the procurement process is ongoing.
3. Information relating to the evaluation of proposals or bids or the possible ranking of proposers or bidders, is confidential prior to the award of a contract, and shall not be disclosed to any proposers or bidders, or their agents. This provision does not prohibit authorized negotiation of the contract that is the subject of the proposal or bid, between Port Authority employees and a contractor, consultant, or vendor.

## **1.10 “Code of Silence” (“No Contact Period”)**

The “No Contact Period” means the period commencing on public issuance by the Port Authority of a solicitation for Formal Procurement bids/proposals, 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, actual and prospective respondents or bidders (including their representatives or persons acting on their behalf) are prohibited from contacting members of Port Commission or any Port Authority employee other than the Director of Procurement Services, or designee, in any manner regarding the advertised solicitation. Actual and prospective respondents or bidders include those respondents or bidders who have received notice that they have

not been chosen as finalists for any solicitation, including their representatives or persons acting on their behalf and are expressly prohibited from offering, presenting or promising gratuities, favors, or anything of value to any member of an evaluation committee or any Port Commissioner or employee of the Port of Houston Authority, or their family members.

Notwithstanding the foregoing, the following types of communications are exempt and shall be 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 and task forces;
3. Written questions or clarification requests made to the Director 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.

During the “No Contact Period,” the Director of Procurement Services or designee shall serve as the sole point of contact for any actual or prospective respondents via an e-procurement application. Nothing in this section shall prevent the respondent from making public statements to the Port Commission after the No Contact Period.

As part of their bid or proposal responses, respondents or bidders shall attest that they understand and agree not to contact any members of Port Commission or Port Authority employees – other than the Director of Procurement Services, or designee – during the No Contact Period and acknowledge that any such contact shall be grounds for disqualification from the solicitation process.

## **1.11 Sample Solicitation Language**

### **1.11.1 “No Contact Period”**

Neither bidder(s) nor any person acting on bidder(s)’s behalf shall attempt to influence the outcome of the award by the offer, presentation or promise of gratuities, favors, or

anything of value to any Port Commissioner or employee of the Port of Houston Authority, or their family members. All inquiries regarding the solicitation are to be directed to the Director of Procurement or designee identified on the first page of the solicitation. Upon issuance of the solicitation through the pre-award phase and up to the award, aside from bidder's formal response to the solicitation, communications publicly made during the official pre-bid/pre-proposal conference, communications during an oral interview scheduled at the request of and for the benefit of the Port Authority's rank and evaluation team, written requests for clarification during the period officially designated for such purpose by the Port Authority Representative, and authorized negotiation, neither bidder(s) nor persons acting on their behalf shall communicate with any Port Commissioner or employee of the Port of Houston Authority, or their family members through written or oral means in an attempt to persuade or influence the outcome of the award or to obtain or deliver information intended to or which could reasonably result in an advantage to any bidder. However, nothing in this paragraph shall prevent a bidder from making public statements to the Port Commission convened for a regularly scheduled session after the official selection has been made and placed on the Port of Houston Authority agenda for action.

## **1.12 Violation of Ethical Standards**

### **1.12.1 Port Commissioners**

The Port Commissioners are subject to all federal and state laws and regulations, Port Commission policies and this Procurement Manual with respect to their conduct as public officials involved in the procurement process. Each Commissioner is individually responsible for adhering to such laws, regulations, policies, and procedures. If the Port Authority has reasonable suspicion that a crime may have been committed related to procurement, the Port Authority shall report the evidence to the appropriate law enforcement agency or agencies for investigation and prosecution.

#### **1. Port Authority Employees**

Any Port Authority employee who violates any Port Authority ethical standards is subject to disciplinary action up to and including termination of employment. If the Port Authority has reasonable suspicion that a crime may have been committed related to procurement, the Port Authority shall report the evidence to the appropriate law enforcement agency or agencies for investigation and prosecution.

#### **2. Vendors**

Any vendor who violates any Port Authority ethical standards is subject to debarment and is subject to disqualification from future procurement solicitations. If the Port Authority has reasonable suspicion that a crime may have been committed related to procurement, the Port Authority shall report the evidence to the appropriate law

enforcement agency or agencies for investigation and prosecution.

### **3. Collusion**

Collusion is an agreement, oral or written, usually secretive, which occurs between two or more persons to limit open competition by deceiving, misleading, or defrauding others to obtain an objective advantage over other bidders and/or over the Port Authority. Examples include, but are not limited to an agreement among two or more firms to divide the market, set process, limit production, share profits, back out of bids to allow another to win the procurement, or to misrepresent the independence of the relationship between the colluding parties (e.g., "shell entities").

Collusion is unethical and is expressly prohibited. Any Port Authority employee who suspects collusion shall report the suspicion to the Director of Procurement Services or designee, who will investigate the matter. If the Port Authority has reasonable suspicion that a crime may have been committed, the Port Authority shall report the evidence to the appropriate law enforcement agency or agencies for investigation and prosecution. All Port Authority employees shall be mindful of the possibility of collusion and should be familiar with and use the checklist in Appendix 3 herein to detect collusion in procurement at the Port Authority.

## **1.13 Other Procurement Considerations**

### **1.13.1 Unauthorized Transactions**

The Port Authority has a responsibility to pay for authorized purchases made according to its approved procurement policies and procedures. The procurement of an item (goods and services) prior to obtaining proper authorization through the requisition process is considered to be an "unauthorized transaction" and is in direct violation of established Port Authority Procurement standards.

Port Authority employees, who generate financial liability exposure for the Port Authority without proper authority, may bear the cost of the goods and services received and may be subject to disciplinary action up to and including termination of employment.

Any vendor who knowingly accepts an unauthorized order will be advised of this policy and may jeopardize the ability to do future business with the Port Authority.

### **1.13.2 Legal Department Review**

All terms and conditions covering all sealed bids, request for proposals, requests for competitive sealed proposals and negotiated contracts shall be reviewed by the Legal department for legal sufficiency. When a supplier requests modifications to standard

language, including language related to limitation of liability, indemnification, warranty, ownership of deliverables, and risk of loss, the responding department should notify the Director of Procurement Services or designee. The Legal department review shall include consideration of Federal, State, and local laws, rules and regulations as well as compliance with Port Authority policies and standards.

The Legal department review should not be used to substitute judgment on non-legal matters. Whenever feasible, and as recommended by the requesting department, deference to industry custom and language usage should be permitted. Procurement Services staff are responsible for exercising informed, sound business judgment in the development and approval of bid/contract documents.

Standardized solicitation and contract forms will be developed and maintained by the Legal department and other offices as appropriate.

Coordination among all Port Authority departments is necessary for the procurement process to work smoothly. To avoid delays in the process and to comply with Port Authority policy and procedures, Port Authority staff should remember aspects of the process, including: available funds, planning, training, and coordination with Procurement Services.

#### 1. **Financial Services Approval**

No contract shall become binding upon the Port Authority until the appropriate financial officer of the Port Authority certifies that funds are or will be available to meet the contract pay requirements when due.

#### 2. **Available Funds**

Requesting departments must ensure that funding is available for a desired purchase before submitting a requisition. The law does not allow expenditures that exceed available funds. Procurement Services will not process requisitions for which there is not adequate funding.

#### 3. **Proper Planning**

Requesting departments must plan purchases to minimize the use of emergency and expedited procurement methods. Rush purchases are generally more expensive and they delay other requisitions already in the system. Vendors may attempt to charge premium prices for goods and services when there is insufficient time allowed to explore alternatives.

#### 4. **Procurement Training**

Requesting departments should be aware of Port Authority procurement policies and procedures prior to ordering goods and services and must assure that all employees

responsible for making purchase requests have read and understand the procurement standards and procedures in this Manual. Departments should also ensure that those employees attend training provided by the Procurement Services department.

#### **5. Coordination with Procurement Services**

Requesting departments must coordinate with Procurement Services on receipt of goods and services. Each department is responsible for ensuring that purchase orders clearly state the location for delivery of goods purchased. In certain instances, purchases (e.g., information technology equipment, etc.) may be required to be received in Office Services to ensure recording of the receipt of such items. Departments should call or e-mail the Procurement Services staff identified on the purchase order to make Procurement Services aware of vendor performance issues such as shortages, late delivery or damaged merchandise.



## **Article 2**

### **Procurement Standards**

#### **2.1 Purpose**

The purpose of this article is to establish guidelines for the development and use of specifications for the purchase by the Port Authority of non-construction goods or services and standards for handling mistakes in bids and proposals.

A specification may refer to an explicit set of requirements to be satisfied by a material, design, product, or service. Should a material, product, or service fail to meet one or more of the applicable specifications, it may be referred to as being out of specifications.

This article also discusses mistakes in bids or proposals in the procurement process and establishes set standards for handling mistakes.

#### **2.2 General Responsibilities**

Procurement Services shall maintain a historical electronic record of current specifications for supplies and services commonly purchased by the Port Authority. The requesting department and the Procurement Services department may jointly develop appropriate specifications. The requesting department will prepare the technical specifications and the scope of services, as appropriate, for the needed supplies and services. Procurement Services and the requesting department will prepare the solicitation provisions and related terms, conditions, and contractual provisions. The Director of Procurement Services or designee may advise the requesting department on the need to modify specifications as necessary or helpful to increase competition, to improve quality, or to ensure that specifications are accurate, clear, unambiguous, and non-restrictive. Procurement Services staff will exercise informed, sound business judgment in advising on the development of specifications and will work with the requesting department to insure that suggested modifications of specifications do not materially change the needs of the requesting department.

#### **2.3 Special Definitions**

For purposes of this section, the following special definitions apply:

**2.3.1 Brand Name Specification:** A specification that is limited to one or more items by manufacturers' names and/or catalog numbers.

**2.3.2 Brand Name or Equal Specification:** A specification that uses one or more manufacturers' names or catalog numbers to describe the standard of quality, performance and other characteristics needed to meet Port Authority requirements and which provides for the submission of equivalent or equal supplies.

**2.3.3 Purchase Description:** The words used in a solicitation to describe the supplies or services to be purchased, including any performance, physical or technical requirements. The terms "purchase descriptions" and "specifications" may be used interchangeably.

**2.3.4 Qualified Products List:** An approved list of supplies or products described by model or catalog number which, prior to competitive solicitation, the Port Authority has determined will meet applicable specifications and requirements.

**2.3.5 Specification:** A description of the physical, functional, or performance characteristics or nature of a supply or service. A specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply or service for delivery. A specification serves as a basis for obtaining a supply or service that will provide the best value to the Port Authority.

## **2.4 Standards in Drafting Specifications**

### **2.4.1 Functional or Performance Description**

Specifications should, to the extent practicable, emphasize functional or performance criteria while limiting design or other physical descriptions to those necessary to meet the needs of the Port Authority. To facilitate the use of such criteria, requesting departments should endeavor to include, as part of their purchase requests, the functional or performance needs that are required from the requested goods or services.

### **2.4.2 Commercially Available Products**

It is the general policy of the Port Authority to purchase standard commercial products whenever practicable. In developing specifications, accepted commercial standards should be used, and unique requirements should be avoided to the extent practicable.

### **2.4.3 Purchase Description or Specification**

The purchase description or specification should include the essential physical and functional characteristics necessary to express the minimum requirements of the Port Authority, such as:

1. A list and description of each supply or service in sufficient detail for all vendors to understand what the Port Authority needs. Relevant sample documents may

be appended to the purchase description; alternatively, vendors should be instructed how to obtain or review such documents. When purchasing a service, the description should clearly specify the service or services vendors will be required to perform and the documents, reports, and materials they must deliver.

2. The quantity of each supply or service needed and whether the quantity shown is the actual amount or an estimate. Vendors need this information to judge whether they can handle the contract and to submit accurate prices.
3. The timeline for which each supply or service is needed. The exact schedule, or an approximate schedule, with a statement describing the extent to which the schedule may be adjusted (e.g. "this schedule is subject to minor adjustment"), should be included in the purchase description.
4. The delivery terms, if known.
5. Other pertinent information that further describes the supply or service required.

#### **2.4.4 Alternate Specification**

A specification may provide an alternate description of supplies or services where two or more design, functional, or performance criteria will satisfactorily meet Port Authority requirements.

#### **2.4.5 Contractual Terms - Not to be Included**

Specifications must not include any solicitation (i.e. bid or proposal terms) or contractual terms or conditions, such as the time or place for the bid opening, time of delivery, payment, liquidated damages, or qualification of bidders. These clauses should be included in the appropriate sections of the solicitation (bid/proposal) package (instructions to Bidders and Contract Terms).

#### **2.4.6 Use of Existing Specifications**

If a specification for a common or general use item has been developed, or if a qualified products list has been developed for a particular supply or service, it must be used unless the Director of Procurement Services, or designee, or the Chief Officer of the requesting department makes a determination that the use of the existing specification is not in the Port Authority's best interest and that other specifications should be used.

#### **2.4.7 Brand Name or Equal**

Brand name or equal specifications may be used when it is determined that:

1. no other design or performance specification or qualified products list is available;
2. time does not permit the preparation of another form of purchase description not including a brand name;

3. the nature of the product or the nature of the Port Authority's requirements makes use of the brand name or equal specification appropriate for the procurement;
4. the use of a brand name or equivalent specifications will provide best value to the Port Authority.

#### **2.4.8 Designation of Several Brands**

Brand name or equal specifications should designate three, or as many different brands as are practicable, as "or equal" references and must state that substantially equivalent products to those designated will be considered for award.

#### **2.4.9 Qualified Products List**

A qualified products list may be developed when testing or examination of supplies prior to issuance of the solicitation is desirable or necessary in order to best satisfy the Port Authority's requirements.

When developing a qualified products list, a representative group of potential suppliers will be solicited in writing to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier may offer his product for consideration, whether or not included in the original solicitation.

### **2.5 Standards for Handling Bids/Proposals & Standards for Handling Mistakes in Bids/Proposals**

#### **2.5.1 Responsiveness of Bid/Proposal**

There are two initial considerations in awards of public procurement contracts: bid responsiveness and bidder responsibility. A bid/proposal is said to be "responsive" when it substantially complies with the specifications and requirements set out in the solicitation. Responsiveness is determined at the time of bid/proposal opening. Non-responsive bids/proposals may be immediately rejected and recorded on the tabulation.

The following guidelines serve as a basis for determining if a bid or proposal should be deemed nonresponsive (Fatal Errors) by the Director of Procurement Services or designee:

1. A bid/proposal, request for withdrawal, or modification of a bid/proposal that is not received at the designated email address, time, and date set forth in the solicitation documents shall be considered late and deemed nonresponsive and returned unopened.
2. A bid/proposal submitted without a bid/proposal security ("bid bond" or guarantee), if such bid/proposal security is required by the solicitation, shall be deemed nonresponsive. If the solicitation requires a bid/proposal security, and a bid/proposal security is submitted but is in an amount less than the amount required, does not use the required forms or otherwise fails to comply with the bid/proposal security

- requirements set out in the solicitation, then the bid/proposal may be deemed nonresponsive as determined by the Director of Procurement Services or designee.
3. If the solicitation requires that a price be bid or proposed, and the bid/proposal fails to include such price, then the bid/proposal shall be deemed nonresponsive.
  4. If the solicitation is non-divisible (i.e. the solicitation requires that all items on a multiple item project be bid/proposed on) then a bid/proposal that does not propose on all items (or the entire project scope), shall be deemed nonresponsive.
  5. If the solicitation is a Request for Qualifications (RFQ) of an engineer or architect, or if the solicitation instructs that a price shall NOT be submitted, then a response that includes a price shall be deemed nonresponsive.
  6. A bid/proposal shall be rejected if it was received from any person or entity that is suspended, debarred or otherwise deemed ineligible shall be deemed nonresponsive unless the Director of Procurement Services or designee makes a determination that such bid/proposal should not be rejected.

### **2.5.2 Responsible Bidder/Offeror**

Bidder/offeror responsibility is the extent to which a bidder/offeror will be able to perform the contract. The requesting department will determine whether a proposal offers the best value to the Port Authority and whether the Port Authority should reject the response of any respondent(s) it considers not “responsible” to perform the project. In determining whether a respondent qualifies as “responsible” (i.e., eligible for award), a number of factors, including but not limited to the following, may be considered. A responsible respondent must:

1. have the ability to comply with the required delivery or performance schedule, taking into consideration other business commitments;
2. have a satisfactory record of performance;
3. have a satisfactory record of integrity; and
4. have the necessary facilities, organization, experience, authorizations, technical skills, and financial resources to fulfill the terms of the contract for the Project.

Any Respondent who is determined to be not “responsible” (i.e., not eligible for award) may appear before the Port Commission of the Port of Houston Authority and present evidence concerning the Respondent's responsibility.

### **2.5.3 Right to Reject Responses and Waive Formalities**

The Port Authority reserves the right to accept or reject any and all responses and waive formalities to best serve the interests of the Port Authority. Moreover, in case of ambiguity or lack of clearness in any response, the Port Authority reserves the right to consider the most advantageous construction of, or to reject, the response. By way of example only:

1. Responses not conforming exactly to the bid/proposal documents may be rejected;
2. Responses not incorporating the Port Authority forms required by the bid/proposal documents may be rejected;
3. Unit price responses in which the prices are, in the opinion of the Port Authority, unbalanced may be rejected;
4. If more than one response from an individual, firm, partnership, corporation, or joint venture, or combination thereof under the same or different names is submitted, all such responses may be rejected;
5. The Port Authority may cancel the entire solicitation;
6. The Port Authority may issue a subsequent solicitation;
7. The Port Authority may remedy technical errors in the solicitation documents;  
and
8. The Port Authority may waive formalities and irregularities.

#### **2.5.4 Submission of Bids/Proposals**

Bids/proposals must be completed, executed, and submitted in accordance with the instructions in the solicitation. Offerors must submit their bids/proposals so that they will be received by the Procurement Services department not later than the exact date and time set for opening of responses.

After that specified date and time, no further bids/proposals will be accepted. The accepted bids/proposals will be opened and read aloud via Webex at the specified date and time as published in the solicitation. The Port Authority does not accept bids or proposal responses submitted by facsimile. Bids/proposals that are not completed, executed, and submitted in accordance with the instructions in the bid/proposal solicitation are considered non-responsive. In other words, it does not comply in all material respects with the solicitation requirements.

Bidders/proposers are responsible for submitting their bid/proposal response so that it reaches the Procurement Services department by the time specified in the solicitation. Bidders/proposers are required to use any transmission method authorized by the bid/proposal, i.e., electronic submissions at [procurementproposals@porthouston.com](mailto:procurementproposals@porthouston.com).

Any bid or proposal response (including a pre-receipt deadline request to withdraw or modify a bid or proposal response), that is received by Procurement Services after the exact time specified for receipt is "late" and will not be considered, unless the Director of Procurement Services, or designee, determines that accepting the late bid/proposal

would not unduly delay the acquisition; and:

- If there is acceptable evidence to establish that the bid/proposal was received by the Port Authority and was under the Port Authority's control prior to the time set for receipt.

Acceptable evidence (the sufficiency of which is determined by the Director of Procurement Services) to establish the time of receipt by the office of Procurement Services includes the electronic submission to the Port Authority.

If an emergency or unanticipated event – including but not limited to fire, threats or acts of terrorism, natural disasters, system or equipment blackout or malfunction when responses are due – occurs, such that normal Port Authority processes are so disrupted that bids/proposals cannot be received by the office of Procurement Services by the exact time specified in the solicitation, and urgent Port Authority requirements preclude amending the opening date, the time specified for receipt of bids will be deemed to be extended to the same day and time of day specified in the bid/proposal one week later on which normal Port Authority processes can resume. If the following weekday falls upon a Port Authority holiday, the bid/proposal shall be extended to a new date via an Addendum issued by Procurement Services.

#### **2.5.5 Securing Bids/Proposals**

All solicitations (including modifications) received before the time set for the opening shall be securely maintained by the Procurement Services department. The bids/proposals shall not be opened or viewed and shall remain under the control of the Procurement Services department in a secure location. Before opening, information concerning the identity and number of bids received is available only to Procurement Services department employees. Disclosure of such information to other Port Authority employees shall be made only on a “need to know” basis.

#### **2.5.6 Postponement of Bid/Proposal Openings**

The Director of Procurement Services or designee and/or the Director of a requesting department may postpone or extend a bid/proposal opening by means of an Addendum if he or she has reason to believe that all or a significant portion of a solicitation has been delayed for causes beyond the reasonable control of the proposed offerors or the Port Authority, and/or in situations where the cause was not due to the fault or negligence of the proposed offerors, and/or in cases of emergencies, and/or in the event of significant failures in the communications system used by the Port Authority for transmission of solicitation notices and information.

The Director of Procurement Services or designee will post any determination to postpone a bid/proposal opening on the Port Authority's electronic procurement system and in the Procurement Services department before the date of the originally scheduled

bid/proposal opening.

### **2.5.7 Late Bids/Proposals**

Except for modification allowed pursuant to negotiation, any bid/proposal, withdrawal, or modification received after the established receipt due date and time is deemed late. No late bid/proposal, late withdrawal, or late modification will be considered unless received prior to contract award, and the proposal, withdrawal, or modification would have been timely but for the action or inaction of personnel directly serving the procurement activity or lateness otherwise not attributable to the proposer's fault or negligence. The Director of Procurement Services or designee shall determine whether to accept a late bid/proposal, late withdrawal, or late modification. All documents relating to the late bid/proposal, late withdrawal, or late modification shall be made a part of the appropriate procurement file.

### **2.5.8 Modification and Withdrawal of Bids/Proposals**

Bids/proposals may be modified or withdrawn by any method authorized by the solicitation, if, not later than the exact time set for opening, notice is received by an authorized representative in the office designated in the solicitation. A bid/proposal may be withdrawn in person by a bidder/proposer or its authorized representative if, before the exact time set for opening of bids/proposals, the identity of the person requesting withdrawal is established and that person signs a receipt for the bid/proposal document withdrawn.

### **2.5.9 Mistakes in Opening of Bids/Proposals**

Electronic submissions of bids/proposals which do not identify the bidder/proposer or the solicitation may be opened solely for the purpose of identification, only by a Procurement Services employee designated for this purpose. The electronic submission should include the project title and solicitation number in the subject line of the email along with the bid or proposal. Procurement Services will provide an electronic confirmation of receipt.

### **2.5.10 Discovery of Mistakes in Bids and Proposals**

Unfortunately, bidders and proposers may make mistakes in their bids and proposals. When this occurs, the appropriate course of action is determined by the type of mistake and when the mistake was discovered.

**2.5.10.1 Discovered Before Receipt Deadline:** Mistakes discovered before the time and date established for receipt: A bidder/proposer may correct mistakes discovered before the time and date established for receipt of proposals by withdrawing or correcting the bid/proposal as provided below.



**2.5.10.2 Discovered After Opening:** After the opening of bids/proposals, the Director of Procurement Services or designee shall examine all responses for apparent mistakes. In cases of apparent mistakes or where the Procurement Services staff believe a mistake has been made, the Director of Procurement Services or designee shall request from the bidder/proposer a verification of the response, calling attention to the suspected mistake. If the bidder/proposer alleges a mistake, the matter shall be processed as provided below.

### **2.5.11 Categories of Mistakes**

There are four generally accepted categories of mistakes that may occur in bids or proposal responses:

- Minor informalities or irregularities (see Section 2.5.12);
- Obvious or apparent clerical mistakes (see Section 2.5.13);
- Mistakes other than minor informalities or irregularities or obvious or apparent clerical mistakes that are discovered prior to award (see Section 2.5.14); and
- Mistakes discovered after award (see Section 2.5.15).

If a mistake fits within one of the above categories, the following can happen:

- The mistake will be recognized, and can be corrected by allowing a bidder/proposer to correct or withdraw their response before the time and date established for the receipt of the bids or proposals;
- The mistake will be recognized, and will be corrected by allowing the successful bidder or proposer to correct their bid or proposal after they have received an award; or
- The mistake will not be recognized, and the bid or proposal will not be corrected or withdrawn.

### **2.5.12 Minor Informalities or Irregularities in Bids/Proposals**

A minor informality or irregularity is one that is merely a matter of form and not of substance. It can also pertain to some immaterial defect in a bid/proposal or a variation of a bid/proposal from the exact solicitation requirements, that could be corrected or waived without being prejudicial to other bidders/proposers. The defect or variation is immaterial when the effect on price, quantity, quality, or delivery is negligible when contrasted with the total cost or scope of the supplies or services being acquired. The

Director of Procurement Services or designee has the discretion to give the bidder/proposer an opportunity to cure any deficiency resulting from a minor informality or irregularity, or to waive the deficiency, whichever may be advantageous to the Port

Authority.

Examples of minor informalities or irregularities include failure of an offeror to:

1. Return the exact number of duplicate copies of completed, signed bids required by the solicitation;
2. Furnish all required forms and documents as indicated in the solicitation, (with the exception of the signature page and bid price);
3. Sign its bid, but only if:
  - a. The unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid (such as the submission of a bid bond or other guarantee or a letter signed by the bidder, with the bid, referring to and clearly identifying the bid itself); or
  - b. The firm submitting a bid has formally adopted or authorized, before the date set for opening of bids, the execution of documents by typewritten, printed, or stamped signature and submits evidence of such authorization and the bid carries such a signature;
4. Acknowledge receipt of an addendum to a procurement solicitation, but only if:
  - a. The bid/proposal response received clearly indicates that the offeror received the addendum, such as where the addendum added another item to the specification and the bidder/proposer's response included a bid on the item; or
  - b. The addendum pertains only to a matter of form or has no effect or merely a negligible effect on price, quantity, quality, or delivery of the item bid upon.

#### **2.5.13 Obvious or Apparent Clerical Mistakes**

Any clerical mistake, apparent on its face in the bid/proposal, may be corrected by the Director of Procurement Services or designee prior to award. The Director of Procurement Services shall first obtain from the bidder/proposer a written verification of the bid/proposal response intended. Examples of apparent mistakes are:

1. Obvious misplacement of a decimal point;
2. Obvious incorrect discounts (for example, 1 percent 10 days, 2 percent 20 days, 5 percent 30 days);
3. Obvious reversal of the price freight on board destination and price freight on board origin; and
4. Obvious mistake in designation of unit.

Correction of the bid/proposal shall be effected by attaching the verification to the original bid and a copy of the verification to a duplicate copy of the bid/proposal.

Correction shall not be made on the face of the bid; however, it shall be reflected in the bid tabulation.

#### **2.5.14 Mistakes Other Than Minor Informalities or Irregularities in Bids or Obvious or Apparent Clerical Mistakes Discovered Prior to Award**

The authority to permit correction of bids is limited to bids that, as submitted, are responsive to the solicitation and may not be used to permit correction of bids to make them responsive. These mistakes are generally raised by the bidder along with a request to withdraw its bid. Examples include: A pricing element from a vendor was received but not included in the bid, or the material cost for an element of work was included but the labor to install it was not included.

1. If a bidder requests permission to correct a mistake, and clear and convincing evidence establishes both the existence of the mistake and the bid actually intended, the Director of Procurement Services or designee may make a determination permitting the bidder to correct the mistake, provided, that if the correction would result in displacing one or more lower bids, such a determination shall not be made unless the existence of the mistake and the bid actually intended are ascertainable substantially from the solicitation and the bid itself.
2. If a bidder requests permission to withdraw a bid rather than correct it, and (a) the evidence is clear and convincing both as to the existence of a mistake and as to the bid actually intended, and (b) the bid, both as uncorrected and as corrected, is the lowest bid received, the Director of Procurement Services or designee may make a determination to correct the bid and not permit its withdrawal.
3. If, under Paragraph (1) of this section, (a) the evidence of a mistake is clear and convincing only as to the mistake but not as to the intended bid, or (b) the evidence reasonably supports the existence of a mistake but is not clear and convincing, the Director of Procurement Services or designee may make a determination permitting the bidder to withdraw their bid.
4. If the evidence does not warrant a determination under Paragraph (1) of this section, the Director of Procurement Services or designee may make a determination that the bid will not be withdrawn or corrected.

#### **2.5.15 Mistakes Discovered after Award**

Mistakes shall be corrected, if the correction is favorable to the Port Authority, provided that they do not change the essential requirements of the specifications.

#### **2.5.16 Processing of Suspected or Alleged Mistakes**

Guidelines for determining the appropriate course of action when there are mistakes in bids or proposals:

1. The Director of Procurement Services or designee shall immediately request the

bidder or proposer to verify the accuracy and completeness of their bid or proposal. Action taken to verify the bids or proposals must be sufficient to reasonably assure to the Director of Procurement Services or designee that the bid or proposal as confirmed is without error, or to elicit the allegation of a mistake by the bidder or proposer. To assure that the bidder or proposer will be put on notice of a mistake suspected by the Director of Procurement Services or designee, the bidder or proposer should be advised as appropriate:

- That their bid or proposal is so much lower than the other responses received, or the Port Authority's in-house estimate indicates a possibility of error;
  - Of important or unusual characteristics of the specifications;
  - Of changes in requirements from previous purchases of a similar item; or
  - Of any other information, proper for disclosure, that leads the Director of Procurement Services or designee to believe that there is a mistake in the bid or proposal.
2. If the bid or proposal is verified, the Director of Procurement Services or designee shall consider the bid or proposal as originally submitted. If the time for acceptance of the bids or proposals is likely to expire before a decision can be made, the Director of Procurement Services or designee shall request all bidders or proposers whose responses may become eligible for award to extend the time for acceptance of their bids or proposals. If a bidder or proposer whose bid or proposal is believed to be erroneous, does not (or cannot) grant an extension of time, the bid or proposal shall be considered as originally submitted. If the bidder or proposer alleges a mistake, the Director of Procurement Services or designee shall advise them to make a written request to withdraw or modify their bid or proposal. The request must be supported by statements (sworn statements, if possible) and shall include all pertinent evidence such as the bidder's or proposer's file copy of their bid or proposal, the original worksheets and other data they used to prepare their bid or proposal, subcontractors' quotations, if any published price lists, and any other evidence that establishes the existence of the error, the manner in which it occurred, and the bid or proposal actually intended.
3. When a bidder or proposer furnishes evidence supporting an alleged mistake, the Director of Procurement Services or designee shall ensure the documentation supporting the decision contains the following minimum information:
- A signed copy of the bid or proposal involved;
  - A copy of the original bid or proposal and any specifications or drawings relevant to the alleged mistake;
  - An abstract or record of the bids or proposals received;

- The written request by the bidder or proposer to withdraw or modify their bid or proposal, together with their written statement and supporting evidence;
- Specific information as to how and when the mistake was alleged;
- A summary of the evidence submitted by the bidder or proposer;
- In the event only one bid or proposal was received, a quotation of the most recent contract price for the supplies or services involved or, in the absence of a recent comparable contract, an estimate of a fair price for the supplies or services;
- A recommendation from the Director of Procurement Services that either the bid or proposal be considered for award in the form submitted, or the bidder or proposer be authorized to withdraw or modify a bid or proposer;
- Attempts made to obtain required pertinent information, and any other actions taken; and
- Any additional pertinent evidence.

## **2.5.17 Mistakes in Proposals**

### **2.5.17.1 Mistakes Discovered Before the Established Due Date**

A proposer may correct mistakes discovered before the time and date established for receipt of proposals by withdrawing or correcting the proposal as provided below.

### **2.5.17.2 Mistakes Discovered After Receipt but Prior to Award**

There are four situations in which mistakes in proposals are discovered after receipt of proposals but prior to award:

1. During Discussions, Prior to Best and Final Offers: Once discussions are commenced with any proposer or after best and final offers are requested, any proposer may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.
2. Minor Informalities: Minor informalities, unless otherwise corrected by the proposer shall be treated as they are under competitive sealed bidding.
3. Correction of Mistakes: If discussions are not held or if the best and final offers upon which award will be made have been received, mistakes may be corrected and the correct offer considered only if:
  - a. The mistake and the correct offer are clearly evident on the face of the proposal in which event the proposal may not be withdrawn; or
  - b. The mistake is not clearly evident on the face of the proposal, but the proposer submits proof of evidentiary value which clearly and convincingly demonstrates both the existence of a mistake and the correct offer and such correction would not be contrary to the fair and equal treatment of

other proposers.

4. Withdrawal of Proposals: If discussions are not held, or if the best and final offers upon which award will be made have been received, the proposer may be permitted to withdraw the proposal if:
  - a. The mistake is clearly evident on the face of the proposal and the intended correct offer is not;
  - b. The proposer submits proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made but does not demonstrate the intended correct offer; or
  - c. The proposer submits adequate proof that clearly and convincingly demonstrates the intended correct offer, but to allow corrections would be contrary to the fair and equal treatment of other proposers.

#### **2.5.18 Bid/Proposal Determinations Required**

When a bid/proposal is corrected or withdrawn, or correction or withdrawal is denied, a written determination shall be prepared showing that relief was granted or denied in accordance with this section. The Director of Procurement or designee shall prepare the determination.

#### **2.5.19 Cancellation of Solicitations after Bid Opening**

Preservation of the integrity of the competitive procurement process dictates that, after responses have been opened, award must be made to the lowest bid and/or best value responsive and responsible offeror who submitted a bid/proposal, unless there is a sufficient reason to reject all bids/proposals and cancel the solicitation.

Every effort shall be made to anticipate changes in a solicitation requirement before the date of opening and to notify all prospective bidders/proposers of any resulting modification or cancellation. This will permit prospective bidders/proposers to change their offers and prevent unnecessary exposure of bid/proposal prices. In the event that none of the responses meet the solicitation requirements, the solicitation shall be cancelled.

Solicitations may be cancelled and all bids rejected before award but after opening when the requesting department or the Director of Procurement Services or designee, determines in writing that:

- Inadequate or ambiguous specifications were contained in the bid/proposal; or
- Specifications require such significant revisions that a new solicitation is necessary; or
- The supplies or services being solicited are no longer required; or

- The bid/proposal did not provide for consideration of all factors of cost to the Port Authority; or
- The needs of the Port Authority can be satisfied by a less expensive product than that for which the solicitation was made; or
- All otherwise acceptable bid/proposal responses received are at unreasonable prices and/or significantly exceed the department's estimated costs or only one response is received and the department cannot determine the reasonableness of the bid/proposal price; or
- The Port Authority has reasonable basis for a belief that bids/proposals were not independently completed in open competition, were collusive, or were submitted in bad faith; or
- No responsive bid/proposal has been received from a responsible offeror; or
- A cost comparison indicates that performance by Port Authority employees is more economically feasible than obtaining the services of a vendor; or
- For other reasons, cancellation is clearly in the Port Authority's best interest, as determined at the discretion of the Director of Procurement Services or designee.

Should administrative difficulties be encountered after bid/proposal opening that may delay contract award beyond bidders'/proposers' acceptance periods, the lowest responsible bidder/proposer should be requested, before expiration of its bid/proposal, to extend in writing the bid/proposal acceptance period (with consent of sureties, if any) in order to avoid the need for re-soliciting. If the low bidder refuses to do so, all bids/proposals must be rejected and the bid/proposal re-advertised.

#### **2.5.20 Guidelines for the Rejection of Bids/Proposals After Bid/Proposal Opening**

The following guidelines serve as a basis for determining if a bid or proposal should be rejected by the Director of Procurement Services or designee:

- A bid/proposal that fails to conform to the essential requirements of the solicitation shall be rejected.
- A bid/proposal that fails to conform to the delivery schedule or permissible alternates stated in the bid/proposal shall be rejected.
- A bid/proposal shall be rejected when (1) it contains exceptions or imposes conditions that would substantively modify the requirements of the solicitation or (2) if it increases risk to or liability of the Port Authority, and allowing such exceptions or conditions would be prejudicial to other bidders/proposers.
- A bid/proposal may be rejected if the prices for any line items or sub-line items are materially unbalanced.
- A bid/proposal shall be rejected if it was received from any person or entity that is suspended, debarred, proposed for debarment, delinquent on taxes or otherwise

deemed ineligible as of the bid/proposal opening date unless the appropriate Chief Officer and the Director of Procurement Services or designee can make a determination that such a bid should not be rejected.

- A low bid or proposal may be rejected, if it has been determined that the bidder/proposer is not responsible.
- A bid or proposal shall be rejected in accordance with the requirements of the solicitation, if the respondent failed to submit a bid bond or guarantee if it is required to be submitted per the solicitation.
- After submitting a bid/proposal, if all of a bidder's or proposer's assets or that part related to their bid, are transferred during the period between the bid/proposal opening and the award, the transferee may not be able to take over the bid/proposal. Accordingly, the Director of Procurement Services, or designee, shall reject the bid/proposal unless the transfer is affected by merger or operation of law.

The originals of all rejected bids/proposals, and any written findings with respect to such rejections, shall be preserved with the papers relating to the solicitation by the Procurement Services Department.

#### **2.5.21 Notice to Bidders of Rejection of all Bids/Proposals**

When it is determined necessary to reject all responses, the Director of Procurement Services or designee shall post notice of rejection of all bids/proposals via the Port Authority's electronic procurement system, which will notify each potential bidder/proposer that all bids have been rejected.

## **2.6 Standards for Purchase Orders**

### **2.6.1 Regular Purchase Orders**

A regular purchase order is the basic instrument for making Port Authority purchases. It is a contract providing for the delivery by a specified date of listed goods or services at a predetermined price, and subject to Port Authority terms and conditions.

At the conclusion of the authorizing process, a purchase order is generated and submitted electronically to the vendor by Procurement Services. The terms and conditions stated on the purchase order are the contractual terms governing the purchase, unless the Port Authority has authorized the use of a separate contract form. If a vendor/supplier attempts to change the terms and conditions of the Port Authority's purchase order (by language on their quote or otherwise), the requesting department should inform the Director of Procurement Services or designee.



### **2.6.2 Open Blanket Purchasing Agreements**

An Open Blanket Purchase is a type of purchase order designed to consolidate repetitive small purchases from a single supplier. It is essentially a form of open account and its use is limited in terms of items which may be ordered, who may place the orders, the period for which it is to be open, and the total dollar amount which can be ordered.

Open Blanket Purchasing agreements (“OBPs”) are agreements with contractors/suppliers that allow multiple small purchases (up to \$25,000 in a calendar year) by individual departments without going through the normal purchasing procedures. This purchasing method may be used for the following: to support the requirements of maintenance, repair, operational services, office supplies, and other purchases of a repetitive nature.

For example, establishing an OBP with an automobile parts supplier for the Port Authority’s Operations department allows for quick and efficient purchases of needed parts or supplies. OBPs also reduce administrative costs for small purchases by eliminating the need for multiple requisitions and purchase orders.

When a department requests an OBP, it is handled like any other purchase. The requisition may require the approval of various managerial levels pending approval thresholds. When the OBP is issued, the purchase order should be encumbered for the full amount of the OBP limit. Invoices are retained and purchases are logged in a manner prescribed by the Port Authority and the Procurement Services department.

### **2.6.3 Return of Goods**

Commodities to be returned to suppliers or manufacturers are the responsibility of the requesting department. Adjustments and/or credits are the responsibility of the Accounts Payable Department. The notification to Accounts Payable is the responsibility of the requesting department. Additionally, the requesting department is responsible for notifying Procurement Services of any changes to the original order.

The return of goods shall be handled as follows by the requesting department:

- Monitor and verify purchase order delivery and receipt of merchandise.
- Identify delivery problems and coordinate solution with requestor and vendor.
- Discrepancies and damages will be identified and resolution shall be coordinated with supplier/vendor and all essential internal departments.
- Return of goods shall be coordinated through the requesting department, Procurement Services, and any other essential internal departments affected by the return.

The vendor may/may not be under an obligation to accept a return of items shipped according to the Purchase Order. Agreement from the vendor to accept a return is not automatic and a restocking fee may be incurred. Such fees will be charged to the requesting department.

#### **2.6.4 Close of Purchase Order**

It is important that all Port Authority departments review their respective open purchase orders to identify those that can be closed, so that all encumbered funds remaining on those purchase orders can be released and returned to appropriate budgets. Prior to closing a purchase order, departments must contact the Accounting and Accounts Payable departments to ensure that there are no amounts awaiting payment against the purchase order. Once a purchase order has been closed, it cannot be re-opened.

#### **2.6.5 Purchase Order Agreement**

Procurement Services is the only Port Authority department authorized to issue purchase orders. All purchases shall be made in compliance with the provisions described in this Manual.

All Port Authority purchase orders have standard terms and conditions that are designed to protect the Port Authority's legal rights in transactions with suppliers. Only the Legal department in conjunction with Procurement Services has the authority to change or waive any standard purchase order terms and conditions.

Every purchase order is subject to the most recent revision of the Procurement Services department terms and conditions of purchase orders. The most recent version of this document is located at: [www.porthouston.com](http://www.porthouston.com). A sample copy is included as Appendix 12.

### **2.7 Standards for Direct Pay Request/Request for Check and Requisitions**

All purchases of goods and services should be ordered and paid with a purchase order. However, it is recognized that some items require processing with a "Request for Check" form. All check requests processed will be scrutinized to determine whether or not a purchase order exists for the vendor/payee from the requesting department. Where a purchase order is found, the Accounts Payable department will determine whether or not the purchase order covers the expense submitted.

Requests for Check found to match existing purchase orders will be returned to the requesting department to be paid via that purchase order.

Requests for Check shall be submitted to the Accounts Payable department if the purchase meets the requirements of section 2.7.1 below. The requesting department will complete a Request for Check and submit to the Accounts Payable department for processing. Accounts Payable processes Requests for Check on an as needed basis. It is the requesting department's responsibility to coordinate with Accounts Payable in a timely manner.

### **2.7.1 Requirements**

To process a Request for Check, each transaction must be documented on a Request for Check requisition form with the invoice for goods and services attached. All check request requisitions must be authorized by the appropriate authority and forwarded to the Accounts Payable department. Request for Check will be processed only for transactions meeting the following criteria:

1. Payroll Expenses, Taxes, Pension Fund Contributions
2. Reimbursements (Retiree, COBRA medical, deposits/refunds, and Petty Cash)
3. Utilities
4. Financial Services Related Fees
5. Postage
6. Seminar/Training Fees, Travel Advances
7. Publications and Subscriptions (one time annual payment)
8. Day Labor, Temporary Employees, Employment Agency Fees
9. Professional Dues, Memberships, Licenses
10. Personnel Drug Testing
11. Legal fees
12. Travel Agency Fees
13. Books and similar printed materials
14. Settlements
15. Receptions and Catering for food and beverages not covered with a P&D form
16. Emergency maintenance and repairs
17. Other non-recurring expenditures as deemed appropriate by the Chief Operating Officer and/or the Chief Financial Officer and the Director of Procurement or designee.

## **2.8 Standards for Contract Award (Formal Procurement Awards)**

The following procedures apply to Formal Procurements (procurements that must be approved by the Port Commission pursuant to Texas Water Code, Chapter 60) using the “Competitive Sealed Proposals,” “Job Order Contracting,” “Requests for Proposals,” or “Requests for Qualifications” purchasing methods. Awards using the “Competitive Sealed Bids” purchasing method are governed by Texas Water Code, Section 60.408.

### **A. Customary Staff Responsibilities for Evaluation of Proposals**

1. Unless the Port Commission determines otherwise, Port Authority staff should evaluate, in relation to the published selection criteria, the proposals received by the Port Authority in response to a Formal Procurement.
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 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 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. Executive Committee**

1. With the assistance of the entire team, Division Chief or Designee must make a written recommendation, via the scoring matrix, to the Executive Committee and the Director of Procurement Services, or designee. This recommendation consists of:
  - a. The acceptability or unacceptability of each vendor;
  - b. The technical and monetary ranking of each acceptable vendor;
  - c. The combined final ranking of the vendors; and
  - d. A detailed rationale explaining why the recommended vendor is the most advantageous.

The Executive Committee should include (1) the Executive Director, Chief Operating Officer, or Chief Legal Officer, depending on availability, (2) the appropriate Chief Officer, the Director of Procurement, and (3) the department director.

2. Construction CSPs: The Executive Committee will review, and approve or reject, the recommended selection and ranking of the CSP evaluation team, based on the matrix that the team prepared.
3. Non-Construction CSPs: The Executive Committee will review, and approve or reject, the recommended selection and ranking of the CSP evaluation team, based on the matrix or narrative evaluation that the team prepared.
4. RFQs for architectural, engineering, and land surveying services: The Executive Committee will review, and approve or reject, the recommendation of most qualified provider made by the RFQ evaluation team, based on the matrix or narrative evaluation that the team prepares.
5. The Executive Committee has the option of requiring that the selection team reevaluate the proposers or service providers, or conduct a new solicitation.
6. The Executive Committee has the option of terminating the procurement if it determines that no proposal offers “best value” to the Port Authority, provided that notification to and concurrence by the Port Commission, of such termination, is obtained.

#### C. 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.

The Port Commission makes a contract award (1) by motion, (2) within the time for acceptance specified in the solicitation or an extension, and (3) to that responsible bidder whose bid conforms to the solicitation. A contract is awarded only after the Port Commission approves an executed contract and when the purchase order is issued. Award shall be made electronically or by mailing or otherwise furnishing a properly executed award document to the successful bidder. When more than one award results from any single solicitation, separate award documents shall be suitably numbered and executed.

If less than three bids have been received, the Director of Procurement Services or designee may examine the situation to ascertain the reasons for the small number of responses. Award shall be made notwithstanding the limited number of bids, but the Director of Procurement Services or designee shall initiate – if appropriate – corrective action to increase competition in future solicitations for the same or similar items.

#### **2.8.1 Notification of Award**

The Director of Procurement Services or designee shall, at a minimum, post electronically a “Notification of Award” through the Port Authority’s electronic procurement system/website to inform all respondents and interested parties of the Port Authority’s award decision within a reasonable time period after award approval. All respondents will be deemed to have notice of the bid award once the Notification of Award has been posted.

All unsuccessful respondents and inquiring entities may review the final contracts, including terms, conditions, scopes of work, specifications and pricing.

After the award, the requesting department shall make preparations to move forward and a Notice to Proceed will be issued by Procurement Services upon receipt of requisite bonds and executed contracts.

## 2.9 Management Guidelines for Change Orders and Contract Amendments

### A. GENERAL REQUIREMENTS

1. General Principle. Every Port Authority contract change must be in writing and executed by the vendor and the authorized representative of the Port Authority, and approved by other staff (see Section C below) before the work is performed.

2. Contract Changes Must Be Documented. This requirement includes changes to the total contract amount, contract fees or expense reimbursements, the character or quantities of goods or services provided under the contract, the scope of work, the contract duration, performance schedule, or any other material element of the contract.

3. Terminology. Changes to contracts can be called “**change orders**” or “**amendments**.” “Change order” is the term typically used for a construction contract change. A “**task order**” assigned under a contract is a form of change as well, though usually planned for under the contract. All are subject to these guidelines.

4. A Proposal Typically Starts the Process. If the Port Authority or the contractor determines that a contract change is required, the contractor will typically submit a proposal with the terms of the proposed change. At other times Port Authority staff members may have requested the proposal, or outlined the terms themselves. If the change is authorized, the Port Authority will prepare the amendment or change order setting forth the terms of the change.

5. No Work Until Change Order or Amendment is Complete. The contractor shall not, and does not have an obligation to, perform any change in the work until a change order or amendment has been authorized and issued by the Port Authority.

### B. WHEN IS A CHANGE ORDER OR AMENDMENT PERMITTED?

1. Port Authority legal or procurement services representatives will not approve a change order or amendment under a contract where it results in a “**fundamental change**” to the contract.

2. A “**fundamental change**” is a significant change in contract provisions that causes a major deviation from the original purpose of the contract, i.e., so extensive, significant, or cumulative, that the purpose of the contract is very different from that described in the original bargain. A “**non-fundamental change**” is a lesser change in contract terms.

- If the intended change is a non-fundamental change, then an amendment or change order can be issued.
- If the intended change is a fundamental change, then a new agreement may need to be entered into, and the changed work may be subject to procurement of a new contract.

### **C. ADDITIONAL CHANGE ORDER AND AMENDMENT REQUIREMENTS**

1. Applicability. These requirements apply to all contracts, including those (a) that result from an advertised solicitation, (b) awarded as a direct selection, (c) based on a qualifications statement, (d) obtained through a cooperative purchase program, or (e) that are “informals,” i.e., under the \$100,000 threshold. A standalone purchase order is considered a “contract” for the purposes of these Guidelines.

2. A Written Change Order or Amendment is Required. Each change order or amendment must be in writing, reference the original contract or purchase order, and be numbered consecutively (beginning with number one). The change order or amendment should be maintained with the original contract for reference, and the Procurement Services Department requires that it is attached to the original along with previous changes when submitted for its records. Electronic (.pdf) records of the change order or amendment, along with electronic signatures, are preferred by the Port Authority.

#### 3. Required Approvals and Signatures.

a. Every change order or amendment must be (i) signed by a Port Authority staff member with appropriate approval authorization, (ii) approved in writing as to form by a Legal Department attorney, and (iii) signed by the Controller or an authorized Accounting Department member to indicate the required review, i.e. when the change has an impact on Port Authority expenditures.

b. The total contract price may never be increased by a change order or amendment unless additional funds are available for that purpose. Therefore, the availability of funds for payment of any change resulting in additional expenditures must be certified in writing by the Director of Financial Planning or authorized Financial Planning Department member.

c. There are very specific considerations related to Business Equity requirements for change orders and amendments of contracts with a Small, Minority-, and/or Woman-Owned Business Enterprise (S/MWBE) subcontractor participation goal. Such change orders require (i) the prior review by the Business Equity Department (for determination of whether the requested change impacts the contract goal) and (ii) its written approval.

d. Signature authority and levels of authorization to approve and sign change orders and amendments, along with the other requirements above, are set out in the current



Signature and Approval Authorizations Memo. Individual delegation memos issued by chief officers may also provide further sub-delegations of authority.

4. Monetary Limitations (see examples attached).

a. Change Orders and Amendments Exceeding \$100,000. Except in permitted emergency situations (see below), any change order or amendment in excess of \$100,000 must be approved by the Port Commission.

b. Change Orders and Amendments Up to and Including \$100,000.

i. Informal Contracts. “Informal” contracts are those less than or equal to \$100,000, and that were not approved by the Port Commission.

- If the amount of the original contract, plus the total amount of all prior contract change orders or amendments, plus the amount of the proposed change order or amendment, is less than or equal to \$100,000, the proposed change can be approved by a staff member with appropriate authority.

- If the amount of the original contract, plus the total amount of all prior contract change orders or amendments, plus the amount of the proposed change order or amendment, is over \$100,000, the proposed change must be approved by the Port Commission.

ii. Formal Contracts. “Formal” contracts are those that have been approved by the Port Commission.

- If the total amount of all prior contract change orders or amendments, plus the amount of the proposed change order or amendment, is less than or equal to \$100,000, the proposed change can be approved by a staff member with appropriate authority.

- If the total amount of all prior contract change orders or amendments, plus the amount of the proposed change order or amendment, is over \$100,000, the proposed change must be approved by the Port Commission.

iii. When a prior change order or amendment was approved by the Port Commission. Regardless of whether a contract is informal or formal:

- If the total amount of contract change orders or amendments since that Port Commission approval, plus the amount of the proposed change order or amendment, is over \$100,000, the proposed change must again be approved by the Port Commission.

c. Special Contract Change Order Limitation. The Texas Water Code provides that an original contract price may not be increased by more than 25 percent or decreased by 18 percent without the written consent of the “contractor.” Since as a general rule the Port Authority requires both parties to agree to change orders or amendments, this requirement should not generally be an issue.

5. Emergency Procurements. In some instances, goods and/or services are urgently required by the Port Authority and the cost is expected to exceed the \$100,000 limitations described above. Change orders or amendments under such emergency circumstances are strictly limited by the Water Code, and the Legal Department must be consulted before moving forward in those circumstances.

#### Example 1

#### Change Orders After an Over-\$100,000 Initial Purchase

Initial contract amount \$101,000 (approved by Port Commission)

Change Order No.	Individual Change Order Amount	Cumulative Total <u>(since last Port Commission approval)</u>	Port Commission Approval Required?
1	\$25,000	\$25,000	No
2	\$40,000	\$65,000	No
3	\$40,000	\$105,000	<b>Yes</b>
4	\$35,000	\$35,000 (starting over, since C.O. 3 was approved by Port Commission)	No
5	\$70,000	\$105,000	<b>Yes</b>
6	\$101,000	\$101,000 (starting over, since C.O. 5 was approved by Port Commission)	<b>Yes</b>

Example 2

Change Orders After an Under-\$100,000 Initial Purchase

Initial contract amount \$75,000 (not submitted to Port Commission)

Change Order No.	Individual Change Order Amount	Cumulative Total	Port Commission Approval Required?
1	\$20,000	\$95,000	No
2	\$6,000	\$101,000	<b>Yes</b>
3	\$55,000	\$55,000 (starting over, since C.O. 2 was approved by Port Commission)	No
4	\$50,000	\$105,000	<b>Yes</b>
5	\$101,000	\$101,000 (starting over, since C.O. 5 approved by to Port Commission)	<b>Yes</b>

## **Article 3**

### **Standards for Professional & Personal Services Procurements**

#### **3.1 Professional Services**

There are two types of services that constitute “professional services” under the law, each with a slightly different consequence as to the procurement method used. One type is professional services under the Professional Services Procurement Act (“PSPA”), Texas Government Code, Chapter 2254. The second type is professional services that are exempt from the requirements of Texas Water Code, Section 60.412. Each is explained below.

##### **3.1.1 PSPA Professional Services**

Under Section 2254.004 of the PSPA, contract for “professional services” that must be obtained through the statute is defined as follows:

A service within the scope of the practice, as defined by state law, of:

- Accounting;
- Architecture;
- Landscape architecture;
- Land surveying;
- Medicine;
- Optometry
- Professional engineering;
- Real estate appraising; or
- Professional nursing.

A Request for Qualifications (RFQ) is a solicitation that seeks a vendor based on qualifications that meet the overall criteria and specifications for the particular project. The selection and award must be based on demonstrated competence and qualifications to perform the services for a fair and reasonable price. An RFQ for PSPA professional services will be solicited in a two-tier format:

**3.1.1.1 Step 1** – First select the most highly qualified proposer of those services on the basis of demonstrated competence and qualifications; and

**3.1.1.2 Step 2** – Then attempt to negotiate with that proposer a contract at a fair and reasonable price.

The RFQ is a negotiated method of procurement. It is a Qualifications-based selection process. Price is not an evaluation factor and is considered only in Step 2. After selecting the most highly qualified firm, price negotiations occur with the top ranked firm only. If unable to negotiate a fair and reasonable price with the top ranked firm, negotiations are terminated and price negotiations begin with the next ranked firm. The process continues until fair and reasonable price is negotiated or the list is exhausted.

Regardless of the dollar amount of the contract, the Port Authority shall select providers of professional services only in accordance with Section 2254 of the Texas Government Code (i.e., those professions must be selected only on the basis of demonstrated competence and qualifications). Additionally, requests for qualifications may not ask the prices for architectural, engineering, land surveying, and construction materials testing/inspection services; only after the most highly qualified provider of those specific services has been selected may the price be negotiated.

### **3.1.2 Exempt Personal or Professional Services**

Section 60.412 Exemptions, personal or professional services, is broader than PSPA professional services and are specifically excluded out of the requirements of the Texas Water Code, Section 60.401. The Port Authority may, at its option, procure Section 60.412 professional services in the same RFQ manner stated in the PSPA, but it is not required. Thus, any non-60.412 professional services not specifically listed in the PSPA may be procured by either of those methods provided by statute and best practices, including competitive sealed bidding, competitive sealed proposals, small purchases, sole source procurement, emergency procurement, and special procurement.

In Opinion No. JM-940, the Texas Attorney General has provided some guidance on what constitutes non-60.412 professional services, as follows:

- “It comprehends labor and skill that is predominantly mental or intellectual, rather than physical or manual” Maryland Casualty Co. v. Crazy Water Co., 160 S.W.2d 102 (Tex. Civ. App.--Eastland 1942, no writ).
- “It no longer includes only the services of lawyers, physicians, or theologians, but also those members of disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence. See Attorney General Opinion MW-344 (1981); Black's Law Dictionary 1089-90 (5th ed. 1979) (definition of 'profession').”
- “Includes work involving specialized, technical, or aesthetic judgment,

considerations of cost yield to considerations of quality and competence.”

- “A professional is one who is a member of a discipline with widely-accepted standards of required study or specified attainments in special knowledge as distinguished from mere skill.” Tex. Atty. Gen. Op. DM-347 (1995); *Maryland Casualty Co. v. Crazy Water Co.*, 160 S.W.2d 102, 105 (Tex. Civ. App. – Eastland 1942, no writ).

For Port Authority purposes, when there is any doubt whatsoever as to whether a service constitutes a professional service under either the PSPA or 60.412, such a determination should be made by the Director of Procurement Services or designee on advice of the Legal department.

## **Article 4**

### **Goods & Services Contracts, Generally**

#### **4.1 Getting Started**

The first step in any procurement is to determine the need for particular goods or services. Researching the market is often essential and Port Authority employees may find an ongoing effort to collect market information to be worthwhile. Port Authority employees should consider contacting their counterparts in local jurisdictions or other professional associations. As part of regular business practices, Port Authority employees should determine whether prices are temporarily high or low so that they can adjust their purchase quantities accordingly. Additionally, it may be cost effective to hire a nonbiased consultant to identify specific contract requirements. All of these suggestions are to be considered within each department's individual purchasing practices.

The purpose of this article is to outline general steps that all Port Authority employees involved in the purchasing function should consider when buying goods and services.

##### **4.1.1 Determining the Need**

The Procurement Services Department of the Port Authority's Finance and Administration Division may award "open blanket contracts" for standard items such as office supplies, which are used by many different departments. Under a blanket contract, each department can obtain supplies as needed, taking advantage of the lower prices obtained through bulk purchasing. As a rule, the Port Authority realizes savings by purchasing in larger volumes.

To realize the benefits of volume purchasing, Port Authority employees are encouraged to review their purchasing needs over a period of time and identify the amount of supplies or services needed. Individual solicitations may allow for delivery and payments to be made on an installment basis throughout the contract term. Employees should consider purchases in prior years and any special or unusual needs that may be expected to arise during the period for which the purchase is made. Whenever feasible, employees should combine like items or services into one contract.

Cooperative purchasing should also be considered. Cooperative purchasing means that two or more jurisdictions purchase supplies or services from a contract that has been procured by a lead jurisdiction. Each participant in a cooperative purchase must comply

with its own local rules – i.e., executive orders, charters, or bylaws – when those rules set stricter requirements, such as a requirement for a written contract over a certain dollar threshold. Under Texas law, the Port Authority may participate in a cooperative purchasing program with Port Commission approval.

#### **4.1.2 Planning for Procurements**

In order to ensure that the Port Authority meets its needs in the most effective, economical and timely manner, the use by Port Authority personnel of advance procurement planning and market research is strongly encouraged. The plan should address the technical, business, management, and other significant elements that will impact the procurement from its inception through its completion.

Given the various elements of the plan, requesting departments should develop the plan based upon input from other appropriate organizational elements. The plan should be coordinated and developed orally or in writing depending upon the complexity of the procurement. Written plans are encouraged for procurement actions in excess of \$100,000 and when prepared, shall be provided to the Director of Procurement Services or designee, prior to initiating the contract execution process.

Users must think through their upcoming procurement needs thoroughly. This means planning for new and renewed procurements 12 to 18 months ahead. Procurements for which a contract will have to be written by the Legal department (essentially any procurement that involves highly technical or complex purchases) take a substantial amount of time to consummate due to lengthy preparation, review, evaluation, and execution process.

Any procurement over \$100,000, whether a contract or purchase order, requires a minimum of 6-12 weeks after the bid opening to award due to the time involved in obtaining Port Commission approval. Procurements of any value may take an extended amount of time to award if unforeseen problems arise before it is received. To reduce unforeseen delays, purchase requests should be planned no less than three months before the anticipated contract or purchase order award date and six months would be advisable. Obviously, very simple procurements may require less time and complex ones will require more.

### **4.2 Types of Services and Supply Contracts**

The following procedures apply to services or supply contracts, as applicable:

1. Service Contracts. Service agreements are contracts that include within the scope of services provisions covering a contractor's time and effort rather than for a product or materials, although the use of products and materials may be an



incidental aspect of the work/service to be performed. The deliverables in service agreements, other than performance of the work or service, would be results and reports incidental to the required performance. Examples of service agreements include contracts for equipment repairs, contracts for training services, and contracts for the services of a consultant. Service agreements shall specify the service to be obtained, the method and amount of payment for those services, and other provisions desired or necessitated by the procurement documents, law or regulation.

2. **Supply Contracts.** Supply contracts are agreements for a vendor/supplier to provide tangible goods, materials or products to the Port Authority. Although the primary component of a supply contract is the provision of such goods, such a contract may also include some incidental services required to install the goods. Examples of Port Authority supply agreements are contracts for the purchase of tires, contracts for the purchase of paper products, and contracts for the purchase of fuel. Supply contracts shall specify the product to be obtained, the method and amount of payment for the product, and other provisions desired or necessitated by the procurement documents, law or regulation.

Service Contracts and Supply Contracts shall be administered in accordance with procedures set out in this Manual. These contracts will be administered by the Director of Procurement Services or other designee of the department director. At a minimum:

- Each vendor will reference every shipment and invoice with a purchase order number.
- All vendors must obtain and use this purchase order number when shipping and invoicing to the Port Authority. No order will be received or processed for payment without a purchase order number.

### **4.3 Initial Contracting Requirements**

Prior to the issuance of a procurement solicitation, the requesting department must verify budget authority and funding availability with the department's Chief Officer or designee. All requests for contract based services, goods, equipment or products shall be initiated by an authorized requestor through a requisition to the Chief Officer.

#### **4.3.1 Form of Contract**

Contracts for the procurement of goods and services must adhere to standard Port Authority contract provision requirements, unless deviations are approved by the Legal department. Contracts that the Legal department deems routine will be generated by Procurement Services using forms approved by the Legal department. Unusual or complex contracts will be drafted with the assistance of and review by the Legal

department.

The Port Authority's Purchase Order ("PO") is itself a contract document. Proposals that are submitted that contain, or appear to contain, additional or conflicting contract terms, are handled in accordance with the provisions of the "Offer/Acceptance" section on the PO, which are described below.

If a successful respondent has submitted a written proposal, then the Port Authority's Purchase Order ("PO") is an acceptance by the Port Authority of the respondent's offer to sell in accordance with the resulting contract, or, if no contract is executed, (a) the Port Authority accepts only the description, quantity, price, or delivery schedule of the items (goods and/or services) included in the respondent's proposal, and (b) the Port Authority's acceptance is limited to the express terms of the PO and the solicitation, except to the extent that those terms conflict with the description, quantity, price, or delivery schedule of the items included in the respondent's proposal.

Any additional or different terms contained in the respondent's proposal shall be deemed material and rejected by the Port Authority. If a respondent has not submitted a written proposal, then the PO is an offer to buy the items described in the solicitation, subject to respondent's acceptance by commencement or written acknowledgement. A respondent's acceptance of a PO is expressly limited to the terms of the PO and the solicitation, and the Port Authority objects to any additional or different terms in respondent's acceptance. A change made by a respondent to the PO is a counter-offer to sell, and cancels the PO, unless the Port Authority accepts the counter-offer by issuing a new or amended PO. Once accepted, a PO is a binding contract.

#### **4.3.2 Contract Tracking/Monitoring**

The Director of Procurement Services or designee shall assign a contract purchase order number to each contract and maintain tracking and monitoring information in an automated system for individual tracking purposes as required herein. The assigned Contract Administrator, as defined herein, will monitor the contract for the purpose of contract administration as determined by the Director of Procurement Services or designee.

### **4.4 Writing a Purchase Description**

Once department personnel have determined a need, they must then convey that need to Procurement Services and/or vendors in such detail as to ensure that the Port Authority receives responsive quotes, bids, or proposals that can be priced and compared in a fair manner. A sufficient purchase description may require only a few words for each item. For more complex procurements, the purchase description will

include more detailed specifications that may include parameters such as size, dimensions, quality, performance, warranties, safety, security, installation, and terms.

A purchase description may also include a “scope of services” that details specific services, including the work products or deliverables to be produced under the contract. An inadequate purchase description renders effective competition impossible because potential vendors will not know what the Port Authority is seeking and will be unable to offer a reliable price. Vague purchase descriptions often result in vendor protests and cancelled procurements. If the Port Authority does award a contract using a vague purchase description, it may end up paying for supplies or services it does not need, and Port Authority procurement employees are likely to have disputes with vendors over what the contract does or does not require. Port Authority employees are encouraged to use purchase descriptions that others have used successfully and – in consultation with the Director of Procurement Services or designee, if needed – adapt those to their needs.

#### **4.4.1 Components of a Purchase Description**

At a minimum, the following are the elements of any good purchase description:

1. A list and description of each supply or service in sufficient detail for all vendors to understand what the Port Authority department needs. Relevant sample documents may be appended to the purchase description; alternatively, vendors should be instructed how to obtain or review such documents.

When purchasing a service, the description should clearly specify the service or services vendors will be required to perform and the documents, reports, and materials they must deliver.

2. The quantity of each supply or service needed and whether the quantity shown is the actual amount or an estimate. Vendors need this information to judge whether they can handle the contract and to submit accurate prices.
3. The timeline for which each supply or service is needed. The exact schedule, or an approximate schedule, with a statement that it is subject to minor adjustment, should be included in the purchase description.
4. The delivery terms, if known.
5. Other pertinent information that further describes the supply or service required.

#### **4.4.2 Preparing Contract Terms and Conditions**

Port Authority legal personnel have developed contract terms and conditions for inclusion in soliciting bids or proposals. All contractual terms and conditions applicable to the procurement must be included in a Competitive Sealed Proposal (“CSP”) or a

Request for Proposal (“RFP”). Both CSPs and RFPs – along with other methods of procurement – are discussed in detail later in this Manual. For highly complex or unusual procurements, requesting departments should consult with legal personnel regarding modifying the terms and conditions.

It is strongly recommended that Port Authority employees consult first with the Procurement Services department or legal for standard procurements to ensure utilization of appropriate forms.

#### **4.4.3 Contract Duration and Options for Renewal, Extension, or Purchase**

Port Authority staff must also determine the contract term that best suits the Port Authority’s needs. As employees make this determination, they should keep in mind that both short-term and long-term contracts involve tradeoffs.

#### **4.4.4 Estimating the Dollar Value of a Contract**

For most contracts, the dollar value of the contract will be based on the total contract cost. For a contract that includes options to renew or extend the contract, the specific procedures used will depend on the dollar value over the entire contract term, including the value of any options to renew or extend the contract. Thus, the value of a two year contract with a one year renewal option would be the cost of the base years plus the cost of the option year.

### **4.5 Selecting the Appropriate Procurement Method**

If the estimate of the contract value is more than \$100,000, the Director of Procurement Services or designee will decide which statutorily approved methods of procurement to utilize. Formal procurements (value over \$100,000) are used to introduce competition into the procurement process. Specifications (Scope of Work) form the backbone of formal procurement. Specifications must be:

- Sufficiently complete to ensure the Port Authority needs are adequately met
- Broad enough to ensure competition
- Drawn to reflect the procurement needs of the Port Authority, rather than favor a particular vendor.

The selection of the appropriate method is determined by the expected cost of the procurement action, the feasibility of preparing complete specifications at the outset of the procurement, and whether or not price alone or price plus other criteria such as quality should determine the selection among qualified suppliers.

#### **4.5.1 Procurement Methods under State Law**

Under Texas Water Code Section 60.454, all Port Authority contracts valued at more than \$100,000 in the aggregate for each 12-month period shall be made by the method below that, in the opinion of the Port Commission, provides the best value to the Port Authority:

- 4.5.1.1** A design-build contract to construct, rehabilitate, alter, or repair facilities;
- 4.5.1.2** A contract to construct, rehabilitate, alter, or repair facilities that involves using a construction manager-agent or construction manager-at-risk;
- 4.5.1.3** Competitive sealed proposals for construction, repair, rehabilitation, or alteration of a facility, and non-construction items;
- 4.5.1.4** Request for proposals for navigation projects;
- 4.5.1.5** A job order contract for the construction, repair, rehabilitation, or alteration of a facility;
- 4.5.1.6** A request for proposals, if the contract is for items other than construction services;
- 4.5.1.7** Competitive sealed bids;
- 4.5.1.8** An interlocal contract;
- 4.5.1.9** Reverse auction procedure;
- 4.5.1.10** A contract with the United States; or
- 4.5.1.11** A contract with the State.

#### **4.6.1 Formal and Informal Procurement Methods**

The Port Authority has informal and formal procurement methods. Procurements valued at up to \$100,000 are informal procurements. Procurements valued at more than \$100,000 are formal procurements. Formal procurement methods include: competitive sealed bids, competitive sealed proposals, requests for proposals, and requests for qualifications.

The Port Authority's eProcurement system is the most common method used at the Port Authority for informal procurements. The Port Authority uses the eProcurement system to generate a procurement request with detailed specifications. Registered vendors are able to enter prices and other relevant information online. Price alone does not determine which item is selected in Port Authority informal procurements.

Regardless of the informal method used, the requesting department staff member will

select the item determined to provide the best value to the Port Authority and may consider the same selection criteria as are used in formal procurements, which include price, vendor reputation, safety, past performance, environmental, quality, benefit to the Port Authority, and small, minority-, woman-owned business participation. Items such as professional services are selected based on the qualifications of the proposer.

#### **4.6.2 Required Factors**

Under the Texas Water Code Section 60.458, except as otherwise provided in Subchapter O, in determining to whom to award a contract, the Port Authority shall consider:

- the purchase price;
- the reputation of the vendor and of the vendor's goods or services;
- the quality of the vendor's goods or services;
- the extent to which the goods or services meet the Port Authority's needs;
- the vendor's past relationship with the Port Authority;
- the impact on the ability of the Port Authority to comply with laws and rules relating to its small, minority- and woman-owned Business Program;
- the total long-term cost to the Port Authority to acquire the vendor's goods or services; and
- any other relevant factor specifically listed in the request for bids or proposals.

#### **4.6.3 Timelines**

Prior to the issuance of a bid/proposal a representative of the Procurement Services department will meet with the requesting department to establish business requirements and milestones relative to the upcoming solicitation. The purpose of this meeting is to ensure that the bid/proposal process is administered efficiently and effectively.

### **4.7 Appointing an Evaluation Team**

The requesting department will be responsible for convening an evaluation team composed of at least three (3) representatives from the requesting department, consultants, and other departments. The requesting department will select members of the rank and evaluate team and coordinate with Procurement Services the date/time of the initial/final evaluation session. The Director of Procurement Services or designee shall be present to instruct and advise on the rank and evaluate process. The evaluation team shall always seek award to the vendor offering best value to the Port Authority. The evaluation team shall conduct evaluations in an ethical and fair manner.

When the requesting department selects individuals to convene an evaluation team for a particular procurement, the following general factors should be considered:

- The relevance of the individual's education and experience to the subject matter of the solicitation;
- The possibility that a superior could directly or indirectly influence the manner in which a subordinate may vote;
- The amount of time the individual would potentially be able to dedicate to the task relative to the amount of time needed to complete it; and
- The possibility of any conflict of interest with respect to the individual's relationship to potential vendors. The individual must have the ability to maintain total impartiality throughout the selection process, as well as to focus on the best interests of the Port Authority and not merely his or her own department's or individual perspectives.

#### **4.7.1 Evaluation Team Members**

Serving as a member of an evaluation team means that an individual will be entrusted with a great deal of responsibility on behalf of the Port Authority to conscientiously evaluate the submitted proposals within the guidelines identified below. Evaluation team members are frequently required to devote considerable time reading proposals, conducting site visits, meeting to discuss proposals with other evaluators, and engaging vendors in oral presentations. Acceptance of an invitation to serve on an evaluation team should be construed as a commitment, within reasonable limits, to expend the time necessary to complete the entire process and to perform a thorough evaluation.

#### **4.7.2 Duties and Responsibilities of Evaluation Team Members**

Evaluation team members must perform their evaluations to the best of their abilities without prejudice or bias. They must keep all information contained in proposals or obtained during the evaluation process confidential, to the extent allowed by law. Furthermore, they must render a fair and impartial evaluation based exclusively upon:

- The evaluation criteria contained in the proposal;
- The contents of the vendors' proposal;
- Information gained from clarification of proposals;
- Oral presentations; or
- Other legitimate sources of reference.

If, upon receipt of the vendors' proposals, team members find that a conflict of interest may exist, they should report it immediately to the Director of Procurement Services, or designee, and to the chairperson of the evaluation team.

If a situation arises where it is necessary for a team member to recuse him/herself, the Director of Procurement Services, or designee, will determine if that person must be replaced or if the team may proceed with the remaining members to complete the evaluation and make a recommendation.

Note: If a Port Authority employee is the superior of another Port Authority employee, the superior may serve as the team chairperson only if the superior does not attempt to influence the scoring of his or her subordinates.

#### **4.7.3 Team Meetings**

Team members are to attend all evaluation team meetings. At the first team meeting a timeline is typically established for the entire evaluation. This should include the number and dates of future meetings, if and when oral presentations will be held, and where the meetings will take place. It is the responsibility of the individual members to arrange their work schedules to allow for full and complete participation.

#### **4.7.4 Understanding Solicitation Documents**

Team members must read the proposal and acquaint themselves with the nature of the requested goods or services. If a team member needs to make notations, he or she must do so directly on the evaluation forms provided. These evaluation forms, with any written comments, become a permanent part of the documentation of the procurement. In some instances these forms – together with evaluator's notes – may be made available to a protesting vendor or its attorney or to any member of the public who makes a request under the Texas Public Information Act. Therefore, notes should be factual, non-inflammatory and should contain neither offensive nor inappropriate remarks. Following the rank and evaluate, Procurement Services will collect all notes and retain in the contract files. Any questions should be directed to the Director of Procurement Services, or designee, or to the chairperson of the team.

Each team member's notes are to be consistent with his/her final overall ranking of all vendors. There should be a note for each significant area in which a vendor is either weak or strong. Frequently, a new evaluation form will be completed after oral discussions or revised submissions. Although each set of evaluation forms are retained in the permanent procurement file, only the final one shall be used for the final evaluation and ranking.



#### **4.7.5 Discussion at Team Meetings**

Team members are encouraged to openly discuss their findings on each proposal at the scheduled evaluation team meetings. They should also freely discuss factors relevant to the published criteria that might influence their evaluations, such as previous experience with a vendor. Team members should seek clarification from the Director of Procurement Services or designee as to whether information or factors that influenced them are proper and appropriate to use.

#### **4.7.6 Oral Presentations**

Potential vendors may provide oral presentations to the team and/or the Port Commission. The duration of such presentations is predetermined by the team and all team members will attend them, if possible. Members should – to the best of their abilities – ask questions regarding parts of proposals needing explanation or clarification or regarding those sections of a proposal that may have deficiencies that the potential vendor could cure. A Notice of Presentation is contained in Appendix 11 herein.

### **4.8 Debriefing**

Debriefing is the act of informing suppliers, contractors or service providers that were not selected during a particular procurement process, of the reasons why they were not selected.

When a contract is awarded on some basis other than price alone, unsuccessful offerors may submit a written request for a debriefing to the Director of Procurement Services within ninety (90) days of award. Debriefings shall be provided at the earliest feasible time after it has been received by the Port Authority. The debriefing shall be conducted by the Director of Procurement Services or designee and the committee chair or designee who is familiar with the rationale that was utilized in the selection and award process. They may need to meet with rank and evaluate team and review notes prior to actual debriefing.

At a minimum, the debriefing shall:

1. Provide rationale for excluding the debriefed offeror from competition (if applicable).
2. Reduce misunderstanding and instill confidence that the offeror was treated fairly.
3. Assure the offeror that proposals were evaluated in accordance with the solicitations, as well as, applicable laws and regulations.
4. Identify weaknesses in the offeror's proposal, so the offeror can better prepare proposals for future acquisitions.

5. Reduce misunderstandings that would otherwise lead to a protest.
6. Provide an explanation of the source selection decision (Texas Water Code/Best Value).
7. Give the offeror an opportunity to provide feedback regarding the solicitation, discussions, evaluations, and the source selection process. Caution: A debriefing is not a debate or defense of the Port Authority's award decision or evaluation results.

#### **4.8.1 Ground Rules and Agenda**

Explain that the debriefing IS NOT and WILL NOT include the following:

1. A page-by-page review/analysis of the offeror's proposal.
2. A point-by-point comparison with other proposals.
3. A debate or defense of the Port Authority's award decision or evaluation results.
4. Information that is confidential by law.

#### **4.8.2 Evaluation Factors/Subconsiderations**

1. Review and provide an overview of the factors/subconsiderations.
2. Focus on the significant factors and explain the rating definitions.

#### **4.8.3 Source Selection Organization**

1. Identify team members by title/position/experience, but not by name, unless the source selection evaluation team is in attendance.
2. Assure the offeror that highly qualified personnel evaluated its proposal in accordance with the solicitation and applicable laws and regulations.

#### **4.8.4 Evaluation Results**

1. Disclose the Port Authority's evaluation of any significant weaknesses or deficiencies in the offer.
  - a. When determining whether something was a strength or weakness, consider whether it impacted the evaluation rating in any way.
  - b. If a weakness was significant enough to include during discussions, it is probably significant enough to mention during the debriefing.
2. Discuss past performance information on the debriefed offeror. (Do not reveal

names of individuals who provided past performance information.)

#### **4.8.5 Overall Rankings**

1. Disclose the overall ranking of all offerors when any ranking was developed by PHA during the source selection. However, DO NOT use or associate the rankings in a way that would identify the other unsuccessful offerors. Use numbers or letters to indicate other offerors to conceal their identities.
2. Disclose the overall evaluated cost or price (including unit prices) and technical rating, if applicable, of the successful offeror and the debriefed offeror.
  - a. DO NOT disclose any specific PHA cost/price adjustments to the awardee's proposed costs/prices.
3. Include any significant cost realism adjustments that might have been made at the major cost element level for the debriefed offeror.

#### **4.8.6 Rationale for Award Decision**

1. Provide a summary of the rationale for the contract award decision.
2. Only release the total evaluated price of the other unsuccessful offerors if they agree to the release or the PHA determines that release would not cause any future competitive harm.
3. Provide responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

#### **4.8.7 Debriefing Memorandum for the Contract File**

1. A summary of the debriefing shall be made a part of the contract file.

### **4.9 Protests**

It is possible that after a vendor has been recommended for award, the rank and evaluate team may be called upon to help the Director of Procurement Services or designee respond to a protest. Bid protests and their procedures are detailed in Article 12.

## **Article 5**

### **Procurements up to \$100,000**

#### **(Informal Procurements)**

#### **Overview**

Texas law does not require newspaper advertising or use of specific procurement methods for most of the Port Authority's small purchases. (Currently the statutory threshold dollar amount for small purchases is \$100,000. The threshold dollar amount must consider the value of items "in the aggregate for each 12-month period.") Even though these purchases may be exempt from the statutory requirements for competitive purchasing methods, best practice requires the inclusion of adequate controls and competition. This Article describes the methods used by Port Authority for these purchases not exceeding \$100,000 (in other words, purchases up to and including \$100,000).

The provisions of this Article apply to all employees of the Port Authority authorized to initiate, approve, and process requisitions.

#### **5.1 Purchases between \$25,000.01 and \$100,000**

1. With the exception of the purchases listed in 5.3, below, informal purchases in amounts more than \$25,000 and up to and including \$100,000:
  - a. Shall be purchased on the "open market" (i.e., using the Port Authority's electronic procurement system, currently BuySpeed), or
  - b. May, at the requesting department's option, be procured using a formal advertised method (e.g., CSB, CSP, RFP), particularly if the requesting department believes that the total purchase will exceed \$100,000 in a calendar year (for example, the amount of the original contract added to the amount(s) resulting from change order(s) or amendment(s)).
  - c. The requesting department should make reasonable efforts to determine that, if available, at least one Port Authority Enrolled Small, Minority- and/or Woman-Owned Business ("S/MWBE") is registered with the applicable NIGP code to receive the electronic procurement solicitation, in accordance with the provisions related to NIGP Codes in the Article on Business Equity.
  - d. With the approval of Procurement Services, a requesting department may, instead of advertising the solicitation on the open market through the electronic procurement system, direct the solicitation to specific potential Vendors (i.e., a Direct Solicitation). In this event, the requesting department must provide a written

request for quote to at least three potential Vendors (if available), one of which should be a Port Authority Enrolled Small, Minority- and/or Woman-Owned Business (“S/MWBE”) (if available).

2. Requesting departments shall award purchases of amounts more than \$25,000 and up to \$100,000 as follows:
  - Unless approval is obtained from Procurement Services, to a Responsive, Responsible Enrolled S/MWBE (if available) provided the price quoted by the S/MWBE price is the lowest price or is within 10% or less of the lowest Bid.
  - If no Responsive, Responsible Enrolled S/MWBE is available, or if the price quoted by the Enrolled S/MWBE is more than 10% higher than the lowest price, and all other evaluation factors appear to be equal, then at the option of the requesting department, either:
    - the Responsive, Responsible Bidder offering the lowest price may be selected, *or*
    - the offer meeting specifications and providing best value to the Port Authority may be accepted.

## **5.2 Purchases not exceeding \$25,000**

1. With the exception of the purchases listed in 5.3, below, informal purchases up to and including \$25,000:
  - a. May, at the requesting department’s option, be purchased on the “open market” (i.e., using the Port Authority’s electronic procurement system). If using the electronic procurement system to solicit on the open market, the requesting department should make reasonable efforts to determine that, if available, at least one Port Authority Enrolled S/MWBE is registered with the applicable NIGP code to receive the electronic procurement solicitation, in accordance with the provisions related to NIGP Codes in the Article on Business Equity; or
  - b. May be made by Direct Solicitation (i.e., not advertising on the open market) of one or more potential Vendors. If the requesting department is not advertising the solicitation on the open market through the electronic procurement system, the requesting department must provide a written request for quote to at least one potential Vendor; if available, that potential Vendor should be a Port Authority Enrolled S/MWBE.
2. Requesting departments shall award purchases of amounts up to \$25,000 as follows:
  - To a Responsive, Responsible Enrolled S/MWBE (if available and acceptable to

the requesting department) provided the price quoted by the S/MWBE price is the lowest price or is within 10% or less of the lowest Bid.

- If no acceptable Responsive, Responsible Enrolled S/MWBE is available, or if the price quoted by the Enrolled S/MWBE is more than 10% higher than the lowest price, and all other evaluation factors appear to be equal, then at the option of the requesting department, either:
  - the Responsive, Responsible Bidder offering the lowest price may be selected, *or*
  - the offer meeting specifications and providing best value to the Port Authority may be accepted.

### **5.3 Exceptions to Informal Guidelines**

This section describes certain limited methods for awarding service and supply contracts.

- 1) Emergency purchases (\$0 - \$100,000). Purchases in emergency situations [Emergency declared by Executive Director], Direct Selection. Purchases in such emergency situations must follow the Port Authority's procedures for such purchases and be made in accordance with Water Code, or other applicable law. The Requisition or Purchase Order must state that it is an Emergency procurement.
- 2) Sole source purchases (\$0 - \$100,000). Purchases of sole-source items, including captive replacement parts and software licenses, Direct Selection. The Requisition or Purchase Order must state that it is a Sole Source procurement.
- 3) A&E services (\$0 - \$100,000). Purchases of professional services in the A&E Services Industry Category. Informal RFQ process (i.e., made in accordance with Government Code 2254.004 - select only on qualifications; don't ask price; don't require S/MWBE). The Requisition or Purchase Order must state that it is an A&E Services procurement.
- 4) Damage claims repairs paid by third parties (\$0 - \$100,000). Award to lowest responsive, responsible bidder; don't require S/MWBE. The Requisition or Purchase Order must state that it is a Damage Claim repair.
- 5) Sponsorships / Donations / Memberships or other Special Industry Category purchase (\$0 - \$100,000), Direct Selection. The Requisition or Purchase Order must state that it is a Sponsorship, Donation, Membership, or other Special Industry Category purchase (as applicable).

- 6) Purchases using interlocal agreements (\$0 - \$100,000), Direct Selection. The Requisition or Purchase Order must state that it is an Interlocal procurement. All new interlocal agreements, regardless of dollar amount, must be approved by the Port Commission.
- 7) Purchases using cooperative purchasing programs (\$0 - \$100,000), Direct Selection. The Requisition or Purchase Order must include the Cooperative Purchase program information.
- 8) Personal Services (\$0 - \$100,000), Direct Selection. The Requisition or Purchase Order must state that it is a Personal Services procurement.
- 9) Professional services (Non-A&E) (\$0 - \$100,000), Direct Selection. It is recommended that the requesting department check with Business Equity for assistance in locating an S/MWBE provider of Professional Services (Non-A&E). The Requisition or Purchase Order must state that it is a Professional Services (Non-A&E) procurement.

## **5.4 Evaluating the Bids**

After Bids are received, the Bidders and their Bids are evaluated in accordance with the provisions of this section.

1. The Port Authority reserves the right to accept or reject any or all Bids, and waive formalities to best serve the interests of the Port Authority. Moreover, in case of ambiguity or lack of clearness in any Bid, the Port Authority reserves the right to consider the most advantageous construction of, or to reject, the Bid. If there is an overwhelming response to a solicitation, the Port Authority may limit the number of firms under consideration.
2. Bidders must be registered in the Port Authority's e-procurement system (BuySpeed) to do business with the Port Authority.
3. Errors in extensions of unit prices and addition errors are subject to correction by the Port Authority. In the case of a mathematical error in the extension of the unit price, the unit price shall govern and the total extended price and total proposed price shall be recalculated.
4. The Port Authority may discuss with one or more Bidders options for scope or time modifications and any price changes associated with the modifications.
5. The Port Authority reserves the right not to evaluate Bids deemed non-Responsive and Bids from entities considered not "Responsible." In determining whether a Bidder qualifies as "Responsible," factors, including but not limited to the following, may be considered. A Responsible Bidder should:
  - a. have the ability to comply with the required delivery or performance schedule,

- taking into consideration other business commitments;
  - b. have a satisfactory record of performance and integrity;
  - c. have a satisfactory safety and environmental record, if applicable;
  - d. have satisfactory references (from other clients) and/or past performance record (from prior goods/services provided to the Port Authority); and
  - e. have the necessary facilities, equipment, material, personnel, organization, experience, authorizations, technical skills, and financial resources to fulfill the terms of the contract for the project, and (if applicable) to provide service for the product.
6. In accordance with the applicable law and the policies and procedures of its Business Equity Programs, the Port Authority shall consider the Bidder's status as an Enrolled S/MWBE.
  7. Unless all Bids are rejected, the requesting department will evaluate Bids as necessary to determine and select the Bid that offers the best value for the Port Authority based on the evaluation.

## **5.5 Making and Documenting the Purchase**

Informal Bids are tabulated by the requesting department in the e-procurement system. The purchase information should include all of the information set out below.

- Vendor name
- Information relating to the Vendor's BuySpeed registration, if applicable
- Quoted price (including corrected price, if applicable). Change in quantities require a change order.
- Information relating to the Bidder's status as an Enrolled S/MWBE (including those with dual certifications).
- Modifications to scope or time discussed, if applicable, and any related modifications to price. Change in quantities require a change order.

The tabulation sheet may also include information relating to Responsiveness of the Bid and the Responsibility of the Bidder, considering the Responsibility factors set out in section 5.4(5).

## **5.6 General**

1. All Informal purchases must comply with applicable Business Equity provisions, as set out in more detail in the Article on Business Equity.
2. The purchases that do not have a *requirement* to select an S/MWBE are still important to the Port Authority's Business Equity Programs. Therefore, requesting departments, in making purchases not exceeding \$100,000:



- a. Must keep in mind that all dollars awarded and committed to Enrolled SBEs count toward the Port Authority's SBDP organizational goal, regardless of whether the individual solicitation requires or includes evaluation credit for SBE status or participation. Similarly, all dollars awarded and committed to Enrolled MWBEs count toward the Port Authority's annual aspirational MWBE goal, regardless of whether the individual solicitation requires or includes evaluation credit for MWBE status or participation.
  - b. Are encouraged to use appropriate "Aspirational Efforts", including encouraging the selection of available S/MWBE in purchases as further described in the Article on Business Equity of this Manual.
  - c. Are reminded that if a contract (other than the Purchase Order) is required for goods or services not exceeding \$100,000, the contract may contain provisions related to the SBDP or MWBE Program.
  - d. Are reminded that successful Vendors are required to comply with all applicable Port Authority SBDP and MWBE Program requirements. Business Equity tracks and reports on: (i) whether purchases are Program-Eligible, Program-Exempt, or Program-Excluded; (ii) the Industry Category of the purchase; and (iii) the dollar amounts awarded/committed to S/MWBE businesses. For purchases not exceeding \$100,000, this information is received from BuySpeed. For purchases over \$100,000 this information also comes from Method of Procurement forms, Respondents Lists, and Port Commission minutes. Projects using subcontractors or suppliers require Contractors to use B2Gnow to provide reporting and compliance information regarding the subcontractors/suppliers.
3. The requesting department (i.e., the initiator of the requisition) is responsible for developing all pertinent information about the Items to be procured and obtaining the appropriate signatory authority.
4. Requisitions will be processed through the Port Authority's procurement system. After Bids are evaluated and documented, Procurement Services will process the purchase order. The requesting department will review and monitor purchase orders for delivery and receipt of merchandise, including resolution of order discrepancies and/or damages.
5. Requesting departments may not split orders to avoid either the requirements to obtain Port Commission approval or to avoid the statutory dollar threshold for formal procurements. Refer to the section of this Manual on "Circumventing Procurement Laws" for additional information.
6. Procurement Services will review the requisition and will assess the required

compliance in the selection of the supplier. In doing so, the requesting department will attach the Informal Selection/Justification document outlining its review and selection of the supplier supporting the requesting department's justification, method, and practice of the selection. The submission and value of the document ensures the requesting department's compliance with PHA policies, including Business Equity and Procurement guidelines.

7. Procurement Services will use best efforts to support the capture in the electronic procurement system (currently "BuySpeed") of required procurement data needed for Business Equity reporting regarding Informal Purchases that were not awarded to S/MWBE businesses.
8. The requesting department has primary responsibility for providing written documentation of procurement efforts and results which must be made and maintained in the electronic procurement system ("BuySpeed"). Written documentation of procurement efforts and results must be retained in accordance with the Port Authority's records retention policy.

## **5.7 Price Quotations**

Price quotations obtained in writing may be used to negotiate informal purchases. Requesting departments may not split orders to avoid either the requirements to obtain Port Commission approval or to avoid the statutory dollar threshold for formal procurements. For purchases valued below bid limits, but more than \$25,000, the requesting department and/or Procurement Services will use the electronic procurement application and/or a source list of reliable contractors/suppliers to obtain a request for quotes.

Written requests for quotes must be sent to at least three contractors/suppliers to comply with best practices and ensure competition. Fewer than three quotes requires the approval of the Director of Procurement Services and/or designee. The request for quotes should be on a standard form provided by Procurement Services. It should contain at least the following information:

1. Name and address of contractor/supplier;
2. Description of item;
3. Quantity required;
4. Last date quotations accepted;
5. Approximate date delivery is required;
6. Terms and conditions of purchase;
7. Total or unit price; and
8. Dates the quoted price will be honored.

## **Article 6**

### **Goods & Services Contracts of More Than \$100,000: Competitive Sealed Bids**

Competitive Sealed Bids (“CSB”) is an advertised procurement method, as used by the Port Authority, 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 and read aloud electronically. Competitive bidding aims at obtaining goods and services at the lowest prices by stimulating competition and by preventing favoritism.

The Competitive Sealed Bid method is an authorized procurement method for the Port Authority to utilize for purchases in amounts more than \$100,000. This method is appropriate to use when the requirements are clearly defined, negotiations are not necessary and price is the major determining factor for selection.

The Competitive Sealed Bid method is an authorized method of procurement for the Port Authority to utilize for the purchase of the following commodities:

1. Repair of facilities as may be required following damage caused by third parties;
2. Products or goods more than \$100,000, i.e. vehicles, mowing equipment, office supplies;
3. Nonprofessional services more than \$100,000, i.e. landscaping, delivery services, and cleaning services.

The purpose of this article is to explain the laws, policies, and procedures underlying the formal competitive sealed bid process.

#### **6.1 Development of Specifications**

Specifications will be developed and documented by the requesting department. Specifications, both descriptive and technical, should be written in a clear, specific manner, providing as much information as is required for a supplier/vendor to identify the goods and/or services being bid. Requestors may also ask Procurement Services for assistance in specification development. Specifications should comply with the guidelines in Article 2, Procurement Standards.

## **6.2 Bid Packet**

A CSB bid packet will be prepared by the requesting department. The bid packet shall contain, but is not limited to, the following information:

- Invitation for Bidders
- Bidder's Checklist
- Instructions to Bidders
- Bid
- Selection Criteria
- Technical Specifications/Special Terms
- Contract Terms
- Attachments

## **6.3 Vendor List**

Vendors qualified to provide the commodity or service required by the Port Authority, are invited to participate in the bid process. If possible, the requestor may supply a list of suggested vendors. Procurement Services may utilize the Port Authority e-procurement application and his/her experience and/or current market trends to include additional vendors.

## **6.4 CSB Advertisement**

The Texas Water Code requires public notice of formal procurement packages. A notice of the CSB will be advertised twice in a local newspaper (e.g., *Houston Chronicle*) – once a week for at least two (2) consecutive weeks prior to the bid opening date.

## **6.5 Pre-Bid Conference Preparation**

The requesting department serves as chairperson during the pre-bid conference and is primarily responsible for addressing technical and site specific questions. The Procurement Services department will have representatives present to answer questions related to the procurement process. An attendance roster is established at each conference to collect the names of attendees, company represented, and contact information (including email addresses).

### **6.5.1 Agenda/Guidelines:**

#### **6.5.1.1 Opening**

After calling the pre-bid conference meeting to order, the Port Authority representative introduces him/ herself, covers basic housekeeping rules, lays out the agenda and has everyone introduce themselves.

#### **6.5.1.2 Recording**

The Port Authority representative announces administrative information regarding any audio or videotaping of the meeting. In addition, attendees are reminded that only a written change via an addendum legally binds the CSB.

It is recommended that the Port Authority representative record (or ensure that detailed notes are taken) at any pre-bid conference. The recording or detailed notes provide a ready reference and checklist if there is a need to publish addenda.

### **6.6 Pre-Bid Conference**

Unless otherwise stated in the solicitation document, attendance of prospective bidders at a pre-bid conference is not mandatory.

Prior to the actual conference, the Director of Procurement Services or designee may wish to meet with the department's point of contact to answer questions and conduct discussions related to the procurement and conference. The meeting is used to coordinate participation and establish ground rules so that the pre-proposal conference is conducted in an organized, meaningful and professional manner. It is also used to ensure departmental representatives are working together to better serve the Port Authority's needs.

The pre-bid conference is a meeting of potential proposers, the Director of Procurement Services or designee and the requesting department's technical representative(s) for the purpose of reviewing requirements, facilitating a clear understanding, and promoting competition. The CSB should specify a reasonable conference time to maximize attendance. The conference date should be within ten days after potential proposers have received their CSB. The administrative point of contact and instructions regarding the pre-proposal conference should be included in the CSB cover page.

Pre-proposal conferences may result in later modifying the CSB if there are special market conditions of which the Port Authority may have been unaware. In this event, an addendum is composed by the requesting Department Director in collaboration with the Director of Procurement Services or designee and then submitted to all proposers prior to the CSB closing date. Those attending the conference are advised that only written modifications via an addendum are considered alterations to the CSB.

### **6.6.1 CSB Overview and Review**

The Port Authority representative will cover the CSB instructions, general terms and conditions and provide an overview of the project/scope of work. Review of the CSB itself serves as the focus for the conference. The Port Authority representative reviews the document, page by page if necessary, permitting prospective bidders an opportunity to ask questions as each page is reviewed.

However, questions concerning the CSB may be requested prior to the pre-bid conference in order to identify the type of questions that may be asked.

### **6.6.2 Recap and Closing**

The Port Authority representative summarizes the key points of the conference. Simple questions should be answered immediately while others may not be easily answerable. In that event, the Port Authority representative must only give an answer that will withstand rigorous scrutiny after the conference. All relevant questions pertaining to the CSB may be addressed in the subsequent addendum and/or through an electronic vendor database. All proposer inquiries relating to interpretation and technical details of the CSB must be referred to the Port Authority representative.

Attendees may offer some suggestions or objections that may be taken under advisement. The Port Authority representative will make a written response in a timely manner before the scheduled opening. No decision on complicated or sensitive matters should be made in haste at the pre-proposal conference. It may be necessary to further research the matter to provide the correct answer.

## **6.7 Pre-Bid Site Visits**

Some projects will necessitate a site visit by bidders. The point of contact for arranging a site visit should be included on the CSB cover page. A general site orientation “walk through” may be discussed during the pre-bid conference with a site visit scheduled that day or at a later date.

## **6.8 Communications with Bidders**

The CSB should advise bidders that they must channel all communications concerning the CSB through the Director of Procurement Services or designee and to no other person or Port Commissioner. All communications should be in writing and should be

responded to by the requesting department or the Director of Procurement Services or designee in writing through an addendum or through an e-procurement application. Failure to observe this “no contact” rule, including but not limited to, attempts to contact Port Commission members directly in regard to the CSB, may be justification for rejection of the violator’s bid.

## **6.9 Addenda to Bids**

Addenda may be issued by the Port Authority prior to or after the pre-bid conference and may reflect questions addressed during the pre-bid conference. Prior to issuing an Addendum, the Director of Procurement Services or designee must consider the time remaining until the CSB opening date. If additional time is needed for the bidder to respond, an Addendum may be used to extend the due date of the CSB.

The Director of Procurement Services or designee is responsible for coordinating the subject matter and issuing the Addenda;

- All changes must be in writing;
- All Addenda shall be numbered sequentially;
- All Addendum must be mailed to bidders on the CSB email list and to all pre-bid conference attendees; and
- Interpretations of a material consequence may not be made orally to potential bidders.

If an Addendum is necessary and seven business days or less remain before the CSB opening date, the deadline for responding to the CSB may be extended.

## **6.10 Modification and Withdrawal of CSBs**

Competitive Sealed Bids may be modified or withdrawn by any method authorized by the solicitation, and in the same manner as set out for the modification and withdrawal of bids set out in Article 2.

## **6.11 Bid Due Date**

Bids will be due on the deadline specified in the solicitation. Any bid, request for withdrawal, or modification of a bid that is not received at the designated location, time, and date set forth in the bid documents will be considered late and will not be considered.

Delivery of the bid to the specified location is the sole responsibility of the bidder. Sealed bids may be submitted by:

- Email to: [procurementproposals@porthouston.com](mailto:procurementproposals@porthouston.com). Vendors will receive an email acknowledgement of receipt of bids/proposals.

## **6.12 Receipt and Opening of Bids**

When the time set for opening bids has arrived, the Director of Procurement Services, or designee, shall (1) electronically open all bids received before the designated time (2) read the bids (name and price) electronically to the persons present, and (3) have the bids recorded. The original of each bid shall be carefully safeguarded, particularly until the abstract of bids has been made and its accuracy verified. The abstract of bids is the written compilation of bidders and their respective bids, usually separated into individual items. The Director of Procurement Services or designee may delegate performance of this procedure to a designee so long as the Director of Procurement Services remains fully responsible for the actions of the designee.

## **6.13 Bid Initial Evaluation**

Once the bid is opened, the Director of Procurement Services, or designee, will determine responsiveness, share the results, and will distribute copies of the bids to the evaluation team. The evaluation team will be determined by the requesting department.

## **6.14 Bid Evaluation and Award**

Bid responses will be reviewed by a diverse evaluation team composed of at least three members, including at least one (1) representative of the requesting department and two (2) representatives of a non-requesting departments. 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 60.458. All Port Authority employees shall conduct evaluations in an ethical and fair manner.

The evaluation of a bid will be conducted in a reasonable and prudent manner to ensure there is no conflict between an evaluation team member and a vendor whose proposal is being evaluated. The evaluation team will perform its due diligence and will review all bids within the reasonable time necessary and relative for the specific bid in order to ensure a fair and equitable evaluation. Prior to the issuance of an award



recommendation, the Director of Procurement Services or designee will review the work effort of the evaluation team and if not deemed in the best interest of the Port Authority, may refer the procurement back to the evaluation team for further review and clarification.

The award is made to the lowest responsive, responsible bidder. When an award requires final approval of the Port Commission, the requesting department will prepare a Request for Port Commission Action item and submit it to the appropriate Chief Officer with a copy to the Director of Procurement Services or designee. Procurement Services will maintain all documents along with an abstract of bids in the Procurement Services contract file.

If a procurement is subsequently cancelled because the recommendation was not approved by the Port Commission, the Port Authority staff should re-solicit the goods or services only after a six month waiting period, except to the extent the specification for the goods or services is sufficiently modified in-order to meet evolving needs of the Port Authority not contemplated at the time of the original solicitation as to constitute a new request or business needs require a shorter schedule.

### **6.15 Tie Bids**

Contracts shall be awarded in the following order of priority when two or more low bids are equal in all respects:

- If two or more bidders submit the lowest and best bid, the Port Commission shall decide between the two bids by drawing lots in a manner prescribed by rule by the chairman of the Port Commission. If time permits, the bidders involved shall be given an opportunity to attend the drawing. The drawing shall be witnessed by at least three persons and the contract file shall contain the names and addresses of the witnesses and the person supervising the drawing.
- When an award is made by drawing by lot after receipt of equal low bids, the Director of Procurement Services, or designee, shall describe how the tie was broken by providing a written statement that the contract award was made in accordance with the circumstances justifying the priority used to break the tie or select bids for a drawing by lot.

### **6.16 Notice of Award**

The Director of Procurement Services or designee shall notify the selected bidder in writing of the award and provide them with the form of contract, which must be approved by the Legal department, that they will be expected to sign. After Port Commission

awards a contract, no notice to proceed shall be issued until all contract formation requirements are fulfilled.

### **6.17 Bid Award Cancellation**

In the event the selected vendor fails to honor its commitment to enter into a contract, Procurement Services should obtain a written acknowledgment to this effect from the selected vendor. Noncompliance by the vendor should result in forfeiture of the bid bond, if one was required. The award may be given to the next responsible and responsive bidder or the Port Authority may reject all bids and re-bid the procurement.

### **6.18 Contract Cancellation**

A contract may be terminated in accordance with its terms. If the terms do not specify a basis for termination, the contract may be terminated with or without cause by the Port Authority giving a thirty (30) day prior written notice to the legal address of the contractor. All contract cancellations are issued by Procurement Services and/or the Legal department. Sample Notices of Termination are included in Appendix 17 and Appendix 18 herein.

### **6.19 Contract Management**

Procurement Services will be responsible for maintaining documentation of supplier performance, as required, utilizing criteria such as terms, price, quality, delivery, timeliness, and service level.

Requesting departments will provide feedback pertaining to the awarded supplier's performance. A supplier/vendor that does not meet the requirements of the awarded contract will be determined to be non-compliant.

The requesting department will notify the supplier/vendor and Procurement Services, in writing, of any problem requiring immediate corrective action. If no satisfactory corrective action is received, the supplier/vendor will be considered to be in breach of contract and the contract may be terminated, and the vendor may be disqualified from future solicitations.

## **Article 7**

### **Goods & Services Contracts of More Than \$100,000: Competitive Sealed Proposal**

Competitive Sealed Proposals (“CSP”) is an advertised procurement method, as used by the Port Authority, 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. The CSP method permits the consideration of non-price criteria, scope negotiation, and some correction of errors.

Competitive Sealed Proposals are commonly utilized in the procurement of the following commodities:

1. Construction, repair, rehabilitation, or alteration of facilities
2. General goods
3. General services

The purpose of this article is to explain the laws, policies, and procedures underlying the formal competitive sealed proposal process.

#### **7.1 Development of Specifications**

Specifications will be developed and documented by the requesting department. Specifications, both descriptive and technical, will be written in a clear, specific manner, providing as much information as is required for a supplier/vendor to identify the goods and/or services being bid. Requestors may also ask Procurement Services for assistance in specification development. Specifications should comply with the guidelines in Article 2, Procurement Standards.

#### **7.2 CSP Packet**

The Competitive Sealed Proposal packet will be prepared by the requesting department. The CSP packet shall contain but is not limited to the following sections:

- Invitation to Proposers
- Proposer’s Checklist
- Instructions to Proposers

- Proposal
- Selection Criteria
- Technical Specifications/Special Terms
- Contract Terms
- Attachments

### **7.3 Vendor List**

If possible, the requestor may supply a list of suggested vendors. Procurement Services may utilize the Port Authority e-procurement application and his/her experience and/or current market trends to include additional vendors.

### **7.4 CSP Advertisement**

The Texas Water Code requires public notice of formal procurement packages. A notice of the CSB will be advertised twice in a local newspaper (e.g., *Houston Chronicle*) – once a week for at least two (2) consecutive weeks prior to the bid opening date. Although not required by the Texas Water Code, Port Commission shall approve in advance every Port Authority solicitation of a formal procurement. Port Authority staff shall present a Request for Commission Action to the Port Commission for approval to advertise or solicit bids, proposals, or qualifications, as applicable. Staff may request at that time that the Port Commission determine whether another statutory purchasing method may offer “best value” to the Port Authority for a specified formal procurement.

### **7.5 Pre-Proposal Conference Preparation**

The requesting department serves as chairperson during the pre-proposal conference and is primarily responsible for addressing technical and site-specific questions. The Procurement Services department will have representatives present to answer procurement issues related to the procurement process. An attendance roster is established at each conference to collect the names of attendees, company represented, and contact information (including email addresses).

#### **7.5.1 Agenda/Guidelines**

##### **7.5.1.1 Opening**

After calling the conference to order, the Port Authority representative introduces

him/herself, covers basic housekeeping rules, lays out the agenda and has everyone introduce themselves.

#### **7.5.1.2 Recording**

The Port Authority representative announces administrative information regarding any audio or videotaping of the conference. In addition, attendees are reminded that only a written change via an addendum legally binds the CSP.

It is recommended that the pre-proposal conferences be recorded (or detailed notes taken). The recording is a ready reference and checklist if there is a need to publish addenda.

### **7.6 Pre-Proposal Conference**

Unless otherwise stated in the solicitation document, attendance of prospective proposers at a pre-proposal conference is not mandatory.

Prior to the actual conference, the Director of Procurement Services or designee may wish to meet with the requesting department's point of contact to answer questions and conduct discussions related to the acquisition. The meeting is used to coordinate participation and establish ground rules so that the pre-proposal conference is conducted in an organized, meaningful and professional manner. It is also used to ensure departmental representatives are working together to better serve the Port Authority's needs.

The pre-proposal conference is a meeting of potential proposers, the Director of Procurement Services or designee and the requesting department's technical representative(s) for the purpose of reviewing requirements, facilitating a clear understanding and promoting competition. The CSP should outline administrative instructions to specify a reasonable conference time to maximize attendance. The appropriate conference date should be within ten days after potential proposers have received their CSP. The administrative point of contact and instructions regarding the pre-proposal conference should be included in the CSP cover.

Pre-proposal conferences may result in later modifying the CSP if there are special market conditions of which the Port Authority may have been unaware. In this event, an addendum is composed by the requesting Department Director in collaboration with the Director of Procurement Services or designee and then submitted to all proposers prior to the CSP closing date. Those attending the conference are advised that only written modifications via an addendum are considered alterations to the CSP.

### **7.6.1 CSP Overview and Review**

The Port Authority representative will cover the CSP instructions, general terms and conditions. A department representative will give an overview of the project/scope of work. Review of the CSP itself serves as the focus for the conference. The Port Authority representative reviews the document, page by page if necessary, permitting proposers an opportunity to ask questions as each page is reviewed. This is imperative for an orderly pre-proposal conference.

However, questions concerning the CSP may be requested prior to the pre-proposal conference in order to identify the type of questions that may be asked.

### **7.6.2 Recap and Closing**

The Port Authority representative summarizes the key points of the conference. Simple questions should be answered immediately while others may not be easily answerable. In that event, the Port Authority representative must only give an answer that will withstand rigorous scrutiny after the conference. All relevant questions pertaining to the CSP may be addressed in the subsequent addendum and/or through an electronic vendor database. All proposer inquiries relating to interpretation and technical details of the CSP must be referred to the Port Authority representative.

Attendees may offer some suggestions or objections that may be taken under advisement. The Port Authority representative will make a written response in a timely manner before the scheduled opening. No decision on complicated or sensitive matters should be made in haste at the pre-proposal conference. It may be necessary to further research the matter to provide the correct answer.

## **7.7 Pre-Proposal Site Visits**

Some projects will necessitate a site visit by proposers. The point of contact for arranging a site visit should be included on the CSP cover page.

A general site orientation “walk through” may be discussed during the pre-proposal conference with a site visit scheduled that day or at a later date.

## **7.8 Communications with Proposers**

The CSP should advise proposers that they must channel all communications concerning the CSP through the Director of Procurement Services or designee and to no other person or Port Commissioner. All communications should be in writing and should be responded to by the requesting department or the Director of Procurement Services or designee in writing through an addenda or through an e-procurement application. Failure to observe this “no contact” rule, including but not limited to attempts to contact Port Commission members directly in regard to the CSP, may be justification for rejection of the violator’s proposal.

## **7.9 Addenda to Competitive Sealed Proposals**

Addenda may be issued prior to or after the pre-proposal conference and may reflect questions addressed during the pre-proposal conference. Prior to issuing an Addendum, the Director of Procurement Services or designee must consider the time remaining until the CSP opening date. If additional time is needed for the proposer to respond, an Addendum is used to extend the due date of the CSP.

The Director of Procurement Services or designee is responsible for coordinating the subject matter and issuing the Addenda:

- All changes must be in writing;
- All Addenda shall be numbered sequentially;
- The Addendum must be mailed to proposers on the CSP email list and to all pre proposal conference attendees; and
- Interpretations of a material consequence may not be made orally to potential proposers.

If an Addendum is necessary and seven business days or less remain before the CSP opening date, the deadline for responding to the CSP may be extended.

## **7.10 Modification and Withdrawal of CSPs**

Competitive Sealed Proposals may be modified or withdrawn by any method authorized by the solicitation, and in the same manner as set out for the modification and withdrawal of bids set out in Article 2.

## 7.11 Proposal Due Date

Proposals will be due on the deadline specified in the solicitation. Any proposal, request for withdrawal, or modification of a proposal that is not received at the designated time and date set forth in the CSP documents will be considered late and will not be considered. Delivery of the proposal to the specified location is the sole responsibility of the proposer. Sealed proposals may be submitted by:

- Email to: [procurementproposals@porthouston.com](mailto:procurementproposals@porthouston.com). Vendors will receive an email acknowledgement of receipt of bids/proposals.

## 7.12 Receipt and Opening of Proposals

When the time set for opening proposals has arrived, the Director of Procurement Services, or designee, shall (1) electronically open all proposals received before the designated time (2) read the proposals (name and price) electronically to the persons present, and (3) have the proposals recorded. The original of each proposal shall be carefully safeguarded, particularly until the abstract of proposals has been made and its accuracy verified. The abstract of proposals is the written compilation of proposers and their respective proposals, usually separated into individual items. The Director of Procurement Services or designee may delegate performance of this procedure to a designee so long as the Director of Procurement Services remains fully responsible for the actions of the designee.

Upon receipt at the email address designated in the solicitation package, sealed proposals will be logged by Procurement Services on or before the deadline specified in the solicitation. When the time set for opening bids has arrived, the Director 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) have the bids recorded. The original of each bid shall be carefully safeguarded, particularly until the abstract of proposals has been made and its accuracy verified. The abstract of proposals is the written compilation of proposers and their respective proposals, usually separated into individual items. The Director of Procurement Services may delegate performance of this procedure to a designee so long as the Director of Procurement Services remains fully responsible for the actions of the designee.

The date and time for receiving the proposals are set out on the CSP cover page. The proposal will be considered only if received:

- Before the closing date and time, and
- Emailed to: [procurementproposals@porthouston.com](mailto:procurementproposals@porthouston.com).



Departments should allow realistic time frames for this process. The proposal due date is assigned based on the complexity of the CSP and Port Commission agenda schedule. In general, 30 to 60 days for a solicitation is considered standard. If a site visit or a pre-proposal conference is required, additional time should be allowed. These considerations are also weighed against the urgency of the department's need for the goods or services sought in the CSP.

After the proposal is received, the Director of Procurement Services or designee will verify the proposals for the following:

- Completion of all proposal requirements;
- Execution of offer; and
- Mandatory documents.

### **7.13 Proposal Initial Evaluation**

The Director of Procurement Services, or designee, will determine responsiveness and will distribute copies of the proposal to the evaluation team. The evaluation team will be determined by the requesting department. The team will evaluate the proposals based on the CSP and any stated evaluation factors, including the points and/or weights, if given in the CSP.

Based on the initial evaluation of the proposals, Procurement Services will coordinate with the evaluation team to share the results of the evaluation, and coordinate follow-up meetings for negotiations or terminate the process. The evaluation team shall always seek award to the vendor offering the best value to the Port Authority in accordance with the factors listed in Texas Water Code, Section 60.458. All Port Authority employees shall conduct evaluations in an ethical and fair manner. If the evaluation team recommends award without further negotiation, Procurement Services will proceed with finalizing the award.

For Port Commission approvals, the requesting department will prepare a Request for Port Commission Action Item and submit it to the appropriate Chief Officer for approval. Procurement Services will maintain these documents along with an abstract of proposals in the Procurement Services contract file.

### **7.14 Appointing Evaluation Team Members**

During the development of the CSP, the director of the requesting department will assign evaluation team members. The requesting department director shall also designate a Team Leader, who may be the requesting department representative. The evaluation team should be composed of individuals who are stakeholders in the final

product or service, and/or individuals who have the necessary technical or program expertise.

The Evaluation Team Leader serves as the lead. The Team Leader is responsible for identifying individuals to represent the core of evaluation team members in the areas of:

- Operational evaluation;
- Technical evaluation;
- Financial evaluation; and
- Administrative support.

The evaluation team should bring together as much knowledge as possible to ensure the best proposal is selected. The Team Leader will be responsible for scheduling and inviting the evaluation team members and other personnel to participate in the evaluation process. It should be clear to evaluation team members from the outset that their duties will require significant time and effort.

There is no restriction as to how many people the department may nominate to the evaluation team; however, the recommendation is to enlist three to five individuals possessing expertise for the service/product being acquired. Limiting the number of team members will make the coordination of activities run more smoothly and help ensure the security and integrity of the processes.

The Team Leader should be the primary point of contact for Port Authority staff during the evaluation portion of the CSP.

## **7.15 Evaluation and Contract Recommendation**

The requesting department will be responsible for convening an evaluation team composed of at least three (3) members, including at least one (1) representative of the requesting department and one (1) representative of a non-requesting department. The requesting department will select members of the rank and evaluate team and coordinate with Procurement Services the date/time of the initial/final evaluation session. The Director of Procurement Services or designee shall be present to instruct and advise on the rank and evaluation process.

The Team Leader should establish the evaluation agenda. Before the individual evaluations begin, the Team Leader and the Director of Procurement Services or designee should meet with the evaluation team to distribute the Certification of Impartiality and Non-Conflict of Interest for Evaluators forms contained in Appendix 1, matrices, and proposals and to brief the evaluation team on the following:

### **7.15.1 Explain**

The Director of Procurement Services or designee should explain:

1. The evaluation process;
2. Member responsibilities regarding the critical nature of their non-conflict of interest and the integrity of the evaluation process;
3. That rank and evaluate team members may communicate with each other about the CSP, but that they should not disclose any information about the process to anyone not a part of the team;
4. The evaluation criteria and the scoring process;
5. The evaluation matrix to ensure the team understands how the matrix works and how proposals will be evaluated; and
6. That each team member must complete and submit, fully executed forms to the Director of Procurement Services or designee.

### **7.15.2 Establish**

The Team Leader should establish:

1. The deadline for completion of evaluations;
2. The principle that all team members should refer all questions during the evaluation process to the Team Leader;
3. The tabulation of scores; and
4. The principle that individual scores may be classified as a matter of public record, subject to the Texas Public Information Act.

The Team Leader should stress the following points with the team:

1. Each member of the team is a voting member.
2. Conclusions are reached independently but team members may discuss issues with each other in arriving at their conclusions.
3. An expert in a specific area may be used to help reach a decision.
4. Each proposal should be evaluated individually against the requirements of the CSP and may utilize the standard Evaluation Considerations & Assessment Categories as a guide.
5. Members may ask questions if they are unable to find information, do not understand information in a proposal, or require technical assistance from other members.
6. After the technical evaluations are completed, all evaluation matrices must be

turned in to the Team Leader for submission to the Director of Procurement Services or designee.

The Team Leader shall remain present during the entire meeting to answer any questions, and to ensure proper procedures are followed. In instances when there are time constraints, remote location positioning of team members, or other unforeseen circumstances, the leader may need to assemble as many available members as possible at one time to evaluate. However, the preferred method is to have all members participating.

Observers may participate as nonvoting observers of the evaluation team upon execution of the Certification of Impartiality and Non-Conflict of Interest for Observers form contained in Appendix 2 herein. Such individuals may include members of the small, minority- and woman-owned program.

## **7.16 Scoring Matrix**

A pre-defined Scoring Matrix (Appendix 13) will be used by the evaluation team to score the individual responses based on the evaluation criteria defined in the solicitation document. The matrix becomes the scoring worksheet to be completed by each evaluation team member. The matrix form will be completed prior to finalizing the solicitation document. If time does not permit the scoring matrix to be completed prior to publication, then the matrix must be completed prior to the opening and review of the proposals.

The CSP must advise the proposers of the evaluation criteria, which should reflect the essential qualities or performance requirements necessary to achieve the objectives of the contract and allow the evaluation team to fairly evaluate proposals. The evaluation criteria may take multiple sources such as the written response, the oral presentation, and conformance to CSP requirements, experience, expertise, qualification, proposed strategy and/or equipment. The required response should directly relate to the evaluation criteria.

To ensure fairness in evaluation, the evaluation criteria should reflect only those requirements specified in the CSP. The CSP should clearly state the consequences of failing to meet these requirements, such as being disqualified from the CSP process.

Criteria not included in the CSP may not be used in the selection or ranking of a proposal. For example, if respondents receive additional points for possessing a national accreditation, that criterion must be included in the CSP so that proposers know there is an opportunity to score higher by providing these options. Likewise, if this

information is not requested in the CSP, proposers who neglect to offer these options cannot be penalized.

## **7.17 Evaluation Criteria**

Competitive Sealed Proposals may be evaluated by, but not limited to, the following selection criteria as a guide:

### **1) Price**

- i) The Purchase Price Criteria will be based on a standard price formula to be published in the solicitation documents

### **2) Vendor Reputation/Safety/ Quality/Past Performance/Environmental Record**

(1) Criteria includes the following:

- 1. Reputation of Respondent and of the Respondent's goods and services
- 2. The Respondent's past performance
- 3. Quality of Respondent's goods and services
- 4. Safety and environmental record of the Respondent

### **3) Benefit to the Port Authority**

(1) Criteria includes the following:

- 1. Extent to which the goods or services meet the Port Authority's needs
- 2. Total long-term cost to the Port Authority to acquire the Respondent's goods or services

### **4) Compliance with Port Authority Policies**

(1) Criteria includes the following:

- 1. Full completion of the Competitive Sealed Proposal response form and submission of the items required by the Proposal documents, including all items set forth in Competitive Sealed

## Proposal response form

5) The Small Business Participation criteria (Dollar amount and/or percentage of this proposal which will be performed by Enrolled Small Businesses) and scoring includes the following:

- (a) A small business is a firm for which the gross revenues or number of employees averaged over the past three (3) years, inclusive of any affiliates as defined by 13 C.F.R. Section 121.103, does not exceed the size standards as defined pursuant to Section 3 of the Small Business Act and for which the net worth of each owner does not exceed \$1,320,000, excluding principal residence and the value of the small business.
- (b) Small Business scoring is explained in more detail in pre-proposal meetings, therefore attendance by Respondents at any offered pre-proposal meeting is strongly encouraged. Information about Small Business scoring may also be obtained by contacting the Port Authority's Small Business Program staff.
- (c) To receive points for small business participation, small business companies (prime and subcontractors) must be enrolled in the Port Authority Small Business Development Program at the time of submission of the Response. (A company that is so enrolled is referred to in these instructions as a "Port Authority-Enrolled Small Business.") In order for a joint venture to receive credit as a small business, the joint venture itself must be enrolled in the Port Authority Small Business Development Program at the time of submission of the Response.
- (d) Subject to the above requirements, the Small Business Participation criterion shall be scored as follows:
- (e) Part B of the Request for Proposal form will indicate which Small Business scoring method will be used for the individual contract, the "Target-Percentage" scoring method or the "SB-Prime Basis" scoring method. The different scoring methods are set out below:
  - 1. "Target Percentage" scoring method:
    - i. Responses submitted from Port Authority-Enrolled Small Businesses will receive a minimum of two-thirds of the points available for Small Business Participation. By way of example, if 15 points are available for Small Business

Participation, that small business Respondent will receive a minimum of 10 points for Small Business Participation. If that small business Respondent subcontracts any portion of the work to a Port Authority-Enrolled Small Business subcontractor, the Respondent will receive the remaining points available for Small Business Participation. By way of example, if 15 points are available for Small Business Participation, the small business Respondent who subcontracts any portion of the work to a Port Authority-Enrolled Small Business subcontractor will receive the remaining 5 points, for a total score of 15.

- ii. Each Response submitted by a company that is not a Port-Authority-Enrolled Small business will receive the percentage of the points available for Small Business Participation corresponding directly to the ratio of the percentage of the work to be performed by Port Authority-Enrolled Small Business contractors compared to the Small Business Target Percentage for this project set forth in Part B of the Request for Competitive Sealed Bids / Proposals, according to the following formula, provided, however, that the score shall not exceed the number of Small Business Participation points available.

*Small Business (SB) Score*

$$= \frac{(Proposed Subcont. SB Participation \%) \times (Available SB Points)}{SB Target \%}$$

1. “SB Prime Basis” scoring method:

- a. Responses submitted by Port Authority-Enrolled Small Businesses will receive all of the available Small Business points. Respondents that are not Enrolled Small Businesses receive no points for Small Business participation. No points are received for Small Business subcontractor participation.

**Solicitations with a Small, Minority- and/or Woman Owned Business Participation Minimum Participation Requirement (i.e., Pass/Fail)**

In order to be considered a “responsive” proposer (i.e., eligible for award), Respondent must offer a small, minority- and/or woman-owned business participation level, or demonstrate adequate Good Faith Efforts for participation level, greater than or equal to

the minimum required percentage set forth in Part B of the Request for Competitive Sealed Proposals. Small, minority- and woman-owned business participation and minimum required participation levels will be discussed in more detail in pre-proposal meetings; therefore, attendance by Respondents at any offered pre-proposal meeting is strongly encouraged. "Small Business Participation" and "Minority- and/or Woman Owned Participation," when expressed as a percentage, means the ratio of the dollar amount of contract deliverables (services or goods) performed or provided by Enrolled Small, Minority- and/or Woman-Owned Businesses, compared to the total contract price.

Individual contract "Required Level" means the minimum level of Small, Minority- and/or Woman-Owned Business ("S/MWBE") participation that is required in an individual contract, expressed as a percentage. A contractor's proposal must meet the individual contract Required Level in order to be considered for award; if this minimum level is not reached, the proposal is deemed non-responsive, or adequate documentation of Good Faith Efforts is not provided and will not be further evaluated. For example, a minimum Small Business Participation Required Level of 15% on a project with a contract price of \$3,000,000 means that at least 15% of \$3,000,000 or (or \$4100,000) must be performed by Enrolled Small Businesses. PHA does not "round-up" in considering whether a Required Level has been reached, i.e., a contractor whose Small Business Participation (or participation and Good Faith Efforts) is 14.9% will not be evaluated in a solicitation with a Required Level of 15%.

#### **Work Breakdown Forms, Utilization Plans, and other Compliance documents.**

Work Breakdown Forms, Utilization Plans, and other Compliance documents must be submitted as provided in this solicitation, and the failure to do so may render the bid/proposal "non-Responsive." Such Breakdown Forms, Utilization Plans, and other Compliance documents must: (a) be affirmed as correct; (b) identify the S/MWBE businesses proposed to participate in the Contract in order to meet the Contract Goal; (c) identify the type of service or supplies each such S/MWBE would perform; (d) set out the dollar amount to be paid to each such S/MWBE for the Commercially Useful Function provided by that S/MWBE; (e) include the Respondent's commitment to meeting or exceeding the Contract Goal, or demonstrating its Good Faith Efforts to do so, and (f) provide such other information as provided for in this solicitation. The Business Equity Division shall review submitted bids/proposal to determine if they meet applicable solicitation and Program requirements.

The Work Breakdown Form (Attachment 07 to the procurement solicitation package) on which Respondent is required to list ALL proposed subcontractors and suppliers is also the form used to supply information regarding small business and MWBE participation (prime contractor, subcontractors, and suppliers). This form must be filled out and returned with the Bid/Proposal Response. Failure to submit this information or to comply with instructions thereon may be the basis for rejection of a proposal Response by Port Houston. The submission of such subcontractor and supplier information does not create any contractual relation between Port Houston and any subcontractor or supplier.

Read the forms and information regarding Commercially Useful Function carefully.



Certification is not the same as Commercially Useful Function. Only the dollar amounts committed to first tier small, minority- and/or woman-owned businesses (as applicable to a specific solicitation) for the Commercially Useful Function(s) that business will provide to the project counts toward a Required Level (or Contract Goal) of participation by that S/MWBE.

By submitting a bid or proposal, a Respondent agrees to provide Port Authority Business Equity Program contract compliance analysts and auditors, or their designees, reasonable access to its applicable books and records, and to the applicable books and records of its Subcontractors and Suppliers, to support the Port Authority's research investigations, determinations, and enforcement of Compliance with the Contract Goal commitment and other Policy and Program requirements.

### **Small Business Participation**

A Small Business prime contractor that will be self-performing at least the Required Level percentage will be deemed to have met the individual contract "Required Level." When the prime contractor is not a Small Business, the determination of whether the individual contract Required Level has been met will be made using the ratio of dollars to be paid to Enrolled Small Businesses compared to the total contract price.

A small business for purposes of projects is a firm: (a) for which the gross revenues or number of employees averaged over the past three (3) years, inclusive of any affiliates as defined by 13 United States Code of Federal Regulations Section 121.103, does not exceed the size standards as defined pursuant to Section 3 of the Small Business Act (15 U.S. Code, Chapter 14A), and (b) for which the net worth of each owner does not exceed \$1,320,000, excluding residence and the value of the small business.

To receive credit for Small Business Participation, small business companies (prime and subcontractors) must be enrolled in the Port Authority Small Business Development Program at the time of submission of the Response. In order for a joint venture to receive credit as a small business, the joint venture itself must be enrolled in the Port Authority Small Business Development Program at the time of submission of the Response.

### **Minority and/or Woman-Owned Business Participation**

A prime contractor may achieve the Required Level (i.e., the Contract Participation Goal) by (i) its own status as an MBE or WBE; (ii) entering into a Joint Venture with one or more MBEs and/or WBEs; (iv) directly purchasing materials or supplies from one or more MBEs and/or WBEs; or (v) any combination of the above.

To be eligible to be counted as an MBE or WBE towards a Contract Goal, the firm

must be Certified at the time of submission and become a Port Authority Enrolled M/WBE no later than the date of award. The Port Authority shall make available on its website and through other means a list of certifying agencies recognized and approved by the Port Authority from time to time.

An MBE or WBE for purposes of projects is as defined in the Port Authority's Minority- and Woman-Owned Business Enterprise Policy.

## **7.18 Team Scoring and Proposal Evaluation**

### **7.18.1 Step 1**

Procurement Services will provide to the evaluation team its initial assessment of all solicitations which have been received. This assessment includes, but is not limited to, those solicitations which should be considered as non-responsive. The Director of Procurement Services will eliminate all proposals that are not responsive to the CSP. Non-responsiveness includes failure to meet basic requirements or significant deviations from the terms of the CSP, such as not providing applicable licenses or certifications or not providing critical information that was requested in the CSP. Procurement Services will categorize each proposal as "responsive"; "reasonably susceptible of being made responsive"; or "non-responsive". Any proposal that modifies or fails to conform to the essential requirements or specifications of the solicitation shall be considered nonresponsive and categorized as nonresponsive, pursuant to Article 2.

### **7.18.2 Step 2**

Once the nonresponsive proposals have been eliminated, the team should conduct an independent evaluation of the remaining proposals. In this phase, team members should strive to evaluate each proposal by identifying both the strengths and weaknesses of each proposal. Each team member shall score each proposal accordingly and independently from other team members' influence. Finally, the team member will need to document any questions, concerns or pertinent information that they need to discuss with the evaluation team after it reconvenes to discuss the independent scores.

### **7.18.3 Step 3**

Once the independent evaluations have been completed, team members are encouraged to openly discuss their findings on each proposal at the scheduled evaluation team meetings. They should also freely discuss factors that might influence their evaluations, such as previous experience with a vendor. Team members should seek clarification from the Director of Procurement Services or designees as to whether

factors that influenced them are proper to use or might be inappropriate. Finally, the evaluation team scores are tabulated to determine the highest ranked proposals and to identify the shortlist.

#### **7.18.4 Step 4**

Once the shortlist has been identified, the team may invite proposers on such shortlist to provide oral presentations to the rank and evaluate team subject to section 7.19 below. The duration of such presentations is predetermined by the team and all team members must attend them, if possible. Members should – during oral presentation – ask questions regarding parts of proposals needing explanation or clarification or regarding those sections of a proposal that may have deficiencies that the potential vendor could cure.

### **7.19 Oral Presentations**

Oral presentations are conducted at the option of the department. The solicitation document may state when oral presentations or discussions will occur. Oral presentations provide an opportunity for respondents to highlight the strengths and unique aspects of their proposal and to provide answers to questions the department may have regarding the proposal.

Demonstrations of product functionality are recommended when appropriate, such as for information technology procurements or solution based procurements.

The selected proposers should each be given the same amount of time to make their oral presentations to the evaluation team. A Notice of Presentation form is contained in Appendix 11 herein.

During the presentation, evaluation team members may ask questions about the proposal or product. When in person presentations or demonstrations are not possible, the presentation may be made by telephone or online conference.

### **7.20 Proposers' References**

The Team Leader will review and approve a proposed reference questionnaire. All follow up reference checks and responses must be documented in writing. Departments

may want to consider using the following statement in the solicitation document in lieu of checking references for all proposers:

[The Port Authority reserves the right to check references prior to award. Any negative responses received may be grounds for disqualification of the proposal.]

By using this clause, departments are not required to check references but may choose to do so. Whether or not to check references as part of the evaluation is at the discretion of the department based on the individual procurement.

Upon completing the reference checks, the requesting department signs the documents and reports all findings to the rank and evaluate team.

### **7.21 Best and Final Offer (BAFO)**

After oral presentations, if any, or after original proposals are evaluated, proposers judged by the evaluation team to have made the most advantageous offers may be invited to submit a Best and Final Offer (“BAFO”).

The Director of Procurement Services or designee shall clearly notify the top-ranked proposer in writing that they are being invited to submit a BAFO and that they have the opportunity to:

- Modify the initial offer;
- Include any added inducements that will improve the overall score in accordance with the CSP evaluation plan.

Upon receipt of the BAFOs, the team will revise its original evaluation(s) based on the information submitted in the BAFO and select the top-ranked proposer to begin contract negotiation.

### **7.22 Contract Negotiation**

A team consisting of Port Authority representatives, as appropriate, selected members of the rank and evaluate team will attempt to negotiate a contract with the top-rated proposer. The Port Authority and its engineer or architect may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the Port Authority is unable to negotiate a

contract with the selected offeror, the Port shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

When an award requires final approval by the Port Commission, the requesting department will prepare a Request for Port Commission Action. Procurement Services will maintain these documents along with an abstract of bids in the Procurement Services contract file.

## **7.23 Notice of Award**

The Director of Procurement Services or designee shall notify the selected proposers in writing of the negotiations and provide them with the form of contract, which must be approved by the Legal department, that they will be expected to sign. After the Port Commission awards a contract, no notice to proceed shall be issued until all contract requirements are fulfilled.

## **7.24 Contract Award**

### **A. Customary Staff Responsibilities for Evaluation of Proposals**

1. Unless the Port Commission determines otherwise, Port Authority staff should evaluate, in relation to the published selection criteria, the proposals

received by the Port Authority in response to a Formal Procurement (procurement of goods/services that must be approved by the Port Commission pursuant to Texas Water Code, Chapter 60).

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 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 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.
6. With the assistance of the entire team, the team chairperson must make a written recommendation, via the scoring matrix, to the Executive Committee and the Director of Procurement Services, or designee. This recommendation consists of:
  - a. The acceptability or unacceptability of each vendor;
  - b. The technical and monetary ranking of each acceptable vendor;
  - c. The combined final ranking of the vendors; and
  - d. A detailed rationale explaining why the recommended vendor is the most advantageous.

B. Executive Committee

1. The Executive Committee should include (1) the Executive Director, Chief Operating Officer, or Chief Legal Officer, depending on availability, (2) the appropriate Chief Officer, and (3) the department director.
2. Construction CSPs: The Executive Committee will review, and approve or reject, the recommended selection and ranking of the CSP evaluation team, based on the matrix that the team prepared.
3. Non-Construction CSPs: The Executive Committee will review, and approve or reject, the recommended selection and ranking of the CSP evaluation team, based on the matrix or narrative evaluation that the team prepared.
4. The Executive Committee has the option of requiring that the selection team reevaluate the proposers or service providers, or conduct a new solicitation.
5. The Executive Committee has the option of terminating the procurement if it determines that no proposal offers “best value” to the Port Authority, provided that notification to and concurrence by the Port Commission, of such termination, is obtained.

C. 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.
3. With Port Commission approval, the requesting department will negotiate with the respondent whose proposal offers the best value to the Port Authority. If a satisfactory contract cannot be negotiated, the Port Authority shall end negotiations in writing and enter into negotiations with the next ranked most highly ranked respondent.

## **7.25 Contract Management**

The Director of Procurement Services or designee will be responsible for maintaining documentation of vendor performance, as required, utilizing criteria such as terms, price, quality, delivery, timeliness and service level.

Requesting departments will provide feedback pertaining to the awarded vendor's performance. A vendor that does not meet the requirements of the awarded contract will be determined to be non-compliant.

The requesting department will notify the vendor and Procurement Services, in writing, of any problem requiring immediate corrective action. If no satisfactory corrective action is received, the vendor will be considered to be in breach of contract and the contract may be terminated, and the vendor may be disqualified from future solicitations. A sample Termination for Default is contained in Appendix 18 herein.

## **7.26 Contract Cancellation**

A contract may be terminated in accordance with its terms. If the terms do not specify a basis for termination, the contract may be terminated with or without cause by the Port Authority giving thirty (30) days' prior written notice to the legal address of the contractor. All contract cancellations are issued by Procurement Services and/or the Legal department. Sample Notices of Termination are included in Appendix 17 and Appendix 18 herein.



## **Article 8**

### **Goods & Services Contracts of More Than \$100,000: Request for Proposals**

A Request for Proposal is an advertised procurement method, as used by the Port Authority, in which the award is made to the lowest and best evaluated offer resulting from negotiation based on the published evaluation criteria. Construction projects may not be processed using the Request for Proposals process (except in the two-step process of a design-build or construction manager- at-risk).

Request for Proposals are commonly utilized in the procurement of the following commodities:

1. High technology goods
2. Professional services
3. Personal services
4. Insurance services

The purpose of this article is to explain the laws, policies, and procedures underlying the formal request for proposal process.

#### **8.1 Development of Specifications**

Specifications and evaluation criteria will be developed and documented by the requesting department. Specifications, descriptive and technical, shall be written in a clear and detailed manner. Procurement Services will review specifications and add or remove information, as required, with input from the Requestor. Specifications should comply with the guidelines in Article 2, Procurement Standards.

#### **8.2 RFP Packet**

The RFP packet will contain at least the following information:

1. General Terms and Conditions
2. Instruction to Proposers
3. Proposal Form
4. Specifications
5. Evaluation Criteria

### **8.3 Vendor List**

Because an RFP is a competitive solicitation of a specialized nature, the requesting department may provide a suggested vendor list. Procurement Services may utilize the Port Authority e-procurement application and his/her experience.

### **8.4 RFP Advertisement**

The Texas Water Code requires public notice of formal procurement packages. A notice of the RFP will be advertised twice in a local newspaper (e.g., *Houston Chronicle*) – once a week for at least two (2) consecutive weeks prior to the bid opening date. Although not required by the Texas Water Code, Port Commission shall approve in advance every Port Authority solicitation of a formal procurement. Port Authority staff shall present a Request for Commission Action to the Port Commission for approval to advertise or solicit bids, proposals, or qualifications, as applicable. Staff may request at that time that the Port Commission determine whether another statutory purchasing method may offer “best value” to the Port Authority for a specified formal procurement.

### **8.5 Pre-Proposal Conference Preparation**

The requesting department serves as chairperson during the pre-proposal conference and is primarily responsible for addressing technical and site specific questions. The Procurement Services department will have representatives present to answer procurement issues related to the procurement process. An attendance roster is established at each conference to collect the names of attendees, company represented, and contact information (including email addresses).

#### **8.5.1 Agenda/Guidelines**

##### **8.5.1.1 Opening**

After calling the conference to order, the Port Authority representative introduces him/herself, covers basic housekeeping rules, lays out the agenda and has everyone introduce themselves.

##### **8.5.1.2 Recording**

The Port Authority Representative announces administrative information regarding any audio or videotaping of the conference. In addition, attendees are reminded that only a written change via an addendum legally binds the RFP. It is recommended that the pre-proposal conferences be recorded (or detailed notes taken). The

recording is a ready reference and checklist if there is a need to publish addenda.

## **8.6 Pre-Proposal Conference**

Unless otherwise stated in the solicitation document, attendance of prospective proposers at pre-proposal conferences is not mandatory.

Prior to the actual conference, the Director of Procurement Services or designee may wish to meet with the requesting department's point of contact to answer questions and conduct discussions related to the acquisition. The meeting is used to coordinate participation and establish ground rules so that the pre-proposal conference is conducted in an organized, meaningful and professional manner. It is also used to ensure departmental representatives are working together to better serve the Port Authority's needs.

The pre-proposal conference is a meeting of potential proposers, the Director of Procurement Services or designee and the Requesting department's technical representative(s) for the purpose of reviewing requirements, facilitating a clear understanding, and promoting competition. The RFP should outline administrative instructions to specify a reasonable conference time to maximize attendance. The appropriate conference date should be within ten days after potential proposers have received their RFP. The administrative point of contact and location of the pre-proposal conference should be included in the RFP cover page.

Pre-proposal conferences may result in later modifying the RFP if there are special market conditions of which the Port Authority may have been unaware. In this event, an addendum is composed by the requesting Department Director in collaboration with the Director of Procurement Services or designee and then submitted to all proposers prior to the RFP closing date. Those attending the conference are advised that only written modifications via an addendum are considered alterations to the RFP.

### **8.6.1 RFP Overview and Review**

The Port Authority representative will cover the RFP instructions, general terms and conditions. A department representative will give an overview of the project/scope of work. Review of the RFP itself serves as the focus for the conference. The Port Authority representative reviews the document, page by page if necessary, permitting proposers an opportunity to ask questions as each page is reviewed. This is imperative for an orderly pre-proposal conference.

However, questions concerning the RFP may be requested prior to the pre-proposal conference in order to identify the type of questions that may be asked.

### **8.6.2 Recap and Closing**

The Port Authority representative summarizes the key points of the conference. Simple questions should be answered immediately while others may not be easily answerable. In that event, the Port Authority representative must only give an answer that will withstand rigorous scrutiny after the conference. All relevant questions pertaining to the RFP may be addressed in the subsequent addendum and/or through an electronic vendor database. All proposer inquiries relating to interpretation and technical details of the RFP must be referred to the Port Authority representative.

Attendees may offer some suggestions or objections that may be taken under advisement. The Port Authority representative will make a written response in a timely manner before the scheduled opening. No decision on complicated or sensitive matters should be made in haste at the pre-proposal conference. It may be necessary to further research the matter to provide the correct answer.

## **8.7 Pre-Proposal Site Visits**

Some projects will necessitate a site visit by proposers. The point of contact for arranging a site visit should be included in the RFP cover page. A general site orientation “walk through” may be discussed during the pre-proposal conference with a site visit scheduled that day or at a later date.

## **8.8 Communications with Proposers**

The RFP should advise proposers that they must channel all communications concerning the RFP through the Director of Procurement Services or designee and to no other person or Port Commissioner. All communications should be in writing and should be responded to by the requesting department or the Director of Procurement Services or designee in writing through an addendum or through an electronic application. Failure to observe this “no contact” rule, including but not limited to attempts to contact Port Commission members directly in regard to the RFP, may be justification for rejection of the violator’s proposal.

If provided in the RFP, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award. Such offerors (those who have submitted Responsive proposals, and who have been determined to be Responsible, and whose proposals have been determined to be reasonably susceptible of being selected for award) will be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submission and before award for the purpose of obtaining best and final offers.

## **8.9 Addenda to Request for Proposals**

Addenda may be issued prior to or after the pre-proposal conference and may reflect questions addressed during the pre-proposal conference. Prior to issuing an Addendum, the Director of Procurement Services or designee must consider the time remaining until the RFP opening date. If additional time is needed for the proposer to respond, an Addendum is used to extend the due date of the RFP.

The Director of Procurement Services or designee is responsible for coordinating the subject matter and issuing the Addenda:

- All changes must be in writing;
- All Addenda shall be numbered sequentially;
- The Addendum must be mailed to proposers on the RFP email list and to all pre proposal conference attendees; and
- Interpretations of a material consequence may not be made orally to potential proposers.

If an Addendum is necessary and seven business days or less remain before the RFP opening date, the deadline for responding to the RFP may be extended.

## **8.10 Modification and Withdrawal of RFPs**

Requests for Proposals may be modified or withdrawn by any method authorized by the solicitation, and in the same manner as set out for the modification and withdrawal of bids set out in Article 2.

## **8.11 Proposal Due Date**

Proposals will be due on the deadline specified in the solicitation. Any proposal, request for withdrawal, or modification of a proposal that is not received at the designated location, time, and date set forth in the RFP documents will be considered late and will not be considered. Delivery of the proposal to the specified location is the sole responsibility of the proposer. Sealed proposals may be submitted by:

- Email to [procurementproposals@porthouston.com](mailto:procurementproposals@porthouston.com). Vendors will receive an email acknowledgement of receipt of proposals.

## **8.12 Receipt of Proposals**

Upon receipt, proposals will be logged by Procurement Services on or before the

deadline specified in the solicitation. When the time set for receipt has arrived, the Director of Procurement Services or designee shall (1) personally open all proposals received before that time and (2) have the proposals recorded. The original of each proposal shall be carefully safeguarded, particularly until the abstract of proposals has been made and its accuracy verified. The abstract of proposals is the written compilation of proposers and their respective proposals, usually separated into individual items. The Director of Procurement Services may delegate performance of this procedure to a designee so long as the Director of Procurement Services remains fully responsible for the actions of the designee.

The date, time and place for receiving the proposals are set out on the RFP cover page. The proposal will be considered only if received:

- Before the closing date and time, and

At the email address designated in the solicitation package.

Departments should allow realistic time frames for this process. The proposal due date is assigned based on the complexity of the RFP and Port Commission agenda schedule. In general, 30 to 60 days for a solicitation is considered standard. If a site visit or a pre-proposal conference is required, additional time should be allowed. These considerations are also weighed against the urgency of the department's need for the services sought in the RFP.

After the proposal is received, the Director of Procurement Services or designee will verify the proposals for the following:

- Completion of all proposal requirements;
- Execution of offer; and
- Mandatory documents.

### **8.13 Proposal Initial Evaluation**

Once the proposals are opened, the Director of Procurement Services, or designee, will determine responsiveness, share results of the evaluation, and will distribute copies of the proposals to the evaluation team. The evaluation team will be determined by the requesting department. The team will evaluate the proposals based on the RFP and any stated evaluation factors, including the points and/or weights, if given in the RFP.

### **8.14 Appointing Evaluation Team Members**

During the development of the RFP, the department director will assign evaluation team members. The department director shall also designate a Team Leader, who may be the department representative. The evaluation team should be composed of individuals who are stakeholders in the final product or service, and/or individuals who have the

necessary technical or program expertise.

The Evaluation Team Leader serves as the lead. The Team Leader is responsible for identifying individuals to represent the core of evaluation team members in the areas of:

- Operational evaluation;
- Technical evaluation;
- Financial evaluation; and
- Administrative support.

The evaluation team should bring together as much knowledge as possible to ensure the best proposal is selected. The Team Leader will be responsible for scheduling and inviting the evaluation team members and other personnel to participate in the evaluation process. It should be clear to evaluation team members from the outset that their duties will require significant time and effort.

There is no restriction as to how many people the department may nominate to the evaluation team; however, the recommendation is to enlist three to five individuals possessing expertise for the service/product being acquired. Limiting the number of team members will make the coordination of activities run more smoothly and help ensure the security and integrity of the processes.

The Team Leader should be the primary point of contact for Port Authority staff during the evaluation portion of the RFP.

### **8.15 Evaluation and Contract Recommendation**

The requesting department will be responsible for convening an evaluation team composed of at least three (3) members, including at least one (1) representative of the requesting department and one (1) representative of a non-requesting department. The requesting department will select members of the rank and evaluate team and coordinate with Procurement Services the date/time of the initial/final evaluation session. The Director of Procurement Services or designee shall be present to instruct and advise on the rank and evaluation process.

The Team Leader should establish the evaluation agenda. Before the individual evaluations begin, the Team Leader and the Director of Procurement Services or designee should meet with the evaluation team to distribute the Certification of Impartiality and Non-Conflict of Interest for Evaluators forms contained in Appendix 1, matrices, and proposals and to brief the evaluation team on the following:

### **8.15.1 Explain**

The Director of Procurement Services or designee should explain:

1. The evaluation process;
2. Member responsibilities regarding the critical nature of their non-conflict of interest and the integrity of the evaluation process;
3. That rank and evaluate team may communicate with each other about the RFP, but that they should not disclose any information about the process to anyone not a part of the team;
4. The evaluation criteria and the scoring process;
5. The evaluation matrix to ensure the team understands how the matrix works and how proposals will be evaluated; and
6. That each rank and evaluate team member must complete and submit fully executed forms to the Director of Procurement Services or designee.

### **8.15.2 Establish**

The Team Leader should establish:

1. The deadline for completion of evaluations;
2. The principle that all team members should refer all questions during the evaluation process to the Team Leader;
3. The tabulation of scores; and
4. The principle that individual scores may be classified as a matter of public record, subject to the Texas Public Information Act.

The Team Leader should stress the following points with the team:

1. Each member of the team is a voting member.
2. Conclusions are reached independently but team members may discuss issues with each other in arriving at their conclusions.
3. An expert in a specific area may be used to help reach a decision.
4. Each proposal should be evaluated individually against the requirements of the RFP.
5. Members may ask questions if they are unable to find information, do not understand information in a proposal, or require technical assistance from other members.
6. After the technical evaluations are completed, all evaluation matrices must be turned in to the Team Leader for submission to the Director of Procurement Services or designee.



The Team Leader shall remain present during the entire meeting to answer any questions, and to ensure proper procedures are followed. In instances when there are time constraints, remote location positioning of team members, or other unforeseen circumstances, the leader may need to assemble as many available members as possible at one time to evaluate. However, the preferred method is to have all members participating.

Observers may participate as nonvoting observers of the evaluation team upon execution of the Certification of Impartiality and Non-Conflict of Interest for Observers form contained in Appendix 2. Such individuals may include members of the Business Equity Program.

When an award requires final approval by the Port Commission, the requesting department will prepare a Request for Port Commission Action. Procurement Services will maintain these documents along with an abstract of bids in the Procurement Services contract file.

## **8.16 Scoring Matrix**

A pre-defined scoring matrix (Appendix 13 and Appendix 14) may be used by the evaluation team to score the individual responses based on the evaluation criteria defined in the solicitation document. The matrix becomes the scoring worksheet to be completed by each evaluation team member. The matrix form should be completed prior to finalizing the solicitation document. If time does not permit the scoring matrix to be completed prior to publication, then the matrix must be completed prior to the opening and review of the proposals.

The RFP must advise the proposers of the evaluation criteria, which should reflect the essential qualities or performance requirements necessary to achieve the objectives of the contract and allow the evaluation team to fairly evaluate proposals. The evaluation criteria may consider multiple sources such as the written response, the oral presentation, and conformance to RFP requirements, experience, expertise, qualification, proposed strategy and/or equipment. The required response should directly relate to the evaluation criteria.

To ensure fairness in evaluation, the evaluation criteria should reflect only those requirements specified in the RFP. The RFP should clearly state the consequences of failing to meet these requirements, such as being disqualified from the RFP process.

Criteria not included in the RFP may not be used in the selection or ranking of a proposal. For example, if respondents receive additional points for possessing a national

accreditation, that criterion must be included in the RFP so that proposers know there is an opportunity to score higher by providing these options. Likewise, if this information is not requested in the RFP, proposers who neglect to offer these options cannot be penalized.

## **8.17 Evaluation Criteria**

Competitive Sealed Proposals may be evaluated by, but not limited to, the following selection criteria as a guide:

### **6) Price**

- i) The Purchase Price Criteria will be based on a standard price formula to be published in the solicitation documents

### **7) Vendor Reputation/Safety/ Quality/Past Performance/Environmental Record**

(1) Criteria includes the following:

1. Reputation of Respondent and of the Respondent's goods and services
2. The Respondent's past performance
3. Quality of Respondent's goods and services
4. Safety and environmental record of the Respondent

### **8) Benefit to the Port Authority**

(1) Criteria includes the following:

1. Extent to which the goods or services meet the Port Authority's needs
2. Total long-term cost to the Port Authority to acquire the Respondent's goods or services

### **9) Compliance with Port Authority Policies**

(1) Criteria includes the following:

1. Full completion of the Competitive Sealed Proposal response

form and submission of the items required by the Proposal documents, including all items set forth in Competitive Sealed Proposal response form

10) The Small Business Participation criteria (Dollar amount and/or percentage of this proposal which will be performed by Enrolled Small Businesses) and scoring includes the following:

- (a) A small business is a firm for which the gross revenues or number of employees averaged over the past three (3) years, inclusive of any affiliates as defined by 13 C.F.R. Section 121.103, does not exceed the size standards as defined pursuant to Section 3 of the Small Business Act and for which the net worth of each owner does not exceed \$1,320,000, excluding principal residence and the value of the small business.
- (b) Small Business scoring is explained in more detail in pre-proposal meetings, therefore attendance by Respondents at any offered pre-proposal meeting is strongly encouraged. Information about Small Business scoring may also be obtained by contacting the Port Authority's Small Business Program staff.
- (c) To receive points for small business participation, small business companies (prime and subcontractors) must be enrolled in the Port Authority Small Business Development Program at the time of submission of the Response. (A company that is so enrolled is referred to in these instructions as a "Port Authority-Enrolled Small Business.") In order for a joint venture to receive credit as a small business, the joint venture itself must be enrolled in the Port Authority Small Business Development Program at the time of submission of the Response.
- (d) Subject to the above requirements, the Small Business Participation criterion shall be scored as follows:
- (e) Part B of the Request for Proposal form will indicate which Small Business scoring method will be used for the individual contract, the "Target-Percentage" scoring method or the "SB-Prime Basis" scoring method. The different scoring methods are set out below:
  - 1. "Target Percentage" scoring method:
    - i. Responses submitted from Port Authority-Enrolled Small Businesses will receive a minimum of two-thirds of the

points available for Small Business Participation. By way of example, if 15 points are available for Small Business Participation, that small business Respondent will receive a minimum of 10 points for Small Business Participation. If that small business Respondent subcontracts any portion of the work to a Port Authority-Enrolled Small Business subcontractor, the Respondent will receive the remaining points available for Small Business Participation. By way of example, if 15 points are available for Small Business Participation, the small business Respondent who subcontracts any portion of the work to a Port Authority-Enrolled Small Business subcontractor will receive the remaining 5 points, for a total score of 15.

- ii. Each Response submitted by a company that is not a Port-Authority-Enrolled Small business will receive the percentage of the points available for Small Business Participation corresponding directly to the ratio of the percentage of the work to be performed by Port Authority-Enrolled Small Business contractors compared to the Small Business Target Percentage for this project set forth in Part B of the Request for Competitive Sealed Bids / Proposals, according to the following formula, provided, however, that the score shall not exceed the number of Small Business Participation points available.

*Small Business (SB) Score*

$$= \frac{(\text{Proposed Subcont. SB Participation \%}) \times (\text{Available SB Points})}{\text{SB Target \%}}$$

2. “SB Prime Basis” scoring method:

- b. Responses submitted by Port Authority-Enrolled Small Businesses will receive all of the available Small Business points. Respondents that are not Enrolled Small Businesses receive no points for Small Business participation. No points are received for Small Business subcontractor participation.

**Solicitations with a Small, Minority- and/or Woman Owned Business Participation Minimum Participation Requirement (i.e., Pass/Fail)**

In order to be considered a “responsive” proposer (i.e., eligible for award),

Respondent must offer a small, minority- and/or woman-owned business participation level, or demonstrate adequate Good Faith Efforts for participation level, greater than or equal to the minimum required percentage set forth in Part B of the Request for Competitive Sealed Proposals. Small, minority- and woman-owned business participation and minimum required participation levels will be discussed in more detail in pre-proposal meetings; therefore, attendance by Respondents at any offered pre-proposal meeting is strongly encouraged. "Small Business Participation" and "Minority- and/or Woman Owned Participation," when expressed as a percentage, means the ratio of the dollar amount of contract deliverables (services or goods) performed or provided by Enrolled Small, Minority- and/or Woman-Owned Businesses, compared to the total contract price.

Individual contract "Required Level" means the minimum level of Small, Minority- and/or Woman-Owned Business ("S/MWBE") participation that is required in an individual contract, expressed as a percentage. A contractor's proposal must meet the individual contract Required Level in order to be considered for award; if this minimum level is not reached, the proposal is deemed non-responsive, or adequate documentation of Good Faith Efforts is not provided and will not be further evaluated. For example, a minimum Small Business Participation Required Level of 15% on a project with a contract price of \$3,000,000 means that at least 15% of \$3,000,000 or (or \$4100,000) must be performed by Enrolled Small Businesses. PHA does not "round-up" in considering whether a Required Level has been reached, i.e., a contractor whose Small Business Participation (or participation and Good Faith Efforts) is 14.9% will not be evaluated in a solicitation with a Required Level of 15%.

### **Work Breakdown Forms, Utilization Plans, and other Compliance documents**

Work Breakdown Forms, Utilization Plans, and other Compliance documents must be submitted as provided in this solicitation, and the failure to do so may render the bid/proposal "non-Responsive." Such Breakdown Forms, Utilization Plans, and other Compliance documents must: (a) be affirmed as correct; (b) identify the S/MWBE businesses proposed to participate in the Contract in order to meet the Contract Goal; (c) identify the type of service or supplies each such S/MWBE would perform; (d) set out the dollar amount to be paid to each such S/MWBE for the Commercially Useful Function provided by that S/MWBE; (e) include the Respondent's commitment to meeting or exceeding the Contract Goal, or demonstrating its Good Faith Efforts to do so, and (f) provide such other information as provided for in this solicitation. The Business Equity Division shall review submitted bids/proposal to determine if they meet applicable solicitation and Program requirements.

The Work Breakdown Form (Attachment 07 to the procurement solicitation package) on which Respondent is required to list ALL proposed subcontractors and suppliers is also the form used to supply information regarding small business and MWBE participation (prime contractor, subcontractors, and suppliers). This form must be filled out and returned with the Bid/Proposal Response. Failure to submit this information or to comply with instructions thereon may be the basis for rejection of a proposal Response by Port Houston.

The submission of such subcontractor and supplier information does not create any contractual relation between Port Houston and any subcontractor or supplier.

Read the forms and information regarding Commercially Useful Function carefully. Certification is not the same as Commercially Useful Function. Only the dollar amounts committed to first tier small, minority- and/or woman-owned businesses (as applicable to a specific solicitation) for the Commercially Useful Function(s) that business will provide to the project counts toward a Required Level (or Contract Goal) of participation by that S/MWBE.

By submitting a bid or proposal, a Respondent agrees to provide Port Authority Business Equity Program contract compliance analysts and auditors, or their designees, reasonable access to its applicable books and records, and to the applicable books and records of its Subcontractors and Suppliers, to support the Port Authority's research investigations, determinations, and enforcement of Compliance with the Contract Goal commitment and other Policy and Program requirements.

### **Small Business Participation**

A Small Business prime contractor that will be self-performing at least the Required Level percentage will be deemed to have met the individual contract "Required Level." When the prime contractor is not a Small Business, the determination of whether the individual contract Required Level has been met will be made using the ratio of dollars to be paid to Enrolled Small Businesses compared to the total contract price.

A small business for purposes of projects is a firm: (a) for which the gross revenues or number of employees averaged over the past three (3) years, inclusive of any affiliates as defined by 13 United States Code of Federal Regulations Section 121.103, does not exceed the size standards as defined pursuant to Section 3 of the Small Business Act (15 U.S. Code, Chapter 14A), and (b) for which the net worth of each owner does not exceed \$1,320,000, excluding residence and the value of the small business.

To receive credit for Small Business Participation, small business companies (prime and subcontractors) must be enrolled in the Port Authority Small Business Development Program at the time of submission of the Response. In order for a joint venture to receive credit as a small business, the joint venture itself must be enrolled in the Port Authority Small Business Development Program at the time of submission of the Response.

### **Minority and/or Woman-Owned Business Participation**

A prime contractor may achieve the Required Level (i.e., the Contract Participation Goal) by (i) its own status as an MBE or WBE; (ii) entering into a Joint Venture with one or more MBEs and/or WBEs; (iv) directly purchasing materials or supplies from one or more MBEs and/or WBEs; or (v) any combination of the above.

To be eligible to be counted as an MBE or WBE towards a Contract Goal, the firm must be Certified at the time of submission and become a Port Authority Enrolled M/WBE no later than the date of award. The Port Authority shall make available on its website and through other means a list of certifying agencies recognized and approved by the Port Authority from time to time.

An MBE or WBE for purposes of projects is as defined in the Port Authority's Minority- and Woman-Owned Business Enterprise Policy.

## **8.18 Team Scoring and Proposal Evaluation**

### **8.18.1 Step 1**

Procurement Services will provide to the rank and evaluate team its initial assessment of all solicitations which have been received. This assessment includes, but is not limited to, those solicitations which should be considered as non-responsive. The Director of Procurement Services will eliminate all proposals that are not responsive to the RFP. Non-responsiveness includes failure to meet basic requirements or significant deviations from the terms of the RFP, such as not providing applicable licenses or certifications or not providing critical information that was requested in the RFP. Procurement Services will categorize each proposal as "responsive"; "reasonably susceptible of being made responsive"; or "non-responsive". Any proposal that modifies or fails to conform to the essential requirements or specifications of the solicitation shall be considered nonresponsive and categorized as nonresponsive, pursuant to Article 2.

### **8.18.2 Step 2**

Once the nonresponsive proposals have been eliminated, the team should conduct an independent evaluation of the remaining proposals. In this phase, team members should strive to evaluate each proposal by identifying both the strengths and weaknesses of each proposal. Each team member shall score each proposal accordingly and independently from other team members' influence. Finally, the team member will need to document any questions, concerns or pertinent information that they need to discuss with the evaluation team after it reconvenes to discuss the independent scores.

### **8.18.3 Step 3**

Once the independent evaluations have been completed, team members are encouraged to openly discuss their findings on each proposal at the scheduled evaluation team meetings. They should also freely discuss factors that might influence

their evaluations, such as previous experience with a vendor. Team members should seek clarification from the Director of Procurement Services or designee, as to whether factors that influenced them are proper to consider or inappropriate. Finally, the evaluation team scores are tabulated to determine the highest ranked proposals and to identify the shortlist.

#### **8.18.4 Step 4**

Once the shortlist has been identified, the team may invite proposers on such shortlist to provide oral presentations to the rank and evaluate team subject to section 8.19 below. The duration of such presentations is predetermined by the team and all team members must attend them, if possible. Members should – during oral presentation – ask questions regarding parts of proposals needing explanation or clarification or regarding those sections of a proposal that may have deficiencies that the potential vendor could cure.

### **8.19 Oral Presentations**

Oral presentations are conducted at the option of the department. If conducted, the solicitation document may state when oral presentations or discussions will occur. Oral presentations provide an opportunity for respondents to highlight the strengths and unique aspects of their proposal and to provide answers to questions the department may have regarding the proposal. Demonstrations of product functionality are recommended when appropriate, such as for information technology procurements or solution based procurements.

The selected proposers should each be given the same amount of time to make their oral presentations to the evaluation team. A Notice of Presentation form is contained in Appendix 11 herein.

During the presentation, evaluation team members may ask questions about the proposal or product. When in person presentations or demonstrations are not possible, the presentation may be made by telephone or online conference.

### **8.20 Proposers' References**

The Team Leader will review and approve a proposed reference questionnaire. All follow up reference checks and responses must be documented in writing. Departments may want to consider using the following statement in the solicitation document in lieu of checking references for all proposers:



[The Port Authority reserves the right to check references prior to award. Any negative responses received may be grounds for disqualification of the proposal.]

By using this clause, departments are not required to check references but may choose to do so. Whether or not to check references as part of the evaluation is at the discretion of the department based on the individual procurement.

Upon completing the reference checks, the Requesting department signs the documents and reports all findings to the evaluation team.

## **8.21 Best and Final Offers**

After oral presentations, if any, or after original proposals are evaluated, proposers judged by the team to have made the most advantageous offers may be invited to submit a Best and Final Offer (“BAFO”).

The Director of Procurement Services or designee shall clearly notify the selected Proposers in writing that they are being invited to submit a BAFO and that they have the opportunity to:

- Modify the initial offer;
- Include any added inducements that will improve the overall score in accordance with the RFP evaluation plan.

Upon receipt of the BAFOs, the team will revise its original evaluation(s) based on the information submitted in the BAFO and select the top or the top two or more proposers to begin contract negotiation.

## **8.22 Contract Negotiation**

Offerors must be treated fairly and equally with respect to any opportunity for discussion, negotiation, and revision of proposals; accordingly, the process set out below should be used to achieve those requirements.

1. All proposals must be evaluated fairly and equally as they are reviewed to determine:
  - a. Whether the proposal is “responsive,” e.g. (i) was submitted on time and with price(s) specified, and (ii) provides the correct bond or bid security (if applicable), correct forms, and all requested information; and

b. Whether the offeror is “responsible,” e.g. (i) can comply with the required delivery or performance schedule (taking into consideration other business commitments), (ii) has a satisfactory record of performance and integrity, satisfactory safety and environmental record, and satisfactory references, (iii) has the necessary facilities, equipment, material, personnel, organization, experience, authorizations, technical skills, and financial resources to fulfill the terms of the contract, and (iv) meets the applicable small business participation requirements, if any.

2. The next step depends on whether the Port Authority intends to negotiate with offeror(s) about the proposal and contract terms for the purpose of obtaining a best final offer (“Negotiations”).

a. If the Port Authority does not desire to conduct Negotiations, the responsive proposals from responsible offerors shall be further fairly and equally evaluated in relation to the published evaluation factors to determine the responsible offeror whose proposal is determined to provide the best value to the Port Authority.

b. If the Port Authority desires to conduct Negotiations, the responsive proposals from responsible offerors shall be further fairly and equally evaluated in relation to the published evaluation factors to the extent sufficient to determine those proposal(s) reasonably qualified for the award.

i. If three or more proposals are determined to be reasonably qualified for the award, the Port Authority must conduct Negotiations with at a minimum the three offerors whose proposals have been determined to be reasonably likely to be ranked as the top three proposals providing the best value to the Port Authority.

ii. If only one or two proposals are determined to be reasonably qualified for the award, the Port Authority must conduct Negotiations with the offeror(s) of, respectively, that one or those two proposals.

iii. Negotiations must be conducted in accordance with the terms of the RFP, applicable law, and Port Authority policies and standards. Whenever possible, Negotiations should be conducted prior to the executive committee meeting in order to permit the evaluation team to take the best and final offer(s) to the executive committee.

#### Notice of Award

The Director of Procurement Services or designee shall notify the selected proposers in writing of the negotiations and provide them with the form of contract, which must be approved by the Legal department, that they will be expected to sign. After Port Commission awards a contract, no notice to proceed shall be issued until all contract formation requirements are fulfilled.

## **8.23 Contract Award**

### **A. Customary Staff Responsibilities for Evaluation of Proposals**

1. Unless the Port Commission determines otherwise, Port Authority staff should evaluate, in relation to the published selection criteria, the proposals received by the Port Authority in response to a Formal Procurement (procurement of goods/services that must be approved by the Port Commission pursuant to Texas Water Code, Chapter 60).
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 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 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.
6. With the assistance of the entire team, the team chairperson must make a written recommendation, via the scoring matrix, to the Executive Committee and the Director of Procurement Services, or designee. This recommendation consists of:

- a. The acceptability or unacceptability of each vendor;
- b. The technical and monetary ranking of each acceptable vendor;
- c. The combined final ranking of the vendors; and
- d. A detailed rationale explaining why the recommended vendor is the most advantageous.

B. Executive Committee

1. The Executive Committee should include (1) the Executive Director, Chief Operating Officer, or Chief Legal Officer, depending on availability, (2) the appropriate Chief Officer, and (3) the department director.
2. The Executive Committee has the option of requiring that the selection team reevaluate the proposers or service providers, or conduct a new solicitation.
3. The Executive Committee has the option of terminating the procurement if it determines that no proposal offers “best value” to the Port Authority, provided that notification to and concurrence by the Port Commission, of such termination, is obtained.

C. 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.
3. With Port Commission approval, the requesting department will negotiate with the most highly qualified vendor. If a satisfactory contract cannot be negotiated, the Port Authority shall end negotiations in writing and enter into negotiations with the next lowest and best evaluated offer resulting from negotiation based on the published criteria.

## **8.24 Contract Cancellation**

A contract may be terminated in accordance with its terms. If the terms do not specify a basis for termination, the contract may be terminated with or without cause by the Port Authority giving thirty (30) days' prior written notice to the legal address of the contractor. All contract cancellations are issued by Procurement Services and/or the Legal department. Sample Notices of Termination are included in Appendix 17 and Appendix 18 herein.

## **8.25 Contract Management**

The Director of Procurement Services or designee will be responsible for maintaining documentation of vendor performance, as required, utilizing criteria such as; terms, price, quality, delivery, timeliness and service level.

Requesting departments will provide feedback pertaining to the contractor's performance. A vendor that does not meet the requirements of the contract will be determined to be non-compliant.

The requesting department shall notify the vendor and the Director of Procurement Services in writing, of any problem requiring immediate corrective action. If no satisfactory corrective action is received, the contractor will be considered to be in breach of contract and the contract may be terminated, and the vendor may be disqualified from future procurements. A sample Termination for Default is contained in Appendix 18 herein.

## **Article 9**

### **Professional Service Contracts of More Than \$100,000: Request for Qualification**

A Request for Qualifications (RFQ), as used by the Port Authority, refers to the two-step advertised procurement method where price is negotiated following selection. The selection and award must be based on demonstrated competence and qualifications to perform the services for a fair and reasonable price. RFQ is used for certain professional services only.

A RFQ for professional services will be solicited in a two-tier format:

1. Step 1 - Qualification Process
2. Step 2 - Submittal of cost/pricing information by the most highly qualified vendor.

A Request for Qualifications is a negotiated method of procurement. It is a Qualifications-based selection process. Price is not an evaluation factor and is considered only in Step 2. After selecting the most highly qualified firm, price negotiations occur with the top ranked firm only. If unable to negotiate a fair and reasonable price with the top ranked firm, negotiations are terminated and price negotiations begin with the next ranked firm. The process continues until fair and reasonable price is negotiated or the list is exhausted.

Request for Qualifications are commonly utilized in the procurement of the following commodities:

1. Material testing/inspection services;
2. Engineering, architect, surveyor services;
3. Bond counsel/investment banking;
4. Other professional services.

#### **9.1 Development of Specifications**

Specifications on qualifying criteria shall be developed by the requesting department. Procurement Services will review information and add or delete information, as required, with input from the Requestor.

## **9.2 RFQ Documents**

The RFQ packet will contain at least the following information:

1. General Terms and Conditions
2. Instruction to Proposers
3. Proposal Form
4. Certification and Disclosure Statement
5. Specifications
6. Evaluation Criteria

## **9.3 Service Provider List**

Because an RFQ is a competitive solicitation of a specialized nature, the requesting department may provide a suggested service provider list. Procurement Services may utilize the Port Authority e-procurement application and his/her experience.

## **9.4 RFQ Advertisement**

The Texas Water Code requires public notice of formal procurement packages. A notice of the CSB will be advertised twice in a local newspaper (e.g., *Houston Chronicle*) – once a week for at least two (2) consecutive weeks prior to the bid opening date. Although not required by the Texas Water Code, the Port Commission shall approve in advance every Port Authority solicitation of a formal procurement. Port Authority staff shall present a Request for Port Commission Action for approval to advertise or solicit bids, proposals, or qualifications, as applicable. Staff may request at that time that the Port Commission determine whether another statutory purchasing method may offer “best value” to the Port Authority for a specified formal procurement.

## **9.5 Pre-Proposal Conference Preparation**

The requesting department serves as chairperson during the pre-proposal conference and is primarily responsible for addressing technical and site specific questions. The Procurement Services department will have representatives present to answer procurement issues related to the procurement process. An attendance roster is established at each conference to collect the names of attendees, company represented, and contact information (including email addresses).

### **9.5.1 Agenda/Guidelines**

#### **9.5.1.1 Opening**

After calling the conference to order, the Port Authority representative introduces him/ herself, covers basic housekeeping rules, lays out the agenda and has everyone introduce themselves.

#### **9.5.1.2 Recording**

The Port Authority Representative announces administrative information regarding any audio or videotaping of the conference. In addition, attendees are reminded that only a written change via an addendum legally binds the RFQ.

It is recommended that the pre-proposal conferences be recorded (or detailed notes taken). The recording is a ready reference and checklist if there is a need to publish addenda.

## **9.6 Pre-Proposal Conference**

Unless otherwise stated in the solicitation document, attendance of prospective proposers at pre-proposal conferences is not mandatory.

Prior to the actual conference, the Director of Procurement Services or designee may wish to meet with the requesting department's point of contact to answer questions and conduct discussions related to the acquisition. The meeting is used to coordinate participation and establish ground rules so that the pre-proposal conference is conducted in an organized, meaningful and professional manner. It is also used to ensure departmental representatives are working together to better serve the Port Authority's needs.

The pre-proposal conference is a meeting of potential proposers, the Director of Procurement Services or designee and the Requesting department's technical representative(s) for the purpose of reviewing requirements, facilitating a clear understanding, and promoting competition. The RFQ should outline administrative instructions to specify a reasonable conference time to maximize attendance. The appropriate conference date should be within ten days after potential proposers have received their RFQ. The administrative point of contact and location of the pre-proposal conference should be included on the RFQ cover page.



Pre-proposal conferences may result in later modifying the RFQ if there are special market conditions of which the Port Authority may have been unaware. In this event, an addendum is composed by the requesting department director in collaboration with the Director of Procurement Services or designee and then submitted to all proposers prior to the RFQ closing date. Those attending the conference are advised that only written modifications via an addendum are considered alterations to the RFQ.

#### **9.6.1 RFQ Overview and Review**

The Port Authority representative will cover the RFQ instructions, general terms and conditions. A department representative will give an overview of the project/scope of work. Review of the RFQ itself serves as the focus for the conference. The Port Authority representative reviews the document, page by page if necessary, permitting proposers an opportunity to ask questions as each page is reviewed. This is imperative for an orderly pre-proposal conference.

However, questions concerning the RFQ may be requested prior to the pre-proposal conference in order to identify the type of questions that may be asked.

#### **9.6.2 Recap and Closing**

The Port Authority representative summarizes the key points of the conference. Simple questions should be answered immediately while others may not be easily answerable. In that event, the Port Authority representative must only give an answer that will withstand rigorous scrutiny after the conference. All relevant questions pertaining to the RFQ may be addressed in the subsequent addendum and/or through an electronic vendor database. All proposer inquiries relating to interpretation and technical details of the RFQ must be referred to the Port Authority representative.

Attendees may offer some suggestions or objections that may be taken under advisement. The Port Authority representative will make a written response in a timely manner before the scheduled opening. No decision on complicated or sensitive matters should be made in haste at the pre-proposal conference. It may be necessary to further research the matter to provide the correct answer.

### **9.7 Pre-Proposal Site Visits**

Some projects will necessitate a site visit by proposers. The point of contact for arranging a site visit should be included on the RFQ cover page. A general site orientation “walk through” may be discussed during the pre-proposal conference with a site visit scheduled that day or at a later date.

## **9.8 Communications with Proposers**

The RFQ should advise proposers that they must channel all communications concerning the RFQ through the Director of Procurement Services or designee and to no other person or Port Commissioner. All communications should be in writing and should be responded to by the requesting department or the Director of Procurement Services or designee in writing through an addendum or through an electronic application. Failure to observe this “no contact” rule, including but not limited to attempts to contact Port Commission members directly in regard to the RFQ, may be justification for rejection of the violator’s proposal.

## **9.9 Addenda to Request for Qualifications**

Addenda may be issued prior to or after the pre-proposal conference and may reflect questions addressed during the pre-proposal conference. Prior to issuing an Addendum, the Director of Procurement Services or designee must consider the time remaining until the RFQ opening date. If additional time is needed for the proposer to respond, an Addendum is used to extend the due date of the RFQ.

The Director of Procurement Services or designee is responsible for coordinating the subject matter and issuing the Addenda:

- All changes must be in writing;
- All Addenda shall be numbered sequentially;
- The Addendum must be emailed to proposers on the RFQ email list and to all pre proposal conference attendees; and
- Interpretations of a material consequence may not be made orally to potential proposers.

If an Addendum is necessary and seven business days or less remain before the RFQ opening date, the deadline for responding to the RFQ may be extended.

## **9.10 Modification and Withdrawal of RFQs**

Requests for Qualifications may be modified or withdrawn by any method authorized by the solicitation, and in the same manner as set out for the modification and withdrawal of bids set out in Article 2.

## **9.11 Proposal Due Date**

Proposals will be due on the deadline specified in the solicitation. Any proposal, request for withdrawal, or modification of a proposal that is not received at the designated

location, time, and date set forth in the RFQ documents will be considered late and will not be considered. Delivery of the proposal to the specified location is the sole responsibility of the proposer. Sealed proposals may be submitted by:

- email to [procurementproposals@porthouston.com](mailto:procurementproposals@porthouston.com). Vendors will receive an email acknowledgement of receipt of proposals.

## **9.12 Receipt of Proposals**

Upon receipt, proposals will be logged by Procurement Services on or before the deadline specified in the solicitation. When the time set for receipt has arrived, the Director of Procurement Services or designee shall (1) personally open all proposals received before that time, and (2) have the proposals recorded. The original of each proposal shall be carefully safeguarded, particularly until the abstract of proposals has been made and its accuracy verified. The abstract of proposals is the written compilation of proposers and their respective proposals, usually separated into individual items. The Director of Procurement Services may delegate performance of this procedure to a designee so long as the Director of Procurement Services remains fully responsible for the actions of the designee.

The date and time for receiving the proposals are set out on the RFQ cover page. The proposal will be considered only if received:

- Before the closing date and time, and
- At the email address designated in the solicitation package.

Departments should allow realistic time frames for this process. The proposal due date is assigned based on the complexity of the RFQ and Port Commission agenda schedule. In general, 30 to 60 days for a solicitation is considered standard. If a site visit or a pre-proposal conference is required, additional time should be allowed. These considerations are also weighed against the urgency of the department's need for the services sought in the RFQ.

After the proposal is received, the Director of Procurement Services or designee will verify the proposals for the following:

- Completion of all proposal requirements;
- Execution of offer; and
- Mandatory documents.

### **9.13 Proposal Initial Evaluation**

Once the proposal is opened, the Director of Procurement Services, or designee, will determine responsiveness, share the results of the evaluation, and will distribute copies of the proposal to the evaluation team. The evaluation team will be determined by the requesting department. The team will evaluate the proposals based on the basis of demonstrated competence and qualifications.

### **9.14 Appointing Evaluation Team Members**

During the development of the RFQ, the department director will assign evaluation team members. The department director shall also designate a Team Leader, who may be the department's representative. The evaluation team should be composed of individuals who are stakeholders in the final product or service, and/or individuals who have the necessary technical or program expertise.

The Evaluation Team Leader serves as the lead. The Team Leader is responsible for identifying individuals to represent the core of evaluation team members in the areas of:

- Operational evaluation;
- Technical evaluation;
- Financial evaluation; and
- Administrative support.

The evaluation team should bring together as much knowledge as possible to ensure the best proposal is selected. The Team Leader will be responsible for scheduling and inviting the evaluation team members and other personnel to participate in the evaluation process. It should be clear to evaluation team members from the outset that their duties will require significant time and effort.

There is no restriction as to how many people the department may nominate to the evaluation team; however, the recommendation is to enlist three to five individuals possessing expertise for the service/product being acquired. Limiting the number of team members will make the coordination of activities run more smoothly and help ensure the security and integrity of the process.

The Team Leader should be the primary point of contact for Port Authority staff during the evaluation portion of the RFQ.

### **9.15 Evaluation and Contract Recommendation**

The requesting department will be responsible for convening an evaluation team

composed of at least three (3) members, including at least one (1) representative of the requesting department and one (1) representative of a non-requesting department. The requesting department will select members of the rank and evaluate team and coordinate with Procurement Services the date/time of the initial/final evaluation session. The Director of Procurement Services or designee shall be present to instruct and advise on the rank and evaluation process.

The Team Leader should establish the evaluation agenda. Before the individual evaluations begin, the Team Leader and the Director of Procurement Services or designee should meet with the evaluation team to distribute the Certification of Impartiality and Non-Conflict of Interest for Evaluators forms contained in Appendix 1, matrices, and proposals and to brief the evaluation team on the following:

#### **9.15.1 Explain**

The Director of Procurement Services or designee should explain:

1. The evaluation process;
2. Member responsibilities regarding the critical nature of their non-conflict of interest and the integrity of the evaluation process;
3. That evaluation team members may communicate with each other about the RFQ, but that they should not disclose any information about the process to anyone not a part of the team;
4. The evaluation criteria and the scoring process;
5. The evaluation matrix to ensure the team understands how the matrix works and how proposals will be evaluated; and
6. That each team member must complete and submit fully executed forms to the Director of Procurement Services or designee.

#### **9.15.2 Establish**

The Team Leader should establish:

1. The deadline for completion of evaluations;
2. The principle that all team members should refer all questions during the evaluation process to the Team Leader;
3. The tabulation of scores; and
4. The principle that individual scores may be classified as a matter of public record, subject to the Texas Public Information Act.

The Team Leader should stress the following points with the team:

1. Each member of the team is a voting member.
2. Conclusions are reached independently but team members may discuss issues with each other in arriving at their conclusions.
3. An expert in a specific area may be used to help reach a decision.
4. Each proposal should be evaluated individually against the requirements of the RFQ.
5. Members may ask questions if they are unable to find information, do not understand information in a proposal, or require technical assistance from other members.
6. After the technical evaluations are completed, all evaluation matrices must be turned in to the Team Leader for submission to the Director of Procurement Services or designee.

The Team Leader shall remain present during the entire meeting to answer any questions, and to ensure proper procedures are followed. In instances when there are time constraints, remote location positioning of team members, or other unforeseen circumstances, the leader may need to assemble as many available members as possible at one time to evaluate. However, the preferred method is to have all members participating.

Observers may participate as nonvoting observers of the evaluation team upon execution of the Certification of Impartiality and Non-Conflict of Interest for Observers form contained in Appendix 2. Such individuals may include members of the Business Equity Division.

When an award requires final approval by the Port Commission, the requesting department will prepare a Request for Port Commission Action. Procurement Services will maintain these documents along with an abstract of bids in the Procurement Services contract file.

## **9.16 Scoring Matrix**

A pre-defined scoring matrix (Appendix 14) may be used by the evaluation team to score the individual responses based on the evaluation criteria defined in the solicitation document. The matrix becomes the scoring worksheet to be completed by each evaluation team member. The matrix form should be completed prior to finalizing the solicitation document. If time does not permit the scoring matrix to be completed prior to publication, then the matrix must be completed prior to the opening and review of the proposals.

The RFQ must advise the proposers of the evaluation criteria, which should reflect the

essential qualities or performance requirements necessary to achieve the objectives of the contract and allow the evaluation team to fairly evaluate proposals. The evaluation criteria may consider multiple sources, such as the written response, the oral presentation, and conformance to RFQ requirements, experience, expertise, qualification, proposed strategy and/or equipment. The required response should directly relate to the evaluation criteria.

To ensure fairness in evaluation, the evaluation criteria should reflect only those requirements specified in the RFQ. The RFQ should clearly state the consequences of failing to meet these requirements, such as being disqualified from the RFQ process.

Criteria not included in the RFQ may not be used in the selection or ranking of a proposal. For example, if respondents receive additional points for possessing a national accreditation, that criterion must be included in the RFQ so that proposers know there is an opportunity to score higher by providing these options. Likewise, if this information is not requested in the RFQ, proposers who neglect to offer these options cannot be penalized. Request for Qualifications responses may be evaluated by, but not limited to, the selection criteria listed below.

## **9.17 Evaluation Criteria for RFQ**

### **1. Respondent's (and Subconsultant's, if applicable) Reputation and Quality of Services:**

- Background of Respondent
- Reputation of Respondent and of Respondent's services
- References, including government project examples
- Quality of Respondent's services
- Availability and dedication of resources to PHA projects, including the ability to perform multiple projects at the same time
- Respondent's past relation with PHA.

### **2. Personnel (Including Subconsultant Personnel, if applicable) Qualifications and Experience:**

- Background, reputation, qualifications, and relevant experience of assigned personnel
- Availability and dedication of qualified personnel to PHA projects, including the ability to perform multiple projects at the same time
- Certifications, registrations, and licenses of available and dedicated personnel
- Personnel's past relation with PHA

3. Performance Plan and Other Benefits:

- The methodology proposed to perform PHA projects and services
- Plan for communicating with PHA
- Any unique or specialized processes, organization, capabilities, safety or environmental considerations, best practices, or quality control methods

4. Overall Compliance with PHA Policies:

- Demonstrated understanding of the RFQ and its objectives
- Clarity and brevity of the Response
- Thoroughness of Response, including submission of all items required by the RFQ

## **9.18 Team Scoring and Proposal Evaluation**

### **9.18.1 Step 1.**

Procurement Services will provide to the evaluation team its initial assessment of all solicitations which have been received. This assessment includes, but is not limited to, those solicitations which should be considered as non-responsive. The Director of Procurement Services or designee will eliminate all proposals that are not responsive to the RFQ. Non-responsiveness includes failure to meet basic requirements or significant deviations from the terms of the RFQ, such as not providing applicable licenses or certifications or not providing critical information that was requested in the RFQ. Procurement Services will categorize each proposal as “responsive”; “reasonably susceptible of being made responsive”; or “non-responsive”. Any proposal that modifies or fails to conform to the essential requirements or specifications of the solicitation shall be considered nonresponsive and categorized as nonresponsive, pursuant to Article 2.

### **9.18.2 Step 2.**

Once the nonresponsive proposals have been eliminated, the team should conduct an independent evaluation of the remaining proposals. In this phase, team members should strive to evaluate each proposal by identifying both the strengths and weaknesses of each proposal. Each team member shall score each proposal accordingly and independently from other team members’ influence. Finally, the team member will need to document any questions, concerns or pertinent information that they need to discuss with the evaluation team after it reconvenes to discuss the independent scores.

### **9.18.3 Step 3.**

Once the independent evaluations have been completed, team members are encouraged to openly discuss their findings on each proposal at the scheduled evaluation team meetings. They should also freely discuss factors that might influence their evaluations, such as previous experience with a vendor. Team members should



seek clarification from the Director of Procurement Services or designee, as to whether factors that influenced them are proper to consider or inappropriate. Finally, the evaluation team scores are tabulated to determine the highest ranked proposals and to identify the shortlist.

#### **9.18.4 Step 4**

Once the shortlist has been identified, the team may invite proposers on such shortlist to provide oral presentations to the rank and evaluate team subject to section 9.19 below. The duration of such presentations is predetermined by the team and all team members must attend them, if possible. Members should – during oral presentation – ask questions regarding parts of proposals needing explanation or clarification or regarding those sections of a proposal that may have deficiencies that the potential vendor could cure.

### **9.19 Oral Presentations**

Oral presentations are conducted at the option of the department. If conducted, the solicitation document may state when oral presentations or discussions will occur. Oral presentations provide an opportunity for respondents to highlight the strengths and unique aspects of their proposal and to provide answers to questions the department may have regarding the proposal.

The selected respondents should each be given the same amount of time to make their oral presentations to the evaluation team. A Notice of Presentation form is contained in Appendix 11 herein.

During the presentation, evaluation team members may ask questions about the proposal. When in person presentations or demonstrations are not possible, the presentation may be made by telephone or electronic devices.

### **9.20 Proposers' References**

The Team Leader will review and approve a proposed reference questionnaire. All follow up reference checks and responses must be documented in writing. Departments may want to consider using the following statement in the solicitation document in lieu of checking references for all proposers:

[The Port Authority reserves the right to check references prior to award. Any negative responses received may be grounds for disqualification of the proposal.]

By using this clause, departments are not required to check references but may choose

to do so. Whether or not to check references as part of the evaluation is at the discretion of the department based on the individual procurement.

Upon completing the reference checks, the requesting department signs the documents and reports all findings to the evaluation team.

## **9.21 Best and Final Offers**

After oral presentations, if any, or after original responses are evaluated, respondents judged by the team to have made the most advantageous offers may be invited to submit a Best and Final Offer (“BAFO”).

The Director of Procurement Services or designee shall clearly notify the selected Proposers in writing that they are being invited to submit a BAFO and that they have the opportunity to:

- Modify the initial offer;
- Include any added inducements that will improve the overall score in accordance with the RFQ.

Upon receipt of the BAFOs, the team will revise its original evaluation(s) based on the information submitted in the BAFO and select the top or the top two or more proposers to begin contract negotiation.

## **9.22 Contract Negotiation**

A team consisting of Port Authority representatives, as appropriate, selected members of the rank and evaluate team will attempt to negotiate a contract with the most highly qualified proposer. The Port Authority representatives will initiate negotiations of a proposed contract, including detailed scope of services and fees, with the selected service provider, considering requirements set forth in the RFQ and the Port Authority’s past experience with the respondents.

Fees will be negotiated based on fair and reasonable estimates of the costs for the scope of services on each identified projects plus allowances deemed appropriate by the Port Authority.

If the Port Authority is unable to negotiate a proposed contract with the selected Respondent that is satisfactory to the Port Authority in its discretion, the Port Authority shall formally, and in writing, end negotiations with that proposer. The Port Authority may then designate the next remaining most highly qualified proposer. If a proposed contract is again not negotiated, such process shall continue until a proposed contract is

successfully negotiated, or until all proposers are rejected. A contract is not binding until it is executed by both the Port Authority and the proposer and approved by the Port Commission, if required.

### **9.23 Notice of Award**

The Director of Procurement Services or designee shall notify the selected proposers in writing of the negotiations and provide them with the form of contract, which must be approved by the Legal department, that they will be expected to sign. After Port Commission awards a contract, no notice to proceed shall be issued until all contract formation requirements are fulfilled.

### **9.24 Contract Award**

#### **A. Customary Staff Responsibilities for Evaluation of Proposals**

1. Unless the Port Commission determines otherwise, Port Authority staff should evaluate, in relation to the published selection criteria, the proposals received by the Port Authority in response to a Formal Procurement (procurement of goods/services that must be approved by the Port Commission pursuant to Texas Water Code, Chapter 60).
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 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 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.
6. With the assistance of the entire team, the team chairperson must make a written recommendation, via the scoring matrix, to the Executive Committee and the Director of Procurement Services, or designee. This recommendation consists of:
  - a. The acceptability or unacceptability of each vendor;
  - b. The technical and monetary ranking of each acceptable vendor;
  - c. The combined final ranking of the vendors; and
  - d. A detailed rationale explaining why the recommended vendor is the most advantageous.

B. Executive Committee

1. The Executive Committee should include (1) the Executive Director, Chief Operating Officer, or Chief Legal Officer, depending on availability, (2) the appropriate Chief Officer, and (3) the department director.
2. RFQs for architectural, engineering, and land surveying services: The Executive Committee will review, and approve or reject, the recommendation of most qualified provider made by the RFQ evaluation team, based on the matrix or narrative evaluation that the team prepares.
3. The Executive Committee has the option of requiring that the selection team reevaluate the proposers or service providers, or conduct a new solicitation.
4. The Executive Committee has the option of terminating the procurement if it determines that no proposal offers “best value” to the Port Authority, provided that notification to and concurrence by the Port Commission, of such termination, is obtained.

C. 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.
3. With Port Commission approval, the requesting department will negotiate with the most highly qualified vendor. If a satisfactory contract cannot be negotiated, the Port Authority shall end negotiations in writing and enter into negotiations with the next ranked most highly qualified vendor.

## **9.25 Contract Cancellation**

A contract may be terminated in accordance with its terms. If the terms do not specify a basis for termination, the contract may be terminated with or without cause by the Port Authority giving a thirty (30) day prior written notice to the legal address of the contractor. All contract cancellations are issued by Procurement Services and/or the Legal department. Sample Notices of Termination are included in Appendix 17 and Appendix 18 herein.

## **9.26 Contract Management**

The Director of Procurement Services or designee will be responsible for maintaining documentation of vendor performance, as required, utilizing criteria such as; terms, price, quality, delivery, timeliness and service level.

Requesting departments will provide feedback pertaining to the contractor's performance. A vendor that does not meet the requirements of the contract will be determined non-compliant.

The requesting department shall notify the vendor and the Director of Procurement Services in writing, of any problem requiring immediate corrective action. If no satisfactory corrective action is received, the contractor will be considered to be in breach of contract and the contract may be terminated, and the vendor may be disqualified from future procurements. A sample Termination for Default is contained in Appendix 18 herein.

## **Article 10**

### **Goods & Services Contracts of More Than \$100,000: Special Cases**

This article describes certain limited methods for awarding service and supply contracts: emergency procurement, sole source procurements, and procurements through interlocal agreements and cooperative purchasing agreements.

Further, this article describes revenue generating contracts to clarify the distinction and assist users in understanding that the standards and procedures in this Manual do not apply to solicitations and contracts that are not procurements.

#### **10.1 Emergency Purchases**

Emergency purchases are purchases necessary to protect the public health and safety, to preserve the property of the Port of Houston Authority, to repair unforeseen damage to the property of the Port Authority, to respond to security directives, and to respond to an emergency related to supply chain disruptions or shortages. Texas law provides that these types of purchases, even if they are in excess of \$100,000, are exempt from procurement law requirements.

##### **10.1.1 Definition of Emergency**

The executive director of a district or an officer of a district authorized in writing by the port commission may make emergency purchases or contracts or emergency amendments to existing purchase orders or contracts in an amount that exceeds the amount authorized under Section 60.403(a) for routine purchases or contracts if necessary:

- (1) To preserve or protect the public health and safety of the residents of the district;
- (2) To preserve the property of the district in the case of a public calamity;
- (3) To repair unforeseen damage to the property of the district;
- (4) To respond to security directives issued by:
  - (a) The federal Department of Homeland Security, including the Transportation Security Administration;
  - (b) The United States Coast Guard;
  - (c) The federal Department of Transportation, including the Maritime Administration; or
  - (d) Another federal or state agency responsible for domestic security; or
- (5) To respond to an emergency related to supply chain disruption or shortages or other disruptions or stoppages in the operation of the district which, without

harm to the welfare of the district, does not permit the delay incident to the competitive process or would result in undue costs to the district.

(b) The executive director of a district or the authorized officer of the district shall notify the port commissioners of any purchase made under Subsection (a) not later than 48 hours after the purchase is made.

#### **10.1.2 Justification of an Emergency**

Any requisition claiming an emergency shall provide detailed information on the goods and/or services needed, and the Requestor must provide justification for the emergency purchase. A written determination of the basis for the emergency and for the selection of a particular contractor or vendor shall be required prior to issuing an emergency purchase order. Within 48 hours, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the contract, and a listing of the item(s) procured under the contract, which shall be reported to the Port Commission.

#### **10.1.3 Procedure for Making Emergency Purchases**

The requesting department making the emergency purchases must adhere to the following procedures:

1. The requesting department will review the justification and verify that an emergency exists.
2. The requesting department must prepare a justification letter/memo documenting the nature of the emergency (for example hazard to life, welfare, safety or property) and what caused the emergency. The justification letter must detail the estimated impact or damage (financial or otherwise) that may result from following standard procurement procedures.
3. The requesting department will create an electronic requisition and obtain required approvals.
4. The requesting department submits the requisition form and justification letter to the Director of Procurement Services or designee.
5. The Director of Procurement Services or designee, in consultation with the General Counsel, will review and determine if an emergency is warranted.
6. The Director of Procurement Services or designee, will issue the emergency purchase order, forward a copy to the requesting department, and file a copy of the emergency purchase order.

#### **10.1.4 Board Notification**

The Executive Director shall notify the Port Commissioners, via letter/memo, of any

procurement made under the Texas Water Code Section 60.4035, not later than 48 hours after the purchase is made.

It is important that the Port Authority make an effort to eliminate emergency purchases for non-emergency situations as much as possible and require that all emergency purchases be fully justified.

## **10.2 Sole Source**

Sole source purchases are purchases of goods or services that are available from just one vendor. These sorts of purchases are exempt from statutory bid requirements. A sole source purchase is not to be used to avoid competition.

Procurement without competition is authorized under limited conditions and subject to written justification documenting the conditions which preclude the use of a competitive process. An item is considered “sole source” when it is available from only one source, including:

1. an item for which competition is precluded because of the existence of a patent, copyright, secret process, or monopoly;
2. no other product or service available that can perform equivalent functions to the sole source product or service;
3. maintenance or repair services by the Original Equipment Manufacturer and the manufacturer does not have multiple agents to perform these services
4. replacement or spare parts are available only from the Original Equipment Manufacturer, and no other parts will work;
5. a utility service, including gas, or water.

An item that comes from a single manufacturer is not automatically a “sole source” item. Many manufacturers sell their products through distributors. Therefore, even if a purchase is identified as a valid “sole brand” or “sole manufacturer”, the requesting department should verify whether the manufacturer has multiple distributors. If the manufacturer does have multiple distributors, competition should be sought among the distributors.

Sole source purchases for the Port Authority are an exception and must be strictly controlled and thoroughly documented. It is also important to remember that negotiation should be conducted before agreeing to a sole source purchase because the lack of competition may lead a vendor to charge unreasonably high prices. The requesting



department should prepare a detailed list of requirements relating to delivery, quality, performance, and other relevant conditions and do everything possible to strengthen the Port Authority's bargaining position.

#### **10.2.1 Justification of Sole Source**

The Port Authority recognizes that there may be instances when sole source purchases must be made, but such purchases must be appropriately justified utilizing the Sole Source Justification form contained in Appendix 16. Each justification form shall contain written sufficient facts and rationale to justify the need for some feature of characteristic (specification) that is unique to the requested product or service that cannot be provided by any other vendor's product or service. The written justification form, signed by the Requestor or other authorized individual, must be forwarded to Procurement Services and must contain at least the following elements:

1. Identification of the unique feature(s) or characteristic(s)/specification(s) of the requested product that will serve as the basis for the sole source justification.
2. An explanation of the need for the unique specifications. This explanation must address the critical importance of the unique specifications to the intended use of the product or service.
3. A reason stating why a competitor's product or service is not satisfactory. This section must relate to the explanation of need for the unique specifications and should serve to support a finding that the stated need cannot be met with competing products or services. Sufficient detail must be included to show that the marketplace has been canvassed to locate acceptable competitive products or services.
4. A Justification Form from the Requestor stating that the product or service is exclusively sold by the vendor and cannot be purchased from any others. The written justification is not a justification to purchase. The law does not require that the decision to purchase products and services be justified. It is a justification of the need for something that is unique about the product or service that precludes competition. If there are two or more products that are acceptable, preserving the competitive solicitation environment will help ensure that the Port Authority receives the best value.

If a sole source purchase is justified, the request should be processed accordingly, rather than using a competitive solicitation and then attempting to disqualify bids received on other products. Because procurement files are subject to the Texas Public Information Act, the use of sole source purchase procedures must withstand critical scrutiny. Justifications must be objective and must avoid statements that cannot be substantiated.

### **10.2.2 Excluded Reasons for Sole Source**

The following reasons to justify a sole source purchase WILL NOT be accepted:

5. Price
6. Competing products or services are not satisfactory
7. Subjective statements regarding product quality

### **10.2.3 Procedure for Making Sole Source Purchases**

Requesting departments making sole source purchases must adhere to the following procedures:

1. The requesting department must first determine whether any functionally equivalent goods or services are exclusively available from only one source by contacting the manufacturer/supplier and conducting thorough independent market research to determine whether other qualified sources are capable of satisfying the department's needs exist.
2. If the requesting department's research confirms that there is no functionally equivalent item, he/she shall submit a Sole Source Justification Form documenting the research conducted and the conclusion reached. In addition, a Sole Source Affidavit (Appendix 15) must be requested from the manufacturer/supplier, stating that the item/service is exclusively available from only one source. The Sole Source Affidavit must not be dated earlier than 30 days before the requesting department's research.

### **10.2.4 Sole Source Purchases Up to \$100,000**

Following the requesting department's confirmation that the item/service is a sole source purchase, the requesting department shall forward the requisition, manufacturer's/supplier's letter and a completed sole source justification form to Procurement Services for approval and issuance of a purchase order.

### **10.2.5 Sole Source Purchases of more than \$100,000**

Following the requesting department's confirmation that the item/service is a sole source purchase, the requesting department shall forward the requisition, manufacturers/supplier's affidavit and a completed sole source justification form to the Procurement Services department for approval and issuance of a purchase order. Sole source purchases of more than \$100,000 must be approved by the Port Commission prior to issuance of a purchase order.

### **10.2.6 Prices for Sole Source Purchases**

Although the purchase of goods or services is made via Sole Source procurement, it will not preclude Procurement Services from determining if the offered price is fair and reasonable. All purchases should be made with the intent to obtain the best value for the Port Authority.

## **10.3 Interlocal Agreements**

Interlocal agreements permit the Port Authority to enter into agreements with other governmental entities in the interest of cooperatively sharing resources for their mutual benefit, pursuant to the Interlocal Cooperation Act. Through interlocal agreements, the Port Authority may contract or agree with another local government inside or outside the state of Texas, including quasigovernmental entities such as a local government corporation that is created and operated to provide one or more governmental functions and services, or with the state or a state agency to purchase goods and any services reasonably required for the installation, operation, or maintenance of the goods.

Generally, interlocal agreements include authorization by the governing body of each party to the contract, a statement of the purpose, terms, rights and duties of the contracting parties and the specification that each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

### **10.3.1 Procedure for Purchasing Using Interlocal Agreements**

Departments that wish to make purchases through interlocal agreements should follow the following procedures:

1. The requesting department identifies the goods or services to be purchased.
2. The requesting department should contact Procurement Services to determine whether an interlocal agreement exists between the Port Authority and a government agency which includes those goods or services to be purchased.
3. When an interlocal agreement already exists: Procurement Services may issue a purchase order if the goods or services to be purchased are up to \$100,000. For purchases of more than \$100,000, the requesting department shall seek Port Commission approval prior to issuing the purchase order. The requesting department shall reference the applicable interlocal agreement in its request to the Port Commission.
4. When no interlocal agreement exists:

- a. Procurement Services, with the assistance of the General Counsel, drafts an interlocal agreement between the Port Authority and the governmental agency.
- b. The agreed upon interlocal agreement shall be submitted to the Port Commission for approval. All interlocal agreements are to be approved by the Port Commission.
- c. Upon receipt of Port Commission approval, Procurement Services may issue a purchase order if the goods or services to be purchased are below \$100,000. For purchases of more than \$100,000, the requesting department shall seek Port Commission approval prior to issuing the purchase order. The requesting department shall reference the applicable interlocal agreement in its Request for Port Commission Action.

## **10.4 Cooperative Purchasing Agreements**

Under Texas law, the Port Authority may participate in a cooperative purchasing program with another local government or a local cooperative organization, upon Port Commission approval. The Port Authority is deemed to have satisfied state bid laws for the purchase of goods and services, provided the Port Authority purchases goods and services in accordance with the cooperative purchasing requirements described below.

When the Port Authority is participating in a cooperative purchasing program with another participating local government or cooperative purchasing organization, the Port Authority is required to:

1. Designate a person to act under the direction of, and on behalf of, the Port Authority, namely, the Director of Procurement Services or designee in all matters relating to the program;
2. Make payments to the other participating local government or a local cooperative organization or directly to a vendor under a contract made under the Texas Cooperative Purchasing Program, as provided in the agreement between the participating local governments or between a local government and a local cooperative organization; and
3. Be responsible for a vendor's compliance with provisions relating to the quality of items and terms of delivery, to the extent provided in the agreement between the participating local governments or between a local government and a local cooperative organization.

### **10.4.1 Procedure for Purchasing Using Cooperative Purchase Agreements**

Departments that wish to make purchases through a cooperative agreement should

adhere to the following procedures:

1. The requesting department identifies the goods or services to be purchased.
2. The requesting department should contact Procurement Services to ensure that it is buying the good or service at the lowest possible price and to determine whether a cooperative agreement exists between the Port Authority and a cooperative through which those goods or services may be purchased.
3. If a cooperative agreement already exists, Procurement Services may issue a purchase order if the goods or services to be purchased are below \$100,000. For purchases of more than \$100,000, the requesting department shall obtain three written quotes (unless impractical) and shall seek Port Commission approval prior to issuing the purchase order. The requesting department shall reference the applicable cooperative agreement in its Request for Port Commission Action.

### **10.5 Federally Funded Contracts**

When a procurement involves the expenditure of federal funds, the procurement shall be conducted in accordance with any applicable federal or state law or regulation. Federal grants typically have specific contract requirements which are outlined in the grant agreement. The requesting department expending the federal funds shall continuously monitor and comply with the timelines and deadlines typically associated with these funds. Additionally, the requesting department shall consult the Financial Services department to ensure compliance with any restrictions tied to the federal funds.

### **10.6 Purchasing Using U.S. GSA Contracts**

The Port Authority may also make certain purchases by taking advantage of the U.S. General Services Administration ("GSA") contracts with vendors. The Port Authority may purchase supplies and services from two GSA schedules: Schedule 70 (for purchasing Information Technology supplies and services) and Schedule 84 (supplies and services related to any aspect of law enforcement, security, facility management systems, fire, rescue, special purpose clothing, marine craft, and emergency/disaster response).

The requesting department should identify the goods or services sought and the vendor on one of the GSA schedules. Requesting departments, with assistance from Procurement Services, shall attempt to negotiate more favorable terms with the vendor. Once all terms have been agreed to, Procurement Services may issue a purchase order

if the goods or services to be purchased are \$100,000 or less. For purchases of more than \$100,000, the requesting department shall seek Port Commission approval prior to issuing the purchase order. The requesting department shall reference the applicable GSA Schedule in its request to the Port Commission.

## **10.7 Revenue Generating Contracts**

Occasionally, revenue generating contracts (such as leases) are confused with procurement solicitations because the Port Authority may use advertised requests for information (“RFI”) or proposals (“RFP”) to determine interest in leasing or developing Port Authority property. The use of an advertisement or solicitation or the fact that an advertisement or solicitation is titled “RFP” does not always indicate a “procurement.” This section on revenue generating contracts is included in the Procurement Manual to clarify the distinction and assist users in understanding that the standards and procedures in this Manual do not apply to solicitations and contracts that are not procurements.

The Port Authority is a financially self-supporting public agency that relies on revenues generated by facility users, fees, and rents. Revenue generating agreements are written legal contracts, signed and executed by all parties, which cover the Port Authority’s income producing or cost recovering activities. A written revenue generating agreement is required whenever a Port Authority department is providing services or access to Port Authority facilities for which payment will be received from an outside entity and may include leases or rental of Port Authority land, buildings, or other facilities, i.e., real estate, facility use agreements, freight handling agreements, pipeline license agreements, and marine construction permits.

The premature disclosure of information from “revenue generators” (potential tenants or other users of Port Authority property) would often have a detrimental effect on the Port Authority’s position in negotiations. For this reason the Texas open government laws exclude certain of such negotiations from deliberations in public session. Additionally, the laws governing the Port Authority’s purchase of goods and services apply only to “purchase contracts” (and “purchase” is defined as the acquisition of an item by a port authority, a contract for construction, or performance of services) and the definition of “items” purchased does not include real property. The sale and lease of Port Authority property is governed by other Texas Water Code sections, including 60.038 et seq., 60.120 et seq., and 62.107. Port Authority procedures relating to the sale and lease of its real property are not included in this Manual.

## **10.8 Navigation Projects**

Construction services valued at more than \$100,000 may be purchased under the procedure provided by Section 60.605 under the Texas Water Code.

Items that may be purchased under the procedure provided by Section 60.605 include items required in connection with a navigation project entered into with the United States.

Proposals shall be solicited by the Port Authority through a Request for Proposals from as many potential vendors as are reasonably available. The request for proposals must specify the relative importance of price and all other factors of evaluation.

Public notice of the Request for Proposals shall be advertised in the Houston Chronicle.

The award for the contract shall be made by the Port Commission in open session to the responsible offeror whose proposal is determined to provide the best value to the Port Authority.

If so provided in the Request for Proposals, information in proposals may not be disclosed to the public until the contract is awarded. After a contract is awarded, proposals shall be open for public inspection, except that information contained in a proposal identified as a trade secret or as confidential shall be kept confidential.

The Port Authority may adopt rules relating to negotiations to be conducted with responsible offerors submitting proposals. Offerors must be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of the proposals. Revisions to proposal and contract terms may be permitted after submission of a proposal and before award of the contract.

# **Article 11**

## **Construction Contracts of More than \$100,000**

### **11.1 General Requirements**

There are six statutory forms of construction related contracts discussed in this article: Competitive Sealed Bidding, Competitive Sealed Proposals, Design-build, Construction Manager-at-risk, Construction Manager Agent, and Job Order Contracts. However, the Port Authority has not received Port Commission approval and has not used several procurement mechanisms, i.e., Job Order Contracts, Construction Manager-at-risk, Construction Manager Agent and Design Build. Construction contracts and the procurement of construction services have many requirements that vary from ordinary procurements. As such, they are treated separately here. This article will also cover a few basic construction related contract provisions governed by statute, including change orders and liquidated damages.

#### **11.1.1 Best Value Determination**

In accordance with the Texas Water Code Section 60.459, the Port Commission, when considering a contract for Construction Services using a method described below, must before advertising, determine which method provides the best value for the Port Authority.

#### **11.1.2 Selection Criteria**

In accordance with the Texas Water Code Section 60.458, except as otherwise provided, in determining to whom to award a contract, the Port Authority may consider the following criteria:

- the purchase price;
- the reputation of the vendor and of the vendor's goods or services;
- the quality of the vendor's goods or services;
- the extent to which the goods or services meet the Port Authority's needs;
- the vendor's past relationship with the Port Authority;
- the impact on the ability of the Port Authority to comply with laws and rules relating to the Port Authority's small business development program, or another contracting program approved by the Port Authority, if any;
- the total long-term cost to the Port Authority to acquire the vendor's goods or services; and



- any other relevant factor specifically listed in the request for bids or proposals.

## **11.2 Methods of Procurement**

### **11.2.1 Competitive Sealed Bidding (“CSB”)**

Competitive Sealed Bidding is one of the quickest and least complicated procurement methods. CSBs are commonly utilized by the Port Authority in the procurement of damage claim repair of a facility with a contract value of more than \$100,000. The formal bid process generally involves the following steps:

1. An invitation to bid is prepared.
2. The solicitation is advertised for two consecutive weeks and is posted on the Port Authority’s website.
3. Procurement Services receives the competitive sealed bids.
4. Procurement Services publicly opens and reads the bids.
5. The bids are tabulated.
6. The Port Commission awards the contract (if greater than \$100,000) to the lowest responsible bidder or bid offering the best value.

The ability to conduct contract negotiations does not exist for competitive sealed bids. The contract terms are typically made part of the bid package. The successful respondent is expected to execute the contract without changes. The Port Authority uses the CSB method in construction services for repairing damage to Port Authority property that was caused by ( and will be paid by) third parties (“damage claims”).

### **11.2.2 Competitive Sealed Proposals (“CSP”)**

Competitive Sealed Proposals result in the contract being awarded to the proposal offering the Port Authority the best value, except this method allows contract negotiations prior to contract award. In this procurement method, the Port Authority requests proposals, ranks the proposers, negotiates as prescribed, and then contracts with a general contractor for the construction, rehabilitation, alteration, or repair of a facility.

The Port Authority selects or designates an architect or engineer or Port Authority in house staff to prepare construction design documents for the project. The Port Authority prepares a request for competitive sealed proposals that includes construction documents, selection criteria, project scope, estimated project completion date, and other information that a contractor may require to respond to

the request. The request is advertised.

The Port Authority shall provide or contract for, independently of the contractor, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the Port Authority. The Port Authority shall select those services in accordance with the PSPA, Section 2254.004, Texas Government Code, and shall identify them in the CSP.

Procurement Services receives, publicly opens, and reads aloud the names of the proposers and any monetary proposals made. Procurement Services then delivers the proposals to the rank and evaluation team, which evaluates and ranks each proposal in relation to the published selection criteria. It must do this no later than 45 days from the date on which the proposals were opened. The rank and evaluation team makes a recommendation to the Chief Officer based on which proposal offers the best value to the Port Authority.

The Port Authority attempts to negotiate a contract with the recommended proposers. The Port Authority negotiating team and its architect or engineer may discuss with the selected proposers options for a scope or time modification and any price change associated with the modification. If the negotiating team is unable to negotiate a satisfactory contract with the recommended proposer, the team shall, formally and in writing, end negotiations with that proposer and proceed to the next proposer in the order of the selection ranking until a contract is reached or all proposals are rejected.

### **1.2.3 Design-Build Contracts**

Design-build is a project delivery method by which the Port Authority may contract with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility. The design-build method can also be used for civil engineering construction projects, (e.g., roads, facilities, infrastructure, and drainage). This section will address only the more common application for the construction, rehabilitation, alteration, or repair of a facility or an associated structure.

#### **11.2.3.1 Port Authority-Designated Independent Architect or Engineer**

The Port Authority shall designate an engineer or architect independent of the design-build firm to act as its representative for the duration of the work on the facility. If the Port Authority's engineer or architect is not a full-time employee of the Port Authority, the Port Authority shall select the engineer or architect in accordance with Section 2254.004 of the Government Code.

Following selection of a design-build firm, that firm's engineers or architects shall complete the design, submitting all design elements for review and determination of scope compliance to the Port Authority-designated independent engineer or architect before or concurrently with construction.

#### **11.2.3.2 Independent Inspection Services**

If needed for the project (as determined by the Port Authority), the Port Authority shall provide or contract for, independently of the design-build firm, the inspection services (example: soil testing), the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the Port Authority. The Port Authority shall select those services in accordance with the PSPA, Section 2254.004 of the Government Code.

#### **11.2.3.3 Request for Qualification ("RFQ") (Design Criteria Package included)**

The Port of Houston Authority shall prepare an RFQ that includes general information on the project site, project scope, special systems, selection criteria, and other information that may assist potential design-build firms in submitting proposals for the project. The Port Authority shall also prepare the Design Criteria Package that includes more detailed information on the project.

If the preparation of the Design Criteria package requires engineering or architectural services that constitute the practice of engineering within the meaning of Chapter 1001, Occupations Code, or the practice of architecture within the meaning of Chapter 1051, Occupations Code, those services shall be provided in accordance with the applicable law.

#### **11.2.3.4 Two Phase Evaluation of Qualification Statements**

The Port Authority shall evaluate statements of qualifications and select a design-build firm in two phases:

**11.2.3.4.1 Phase One:** In phase one, the Port Authority shall prepare an RFQ and evaluate each proposer's experience, technical competence, and capability to perform, the past performance of the proposer's team and members of the team, and other appropriate factors submitted by the team or firm in response to the RFQ, except that cost-related or price-related evaluation factors are not permitted. Each proposer must certify to the Port Authority that each engineer or architect that is a member of its team was selected based on demonstrated competence and qualifications, in the manner provided by the PSPA, Section 2254.004, of the Government Code. The Port Authority shall qualify a maximum of five proposers to submit additional information and, if the Port Authority chooses, to interview for final selection.

**11.2.3.4.2 Phase Two:** In phase two, the Port Authority shall evaluate the information submitted by the proposers on the basis of the selection criteria stated in the RFQ and the results of any interviews. The Port Authority may request additional information regarding demonstrated competence and qualifications, considerations to safety, environmental, and long-term durability of the project, the feasibility of implementing the project as proposed, the ability of the proposer to meet schedules, costing methodology, or other factors as appropriate. The Port Authority may not require proposers to submit detailed engineering or architectural designs as part of the proposal. The Port Authority shall rank each proposal submitted on the basis of the criteria set forth in the RFQ. The Port Authority shall select the design-build firm that submits the proposal offering the best value for the Port Authority on the basis of the published selection criteria and on its ranking evaluations.

The Port Authority shall first attempt to negotiate a contract with the selected proposer. If the Port Authority is unable to negotiate a contract with the selected proposer, the Port Authority shall, formally and in writing, end negotiations with that proposer and proceed to negotiate with the next proposer in the order of the selection ranking until a contract is reached or negotiations with all ranked proposers end.

#### **11.2.3.5 Signed and Sealed Set of Construction Documents**

The design-build firm shall supply a signed and sealed set of as-built construction documents for the project to the Port Authority at the conclusion of construction.

#### **11.2.3.6 Payment and Performance Bonds**

Payment and Performance Bonds are required for the Design-Build Contract. However, a payment or performance bond is not required for, and may not provide coverage for, the portion for a design-build contract that includes design services only. If a fixed contract amount or guaranteed maximum price has not been determined at the time a design-build contract is awarded, the penal sums of the performance and payment bonds delivered to the Port Authority must each be in an amount equal to the project budget, as specified in the Design Criteria Package. The

design-build firm shall deliver the bonds not later than the 10<sup>th</sup> day after the date the

design-build firm executes the contract unless the design-build firm furnishes a bid bond or other financial security acceptable to the Port Authority to ensure that the design-build firm will furnish the required Performance Bond and Payment Bond when a guaranteed maximum price is established.

#### **11.2.4 Construction Manager-at-Risk (“CM at Risk”) Contracts**

Construction Manager-at-Risk is a delivery method by which the Port Authority contracts with an architect or engineer for design and construction phase services and contracts separately with a construction manager-at-risk to serve as the general contractor and to provide consultation during the design and construction, rehabilitation, alteration, or repair of a facility. Under this method of procurement, the contractor assumes the risk at the contracted price as a general contractor and provides consultation to the Port Authority regarding construction during and after the design of the facility. The contracted price may be guaranteed maximum price.

##### **11.2.4.1 Independent Architect or Engineer**

Before or concurrently with selecting a CM at Risk, the Port Authority shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with Chapter 1001 or 1051, Occupations Code, as applicable. If the engineer or architect is not a full-time Port Authority employee, the Port Authority shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by the PSPA, Section 2254.004, of the Government Code. The Port Authority’s engineer, architect, or construction manager-agent for a project may not serve, alone or in combination with another, as the CM at Risk unless the engineer or architect is hired to serve as the CM at Risk under a separate or concurrent procurement.

The Port Authority selected engineer or architect may, at the Port Authority’s discretion, still provide customary construction phase services under the engineer’s

or architect's original professional service agreement in accordance with applicable licensing laws.

#### **11.2.4.2 Independent Inspection Services**

If needed for the project (as determined by the Port Authority), the Port Authority shall provide or contract for, independently of the CM at Risk, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the Port Authority. The Port Authority shall select those services in accordance with the PSPA, Section 2254.004, Texas Government Code.

#### **11.2.4.3 One or Two-Step Selection Process**

The Port Authority shall select the CM at Risk in either a one-step (RFP) or two-step (RFQ) process. In either process, the Port Authority shall prepare a solicitation that includes:

- Statement as to whether the selection process is a one-step or two-step process
- General information on the project site
- Project scope
- Schedule
- Estimated budget
- Time and place for receipt of proposals or qualifications, as applicable
- Other information that may assist the Port Authority in its selection
- Selection criteria, which may include the proposer's:
  - Experience
  - Past performance
  - Safety record
  - Environmental record
  - Proposed personnel and methodology, and
  - Other appropriate factors that demonstrate the proposer's capability.

**11.2.4.3.1 If Using a One-Step Process** – The Port Authority shall prepare the solicitation as an RFP. In addition to the above, the RFP may request proposed fees and prices for fulfilling the general conditions.

**11.2.4.3.2 If Using a Two-Step Process** – The Port Authority shall prepare the solicitation as an RFQ. The RFQ shall request the information above, but shall not request fees or prices in step one. In step two, the Port Authority may request that five or fewer proposers, selected solely on the basis of qualifications, provide additional information, including the CM at Risk's proposed fee and its price for fulfilling the general conditions.

At each step, the Port Authority shall receive, publicly open, and read aloud the names of the proposer's. At the appropriate step (Step One for an RFP) (Step Two for an RFQ), the Port Authority shall also read aloud the fees and prices, if any, stated in each proposal as the proposal is opened.

Within 45 days after the date of opening the proposals, the Port Authority shall evaluate and rank each proposal submitted in relation to the criteria set forth in the solicitation.

The Port Authority shall select the proposer that submits the proposal that offers the best value for the Port Authority based on the published selection criteria and on its ranking evaluation. The Port Authority shall first attempt to negotiate a contract with the selected proposer.

If the Port Authority is unable to negotiate a satisfactory contract with the selected proposer, the Port Authority shall, formally and in writing, end negotiations with that proposer and proceed to negotiate with the next proposer in the order of the selection ranking until a contract is reached or negotiations with all ranked proposers end.

#### **11.2.4.4 Payment and Performance Bonds**

If a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the Performance and Payment Bonds delivered to the Port Authority must each be in an amount equal to the project budget, as specified in the RFP or RFQ. The CM at Risk shall deliver the bonds not later than the 10th business day after the date the CM at Risk executes the contract unless the CM at Risk furnishes a bid bond or other financial security acceptable to the Port Authority to ensure that the CM at Risk will furnish the required Performance and Payment Bonds when a guaranteed maximum price is established.

### **11.2.5 Construction Manager Agent (“CMA”)**

This method is unique to construction services and results in a construction manager who represents the Port Authority in a fiduciary capacity in providing consultation to the Port Authority regarding construction, rehabilitation, alteration, or repair of a facility. The contract may require the CMA to provide administrative personnel, equipment, on-site management, and other services specified in the contract.

#### **11.2.5.1 Independent Architect or Engineer**

Before or concurrently with selecting a CMA, the Port Authority shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with Chapter 1001 or 1051, Occupations Code, as applicable. If the engineer or architect is not a full-time Port Authority employee, the Port Authority shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by the PSPA, Section 2254.004, Local Government Code.

The Port Authority's engineer or architect may not serve, alone or in combination with another person, as the CMA unless the engineer or architect is hired to serve as the CMA under a separate or concurrent procurement. The Port Authority's engineer or architect may still provide customary construction phase services under the engineer's or architect's original professional service agreement in accordance with applicable licensing laws.

#### **11.2.5.2 Independent Inspection Services**

If needed for the project (as determined by the Port Authority), the Port Authority or the selected CMA shall procure, in accordance with the PSPA, Section 2254.004, Government Code, all of the testing of construction materials engineering, the inspection services, and the verification testing services necessary for acceptance of the facility by the Port Authority.

#### **11.2.5.3 Request for Qualification**

The Port Authority shall select a CMA on the basis of demonstrated competence and qualifications in the same manner as provided for the selection of engineers or architects under the PSPA, Section 2254.004, Local Government Code.



#### **11.2.5.4 Selection of Other Contractors**

If the Port Authority uses the CMA method, the Port Authority must then procure, in accordance with applicable law, and in any manner authorized by the Texas Water Code, Section 60, Subchapter N & O, a general contractor, trade contractor, or subcontractor who will serve as the prime contractor for their specific portion of the work.

#### **11.2.6 Selecting Contractor for Construction Services through Competitive Sealed Proposals**

(a) In selecting a contractor for construction, rehabilitation, alteration, or repair services for a facility through competitive sealed proposals, a district shall follow the procedures prescribed by this section.

(b) The district shall select or designate an engineer or architect to prepare construction documents for the project. The selected or designated engineer or architect has full responsibility for complying with Chapter [1001](#) or [1051](#), Occupations Code, as applicable. If the engineer or architect is not a full-time employee of the district, the district shall select the engineer or architect as provided by Section [2254.004](#), Government Code.

(c) The district shall provide or contract for, independently of the contractor, the inspection services, the testing of construction materials, and the verification testing services necessary for acceptance of the facility by the district. The district shall select those services for which it contracts in accordance with Section [2254.004](#), Government Code, and shall identify them in the request for proposals.

(d) The district shall select a contractor through competitive sealed proposals in either a one-step or two-step process. The district shall prepare a request for competitive sealed proposals, in the case of a one-step process, or a request for qualifications, in the case of a two-step process, that includes construction documents, selection criteria, project scope, schedule, the time and place for receipt of proposals or qualifications, as applicable, a statement as to whether the selection process is a one-step or two-step process, and other information that contractors may require to respond to the request. The district shall state in the request for proposals or qualifications, as applicable, the selection criteria that will be used in selecting the successful offeror. If a one-step process is used, the district may request, as part of the offeror's proposal, proposed prices.

(d-1) If a two-step process is used, the district may not request prices in the first step. In the second step, the district may request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including proposed prices.

(e) At each step, the district shall receive, publicly open, and read aloud the names of the offerors. At the appropriate step, the district shall read aloud the prices, if any, stated in each proposal as the proposal is opened. Not later than the 45th day after

the date of opening the proposals, the district shall evaluate and rank each proposal submitted in relation to the published selection criteria.

(e-1) Notwithstanding Subsection (e), if the district demonstrates 45 days is not sufficient time for thorough evaluation, the district may specify in the request for competitive sealed proposals a deadline, not later than the 90th day after the date of opening the proposals, to evaluate and rank each proposal submitted in relation to the published selection criteria.

(f) The district shall select the offeror that offers the best value for the district based on the published selection criteria and on its ranking evaluation. The district shall first attempt to negotiate a contract with the selected offeror. The district and its engineer or architect may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the district is unable to negotiate a contract with the selected offeror, the district shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

(g) In determining best value for the district, the district is not restricted to considering price alone, but may consider any other factor stated in the selection criteria.

#### **11.2.7 Job Order Contracts or “JOC”**

This method is unique to construction services and is limited to contracts for the minor construction, repair, rehabilitation, or alteration of a facility if the work is of a recurring nature but the delivery times are indefinite and indefinite quantities and orders are awarded substantially on the basis of pre-described and pre-priced tasks. Contracts may be awarded to one or more JOC contractors in connection with each solicitation. In any event, contracts awarded must provide the best value to the Port Authority and shall consider all of the factors listed in Texas Water Code Section 60.464.

##### **11.2.7.1 Request for JOC Proposals**

In the request for JOC proposals, the Port Authority may require proposers to submit additional information besides rates, including experience, past performance, and proposed personnel and methodology.

The Port Authority may also establish contractual unit prices for a job order contract by either:

- Specifying one or more published construction unit price books and the applicable divisions or line items; or
- Providing a list of work items and requiring the proposers to bid or propose one or more coefficients or multipliers to be applied to the price book or work items as the price proposal.

The Port Authority may require offerors to submit, in addition to information on rates, other information, including experience, past performance, and proposed personnel and methodology.

The base term of a job order contract is for the period, and with any renewal option, that the Port Authority sets forth in the request for job order proposals. If the Port Authority fails to advertise that term, the base term may not exceed two (2) years and is not renewable without further advertisement and solicitation of proposals.

#### **11.2.7.2 Architect or Engineering Services**

If a job order contract or an order issued under the contract requires engineering or architectural services that constitute the practice of engineering within the meaning of Chapter 1001, Occupations Code, or the practice of architecture within the meaning of Chapter 1051, Occupations Code, the Port Authority shall select or designate an architect or engineer to prepare the construction documents for the facility project. If the architect or engineer is not a full-time Port Authority employee, the Port Authority shall select the architect or engineer on the basis of demonstrated competence and qualifications as provided by the PSPA, Section 2254.004, Local Government Code.

#### **11.2.7.3 Job Order Award**

Contracts may be awarded to one or more contractors in connection with each solicitation. Proposals will be evaluated by an evaluation team composed of at least three (3) selected team members from various Port Authority departments. The evaluation team shall always seek award to the vendor offering the best value to the Port Authority in accordance with the factors listed in Texas Water Code Section

60.464. All Port Authority employees shall conduct evaluations in an ethical and fair manner.

Once awards are made, an individual order for a job or project under the job order contract must be signed by the Port Authority and the contractor. The order may be a fixed price, lump-sum contract based substantially on contractual unit pricing applied to estimated quantities or may be a unit price order based on the quantities and line items delivered.

## **11.2.8 Construction-Related Requirements**

### **11.2.8.1 Advertisement**

The Texas Water Code requires public notice of formal procurement packages. A notice of the solicitations will be advertised twice in a local newspaper (e.g., *Houston Chronicle*) – once a week for at least two weeks prior to the solicitation opening date. Although not required in the Texas Water Code, prior to advertisement, requesting departments must prepare a Request for Port Commission Action to advertise for and receive solicitations on the procurement.

### **11.2.8.2 Pre-Proposal Conference**

Unless otherwise stated in the solicitation document, attendance of prospective proposers at a pre-proposal conference is not mandatory.

### **11.2.8.3 Proposal Due Date**

Proposals will be due on the deadline specified in the solicitation. Any proposal, request for withdrawal, or modification of a proposal that is not received at the designated location, time, and date set forth in the proposal documents will be considered late and will not be considered.

Delivery of the proposal to the specified location is the sole responsibility of the proposer. Sealed proposals may be submitted by:

- email to [procurementproposals@porthouston.com](mailto:procurementproposals@porthouston.com). Vendors will receive an email acknowledgement of receipt of proposals.

### **11.2.8.4 Receipt and Tabulation of Bid/Proposals**

Upon receipt, sealed bids/proposals will be date stamped and logged by Procurement Services on or before the deadline specified in the solicitation. The bid/proposal opening shall be attended by a minimum of two (2) employees of Procurement Services. Vendors may attend as well. Bids/proposals will be publicly opened and read aloud the names of the offerors and, if any lump sum prices are required to be stated, all such lump sum prices stated in each proposal. Bids/proposals will be recorded and tabulated by the Director of Procurement Services, or designee.

### **11.2.8.5 Bid/Proposal Evaluation, Selection, and Award**

Not later than the 45<sup>th</sup> day after the date of opening the proposals, the Port Authority

shall evaluate and rank each proposal submitted in relation to the published criteria. If the Requesting department demonstrates 45 days is not sufficient time for thorough evaluation, the Port Authority may specify in the proposal a deadline, not later than the 90<sup>th</sup> day after the date of opening the proposals, to evaluate and rank each proposal submitted in relation to the published criteria.

The Requesting department will prepare a Request for Port Commission Action and submit it to their designated Chief Officer. Procurement Services will maintain these documents along with an abstract of bids in the Procurement Services contract file.

The Port Authority shall document the basis of its selection and shall make the evaluations public not later than the later of:

1. The 30<sup>th</sup> day after the date of the award of the contract; or
2. The next scheduled Port Commission meeting.

Refer to Section 2.9, “Standards for Contract Award (Formal Procurement Awards)” for additional information on customary staff responsibilities related to evaluation of proposals, and Port Commission action.

#### **11.2.8.6 Payment and Performance Bonds**

The contractor shall provide Payment and Performance Bonds in the same manner as stated in the Definitions section herein, based on the amount or estimated amount of any order. Such bonds must be furnished on the Port Authority forms. No other forms are acceptable. Such bonds must remain in full force for one year after final acceptance of the finally completed work and cover all obligations of the Contractor during such one year period, specifically including all repair and warranty obligations of the Contractor. For demolition projects, only, payment and performance bonds shall expire upon completion of the work and payment of all contractors.

#### **11.2.8.7 Change Order Contract Provisions**

Refer to Section 2.9.

#### **11.2.8.8 Liquidated Damages**

A liquidated damages clause defines the financial damages to be paid by the contractor and is most commonly used in the event their performance is not substantially completed within the time frame required by the contract. The time allowed will be calculated from the date of the Notice to Proceed through the substantial completion or delivery time indicated by the successful contractor on

their bid/proposal form for the completion work or the delivery of goods specified.

Failure of a contractor to complete the work or deliver the goods within the time allowed will result in damages, and for each consecutive day in excess, the contractor shall pay to the Port Authority the specified dollar amount, stated in the contract, per calendar day. The assessment must be reasonably related to the harm suffered by the Port Authority, even if the exact harm cannot be calculated with precision. Such amount shall not be construed as a penalty but as a minimum value of liquidated damages that may be deducted from payment due to the contractor if such delay occurs.

The Project Manager shall consult with the Legal department prior to the assessment of liquidated damages under any contract. The Project Manager shall provide a detailed report to the department director and the Director of Procurement Services or designee for review and consideration pertaining to delay in completion of the work. The department director will make the final determination regarding the assessment of liquidated damages.

Upon determination by the department director that the assessment of liquidated damages is proper under the terms of the Contract and the relevant portions of these procedures, the Project Manager shall promptly prepare a letter for the department director's signature, notifying the contractor of the Port Authority's assessment of liquidated damages. The amount of liquidated damages assessed may be deducted from the contractor's final invoice. Should the amount of the liquidated damages exceed the final invoice amount, the Project Manager shall submit an invoice to the contractor for the difference.

## **Article 12**

### **Vendor Protest Procedure**

#### **12.1 Purpose**

The purpose of the Port 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.

#### **12.2 Protest Circumstances**

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

- 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
- 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.

This Vendor Protest Procedure does not apply to Contracts for:

- the award of grants;
- activities permitted with respect to the Promotion and Development Fund under Subchapter H, Chapter 60, Texas Water Code;
- subcontracts supporting the performance of a Contract;
- items procured pursuant to the Interagency Cooperation Act, Chapter 771, Texas Government Code, or Interlocal Cooperation Act, Chapter 791, Texas Government Code; and
- items procured under processes administered by the Texas Comptroller’s Office, the Department of Information Resources, or other Texas state agencies.

#### **12.3 Access to Evaluation Materials**

After the Port Authority awards 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 thereafter, taking into consideration the size and scope of the procurement and number of debriefing requests received.

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.

Requests for briefings pursuant to this section must be sent to the Director of Procurement Services, or designee. Requests for Information pursuant to this section must be sent to the Port Authority Public Information Officer.

## **12.4 Notice of Protest**

Any Protesting Party may Protest an action relating to the solicitation, evaluation, or award of a Contract by submitting such Protest no later than seven (7) calendar days after the earlier of:

- The date the award or action is made or taken in a public meeting;
- The date the award or action is posted on the Port Authority's website; or
- The date the protesting Party knows, or should have known, of the occurrence of the award or action that is protested.

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.

A Protesting Party shall submit its Protest to the Director of Procurement Services, or designee.

A Protest shall not be considered by the Port Authority, unless it is:

- In writing, and sworn to and signed by the Protesting Party or the Protesting Party's authorized representative;
- Delivered by hand, by certified mail, or other verifiable delivery service; and
- Limited to matters relating to the Protesting Party's qualifications to perform the Contract, the suitability of the items offered by the Protesting Party to be procured by the Contract, or alleged irregularities in the procurement process for the subject



Contract.

## **12.5 Content of Protest**

A Protest shall not be considered by the Port Authority unless it contains:

- The Protesting Party's name and identification of the specific Contract that is being Protested;
- 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:
  - a specific description of the action alleged to have violated
  - the federal or state statutory or regulatory provision(s); and
  - a specific identification of the federal or state statutory or regulatory provision(s) that the action complained of is alleged to have violated;
- A precise statement of the relevant facts;
- Identification of the issue(s) to be resolved;
- The argument and authorities in support of the Protest;
- The action the Protesting Party is requesting to address its Protest;
- Proof that copies of the Protest have been mailed or delivered to all Interested Parties. A certification by the Protesting Party, or executive officer of the Protesting Party, that copies were supplied to all Interested Parties, with a list of the addresses the copies were sent to, may be provided as proof of delivery of such copies. Names and addresses of Interested Parties may be obtained by sending a written request for the information to the Port Authority Public Information Officer.

## **12.6 Suspension of Award**

If a Protest or appeal of a Protest (as described 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 this policy.

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 Director of Procurement Services, or designee, 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.

## **12.7 Review and Disposition of Protest**

### **12.7.1 Informal Resolution**

The Director of Procurement Services, or designee, may informally resolve the Protest by written agreement with the Protesting Party.

### **12.7.2 Written Determination**

- If the Protest is not resolved by agreement, the Director of Procurement Services, or designee, may solicit written responses to the Protest from Interested Parties and from other parties, and will issue a written determination to resolve 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.
- The General Counsel or 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.
  - If the General Counsel determines no violation of federal or state statutory or regulatory provision(s) governing the procurement occurred, the Director of Procurement Services, or designee, shall so inform the Protesting Party and each Interested Party in a writing that sets forth the reasons for the determination.
  - 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 Director of Procurement Services, or designee, 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.
  - 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 Director of Procurement Services, or designee, 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.
- No setting aside, voiding, re-advertising, or other remedial action shall be required if a violation is determined to be harmless.

## **12.8 Appeal**

The determination of the Director of Procurement Services or designee, 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.

An appeal of the Director of Procurement Services or designee, 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. A copy of the appeal must be delivered or mailed by the Protesting Party to the Director of Procurement Services, or designee, and to all Interested Parties, and must contain a certified statement that such copies have been provided.

Failure of the Protesting Party to appeal the Director of Procurement Services or designee's, determination within seven (7) calendar days after the date of the determination renders the determination the final administrative action regarding the Protest.

The Port Authority's General Counsel or 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 process as provided for in this policy.

The Executive Director or designee may issue a final written determination, or refer the matter to the Port Commission for consideration at a regularly scheduled open meeting.

When an appeal has been referred to the Port Commission:

- Copies of the Protest, the determination, and the appeal shall be provided by the General Counsel to the Port Commission.
- 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.
- 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 Director of Procurement Services, or designee, 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 the Director of Procurement Services, or designee. Written testimony received in response to a Protest is considered a public record.

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

## **12.9 Final Action**

A determination of a Protest appeal by the Port Commission in open meeting is final. If the matter is not referred to the Port Commission by the Executive Director or designee, the written determination of the Executive Director or his or her designee is final.

A written determination by the Director of Procurement Services or designee that is not appealed in a timely manner and in accordance with these Vendor Protest Procedures is final.

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 of determination that the Protest is final.

## **12.10 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.

## **12.11 General Provisions**

Nothing in these Vendor Protest Procedures shall be construed to waive any immunity or defense of the Port Authority.

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 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.

Except as otherwise provided herein, all written communications required under these Vendor Protest Procedures must be addressed and delivered to:

**Director of Procurement Services  
Port of Houston Authority  
111 East Loop North  
Houston, TX 77029-4326**

### **12.12 Applicability**

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.

### **12.13 Responsibility**

The Director of Procurement Services or designee is the owner of this Vendor Protest Procedure, is responsible for its implementation, and is the contact for its interpretation.

## **Article 13**

### **Vendor Requirements**

#### **13.1 Debarment and Suspension**

**Debarment:** The Port Authority may bar (“Debar”) any individual or firm (“Proposer”) from eligibility for participation in any Port Authority procurement for up to two years.

##### **13.1.1 Grounds for Debarment**

1. A proposer found to have committed any of the following acts in the two-year period preceding referral to the Director of Procurement Services may be Debarred:
  - a. Any material breach of any contract, including without limitation, wrongfully or negligently:
    - i. Failing to fully perform work in accordance with the terms of a contract and accepted industry practices, including performance of the contract work within the contract time;
    - ii. Failing to comply with state, federal or local laws or regulations that are applicable to the performance of a contract; or
    - iii. Failing to fully perform any other contractual obligations.
  - b. Knowingly using a Debarred Contractor as a subcontractor or supplier.
  - c. Falsifying or misrepresenting the contractor’s abilities.
  - d. Conferring or offering to confer upon any person conducting a procurement an unlawful or unethical gift, gratuity, favor, or advantage, present or future.
  - e. Violating a Port Authority policy, procedure, or standard with respect to procurement, including without limitation, the Small Business Development Program Policies and Procedures (Revised).
  - f. Any other conduct that evidences the inability of the Contractor to responsibly perform a contract on behalf of the Port Authority.

Conviction or civil adjudication of the contractor or the contractor's officers or owners of a criminal offense or civil misconduct in connection with the contractor's business that evidences a lack of business integrity or business honesty, including without limitation, embezzlement, theft, forgery, bribery, fraud, falsification or destruction of records, making false statements, or receiving stolen property, or violations of laws relating to the obtaining of or performing of public contracts.

The conduct giving rise to the debarment may be based upon actions taken in connection with work undertaken for the Port Authority, other public entities, or private entities.

### **13.1.2 Debarment Procedure**

1. In the event that grounds to Debar a Contractor are referred to Port Authority staff, the Executive Director shall select a hearing officer who shall conduct a hearing to consider whether such alleged conduct provides grounds for the Contractor to be Debarred.
  - a. Notice of such hearing, and the Contractor's alleged conduct, shall be provided to the Contractor at least fifteen (15) calendar days prior to the hearing.
  - b. Such hearing shall be conducted informally, but parties may be represented by counsel, present evidence, and cross-examine witnesses.
  - c. Following the hearing, the hearing officer shall promptly notify the Contractor of its determination whether, and for what period of time, the Contractor should be Debarred.
2. In the event the hearing officer recommends that the Port Authority Debar such Contractor, the Contractor may appeal by filing a written notice of appeal with the Director of Procurement Services no later than fifteen (15) calendar days following notice of the final decision of the hearing officer.
3. Port Authority staff shall promptly submit the Respondent's appeal of the hearing officer's recommendation to the Port Commission for possible action. Notice thereof shall be provided to the appealing Contractor at least ten (10) calendar days prior to the Port Commission meeting at which the action may be taken.
4. The procedure for Port Commission action shall also be informal, without the formal admission of evidence as in a court of law. The hearing shall include:
  - a. The submission to the Port Commission of the hearing officer's recommendation, and written submissions by staff, the Contractor, and any other interested parties; and
  - b. Oral presentations by the staff, the Contractor, and any other interested parties, provided that the right to question presenters shall be limited to

the Port Commission.

5. The Port Commission may:

- a. Adopt the recommendation and Debar the Contractor for the recommended period of time;
- b. Adopt the recommendation with modifications;
- c. Return the recommendation to the hearing officer for further action; or
- d. Reject the recommendation and take no action against the Contractor.

The decision of the Port Commission shall be final.

### **13.1.3 Period of Debarment**

The period for debarment shall be commensurate with the seriousness of the cause or causes therefor, but in no case shall the period exceed two years.

### **13.1.4 Notice and Record of Debarment**

The Director of Procurement Services or designee shall notify the contractor in writing of the hearing official's and/or the Port Commission's decision. The Director of Procurement Services or designee shall maintain the record of all debarred contractors/vendors.

### **13.1.5 Effective Dates**

- A decision to debar a contractor becomes final on the day that the Hearing Official and/or Port Commission makes a debarment determination.
- A debarment shall remain effective for the period of time specified unless the Port Commission and/or the Port Authority sooner issues an order of reinstatement.

### **13.1.6 Reinstatement**

1. A debarred contractor may petition for reinstatement by written request to the Executive Director, at any time after the contractor has served at least one-half of the original period of debarment, specified in the debarment order. A hearing shall be conducted as set forth above, except that the burden shall be upon the debarred contractor/vendor, who shall be responsible for all recording fees and



for hearing official fees, if a private hearing official is requested.

2. At the reinstatement hearing, the Executive Director shall consider any evidence presented by the contractor to demonstrate that the contractor may responsibly perform public contracts. If the Executive Director determines that there is good cause to end the debarment, he shall reduce the findings and recommendation to writing and submit them to the Port Commission for consideration.
3. The Port Commission shall either terminate or continue the debarment. If the Port Commission terminates the debarment, the Director of Procurement Services or designee shall immediately remove the contractor's name from the list of debarred contractors, and the contractor shall become eligible for award of Port Authority contracts.

#### **13.1.7 Effect of Debarment Order**

1. An order of debarment issued by the Port Commission or a hearing official against a contractor/vendor constitutes a finding that the contractor/vendor is not responsible and operates as Port Authority's rejection of any bid submitted by the contractor/vendor during the debarment period. The Director of Procurement Services or designee shall return a debarred contractor/vendor's bid and bid bond immediately after bids are opened without requirement of any further action by the Port Authority.
2. A debarment order against a contractor/vendor shall not affect any contracts or subcontracts existing at the time of the issuance of the debarment order if the contractor/vendor is not in default of such contract.

#### **13.1.8 Remedies Cumulative**

The provisions of this article are cumulative of any other rights or remedies available to the Port Authority in connection with the award of any public contracts to bypass bidders/proposer's who are not responsible, regardless of whether they have been so declared hereunder. This right extends but is not limited to declining to award public contracts to bidders/proposer's that have the same or substantially the same officers, owners, or managers as debarred contractors.

#### **13.1.9 Acknowledgement of the Procurement Manual**

Prior to an award of a formal contract, a vendor must sign the Vendor Acknowledgement Form, contained in the Appendix 22 herein, indicating that the Vendor has read and understands and agrees to abide by all Port Authority procurement requirements contained in the Port Authority Procurement Manual. This requirement is a material term of all contracts between the Port Authority and any vendor.

#### **13.1.10 Conflict of Interest Disclosures**

All vendors are charged with notice of the Conflict of Interest Questionnaire requirements contained in Local Government Code, Chapter 176. To the extent a conflict exist that requiring disclosure, all vendors must comply with Chapter 176. Failure to comply with Chapter 176 is considered a default under a contract with the Port Authority, and the Port Authority may at its sole option declare the contract void or voidable. This requirement is a material term of all contracts between the Port Authority and any vendor. For ease of compliance, the conflict of interest questionnaire form is contained in Appendix 4 herein.

#### **13.1.11 Criminal History Information**

Before entering into a contract with the Port Authority, a person or business shall give notice to the Port Authority if the person or an owner or operator of the business has been convicted of a felony. The Port Authority may terminate a contract with a person or business if the Port Authority determines that the person or business failed to give such notice or misrepresented the conduct resulting in the conviction. The Port Authority must compensate the person for services performed prior to contract termination. Prior to an award of a formal contract, the Port Authority will require all vendors to complete the Criminal History Form/Felony Conviction Notice contained in Appendix 12 herein.

#### **13.1.12 Vendor Performance**

The Port Authority has a vendor performance evaluation process in force. The Director of Procurement Services or designee and requestor shall complete a vendor evaluation report prior to exercising a contract renewal option and/or upon completion of each contract. Any performance-related issues may be grounds for debarment or suspension of the contractor.

#### **13.1.13 Vendor Payment**

Under Texas Government Code 2251.021, payments by the Port Authority are not overdue until 45 days after the later of the date the Port Authority receives the goods under the contract; the date the performance of the service under the contract is completed; or the date the Port Authority receives an invoice for the goods or service. The Port Authority will not pay a vendor unless an invoice is received for the goods or services provided and a delivery confirmation substantiating satisfactory receipt of goods or performance of service is submitted from the employee acting on behalf of the Port Authority.

## **Article 14**

### **Contract Administration**

#### **14.1 Purpose of Contract Administration**

This article provides guidelines for the administration of contracts to which the Port Authority is a party. Administration of Port Authority contracts encompasses the full realm of collection of data on contractor performance and similar types of review and responsibility.

Port Authority departments are expected to diligently and proactively monitor performance and progress of contracts, ensure vendor compliance with contract terms, specifications, conditions, and provisions as well as compliance with the Port Authority's procurement policies and applicable laws through Vendor Performance Management System (VPMS).

The purpose of this article is to assist the Port Authority in assuring maximum contract performance. The procedures herein do not in any way diminish the responsibility of the contractor/vendor to completely and independently perform contractual obligations or terms, nor do they excuse or mitigate nonperformance by the contractor.

The failure of any Port Authority official or employee to adhere to these procedures does not act as a waiver of performance by the contractor. The procedures set out in this article are general and are subject to change without notice. Contractors/vendors and Port Authority staff shall refer to contract provisions contained in the specific contract or in any specific attachments or addenda to a contract for the terms applicable to a specific procurement.

#### **14.2 Contract Administration Roles & Responsibilities**

After execution of the basic contract, the technical administration of the contract becomes the responsibility of the Project Manager, and the contractual administration becomes the responsibility of the Contract Administrator. Contract administration is performed by the Contract Administrator from solicitation development, contract execution through Port Commission award, performance, transition, closeout, and if applicable, final dispute resolution. The key aspect of contract administration includes ensuring that all solicitation parties fulfill their contractual obligations, as well as documents are properly maintained including proper records of the contract and its administration throughout the above referenced process.

### **14.3 Contract Administrator**

The Contract Administrator is the Procurement Services department employee designated to track and monitor the performance of the contract on behalf of the Port Authority. The Director of Procurement Services will designate the Contract Administrator for each contract based on the requirements and purpose of the contract.

The Contract Administrator will track and monitor completed vendor performance survey forms that include performance, and compliance with contract specifications and terms and conditions from the date performance commences until date of completion or termination. The primary responsibilities of the Contract Administrator include, but are limited to the following:

- Monitor contract activities for compliance with: work progress to ensure goods and services are performed according to the quality, quantity, objectives, schedule and manner specified within the contract;
- Track and monitor contract performance and progress under the contracts;
- Track and monitor payments to ensure expenditures are consistent with contract terms;
- Track and monitor change orders, adjustments, and amendments;
- Assures contractor insurance and bonds, if applicable, are maintained during the life of the contract;
- Properly document and maintain accurate auditable records of contract administration.

#### **14.3.1 Monitoring/Reporting**

The Contract Administrator is the Procurement Services department employee designated to maintain and manage documentation that will track and monitor the process of the solicitation on behalf of the Port Authority. The Director of Procurement Services will designate the Contract Administrator for each contract based on the requirements and purpose of the contract.

The primary responsibilities of the Contract Administrator include, but are not limited to the following:

- Pre-Bid/Pre-Proposal Conference;
- Attend meetings and provide bid/proposal submission instructions;
- Ensure solicitation electronic file contains potential plan holders list;
- Prepare meeting minutes;
- Bid/Proposal Opening;
- Accept bid/proposal responses and log them into BuySpeed;

- Determine “Responsiveness” by preparing Excel report (entitled “Responsiveness Checklist”); Participate in bid openings day procedures (e.g., Prepare bid opening paperwork, read and record prices during public bid opening, upload bidders/proposers list to BuySpeed, manually enter prices into BuySpeed, create potential and plan holder lists, separate original bids/proposals from copies, deliver copy of bids/proposals to Small Business Department).
- Initial Rank and Evaluation Meeting;
- Upload Bids to SharePoint designated folder for project;
- Upload to Shareport Project Manager documents for project (e.g., Project Instructions, Responsiveness Checklist, Bidder List, Respondents List, Potential and Plan Holder List, Scoring Matrix Instructions, Draft Scoring Matrix, and Reference Questionnaire);
- Final Rank and Evaluation Meeting;
- Attend meetings and serve as electronic score keeper;
- Oral Presentations;
- Create electronic file which includes the agenda, and notification of meeting for each vendor;
- Manage and monitor contract performance documentation through the VPMS;
- Monitor contract activities for compliance with: work progress to ensure goods and services are performed according to the quality, quantity, objectives, schedule and manner specified within the contract;
- Track and monitor contract performance and progress under the contracts;
- Track and monitor payments to ensure expenditures are consistent with contract terms;
- Track and monitor change orders, adjustments, and amendments;
- Assures contractor insurance and bonds, if applicable, are maintained during the life of the contract;
- Properly document and maintain accurate auditable records of contract administration.

The Contract Administrator will maintain sufficient documentation to track and monitor the progress of performance of the contract in the solicitation. file. Under the guidance and instruction of the Director of Procurement Services or designee, the Contract Administrator shall maintain, in a designated contract file, documentation related to the execution, performance and completion of any solicitation process. The Contract Administrator will maintain a file for each solicitation.

The file will, to the extent applicable, include the following: copy of the executed contract with all amendments; modifications; additions/deletions; letters; change orders; exhibits; updated insurance certificates; copies of bid bonds; completed Procurement Profile Form; diary of the progress of the work, original published solicitation that advertises the services, or product procured; inspection and monitoring reports; monthly review of price commitments for supply and services contracts; copies of correspondence and notices to

the contractor, and any other pertinent and relevant documentation (e.g., Small Business Development and Business Equity Program). In addition, for each file, Small Business Development staff will perform compliance assessment (Respondents List) regarding participation by contract type, dollar value of contract and subcontract work, small business development utilization, payment to small business enterprises and ownership status.

#### **14.3.2 Procurement Profile Form**

The Procurement Profile Form: For each contract, the Procurement Profile Form will identify the designated Port Authority Representative (Requesting department Designee), and will include, at minimum, the contract amount, funding source, contractor contact person, other pertinent contractor/vendor information, schedule to guide implementation of the contract, and other information as may be necessary and appropriate. The Procurement Profile Form will become a part of the working solicitation file of the Contract Administrator. The Contract Manager shall provide a copy of the Procurement Profile Form to the Director of Procurement Services or designee. Each Contract Administrator shall set up a file, which includes the solicitation contract, the Procurement Profile Form and other information pertaining to the contract. The Contract Administrator will maintain sufficient documentation to track and monitor the progress of performance of the contract in the file. A sample Procurement Profile Form is contained in Appendix 5 herein.

#### **14.3.3 Contract Execution and Term**

The contract is not effective until it is signed by all the parties and, if over the statutory threshold dollar amount requiring Port Commission approval, approved by the Port Commission. The contract will establish the time for performance of the contract. A start and completion date, which may be subject to additional time extensions, shall be specified in the contract. Original contracts shall be prepared by the Port Authority and executed by the parties. The Records Information Management department will maintain the original of each Port Authority contract. An electronic copy of the fully executed contract will be attached to the Purchase Order by the Director of Procurement Services or designee and an electronic copy will be sent to the requesting department.

### **14.4 Ongoing Contract Administration**

The Contract Administrator has the primary responsibility of collecting data to monitor and track vendor's performance contract on behalf of the Port Authority. This means that the Contract Administrator has oversight responsibilities on behalf of the Port Authority and will continue to collect data to monitor and track vendor's performance and compliance with contract specifications and terms from the date performance commences until the date of completion or termination.

#### **14.4.1 Deficiencies**

In receiving goods and services, and during the ongoing contract performance by the contractor, the requesting department should remain alert for irregularities or deficiencies in the performance of the contract and should document irregularities or deficiencies on the Contract Discrepancy Report form contained in Appendix 8. The Document should be sent to Director of Procurement Services or designee and the Chief Officer. Nonconforming work, services, products, equipment, or goods should be promptly rejected. It is recommended that the requesting department or designee confer with the Director of Procurement Services and the Legal department before terminating a contract.

### **14.5 Contract Modifications/Additional Work/Expanded Scopes of Services Construction Contracts**

Construction contracts shall adhere to the foregoing procedures as well as those outlined in this section.

#### **14.6.1 Required Pre-Construction Documents**

The contractor shall submit specified documents prior to the issuance of a Notice to Proceed. The Contract Administrator shall review and verify all documents and forward them to the department director with a recommendation to proceed. The following pre-construction documents may be required to be submitted by the contractor to the Contract Administrator:

- Certificates of Insurance and associated endorsements. Contractor shall provide all of the insurance specified in the contract prior to contract execution by the Port Authority.
- Permits. The Contractor shall obtain all building or other work permits required by law or regulation.
- Applicable License. When applicable, any applicable professional license shall be required on all construction contracts and as otherwise required by law.
- Performance and payment bonds. Contractors performing construction contracts shall provide all bonds pursuant to the Texas Government Code before the contract will be executed by the Port Authority.

## **Article 15**

### **Surplus, Salvage, and Unclaimed Property Disposition**

The Director of Procurement Services or designee shall be responsible for disposition of all Port Authority surplus, salvage, unclaimed, and waste property pursuant to the following policy.

#### **15.1 Disposition of Waste Property and Surplus - Definitions**

##### **15.1.1 Definition of Waste Property:**

Waste property is “personal property” (i.e. property that is not attached to a building and other real estate) that is *routinely discarded as waste*. This includes, among other things, property that is so worn, damaged, or obsolete that (i) it has no value for its original purpose, and (ii) sale expenses would cost the Port Authority more than sale proceeds.

This determination is the judgment call of the requesting department. Examples of waste property include broken furniture, an outdated computer instruction manual, etc.

Waste property also includes property that cannot be sold after a reasonable attempt to do so. This can include property initially considered to be surplus, salvage, or unclaimed items. This revised determination shall be made by the Procurement Services department.

##### **15.1.2 Definition of Surplus Property:**

Surplus property is personal property that is not currently needed by the Port Authority, is not required for the Port Authority’s foreseeable needs, and possesses some usefulness for its intended purpose or for some other purpose. Examples of surplus include extra furniture, a computer replaced by an upgraded model, etc.

##### **15.1.3 Disposition**

The Port Authority may:

1. Periodically sell surplus, salvage, or unclaimed property by competitive bid, auction, or by offer through entities that perform government surplus auctions.
2. Offer the property as trade-in for new property of the same general type, if the Port Authority considers that action to be in its best interests.
3. Destroy or otherwise dispose of property as waste property if it cannot be sold after reasonable attempts to do so.



4. Destroy or otherwise dispose of property as waste property if the property is so worn, damaged, or obsolete that it has no value for the purpose for which it was originally intended, and the administrative and other expenses associated with an attempt to sell the property would cost the Port Authority more than potentially could be realized from proceeds from a sale.
5. Without limiting the foregoing, surplus, salvage, or unclaimed property deemed to be worthless or of minimal value may be disposed of by private entities in exchange for freight or transportation charges in excess of such value.
6. Dispose of surplus, salvage, or unclaimed property deemed to be worthless or of minimal value, by donating it to a civic or charitable organization located in Harris County if the organization provides the Port Authority with adequate consideration, such as relieving the Port Authority of transportation or disposal expenses.
7. Destroy or dispose of surplus, salvage or unclaimed property by any other method permitted from time to time for counties under Subchapter D, Chapter 263, Local Government Code.

#### **15.1.4 Maximum Benefit**

The Port Authority shall at all times try to realize the maximum benefit in the sale and disposal of surplus, salvage or unclaimed property, provided however that this requirement shall not prevent or impede the destruction or disposal of waste property.

#### **15.1.5 Notice**

The Port Authority shall publish any required notice of a sale of surplus, salvage, or unclaimed property in at least one newspaper of general circulation in Harris County, and the notice must be published on or after the 30th day but before the 10th day before the date of the sale.

In lieu of such notice, the Port Authority may offer the surplus, salvage, or unclaimed property through entities that regularly perform government surplus auctions.

#### **15.1.6 Rejection of Offer**

The Port Authority representative conducting a sale may reject any offer to purchase surplus, salvage, or unclaimed property if the representative finds the rejection to be in the best interests of the Port Authority.

#### **15.1.7 Records**

The Port Authority shall keep reasonable records of unclaimed, surplus or salvage property sold and their sale prices.

The Port Authority shall keep, for one calendar year, reasonable electronic records of unclaimed, surplus or salvage property destroyed or otherwise disposed of, provided that no such records shall be required to be kept for waste property.

#### **15.1.8 Proceeds**

The Port Authority shall deposit the proceeds from the sale of unclaimed, surplus, salvage, or unclaimed property to the credit of the general fund.

#### **15.1.9 Title**

If an acquirer of surplus, salvage, or unclaimed property hereunder complies in good faith with this policy and any other applicable rules of the Port Authority, the acquirer obtains and succeeds to the Port Authority's title to the property.

#### **15.1.10 Designee**

The Director of Procurement Services or designee shall dispose or destroy salvage, surplus or unclaimed property in accordance with these procedures, provided that all Port Authority managers and their designees may dispose or destroy waste property in the regular course of their duties.

### **15.2 Disposition of Surplus, Salvage, Unclaimed and Waste Property - Procedures**

#### **15.2.1 Disposition of Waste Property:**

1. The manager of the requesting department may make the determination that property is waste. The requesting department should complete and submit an electronic Inventory Change Notice form, signed by a department manager or designee to Procurement Services and the Financial Accounting departments (electronic forms are located on SharePort). Questions regarding waste property may be directed to the Fixed Assets accountant in the Financial Accounting department, to determine if it is listed as inventory.
2. If a Port Authority manager determines that personal property is surplus, salvage, or unclaimed property, and not waste property, such manager may notify the Director of Procurement Services or designee, giving a description of the item, any inventory tag number or equipment number or other identifying information, and request that it be disposed of as surplus, salvage or unclaimed property.
3. The requesting department should then make all necessary arrangements to

dispose of the items. Waste property should be disposed of on Port Authority property in order to properly control the disposal process (e.g. it should not be taken home).

#### **15.2.2 Disposition of Surplus Property:**

1. If the requesting department manager is unable to determine if property is waste, or if the manager initially determines that the property is surplus, salvage or unclaimed property, the manager should contact other Port Authority departments to determine whether there is any internal interest in using the property.
2. If another department wants the property, the property can be transferred. If the property has record of value, the requesting department should complete and submit the electronic Inventory Change Notice form, signed by a department manager or designee, to Procurement Services and the Fixed Assets accountant in the Financial Accounting department.
3. If there is no internal interest in the property, the requesting department should complete and submit an electronic Inventory Change Notice form, signed by a department manager or designee, to the Procurement Services Department.
4. If the Requesting department manager is unable to determine that property is waste, the Director of Procurement Services or designee may do so. Following that determination the requesting department manager should make arrangements for proper disposal of the property. If the property has value, the requesting department should complete and submit an electronic Inventory Change Notice form to Procurement Services and the Fixed Assets accountant in the Financial Accounting department.
5. The Director of Procurement Services or designee should determine the method of disposition of surplus property as authorized by policy, including by auction on a site such as GovDeals, to realize the maximum benefit to the Port Authority. Throughout the disposition process (typically no more than 15 days), the property shall remain with the requesting department.
6. If property is to be auctioned, the Director of Procurement Services or designee will take pictures of the property. Auctions typically last 5 days. The winning bidder then has 5 business days to pay for and remove the items. If the winning bidder does not remove the property by the designated day, the property may, at the discretion of the Director of Procurement Services or designee, be re-auctioned for another 5 days.

7. If the property does not sell at auction, the Director of Procurement Services or designee, at his discretion, may instruct the requesting department manager to dispose of it as waste property, or may elect to donate it in accordance with the policy. All arrangements to dispose of waste property should be made by the Requesting department.

To expedite the disposition process, the requesting department is required to send to Procurement Services photographs of the surplus items.

In connection with any transfer or disposal of Port Authority property declared as waste, surplus, salvage or unclaimed, if such property contains record of value, the requesting department must have electronic Inventory Change Notice forms properly completed, signed, and submitted to Procurement Services and the fixed assets accountant in the Financial Accounting department. Electronic process forms are located on SharePoint.

When disposing of waste property, employees should work with the Environmental Affairs department to ensure that Port Authority property is disposed of in the proper manner. For example, items such batteries and printers with toner, may be harmful to the environment if disposed of improperly. Questions regarding environmental waste property should be directed to the compliance specialist in the Environmental Affairs department.

# **Glossary of Terms**

## **Acquisition**

Obtaining goods and services through best methods and business practices.

## **Addendum**

A document used to change the terms and/or conditions of a Solicitation.

## **Advisory Council**

A citizens group created by PHA to assist the SBDP by providing an independent assessment of the Program's operations and by assisting in refining its goals, procedures, and operations. Members of the Advisory Council are appointed by the Chairman of the Port Commission in conjunction with the appropriate Commission Committee from representatives of small businesses, Contractor associations, minority business groups, women-owned business groups, community organizations, and other governmental units.

## **Appeal Arbitration**

An arbitration conducted to hear a requested appeal of a suspension imposed by a final decision of a Hearing Officer. Appeal Arbitrations are only available to hear the appeal of final decisions that result in suspension of a Contractor or a SBDP-Certified Small Business. By being a party in an Appeal Arbitration, PHA *does not* waive its immunities.

## **Appeal Arbitrator**

The individual chosen by lottery-style selection with the limited authority of determining whether a suspension imposed by the Hearing Officer for violations of the SBDP should be upheld.

## **Architect**

An individual registered as an architect under Chapter 1051, Texas Occupations Code.

## **Award**

The acceptance of a bid or proposal after all required approvals have been obtained which is then completed by the presentation of a purchase agreement or written notice

of award to the selected vendor.

### **Best Value Determination**

A determination made by the Port Authority before the bid or proposal is advertised of the method of procurement that will be used in a particular procurement or group or type of procurements that will provide the best value to the Port Authority and emphasizes value over price. Any reasonable factors related to value may be considered in determining the best value method, including but not limited to, the total life cycle cost of the item, the time to complete the procurement, cost of the method, anticipated quality of good or services likely obtained by the method, and the limitations of the various methods.

### **Bid**

A statement of price, terms of sale, and description of the supplies, services, construction, or construction related services offered by a bidder in response to an invitation for bids under the competitive bid process or comparable procurement process.

### **Bidder**

One who submits an offer or bid in response to a solicitation.

### **Blanket Purchase Order**

An arrangement in which a vendor agrees to provide goods or services to the Port Authority on a demand basis. Properly prepared, such an arrangement sets a limit on the period of time (typically no more than one year) it is valid and the maximum amount of money which may be spent at one time or within a specified period. It also identifies the persons authorized to place orders and/or accept goods under the order.

### **Business**

Any profit or not for profit corporation, partnership, individual, sole proprietorship, joint venture, or any other private legal entity through which commercial activity is conducted.

### **Buyer**

The designated personnel in the Procurement Services Department on a particular

requisition or purchase.

### **Capital Improvement**

Construction or an architectural service as defined herein.

### **Certification**

The process by which an applicant is determined to be a SBDP-Certified Small Business and to be eligible for participation in the PHA SBDP.

### **Change Order**

A written order signed by the authorized parties (or otherwise authorized by the contract documents) to modify or amend a contract or purchase order. In construction contracts, it relates primarily to changes required by unanticipated circumstances not already covered by the plans, specifications or drawings for the project.

### **Code of Silence or No Contact Period**

The “No Contact Period” means the period commencing on public issuance by the Port Authority of a solicitation for Formal Procurement bids/proposals, 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, actual and prospective respondents or bidders (including their representatives or persons acting on their behalf) are prohibited from contacting members of Port Commission or any Port Authority employee other than the Director of Procurement Services, or designee, in any manner regarding the advertised solicitation. Actual and prospective respondents or bidders include those respondents or bidders who have received notice that they have not been chosen as finalists for any solicitation, including their representatives or persons acting on their behalf and are expressly prohibited from offering, presenting or promising gratuities, favors, or anything of value to any member of an evaluation committee or any Port Commissioner or employee of the Port of Houston Authority, or their family members.

Notwithstanding the foregoing, the following types of communications are exempt and shall be 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 and task forces;

3. Written questions or clarification requests made to the Director 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.

### **Collusion**

An agreement, oral or written, usually secretive, which occurs between two or more persons to limit open competition by deceiving, misleading, or defrauding others to obtain an objective advantage over other bidders and/or over the Port Authority. Examples include, but are not limited to an agreement among two or more firms to divide the market, set prices, limit production, share profits, back out of bids to allow another to win the procurement, or to misrepresent the independence of the relationship between the colluding parties (e.g., “shell entities.”).

### **Commercially Acceptable Function**

A discrete task or group of tasks, the responsibility for performance of which shall be discharged by the small business by using its own forces or by actively supervising on-site the execution of the tasks by another entity for whose work the small business is responsible. A small business will not be considered to be performing a commercially acceptable function if it subcontracts to non-small businesses or to other small businesses more than fifty percent (50%) of a Contract being counted toward the applicable participation goal. PHA may waive this requirement upon demonstration that the industry standard for the type of work involved is to subcontract over fifty percent (50%) of the work.

### **Commodity**

An item of purchase which may include office goods and materials, food, building materials, and other items needed to support normal operations.



## **Competitive Bidding**

Procurement method for obtaining goods, services and construction services in which bids are submitted in a sealed fashion in response to a Competitive Sealed Bid by bidders competing for a contract, privilege, or right to supply specified services or goods. This method is never available to obtain professional services under the Texas Professional Services Procurement Act.

## **Competitive Sealed Bids or CSB**

Competitive Sealed Bids (“CSB”) is an advertised procurement method, as used by the Port Authority, 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.

## **Competitive Sealed Proposal or CSP**

Competitive Sealed Proposals (“CSP”) is an advertised procurement method, as used by the Port Authority, 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. The CSP method permits the consideration of non-price criteria, scope negotiation, and some correction of errors.

Competitive Sealed Proposals are commonly utilized in the procurement of the following commodities:

1. Construction, repair, rehabilitation, or alteration of facilities
2. General goods
3. General services

## **Competitive Solicitation**

The purchasing process required by Subchapter N, Texas Water Code, Sections 60.401 through 60.414.

## **Component Purchases**

Purchasing an item through multiple purchase orders for the component parts of the item versus issuing a single purchase order for the entire item. Repeated purchases of

additional optional equipment or parts after an initial purchase may be, or may create the perception of component purchasing.

## **Construction**

The process of building, altering, improving, replacing, repairing, demolishing any structure, building, building system, infrastructure, or other improvement to real property, provided however, construction does not include the routine operation, routine repair, or routine maintenance of an existing improvement to real property.

## **Construction Manager-Agent or CMA**

A sole proprietorship, partnership, corporation, or other legal entity that provides consultation to the Port Authority regarding construction, rehabilitation, alteration, or repair of the facility, and in doing so represents the Port Authority in a fiduciary capacity.

## **Construction Manager-At-Risk or CM at Risk**

A sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the Port Authority regarding construction during and after the design of the facility.

## **Contract**

An agreement, including a purchase order, entered into by the parties for the acquisition of supplies, commodities, equipment, real or personal property, construction, architectural engineering services, or other services, or any combination thereof.

## **Contract Administration**

The management of all facets of a contract to ensure the vendor's total performance is in accordance with the contractual commitments and the vendor fulfills all obligations under the terms and conditions of the contract.

## **Contract Modification**

Any written alteration in the specifications, delivery point, date of delivery, contract period, price, quantity, or other provisions of an existing contract, whether accomplished in accordance with a contract provision, or by mutual agreement of the parties to the contract. It includes change orders, extra work orders, supplemental agreements,

contract amendments, or reinstatements.

### **Contractor**

In the context of a contract for the construction, rehabilitation, alteration, or repair of a facility means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for constructing, rehabilitating, altering, or repairing all or part of the facility at the contracted price. Otherwise, any person or business having a contract with the Port Authority.

### **Contractor's Small Business Plan**

The plan submitted by a Proposer (and maintained by a Contractor) that demonstrates the proposed and/or actual small business participation and utilization in a SBDP-Eligible Contract.

### **Cure Notice**

A notice either oral or in writing that informs the vendor that he or she is in default and states what the vendor has to do to correct the deficiency and specifies a time period in which to correct the default. If the notice is oral it shall be confirmed in writing.

### **Day**

A calendar day unless otherwise designated.

### **Debarment**

An action taken by the Port Authority to exclude individuals or firms from eligibility for participation in any procurement for particular goods or services for up to two years.

### **Debriefing**

Debriefing is the act of informing suppliers, contractors or service providers that were not selected during a particular procurement process, of the reasons why they were not selected.

### **Default**

Failure of a contractor to comply with the terms and conditions of a contract.

**Design-Build Contract**

A delivery method for construction projects that combines the architectural, engineering and construction services required for a project into a single contractual agreement with a single point of contact.

**Design-Build Firm**

A partnership, corporation, or other legal entity or team that includes an engineer and/or architect and builder qualified to engage in building construction in Texas.

**Design-Build Method**

A method of procurement used for the construction, rehabilitation, alteration, or repair of a facility in which there is a single contract with a design-build firm or team for the project.

**Design-Build Proposal**

A written proposal to PHA by a prospective Contractor to provide both design and construction services for designated projects identified and requested by PHA. Design-Build Proposals include the requisite professional and technical services required to complete the project.

**Design Criteria Package**

A set of documents that provides sufficient information to permit a design-build firm to prepare a response to a request for qualifications and any additional information requested, including criteria for selection. The design criteria package must specify criteria the Port Authority considers necessary to describe the project and may include, as appropriate, the legal description of the site, survey information concerning the site, interior space requirements, special material requirements, material quality standards, conceptual criteria for the project, special equipment requirements, cost or budget estimates, time schedules, quality assurance and quality control requirements, site development requirements, applicable codes and ordinances, provisions for utilities, parking requirements, or any other requirement, as applicable.

**Determination**

A written procurement decision made by a public official or employee which is based upon written findings.

**Direct Payment (Check Request)**

A method of purchase to expedite certain types of transactions that do not require the use of a purchase order yet does not circumvent the State of Texas procurement requirements.

**Electronic Bids/Proposals**

Bids or proposals received by the Port Authority through designated electrical, digital, magnetic, optical, electromagnetic, or similar technology in accordance with rules adopted by the Port Commission that ensure the identification, security, and confidentiality of electronic bids or proposals and ensures that the electronic bids or proposals remain effectively unopened until the proper time.

**Emergency**

A sudden and unexpected occurrence which requires immediate action by the Port Authority because of an imminent threat to public health or safety or a reasonably unforeseeable situation, including but not limited to, a circumstance where the Port Authority property, equipment, facility, or portion of a facility is destroyed, severely damaged, or experiences a major unforeseen operational or structural failure, and the Port Commissioners or designee, determines that the delay posed by using one of the applicable purchasing methods would prevent or substantially impair the normal operations of the Port Authority.

**Evaluation of Bids**

The process of examining a bid after opening to determine the bidder's responsiveness to requirements, responsibility, and other characteristics of the bid relating to selection for award.

**Executive Director**

The Port Authority's Executive Director or senior most staff executive.

**Extension**

As applied to contracts for the performance of architect/engineer services, an extension is a change in the scope of the services to be performed by the architect/engineer by including in the contract a requirement for the performance of phases of services not previously included.

**Facility**

Real property, including buildings and associated structures and improved or unimproved land. The term does not include: highways, roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water and wastewater distribution or conveyance facilities, wharves, docks, airport runways and taxiways, drainage projects, or related types of projects associated with civil engineering construction; or buildings or structures that are incidental to projects that are primarily civil engineering construction projects.

**Fatal Errors**

Proposals may be immediately rejected that contain errors that are deemed uncorrectable. The following are deemed uncorrectable errors (fatal errors):

- Late bids
- No bond or bid security (if applicable)
- No dollar amount specified
- Debarred vendor

**Fee**

In the context of a contract for the construction, rehabilitation, alteration, or repair of a facility means the payment a construction manager receives for its overhead and profit in performing its services.

**First-Tier Subcontractor**

A subcontractor who contracts directly with the Prime Contractor.

**Fixed Price Contract**

A contract which provides for a guaranteed and fixed vendor price under which the vendor bears the full risk of profit or loss.

**Formal Procurement**

The procurement of goods and services that must be approved by the Port Commission pursuant to Texas Water Code Chapter 60.

## **Funds Availability**

Monies that are currently credited to the Port Authority and are contained within the proper object of the expenditure.

Certification by an appropriate financial officer of the Port Authority in accordance with Texas Water Code Section 60.408(g) that funds are or will be available to meet the contract when due.

## **General Conditions**

In the context of a contract for the construction, rehabilitation, alteration, or repair of a facility means on-site management, administrative personnel, insurance, bonds, equipment, utilities, and incidental work, including minor field labor and materials.

## **General Counsel**

The Port Authority's senior-most staff attorney.

## **Goal**

A numerically expressed objective that PHA or Contractors are encouraged to make a Good Faith Effort to achieve. A goal is identified for each individual SBDP-Eligible Contract. The initiating PHA department, in consultation with a Small Business Development Business Advisor, determines the small business subcontracting or joint venture potential and availability and small business capacity for the SBDP-Eligible Contract. In determining small business capacity, PHA may use PHA past practices and experiences, available SBDP certifications, recognized industry make-up, and available small business listings from other governmental entities.

## **Good Faith Efforts**

Documented steps that describe attempts to include small businesses in procurement and contracting opportunities. PHA requires all Contractors to make Good Faith Efforts to utilize small businesses in the performance of an SBDP-Eligible Contract.

1. **Good Faith Efforts for non-small businesses** shall mean *at a minimum* the following:
  - a. Delivery of written notice of subcontracting opportunities on SBDP-Eligible Contracts to the appropriate and industry-specific small businesses identified in the PHA small business directory;
  - b. Utilization of local small business and minority- and women-focused

- associations for notice purposes regarding subcontracting opportunities;
  - c. Delivery of written notice to all small businesses that request information on the SBDP-Eligible Contract;
  - d. The written notices will contain the following:
    - (i) Adequate information about the plans, specifications, and relevant terms and conditions of the Contract and about the work to be subcontracted to, or the goods to be obtained from, Subcontractors and suppliers;
    - (ii) A contact person with the Proposer's office to answer questions;
    - (iii) Information regarding the Proposer's bonding requirements, the procedure for obtaining any needed bond, and the name and telephone number of one or more acceptable surety companies to contact; and
    - (iv) The last date for receipt by the Proposer of small business price quotations;
  - e. Attendance at any special pre-proposal meeting called to inform businesses of subcontracting or supply opportunities, if set forth in the proposal documents;
  - f. Division of the SBDP-Eligible Contract, when recommended by the department head of the initiating PHA department and in accordance with normal industry practice, into small, economically feasible segments that could be performed by small businesses;
  - g. Compliance with the dispute resolution provisions of the SBDP; and
  - h. Adhering to PHA's Nondiscrimination Mandate in the procurement and discharge of an SBDP-Eligible Contract and the performance of the SBDP requirements.
2. **Good Faith Efforts for small businesses** shall mean at a minimum the following:
- a. Furnishing prompt written responses to any written inquiry from PHA regarding the small business's participation in the SBDP, the small business's performance, or the small business's status;
  - b. Ensuring at all times during the performance of any SBDP-Eligible Contract or subcontract that the small business is engaging in a commercially acceptable function as that term is defined herein;
  - c. Ensuring that no application, response to a request for information, or other factual material submitted to PHA contains any material misrepresentation;
  - d. Complying with the dispute resolution provisions of the SBDP; and



- e. Adhering to PHA's Nondiscrimination Mandate in the procurement and discharge of an SBDP-Eligible Contract and the performance of the SBDP requirements.

### **Grievance Officer**

The person selected by the Executive Director to hear grievances brought by an aggrieved party against a decision made by a Small Business Development Business Advisor in the operations of the SBDP.

### **Hearing Officer**

The Small Business Development Business Advisor who conducts hearings and makes findings and determinations regarding allegations against Contractors or SBDP-Certified Small Businesses for failure to comply with Good Faith Efforts and/or other violations of the requirements of the Policy and Procedures of PHA's SBDP. The Hearing Officer is authorized to impose sanctions of all types for violations (private and public reprimands, suspensions, etc.). The Port Commission of PHA has delegated authority to the Hearing Officer to conduct hearings and impose sanctions. All actions taken by the Hearing Officer in this regard are made in the Hearing Officer's official capacity as an agent of the Port Commission of PHA.

### **Inspection**

Examination and testing of goods or services to determine whether the goods or services proposed or furnished conform to contract requirements.

### **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.

### **Interlocal Agreement**

A contract authorized by Texas Government Code Section 791.001 *et seq.* (the "Interlocal Cooperation Act") between two or local governments (including a federally recognized Indian tribe in Texas listed under 25 USC Section 479a-1) to either study the feasibility of the performance of a governmental function or service by interlocal agreement, or to provide a governmental function or service that each party to the agreement is authorized to perform individually. In other words, it allows the Port

Authority to enter into an interlocal agreement with another local government (or Indian tribe) for the purpose of sharing or "piggy-backing" competitive solicitations issued by another local government. An interlocal agreement must be approved by the Port Commission and must specify that each party will make payments under the agreement from current revenues only. As such, if the agreement continues from year to year, it may be renewed annually.

### **Invoice**

A contractor's/vendor's written request for payment for supplies, goods, commodities, services, maintenance, construction or other similar services performed or provided.

### **Items**

Any service, equipment, goods or other tangible or intangible personal property.

### **Joint Venture**

An association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills, and knowledge.

### **Late Bid or Proposal**

A bid or proposal received at the place designated in the solicitation after the deadline established in the solicitation.

### **Lease**

A contract for the use of Port Authority property for a period of time in return for a specified compensation

### **Maintenance**

Any work necessary for the continued operation or upkeep of a facility, structure, building, grounds, or building system, not included within the definition of construction.

**Minority-owned business enterprise (MBE)**

A business that is at least 51% owned by one or more minority persons, or for which at least 51% of the equity is owned by one or more minority persons, and both the management and daily business operations are carried out and controlled by one or more of the minority persons who own it.

**Monthly Utilization Report or MUR**

A reporting form used by PHA to record small business participation. Contractors (vendors) are required to submit Monthly Utilization Reports on small business participation.

**May**

Denotes the permissive.

**Multiple Awards**

The award of contracts to more than one vendor when the terms and conditions of solicitation allow for such an award.

**National Institute of Governmental Purchasing Commodity Services (NIGP Code)**

The NIGP Code is a coding taxonomy used primarily to classify products and services procured by state and local governments in the United States. Agencies use the class-item numbering and descriptions found in this book to properly code products or services on their requisitions and purchases, so informal and formal invitations for bid will reach vendors that have indicated they are capable of furnishing the required materials, equipment, supplies, and services. The NIGP Code is most commonly used, not only to classify vendors, but to track spend data for use in strategic sourcing and spending analysis. The database is often incorporated in to the procurement software utilized by the entity for use in electronic procurement. The NIGP Code currently exists in English and Spanish versions.

**North American Industry Classification System (NAICS, pronounced “nakes”)**

The North American industry Classification System or NAICS is used by business establishments according to type of economic activity (process of production) in Canada, Mexico, and the United States. It has largely replaced the older Standard

Industrial Classification (SIC) system, however, certain government departments and agencies, such as the U.S. Securities & exchange Commission, still use the SIC codes. An establishment is typically a single physical location, though administrative distinct operations at a single location may be treated as distinct establishments. Each establishment is classified to an industry according to the primary business activity taking place there. The NAICS numbering system employs six-digit code at the most detailed industry level. The first five digits are generally (although not always strictly) the same in all three countries. The first two digits designate the largest business sector, the third digit designates the subsector, the fourth digit designates the industry group, the fifth digit designates the NAICS industries, and the sixth digit designates the national industries.

### **Negotiation**

A bargaining process between two or more parties to reach a mutually satisfactory agreement, contract or settlement.

### **No Contact Period**

See "Code of Silence".

### **Notice of Appeal**

The written notice of a request to appeal the final decision of a Hearing Officer imposing sanctions on a business. The Notice of Appeal must be filed in writing with the Executive Director of PHA no later than fifteen (15) days following receipt of notice of the final decision of the Hearing Officer.

### **Notice of Award**

A notification that a contract has been awarded.

### **Option**

The unilateral right of the Port Authority under a contract to: extend the contract for an additional period of time; purchase delineated additional goods or services; or to purchase materials or facilities that have been leased.

### **Pass-Thru Business**

A small business that is not performing a Commercially Acceptable Function and that operates as a conduit or intermediary while allowing other Contractors and

Subcontractors to actually do the work at PHA. For example, a Pass-Thru Business may purport to act as a supplier, while actually obtaining wholesale goods or services from another party conducting such business and reselling them in order to take part in the SBDP.

### **Payment Bond**

A bond required from a contractor before beginning the work in a situation where the Port Authority makes a public work contract for constructing, altering, demolishing or repairing a public building and the contract amount is in excess of \$25,000. The purpose of the payment bond is to ensure fulfillment of the contractor's obligation to pay all persons supplying labor or materials in the performance of the work provided for in the contract, and it shall be executed in the amount of the contract solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material. A payment bond is not required for, and may not provide coverage for, the portion of a design-build contract that includes design services only. The bond shall be executed by a corporate surety in accordance with Texas Insurance Code, Chapter 3503 (formerly Article 7.19-1) and shall comply with all requirements of Texas Government Code, Section 2253.021 *et seq.* (commonly referred to as "The MacGregor Act").

### **Performance Bond**

A bond required from a contractor before beginning the work for the full amount of the contract conditioned on the faithful performance of the work according to the plans, specifications, and contract documents in a situation where the Port Authority makes a public work contract for constructing, altering, demolishing or repairing a public building and the contract amount is in excess of \$100,000. The bond is solely for the protection of the Port Authority from loss due to a contractor's inability to complete the contract in accordance with its terms and conditions. A performance bond is not required for, and may not provide coverage for, the portion of a design-build contract that includes design services only. The bond shall be executed by a corporate surety in accordance with Texas Insurance Code, Chapter 3503 (formerly Article 7.19-1) and shall comply with all requirements of Texas Government Code, Section 2253.021 *et seq.* (commonly referred to as "The MacGregor Act").

### **Person**

Includes an individual, sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that proposes or otherwise seeks to enter into a contract or other transaction with the Port Authority

requiring approval by the Port Commission.

### **PHA-Approved Small Business or PHA-Certified Small Business**

A small business whose application to participate in the SBDP has been received and approved and is eligible for SBDP participation.

### **PHA's Nondiscrimination Mandate**

The policy of PHA to prohibit discrimination based on race, color, sex, religion, national or ethnic origin, age, or disability. The SBDP must be implemented in a nondiscriminatory manner. Discriminatory conduct by Contractors or SBDP-Certified Small Businesses in the operation of the SBDP violates this mandate and subjects violators to sanctions.

### **PHA's Business Equity Division**

The Port Authority division or the successor Port Authority division responsible for the Program.

### **Port Authority or PHA**

Port of Houston Authority of Harris County, Texas, a political subdivision of the State of Texas, operating as a navigation district in accordance with Texas Special District Local Laws Code, Chapter 5007.

### **Port Commission**

The governing body of the Port Authority.

### **Pre-bid/Proposal Conference**

A conference conducted by Procurement Services for the benefit of those wishing to submit a bid or proposal for services or supplies required by the Port Authority held in order to allow bidders/proposers to ask questions about the proposed contract and particularly the contract specifications.

### **Price Analysis**

An examination of a vendor's price by comparison to other prices for like goods or

services or comparison to other price benchmarks.

### **Prime Contractor**

A Contractor who receives a Contract from PHA for goods or services and has the primary responsibility for execution of the Contract. The Prime Contractor may subcontract portions of the work required to Subcontractors.

### **Prime Contractor Small Business**

A small business that is awarded a Prime Contractor Contract by PHA.

### **Procurement**

All functions that pertain to the process of buying, leasing as lessee, purchasing, or otherwise obtaining any supplies, goods, services, construction, architectural services, engineering services, or services provided under an energy performance contract, including description of requirements, selection criteria, and solicitation of sources, preparation and award of contract, and all phases of contract administration.

### **Program**

The Small Business Development Program of Port of Houston Authority of Harris County, Texas.

### **Prompt Payment Directive**

The directive authorized by the SBDP Policy and Procedures and issued by PHA's Executive Director that requires prompt payment to small businesses by Contractors and Subcontractors, following receipt of payment from PHA.

### **Proposal**

A written response to a request for proposals issued by Procurement Services to obtain goods or services.

**Proposal Request**

Any written request by PHA for submittal of proposals to provide labor, goods, or services to PHA by Contract. A Proposal Request may be in the form of a Request for Proposals, Request for Qualifications, or Request for Competitive Sealed Proposals.

**Proposal Response**

The response submitted to PHA by a prospective Contractor to a request for proposals or other written invitation from PHA to make a proposal to provide labor, goods, or services to PHA as requested.

**Proposer**

Any person or entity that submits a proposal to provide labor, goods, and/or services to PHA by Contract in response to a Request for Proposals, Request for Qualifications or Request for Competitive Sealed Proposals.

**Proprietary Information**

Information in bids or proposals to which a vendor claims ownership or exclusive rights and which is protected from disclosure in accordance with the Texas Public Information Act as determined by the Attorney General of Texas.

**Protest**

A formal written complaint relating to the solicitation, evaluation, or award of a procurement contract.

**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.

**Public Notice**

A written notice of the time by when and place where the bids or proposals, or the responses to a request for qualifications, will be received and opened, which is published in the county in which the Port Authority's central administrative office is located, once a week for at least two weeks before the deadline for receiving bids, proposals,



or responses to a request for qualifications, provided that in a two-step procurement process, the time and place where the second step bids, proposals, or responses will be received are not required to be published separately.

## **Purchase**

The act of buying, or that which has been bought.

## **Purchase Order or PO**

A document issued by the Port Authority authorizing a procurement from a vendor. If issued in acceptance of a bid or proposal, the document is an “acceptance” and forms a contract upon issuance. If issued not in acceptance of a bid or proposal, a contract is formed upon acceptance by the vendor. Acceptance is evidenced by any reasonable manner in light of the circumstances including prompt shipment or prompt promise to ship or definite expression or written confirmation sent by the vendor within a reasonable time.

## **Purchasing Executive**

The Port Authority’s senior-most purchasing executive.

## **Purchasing Laws**

The laws that govern the Port Authority’s procurement include the following:

- Texas Water Code (Subchapters N and O)
- Purchasing and Contracting Authority, Texas Local Government Code, Chapter 271 (to the extent applicable)
- State Cooperation in Local Purchasing Programs, Texas Local Government Code, Chapter 271, Sections 271.081 through 271.083
- Interlocal Cooperation Act, Texas Government Code, Chapter 791
- Professional Services Procurement Act, Texas Government Code, Chapter 2254, Subchapter. A
- Port Authority Bylaws
- Texas Special District Local Laws Code, Chapter 5007

## **Request for Proposals or RFP**

A Request for Proposal is an advertised procurement method, as used by the Port Authority, in which the award is made to the lowest and best evaluated offer resulting from negotiation based on the published evaluation criteria. Construction projects may not be processed using the Request for Proposals process (except in the two-step process of a design-build or construction manager- at-risk).

Request for Proposals are commonly utilized in the procurement of the following commodities:

1. High technology goods
2. Professional services
3. Personal services
4. Insurance services

## **Request for Qualifications or RFQ**

A Request for Qualifications (RFQ), as used by the Port Authority, refers to the two-step advertised procurement method where price is negotiated following selection. The selection and award must be based on demonstrated competence and qualifications to perform the services for a fair and reasonable price. RFQ is used for certain professional services only.

A RFQ for professional services will be solicited in a two-tier format:

1. Step 1 - Qualification Process
2. Step 2 - Submittal of cost/pricing information by the most highly qualified vendor.

## **Requestor or Requesting Department**

The Port Authority department or office requesting that certain items be purchased through Procurement Services.

## **Responsible Bidder**

A vendor who is fully capable of meeting all requirements of the solicitation and subsequent contract, and who possesses the full capability (including financial and technical) to perform as contractually required.

**Responsive**

A bid or proposal submitted in response to an invitation for bids/proposals that conforms in all material respects to the requirements contained in the solicitation.

**Reverse Auction**

A reverse auction is a type of auction in which the roles of the buyer and seller are reversed, the sellers compete to obtain business from the buyer and prices will typically decrease as the sellers undercut each other.

**Salvage Property**

Personal property, other than surplus, unclaimed or waste property, that because of use, time, accident, or any other cause is so worn, damaged, or obsolete that it has no value for the purpose for which it was originally intended.

**SBDP**

The Small Business Development Program of the Port of Houston Authority of Harris County, Texas.

**SBDP Business Advisor**

Each PHA Small Business Development Department staff person responsible for the operation and implementation of the SBDP.

**SBDP-Certified Small Business**

A small business whose application to participate in the SBDP has been received and approved and is eligible for SBDP participation.

**SBDP-Eligible Contract**

A Contract awarded by PHA that is awarded with SBDP goals and for which Good Faith Efforts to utilize small businesses is required. Specifically, SBDP-Eligible Contracts are all Contracts valued at over \$100,000, *excluding* Contracts for sole-source items, federally funded Contracts, Contracts with other governmental entities, and those Contracts for which participation in the SBDP is otherwise prohibited by applicable law or exempted by PHA. Professional service Contracts are SBDP-Eligible Contracts, to the extent permitted by law.

**Sealed Bid**

A sealed bid is a document enclosed in a sealed envelope and is submitted in response to invitation to bid. Sealed bids are received up to the deadline date and are generally opened at a stated time and place in the presence of anyone who may wish to be present and evaluated for award of a contract.

**Separate Purchases**

Purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.

**Sequential Purchases**

Purchase of the same items or type of items over the course of a 12 month calendar period that, in the aggregate, exceed the statutory competitive procurement dollar amount threshold. Sequential purchasing usually results from needs that were not properly planned or anticipated. It may also result from lack of centralization of the purchasing function.

**Services**

The rendering of time, effort, or work, rather than the furnishing of a specific physical product other than reports incidental to the required performance. It includes, but is not limited to the professional, personal, and or contractual services provided by architects, engineers, attorneys, accountants, physicians, consultants, appraisers, land surveyors, and where the work provided is associated with the provision of expertise or labor, or both.

**Shall**

Denotes the imperative.

**Signature**

A manual or electronic unique identifier or the electronic result of an authentication technique attached to or logically associated with a record that is intended by the person using it to have the same force and effect as a manual signature.

## **Significant Local Presence**

The required location of a small business in one or more of the counties of Harris, Galveston, Fort Bend, Montgomery, Liberty, Waller, Chambers, or Brazoria, Texas, with one or more of its employees regularly based therein. A location utilized solely as a post office box, mailbox, or telephone message center, or any combination thereof, with no substantial work function, shall not be considered a Significant Local Presence.

## **Size Standards**

The limitations on the size of a small business relating to the gross revenues or number of employees of the small business over a three year period as described in Section 3 of the Small Business Act and 13 C.F.R. Section 121.103 and Section 121.201.

## **Small Business**

A business that is independently owned and operated and which is not dominant in its field of operation and which meets size standard set forth in 13 C.F.R., Part 121. A business is automatically eligible if it has a valid and current certification as a Small Business Administration (8a) Firm, Historically Underutilized Businesses, or Minority and Disadvantaged Business Enterprises, issued by:

- U.S. Small Business Administration;
- The Houston Minority Supplier Development Council;
- City Of Houston;
- Metropolitan Transit Authority of Harris County; or
- Women's Business Enterprise Alliance.

## **Small Business Development Program Director**

The PHA officer primarily responsible for the direct operation and direct implementation of the S/MWBBDP.

## **Small Business Proposer**

A SBDP–Certified Small Business that submits a proposal to provide labor, goods, or services to PHA in response to a Request for Proposals, Request for Qualifications or Request for Competitive Sealed Proposals.

### **Sole Source Item or Service**

An item that is available from only one source, including: an item for which competition is precluded because of the existence of a patent, copyright, secret processes, or monopolies; a film, manuscript, or book; a public utility service, including electricity, gas, or water; and a captive replacement part or component for equipment.

### **Solicitation**

Invitation for Bids, Invitation for Proposals, Request for Proposals, or any other method or instrument used to communicate to potential bidders, offerors or proposers that the Port Authority has a particular procurement need.

### **Specifications**

A concise description of a good or service that an entity seeks to buy and the requirements the vendor must meet in order to be considered for the award. A specification may include requirements for testing, inspection, or preparing any item for delivery, or preparing or installing it for use. The specification is the total description of the item or services to be purchased.

### **Standard Terms and Conditions**

Standard clauses and requirements incorporated into all solicitations and resulting contracts which are derived from law, regulation, ordinance, and/or Port Authority policy and/or administrative procedures.

### **State Contract**

A method of procurement established in accordance with Local Government Code Chapter 271 Subchapter D, State Cooperation in Local Purchasing Programs, whereby the Port Authority may, through the adoption of a resolution by the Port Commission, participate in procurement for goods made through the State of Texas. Such procurements are compliant with other state law requiring the Port Authority to seek competitive bids for the purchase of an item (e.g., Texas Water Code Section 60.454, Texas Government Code Section 2054.0565, etc.).

### **Subcontractor**

Any business providing goods, labor, or services to a Contractor if such goods, labor, or services are procured or used in fulfillment of the Contractor's obligations arising from a Contract with PHA.

**Substitution**

An item of equipment, material, or supply for which the quality, design, and/or performance characteristics are less than fully equal to an item specified in a solicitation. Whether a substitution will be accepted as “equal” is determined by the Director of Procurement Services or designee.

**Surplus Property**

Personal property that is not salvage, unclaimed or waste property; property that is not currently needed by the Port Authority; property that is not required for the Port Authority's foreseeable needs, and; property that possesses some usefulness for the purpose for which it was intended or for some other purpose.

**Suspension**

A sanction imposed (after due process procedures) on a Contractor or small business that takes away the opportunity to do business with PHA for a defined period of time.

**Task Force**

Procurement and Small Business Development Task Force of the Port Commission.

**Unclaimed Property**

Property that has been delivered to Port Authority facilities, for which the Port Authority has no practical need, and has not been claimed, by the consignor or consignee after reasonable attempts by the Port Authority to complete delivery or return it to the shipper.

**Vendor**

A person or business who desires to enter into a contract with the Port of Houston Authority.

**Woman-Owned Business Enterprise (WBE)**

A business that is at least 51% owned by one or more female American citizens, or for which at least 51% of the equity is owned by one or more female American citizens, and both the management and daily business operations are carried out and controlled by one or more of the female American citizens who own it.

**Waste Property**

Personal property routinely discarded as waste.



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## Certification of Impartiality & Non-Conflict of Interest for Evaluators

The undersigned agrees to participate in the consideration, evaluation and/or scoring of solicitation number \_\_\_\_\_ for \_\_\_\_\_.

In this capacity, I affirm the following:

1. I agree to perform any and all tasks related to the above referenced solicitation in an unbiased manner, to the best of my ability, and with the best interest of the Port of Houston Authority paramount in all decisions.
2. I have reviewed and am familiar with the Port of Houston Authority's *Code of Ethics*, and *Standards For Employee Interaction with Interested Parties*. I agree not to violate these policies and guidelines while participating in the consideration, evaluation and/or scoring of the above referenced solicitation.
3. I have not solicited, accepted, or agreed to accept any Benefit, as defined by the Port of Houston Authority's *Code of Ethics*, as consideration for my decision, vote, or recommendation with respect to the above referenced solicitation.
4. I am not currently employed by a Participating Vendor or Vendor Affiliate; I am not receiving any compensation from a Participating Vendor or Vendor Affiliate; nor am I or have I been the recipient of any present or promised economic opportunity, employment, gift, loan, gratuity, special discount, trip, favor, or service prohibited by the Port of Houston Authority's *Code of Ethics* in connection with any Participating Vendor or Vendor Affiliate. As used herein:

"Participating Vendor" is defined as any Business (i.e., sole proprietorship, partnership, corporation, limited liability company, holding company, joint stock company, receivership, trust or any other firm or entity recognized by law) that has submitted a bid or proposal in response to the above referenced solicitation; and

"Vendor Affiliate" is defined as any parent, subsidiary, sister company, contractor, subcontractor, or any affiliate of any Participating Vendor.

5. No Immediate Family Member nor Business Associate of mine is currently employed by a Participating Vendor or Vendor Affiliate; no Immediate Family Member or Business Associate of mine is receiving any compensation from a Participating Vendor or Vendor Affiliate; nor is any Immediate Family Member or Business Associate of mine the recipient of any present or promised economic opportunity, employment, gift, loan, gratuity, special discount, trip, favor, or service prohibited by the Port of Houston Authority's *Code of Ethics* from any Participating Vendor or Vendor Affiliate. As used herein:

"Immediate Family Member" means the spouse, parents, children (including adopted children), father-in-law or mother-in-law, sons-in-law or daughters-in-law, and step-sons or step-daughters of the undersigned. An Immediate Family Member also includes former and subsequent spouses of parents, and spouses of the other relatives described above; and

- "Business Associate" means, as related to the undersigned, a partner (or other co-investor, co-owner, or co-participant) in a Business with gross annual revenues of \$7,500

or more, in which both parties (the undersigned and such person's Business Associate) each own interests of 33 1/3 percent or more of the voting stock, shares, or other equity interests of such Business.

6. I will hold all information pertaining to the evaluation process in strict confidence and will not disclose any information related to the above referenced solicitation (except to those authorized Port of Houston employees who are involved in the solicitation) while it is being considered, evaluated and/or scored.
7. I understand that any revision(s) to this Form requires prior approval from the Director of Procurement Services or designee, and the Legal Department.
8. I acknowledge, that I cannot participate in the consideration, evaluation and/or scoring of the above referenced solicitation until such time I have affixed my signature on this Form, and it has been received by the Director of Procurement Services or designee.
9. If at any time during the consideration, evaluation and/or scoring of the above referenced solicitation any of the above affirmations are no longer true and correct, or if I am unable to carry out my agreements above, I understand that the Port Authority may:
  - Remove me from further participation in the consideration, evaluation and/or scoring of the above referenced solicitation;
  - Disqualify any scoring or evaluation I contributed to; and,
  - Take other actions, including disciplinary action, as may be deemed appropriate.
10. I will immediately inform the Director of Procurement Services or designee and the Legal Department, if at any time during the consideration, evaluation and/or scoring of the above-referenced solicitation if any of the above affirmations are no longer true and correct, or if I am unable to carry out my agreements above.
11. I have been given the opportunity to review this Form prior to signing, and will contact the Director of Procurement Services or designee, and the Legal Department, should I have any questions regarding its contents.

_____	_____
Name	Title
_____	_____
Signature	Date

## Certification of Impartiality & Non-Conflict of Interest for Observers

The undersigned agrees to be an observer during the consideration, evaluation and/or scoring of solicitation number \_\_\_\_\_, for \_\_\_\_\_. In this capacity, I affirm the following:

12. I have reviewed and am familiar with the Port of Houston Authority's *Code of Ethics and Standards For Employee Interaction with Interested Parties*. I agree not to violate these policies and guidelines while observing the consideration, evaluation and/or scoring of the above referenced solicitation.
13. I will hold all information pertaining to the evaluation process in strict confidence and will not disclose any information related to the above referenced solicitation while it is being considered, evaluated and/or scored.
14. I understand that any revision(s) to this form requires prior approval from the Director of Procurement Services or designee, and the Legal Department.
15. I acknowledge, that I cannot observe the consideration, scoring and/or evaluation of the referenced solicitation until such time I have affixed my signature on this form, and it has been received by the Director of Procurement Services or designee.
16. If at any time during the consideration, evaluation and/or scoring of the referenced solicitation any of the above affirmations are no longer true and correct, or if I am unable to carry out my agreements above, I understand that the Port Authority may:
  - Disqualify me from observing the consideration, evaluation and/or scoring of the above referenced solicitation; and,
  - Take other actions, including disciplinary action as may be deemed appropriate.
17. I will immediately inform the Director of Procurement Services or designee, and the Legal Department, if at any time during the consideration, evaluation and/or scoring of the referenced solicitation if any of the above affirmations are no longer true and correct, or if I am unable to carry out my agreements above.
18. I have been given the opportunity to review this form prior to signing, and will contact the Director of Procurement Services or designee, and the Legal Department should I have any questions regarding its contents.

_____	_____
Name	Title
_____	_____
Signature	Date

## **Checklist for Possible Collusion**

### **Checklist for Possible Collusion**

This is a list of red flags. None of these indicators, individually or in combination, prove collusion. Rather, they identify situations which may justify further inquiry to discover whether collusion has occurred.

### **Conditions Favorable to Collusion**

Certain market conditions increase the likelihood of collusion. Pay close attention to bids and bidding patterns under the following market conditions:

- ☐ A small number of vendors dominate the market. The fewer the vendors, the easier it is to get everyone on the same page.
- ☐ Tight specifications mandate no easy substitution of the product(s). Fewer products make it easier for the vendors to coordinate.
- ☐ The bids are for a standardized product. Fewer variables in terms of design, quality, or service, make it easier to reach a common pricing scheme.
- ☐ There are frequent, repetitive bids for specific goods. The more frequent the bids the more opportunity the vendors have to become familiar with each other.
- ☐ Competitors regularly socialize with each other, through personal connections or trade associations.
- ☐ Competitors regularly get together in the vicinity of Procurement Services' office shortly before filing deadlines.
- ☐ There is industry-wide resale price maintenance. Each manufacturer sets the price at which all of its distributors or resellers must sell the product to their customers. This could help manufacturers enforce collusion at the manufacturing level.

### **Suspicious Statements or Behavior**

Sometimes a bidder's or proposer's behavior or the circumstances under which they respond to a solicitation can create the suspicion of collusion. Pay close attention to bids or proposals and bidding patterns for the following:

- ☐ Irregularities (e.g., identical calculation errors) in the physical appearance in the bid or proposals or in the method of their submission (e.g., use of identical forms or stationery), suggesting that competitors copied, discussed, or planned one another's bids or proposals. If the bids or proposals are obtained by mail, there are similarities in postmark or post metering machine marks.
- ☐ A vendor requests a bid package for itself and a competitor, or submits both its bid/proposal and that of a competitor.
- ☐ Two or more competitors file a "joint bid," even though at least one of the competitors could have bid on its own.

- ☐ A bidder or proposer intentionally submits a bid or proposal that is likely to be unsuccessful, so that another conspirator can win the contract (This is likely a complementary bid).
- ☐ A vendor brings multiple bids or proposals to the opening of the bids or proposals only after determining (or trying to determine) who else is responding to the solicitation.
- ☐ A bidder or salesperson makes a suspicious statement, such as:
  - ☐ A reference to industry-wide price schedules;
  - ☐ A comment indicating advance knowledge of its competitor's bid/price;
  - ☐ A statement that a particular contract "belongs" to a certain vendor;
  - ☐ A reference to a "complementary," "courtesy," "token," or "cover" bid;
  - ☐ Any other statement indicating competitors may have discussed prices/bids.

### **Suspicious Bidding or Pricing Patterns**

Certain bidding or pricing patterns appear inconsistent with the operation of the free market and warrant further investigation:

- ☐ Some bids or proposals are much higher than published price lists, previous bids by the same firms, or engineering cost estimates.
- ☐ Vendors who would be expected to submit a bid or proposal do not do so. This could indicate an agreement to withhold bids or proposals.
- ☐ Certain vendors never submit a bid or proposal against each other.
- ☐ Certain vendors frequently submit a bid or proposal but never (or almost never) win.
- ☐ There is a consistent percent margin (e.g., 10%) between the winning bid or proposal and the second bidder or proposer.
- ☐ The same vendor has been the low/high bidder or proposer on successive occasions over a period of time without any apparent market advantage/disadvantage to account for their submittal.
- ☐ A certain vendor appears to be submitting a bid or proposal that is substantially higher on some bids or proposals, with no logical cost difference to account for the difference.
- ☐ A bidder or proposer uses uniform shipping charges in various bids or proposals. Vendors would ordinarily be expected to charge less for shipping locally than to a distant site, absent an agreement.
- ☐ A local vendor charges more for delivery than a distant vendor. This is counter-intuitive and could indicate that the local vendor has submitted a complementary bid.

- ☐ An apparent pattern of low bids appears, such as corporation “X” always winning a bid in a certain geographic area for a particular service, or in a fixed rotation with other bidders.
- ☐ A successful bidder or proposer subcontracts to:
  - ☐ a vendor that won the bid but then withdrew,
  - ☐ vendor(s) that could/should have bid (e.g., picked up packets) but did not, or
  - ☐ vendor(s) that repeatedly submitted higher bids.
- ☐ Competitors submit identical bids or frequently change prices at about the same time and to the same extent.
- ☐ Prices appear to drop whenever a new or infrequent bidder or proposer submits a bid or proposal.

# CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor

## OFFICE USE ONLY

Date Received

1 Name of person who has a business relationship with local governmental entity.

2 ☐ Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has employment or business relationship.

\_\_\_\_\_  
Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

☐ Yes ☐ No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

☐ Yes ☐ No

D. Describe each employment or business relationship with the local government officer named in this section.

4

\_\_\_\_\_  
Signature of person doing business with the governmental entity

\_\_\_\_\_  
Date



[Date]

[Recipient Name]

[Contractor]

[Address]

City, State / Province, Country, ZIP / Postal Code

Name of Project:

Contract Number:

**Subject:** Contract Close-out Letter

Dear [Mr. / Ms. / Mrs. / Dr. Name]:

[Body Text]

The records maintained by the Port of Houston Authority's Procurement Services Department, related to the subject contract reflected above, indicate that the contract will be closed. [All services (substitute supplies or equipment when necessary) ] have been received and accepted by the Port of Houston Authority. Final payment has been verified by the Procurement Services Department and your office.

Accordingly, this is your official notification that your records relative to this contract should be closed. The last purchase/change order against the contract is [Body Text]. Should additional information be required, please do not hesitate to call the Port of Houston Authority, Procurement Services Department at 713-670-2464.

Sincerely,

Sender's Name



## PORT OF HOUSTON AUTHORITY CONTRACT CLOSEOUT CHECKLIST

Contract Type & Number: \_\_\_\_\_ Award Amount \$ \_\_\_\_\_  
Contractor: \_\_\_\_\_ Project  
Name: \_\_\_\_\_

Project/Construction Manager and Requesting Dept.: \_\_\_\_\_  
Purchase Order Number: \_\_\_\_\_ Contract Completion Date: \_\_\_\_\_

ITEM	FILED (y/n)	CHECKLIST ITEMS	COMPLETION DATE	COMMENTS
1.		Contract Administration Plan		
2.		Termination Notices		
3.		Dept. has verified all deliverables and services are completed		
4.		Date of Last Change Order		
5.		Final Contract Amount		
6.		Last Invoice #, Date, Final Payment		
7.		Contractor Performance Evaluation completed		
8.		Post Award conducted		
9.		Contract Violations (if applicable)		
10.		Notice to Proceed		
11.		Contract Discrepancy Report		
12.		Completion of Work from Contractor		
13.		Contract Close-Out Letter		
14.		Requesting Dept. Approval		
15.		Port Commission Approval		
16.		Executed Contract		
17.		Approval of any Extension(s) (if applicable)		
18.		Deficiencies Recorded		
19.		Insurance & Bonds		
20.		Warranties have been enforced		

\_\_\_\_\_  
Procurement Services Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Requesting Department Signature

\_\_\_\_\_  
Date



[Date]

[Recipient Name]

[Contractor]

[Address]

City, State / Province, Country, ZIP / Postal Code

Name of Project:

Contract Number:

**Subject:** Cure Notice

Dear [Mr. / Ms. / Mrs. / Dr. Name]:

You are hereby notified that the Port of Houston Authority considers your failure to [Reason for Cure Notice] a condition that is endangering performance of the contract. Therefore, unless this condition is cured within ten (10) days after receipt of this notice, the Port of Houston Authority may terminate the contract under the terms and conditions of the Default clause.

Sincerely,

Sender's Name

## BACKGROUND INFORMATION FORM

Respondent: \_\_\_\_\_

Respondent shall check "Yes" or "No" to the questions below as they apply to the Respondent or an entity related to Respondent. "*Entity related to Respondent*" means any entity, its principals and management officers that is or has controlled, or is or has been controlled by or under common control with the Respondent.

Yes    No

- |                          |                          |  |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | 1. Has Respondent been disqualified or disallowed from bidding on a project for any public entity or otherwise determined to be unfit, unsuitable, unqualified, or not a responsible bidder for such a project, in the last five (5) years? (A " <i>public entity</i> " means the United States of America or any state, county, municipality or other governmental or political subdivision within the United States of America.) |
| <input type="checkbox"/> | <input type="checkbox"/> | 2. Has any warranty or defective workmanship claim been asserted against Respondent, or its work or services, in the last five (5) years?  |
| <input type="checkbox"/> | <input type="checkbox"/> | 3. Has Respondent been declared in default under a project, been terminated for cause from a project, abandoned a project, or otherwise failed to complete a project in the last five (5) years?   |
| <input type="checkbox"/> | <input type="checkbox"/> | 4. Has a surety for Respondent been required to perform on Respondent's behalf, under the performance bond for a project, in the last five (5) years?  |
| <input type="checkbox"/> | <input type="checkbox"/> | 5. Has Respondent had its license(s) required to perform the work suspended or terminated in the last five (5) years?  |
| <input type="checkbox"/> | <input type="checkbox"/> | 6. Has Respondent been a plaintiff, defendant or other party to any litigation, arbitration, mediation or other claim resolution procedure regarding its business in the last five (5) years?  |
| <input type="checkbox"/> | <input type="checkbox"/> | 7. Has Respondent ever declared bankruptcy, been the subject of an involuntary bankruptcy proceeding, made an assignment for the benefit of creditors, been subjected to receivership proceedings in any court, or determined to be insolvent?   |
| <input type="checkbox"/> | <input type="checkbox"/> | 8. Has Respondent, its owner or operator ever been convicted of a felony?  |

For all questions to which the Respondent answered "Yes," provide an explanation in the space below or on an attached separate sheet. Respondent shall label any additional pages "ATTACHMENT 06 – BACKGROUND INFORMATION" and state the name of this project.

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## Procurement Services Decision Matrix

### **BASED ON THE AMOUNT OF THE EXPENDITURE**

(The Amount in the Aggregate for each 12-month period)

Item No.	Amount	Type	Business Process / Procedure	Procurement Manual Reference
1	\$100 or more and meets PHA check request requirements	<b>Direct Pay / Check Request</b>	The requesting department shall complete and submit all Check Request Requisitions to the Accounts Payable Department (AP) for processing.	<b>Article 2.7</b>
2	Purchase Order for Less Than \$25,000	<b>Informal</b>	The purchase may be made on a noncompetitive basis from the contractor /supplier that is offering the best value to the Port Authority, without a requirement to contact other contractors/suppliers.	<b>Article 5.2</b>
3	Purchase Order between \$25,000 and \$100,000	<b>Informal</b>	If a formal procurement solicitation method will not be utilized, price quotations should be solicited from three or more contractors/suppliers to help ensure that the quotations received are fair.	<b>Article 5.1</b>
4	Purchase Order \$100,000 or More	<b>Formal</b>	If the estimate of the contract value is more than \$100,000, the requesting department and the Director of Procurement Services or designee will decide which statutorily approved methods of procurement to utilize.	<b>Article 4.3</b>

**Procurement Services  
Decision Matrix**

**BASED ON COMMODITY**

Item No.	Commodity	Amount	Procurement Methodology	Procurement Manual Reference
5	Products or goods (i.e., vehicles, mowing equipment, office supplies)	Purchase Order \$100,000 or More	CSB - Non Construction	Article 6
6	(1) General Goods, (2) General Services	Purchase Order \$100,000 or More	CSP - Non-Construction	Article 7
7	(1) High technology goods (e.g., IT Systems, Software, Electricity, Records Management Systems), (2) Professional Services (e.g., Consultant, Photographer, Insurance Services, Depository Services), (3) Personal Services (e.g., Trainer, Investment Counselors, Fiscal Agents), (4) Goods (e.g., Cranes, Fireboats), (5) Insurance Services	Purchase Order \$100,000 or More	RFP	Article 8

**Procurement Services  
Decision Matrix**

**BASED ON COMMODITY**

Item No.	Commodity	Amount	Procurement Methodology	Procurement Manual Reference
8	Professional Services per Government Code 2254.004 (i.e., Engineers, Architects, Surveyors). Also: Construction Materials Testing, Energy Savings Performance. May use for other professional services (e.g., Bond Counsel, Investment Banking)	Purchase Order \$100,000 or More	RFQ	Article 9
9	Special Case	Purchase Order \$100,000 or More	(1) Emergency Purchases, (2) Sole Source Purchases, (3) Interlocal Agreements, (4) Cooperative Purchasing Agreement, (5) Revenue Generating Contracts	Article 10
10	Construction (e.g., (1) Repair damages caused by third party, (2) Construction services	Purchase Order \$100,000 or More	CSB - Construction or CSP - Construction	Article 11



[Date]

E-mail Transmittal: [EMAIL ADDRESS]

[Proposer Name]

[Proposer Address]

**REF:** Notice of Presentation [Solicitation No. – Solicitation Title]

Dear [Mr./Ms.][Name]:

On [Date], qualifications were received for [Solicitation No. and Title]. These responses have been reviewed and subsequently your organization is hereby invited to appear before the Evaluation Team for a vendor presentation followed by a question and answer period. The meeting is to be held at the Port Authority offices located at [Enter Address Here]. Please inform the front desk of your arrival.

**The meeting is scheduled for: [DATE @ TIME - TIME]**

If there is a scheduling conflict with the proposed date and/or time of this meeting please inform the PHA contact identified below as soon as possible. The meeting is anticipated to last approximately 45 minutes, which includes 5 minutes for introductions, 20 minutes for the presentation, and 20 minutes for questions and answers. Your firm will have approximately 5 minutes for presentation preparation.

Your response to this letter must be received via e-mail, to the PHA contact identified below, by [Enter Date]. Within your response, acknowledge receipt of this letter, confirm your attendance at the meeting, and list the names and job titles of the representatives attending from your organization. Please ensure that the Project Manager and other key team members who will work on this project are in attendance.

**Port Authority Contact:** [Enter Name]

Procurement Services Department

[Enter e-mail]@poha.com

[Enter Phone Number]

If questions regarding this communication arise, please call or e-mail the contact listed above.



**Terms and Conditions.** Vendor agrees to sell and PHA agrees to buy the Items, subject to the following provisions to which the parties agree.

1. **Definitions.** "Items" means the services, goods, or other tangible or intangible personal property covered by this PO. "PHA" means the Port of Houston Authority of Harris County, Texas. "PO" means this Purchase Order. "Proposal" means the Vendor's quote, response to Solicitation, bid, or proposal for the Items in this PO. "Solicitation" means PHA's formal or informal request, invitation, or solicitation for the Items in this PO or to which the Vendor has provided a Proposal. "Vendor" means the individual or entity contracting with the PHA to furnish the Items covered by this PO.

2. **Offer/Acceptance.** If Vendor has submitted a written Proposal, this PO is an acceptance by PHA of Vendor's offer to sell in accordance with the resulting contract, or, if no contract is executed, a) PHA accepts only the description, quantity, price, or delivery schedule of the Items included in Vendor's Proposal and b) PHA's acceptance is limited to the express terms contained in this PO and the Solicitation, except to the extent that those terms conflict with the description, quantity, price, or delivery schedule of the Items included in Vendor's Proposal. Any additional or different terms contained in Vendor's Proposal shall be deemed material and are hereby objected to and rejected by PHA. If Vendor has not submitted a written Proposal, this PO is an offer to buy the Items listed in the Solicitation, subject to Vendor's acceptance by commencement of performance or written acknowledgment. Vendor's acceptance of this PO is expressly limited to terms of this PO and the Solicitation, and PHA hereby objects to any additional or different terms in Vendor's acceptance. A change by Vendor to the PO is a counter-offer to sell, and cancels this PO, unless PHA accepts the counter-offer by new or amended PO. Once accepted, this PO is a binding contract.

3. **PHA Obligation.** PHA has no obligation under this PO until it is executed by (i) PHA's Procurement Director or its designee, and (ii) PHA Financial Services or its designee.

4. **Firm Price, No Extra Charges.** PHA is not obligated by Vendor's increased prices, alterations, substitution, or extra charges.

5. **Tax-Exempt Status.** PHA is exempt from Federal Excise and Transportation Tax, State Sales and Use Tax, and State Fuel Tax. Unless the Solicitation or Proposal documents so indicate, prices are exclusive of such taxes. Vendors may submit requests for refunds or of exemptions from taxes paid on Items, and the PHA Procurement Director may approve or issue the necessary certificates.

6. **Packaging and Delivery; Services.** Vendor shall package Items in accordance with good commercial practice. Vendor shall supply a delivery ticket upon delivery. Delivery terms are F.O.B. to PHA facilities during normal business days and hours. Alternative delivery options must be approved in writing in advance by the appropriate Deputy Executive Director. Deliveries prior to the delivery date(s) scheduled in this PO may be accepted; however, payment terms shall be unchanged. PHA may return quantities delivered in excess of those specified on the PO at its discretion, and the risk and expense thereof shall be borne by Vendor. Vendor shall perform services in accordance with specifications in this PO and the related Solicitation and Proposal documents.

7. **Time of the Essence, Etc.** PHA reserves the right to terminate the entire PO or its purchase of Items improperly delivered if delivery or performance is not at the time(s) or in the quantity specified.

8. **Inspection.** PHA reserves the right to inspect Items prior to acceptance and/or payment. Items which, in the opinion of PHA, do not conform to PHA's specifications or are determined to be defective may be rejected, and shall be promptly replaced by Vendor at its risk and expense, or refurbished or completed by PHA, the cost which may be deducted from payments made or owing to Vendor.

9. **Title and Risk of Loss.** Title and risk of loss of Items shall pass to PHA when it receives, accepts, and takes possession at the point of delivery.

10. **Invoices.** Vendor shall **submit an original invoice bearing this PO number**, for Items received and accepted by PHA, to the PHA address on this PO, Attn: Accounts Payable, signed by an authorized representative of Vendor. Excess items provided by Vendor are at its expense. The amount due Vendor hereunder is limited to the PO amount, the sum certified as available by PHA Financial Services, when PHA has expended such sum, PHA shall have no further obligation or duty hereunder.

11. **Payments; Discounts.** Under Texas Govt. Code 2251.021, payments by PHA are not overdue until 46 days after the later of the date PHA receives the goods under the contract; the date the performance of the service under the contract is completed; or the date PHA receives an invoice for the goods or service. Cash discounts shall be shown on face of invoice. For the purpose of discounts, payment is deemed made on the date of check mailing. If invoices are not mailed on the date Items are furnished, discounts are calculated from the date the invoice is received.

12. **Termination.** Either party may terminate the PO, for any reason, following thirty (30) calendar days written notice to the other party. All or any part of this PO shall terminate if Vendor defaults, and fails to cure following ten (10) calendar days written notice and demand to cure by PHA. In such event, PHA may obtain similar Items elsewhere and Vendor shall be liable to PHA for any damages including additional costs.

13. **Warranties.** Vendor warrants that all Items are new (unless otherwise specified on the face hereof or in the Solicitation or Proposal documents), free from defects (including defects in title, and in Vendor's right to sell a patented or copyrighted product or to use a patented process), conform to industry standards and good practice and all specifications including those in the Solicitation and Proposal documents, and suitable for their intended purpose. Neither acceptance

of, nor payment for, an Item shall constitute a waiver or modification of any warranties by Vendor or any rights of PHA. Vendor shall transfer to PHA any manufacturers' warranties for Items. If an Item does not conform to these warranties during one year from the date of acceptance of the Item by PHA, and the Procurement Director so notifies Vendor, Vendor shall correct such Item to the PHA's satisfaction, or PHA may revoke acceptance by purchasing a substitute item or correcting the nonconformity. Costs of such correction shall be borne by Vendor.

14. **Intellectual Property.** When PO is for design services, all ideas, design, drawings, and specifications created under it ("Work Product") are PHA's property upon creation, provided that Work Product shall not include pre-existing proprietary information of the Vendor. Vendor agrees that it has been hired to create all Work Product and assigns to PHA all Vendor's right, title, and ownership in Work Product.

15. **Indemnity.** Vendor shall INDEMNIFY, DEFEND and HOLD HARMLESS PHA, as well as PHA's commissioners, officers, employees, and agents (collectively, "PHA Indemnitees") from and against all claims, lawsuits, judgments, liabilities, losses, costs, damages, injuries, fines, penalties, expenses, awards, and reasonable attorneys' fees and court costs, arising under Vendor's performance under or breach of this PO, or under any negligence, strict liability, or other torts or any violation of laws, including any obligation to protect health or the environment caused by or on behalf of Vendor (collectively "Liabilities"). This indemnity shall not apply to any liability resulting from the sole negligence or fault of the PHA Indemnitees, and in the event of joint and concurrent negligence of both Vendor and the PHA Indemnitees, responsibility and indemnity, if any, shall be apportioned in accordance with the laws of the State of Texas, without, however, waiving PHA's governmental immunity under Texas law. This indemnity shall survive any acceptance of the item or payment therefor by PHA.

16. **Insurance.** Unless otherwise agreed to in writing by PHA, Vendor shall obtain and maintain at all times during the term of this PO, or as otherwise required in the Solicitation, insurance specified in the Solicitation, and provide PHA proof of coverage.

17. **Communications.** Communications concerning this PO shall be directed to PHA's Procurement Director at the address on this PO.

18. **Compliance with Laws.** Vendor agrees to comply with all applicable federal and state of Texas laws, regulations, and policies, including those regarding discrimination, unfair labor practices, and collusion.

19. **Ethical Conduct.** Vendor shall familiarize itself with the PHA Code of Ethics governing PHA commissioners and employees, and any Guidelines for PHA Employee Interaction with Contractors, Consultants, and Vendors, and not violate them, including offering, conferring, or agreeing to confer any prohibited benefit as consideration for a commissioner's or employee's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, or in exchange for the commissioner's or employee's exercise of official powers or performance of official duties, or participating in the violation of any provision of the Code or Guidelines. PHA reserves the right to cancel Vendor's contracts and exclude it from future business in the event of its breach of this provision.

20. **Independent Contractor.** Vendor is an independent contractor and not an agent, representative, or employee of PHA.

21. **Assignment; Third Parties.** Vendor's rights and obligations hereunder shall not be assigned, delegated, sold, or otherwise transferred without PHA's prior written consent. This PO shall not confer any rights upon any third party but rather shall benefit only PHA and Vendor.

22. **Controlling Documents.** The description, quantity, price, or delivery schedule of the Items included in Vendor's Proposal control over any conflicting provisions included in any other documents. Any other terms of this PO or PHA's Solicitation documents control over the terms of any documents submitted by Vendor, including Vendor's Proposal. Any contract terms in PHA's Solicitation documents control over the terms of this PO.

23. **Valid Terms.** Terms not contained or expressly incorporated herein are not binding on PHA, unless specifically accepted in writing by PHA's Procurement Director. Oral instructions by PHA staff are valid only as confirmed by this PO.

24. **Waiver.** Failure to insist upon strict compliance with any provision shall not be a waiver of any provision of this PO, which shall only occur by written instrument signed by the party waiving such provision. Failure to object to any breach of this PO shall not waive rights to object to that breach or any subsequent breach of the same or any other provision.

25. **Entire Agreement; Amendments.** This PO and the Solicitation and Proposal provisions expressly incorporated herein constitute the entire agreement between the parties and supersede prior offers, negotiations, exceptions, and understandings, whether oral or written, between the parties. This PO shall not be modified except by written amendment signed by the parties.

26. **Interpretation, Jurisdiction, Venue.** This PO and related Solicitation and Proposal documents shall be construed in accordance with the laws of Texas, without regard to its conflict of laws provisions. Venue of any suit or cause of action arising under or in connection with this PO and its related documents shall lie exclusively in Harris County, Texas.

27. **Savings Clause.** The invalidity, illegality, or unenforceability of any provision of this PO or its related documents, or the occurrence of any event rendering any provision of this PO or its related documents void, shall not affect the validity or enforceability of any other provision. Any such provision shall be severed from this PO and the remainder shall be construed and enforced as if it did not contain it

## CSP SCORING MATRIX (SAMPLE)

### CSP-23099 Maintenance Building Project (Revised)

<b>Budget: \$2,641,627 Final Date: 09/08/2022 at 2:00 PM via Teams</b>					
	<b>ABC Partners, LLC</b>				
<b>SBE Participation- 5 pts</b>					
Calculation of SBE Participation - 20% TARGET GOAL	58.04				5.00
<b>Project Relative Weight</b>					<b>Average Team Score</b>
	<b>E1</b>	<b>E2</b>	<b>E3</b>	<b>E4</b>	<b>85.25</b>
<b>Purchase Price - 40 pts</b>					
<b>Total Score - Price</b>	\$3,695,983.55				<b>40.00</b>
<b>Vendor's Reputation, Quality of Services and/or Product, Safety Record - 30 pts</b>					
Reputation of Respondent and of Respondent's good or services - 10 pts	10.00	8.00	6.00	6.00	<b>7.50</b>
The Respondent's past performance - 10 pts	9.00	7.00	7.00	7.00	<b>7.50</b>
Quality of Respondent's goods or services - 5 pts	4.00	3.00	3.00	3.00	<b>3.25</b>
Safety and environmental records of Respondent -5 pts	4.00	3.00	2.00	2.00	<b>2.75</b>
<b>Total Average - Respondent's Reputation and Quality of Services</b>	<b>27.00</b>	<b>21.00</b>	<b>18.00</b>	<b>18.00</b>	<b>21.00</b>
<b>Benefit to PHA - 20 pts</b>					
Extent to which the goods or services meet the Port Authority's needs -10 pts	9.00	8.00	6.00	6.00	<b>7.25</b>
Total long-term cost to the Port Authority to acquire the Respondent's goods or services - 10 pts	10.00	8.00	6.00	5.00	<b>7.25</b>
<b>Total Average -Benefit to PHA</b>	<b>19.00</b>	<b>16.00</b>	<b>12.00</b>	<b>11.00</b>	<b>14.50</b>
<b>Overall Compliance with Port Authority Policies and Instructions - 5 pts</b>					
Full completion of the Competitive Sealed Bid/Proposal Response form and submission of the items required by the Bid/Proposal Documents, including all items set forth in Part C of the Competitive Sealed Bid/Proposal Response form	5.00	4.00	5.00	5.00	<b>4.75</b>
<b>Total Average - Compliance with PHA Policies and Instructions</b>	<b>5.00</b>	<b>4.00</b>	<b>5.00</b>	<b>5.00</b>	<b>4.75</b>
<b>TEAM AVERAGE TOTAL SCORES</b>					<b>85.25</b>

## **CSP/RFP EVALUATION CRITERIA GUIDELINES FOR EVALUATORS**

The purpose of this document is to define the evaluation criteria and sub criteria weights for Competitive Sealed Proposals (CSPs) and Request for Proposals (RFPs) and to provide clarity in the evaluation process. If evaluators have questions, they can seek guidance from Procurement Services.

### **Vendor Criteria includes the following:**

- **Respondent's Reputation, Goods and Services:**

Guidelines:

- Any litigation in the last 5 years should be heavily scrutinized
- Exercise due diligence. Check court records and Google the company; check reviews, etc.

- **Respondent's Quality of Goods & Services:**

Guidelines:

- Use reference feedback to obtain this information.
- **References, including Government Project examples:**  
These references should be of projects that are related to the solicitation scope.
- Team lead should assign each team member certain number of references to call
- Acquire at least 3 references per vendor
- Ensure the 3 references are customers, not a client.

Examples of unacceptable references:

- Supplier from which the vendor buys materials
  - Sub-contractor to the vendor
  - Attorney of the vendor
  - Accountant of the vendor
- Bonding company vendor uses
  - PHA employee

**Note:** If reference(s) are unacceptable, contact Procurement to request updated reference list. If reference(s) do not answer, leave message. Document time/date the reference was called and notate on the form that a message was left. Call back at least one more time (next day or later). If no response, call contacts from current/past projects. If the vendor has refused to provide contact information for past projects/references, and Procurement Services has requested such information from the vendor, then the vendor should not be given points.

- **Resumes of Key Employee:** Resumes should clearly identify requisite experience, MUST be included with the Proposal Response.
- “Key Employees” are defined as a key employee involved in the day-to-day or general management of the Project, including, but not limited to, the Field Supervisors and other project managers.

**Note:** Failure to submit required résumé(s) will be taken into consideration in the proposal evaluation process, as will determinations of whether and to what extent experience on submitted résumé(s) meets Project requirements.

- **Respondent’s Past Performance:**

Guidelines:

- This means past performance in the industry, not just with Port Houston. Use reference feedback to obtain this information
- Use the last 3-5 related projects conducted by the Respondent. If Respondent has never done a project with the Port Authority, use other similar clients.

- **Respondent’s Safety & Environmental Records: (not applicable for RFPs)**

Guidelines:

- Ensure Respondents responses to questions 1 and 2 on “Attachment-05 Safety Data Form” are “No”, if “Yes” then ensure sufficient explanation was provided. If no explanation provided request clarification from Procurement.
- Respondents Workers Compensation Experience Modification Rate (EMR): Exercise due diligence and review the last five (5) years EMR and EPA/TCEQ violations. Average the 5-year EMR to obtain 5-year average.

**Note:** Any Respondent with a small number of employees or if the company was founded in the last 3 years will have an EMR of 1.0. Direct any questions concerning EMR to the PHA Site Safety Manager.

### **Benefit to Port Authority:**

- **The extent to which proposed services are suitable to and benefit PHA (compatible with existing PHA systems and procedures; incorporate systems that are environmentally friendly):**

Guidelines:

- Did the Respondent understand the scope of services and answer every need and item that was requested in the scope/price exhibit?
- **Total long-term cost to acquire the goods/services:**

Guidelines:

- Were ALL items that will be part of the Total Long-Term Cost included? Does it eliminate the possibility of change orders?

### **Overall Compliance with Port Authority Policies:**

- **Demonstrated understanding of the solicitation and its objectives**

Guidelines:

- Any submitted information (such as example projects, Respondent's experience, etc.) that are not related to the solicitation will be considered lack of understanding
- **Clarity and brevity of the Response**

Guidelines:

- Any response that is not clear or unorganized will be scored accordingly
- **Thoroughness of Response, including submission of all items required by the solicitation**

Guidelines:

All documentation and information are submitted as outlined by the solicitation (such as resumes, product samples, reports, etc.)

# RFQ SCORING MATRIX (SAMPLE)

RFQ-2254877 Inspection Services

Budget: \$600,000   Final Date: 07/25/2022 at 11:00 AM via Teams										
	ABC CONSULTANTS, LLC					DEF ENGINEERS, LLC				
Project Relative Weight					Average Team Score					Average Team Score
	E1	E2	E3	E4	97.0	E1	E2	E3	E4	90.3
SMWBE Participation - 35% Organizational Goal/MWBE - 30% Aspirational Goal										
Respondents Reputation and Quality of Service - 35 pts										
Background of Respondent - 8 pts	8.0	8.0	8.0	8.0	8.0	8.0	8.0	8.0	7.0	7.8
Reputation of Respondent and Respondent services - 6 pts	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0
References, including PHA project examples - 5 pts	5.0	5.0	5.0	5.0	5.0	4.0	5.0	4.0	4.0	4.3
Quality of Respondent's services -5 pts	5.0	5.0	5.0	5.0	5.0	4.0	4.0	5.0	4.0	4.3
Availability and Dedication of Resources to PHA projects, including, if required, the ability to perform multiple projects at the same time - 5 pts	5.0	5.0	5.0	5.0	5.0	4.0	4.0	4.0	4.0	4.0
Respondent's Past Performance - 6 pts	6.0	6.0	6.0	6.0	6.0	6.0	6.0	5.0	5.0	5.5
Total Average - Respondents Reputation and Quality of Service	35.0	35.0	35.0	35.0	35.0	32.0	33.0	32.0	30.0	31.8
Personnel, Qualification and Experience - 25 pts										
Background, Reputation, Qualification and Relevant experience of assigned personnel- 8 pts	8.0	7.0	8.0	8.0	7.8	7.0	7.0	7.0	7.0	7.0
Availability and Dedication of Qualified Personnel to Port Authority projects, including, if required, the ability to perform multiple projects at the same time - 5 pts	5.0	4.0	5.0	5.0	4.8	5.0	3.0	5.0	5.0	4.5
Certifications, Registrations, and Licenses of available and dedicated personnel -5 pts	5.0	5.0	5.0	5.0	5.0	5.0	5.0	4.0	5.0	4.8
Personnel's Past Performance - 7 pts	7.0	7.0	7.0	7.0	7.0	6.0	7.0	6.0	6.0	6.3
Total Average - Personnel, Qualification and Experience	25.0	23.0	25.0	25.0	24.5	23.0	22.0	22.0	23.0	22.5
Performance Plan and Other Benefits - 25 pts										
The methodology proposed to perform Port Houston projects and services- 10 pts	10.0	9.0	9.0	9.0	9.3	8.0	8.0	8.0	8.0	8.0
Plan for communicating with Port Houston- 7 pts	7.0	7.0	7.0	7.0	7.0	7.0	6.0	7.0	7.0	6.8
Any unique or specialized processes, organization, capabilities, safety or environmental considerations, best practices, or quality control methods- 8 pts	6.0	7.0	6.0	6.0	6.3	6.0	7.0	6.0	6.0	6.3
Total Average - Performance Plan and Other Benefits	23.0	23.0	22.0	22.0	22.5	21.0	21.0	21.0	21.0	21.0
Overall Compliance with PHA Policies - 15 pts										
Demonstrated understanding of this RFQ and its objectives- 5 pts	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
Clarity, robustness and brevity of response, including submission of all required items- 5 pts	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
Thoroughness of Response, including submission of all items required by RFQ - 4 pts	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0
Willingness to employ small business and MWBE's to the extent they are qualified, available and cost competitive - 1 pts	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Total Average - Overall Compliance with PHA Policies	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0
TEAM AVERAGE TOTAL SCORES					97.0					90.3

## **RFQ EVALUATION CRITERIA GUIDELINES FOR EVALUATORS**

The purpose of this document is to define the evaluation criteria and sub criteria weights for Request for Qualifications (RFQs) and to provide clarity in evaluation process. If evaluators have questions, they can seek guidance from Procurement Services.

### **Respondent's (and Subconsultant's, if Applicable) Reputation and Quality of Services:**

- **Background of Respondent-** the type of projects that the company has completed
  - Relevant work experience that closely mirrors the project in the solicitation should hold the most weight
- **Reputation of Respondent and Respondent's services-**any litigation in the last 5 years should be heavily scrutinized
  - Exercise due diligence-check court records and Google the company; check reviews
- **References, including government project examples-**these references should be of projects that are related to the RFQ scope
  - Team lead should assign each team member certain number of references to call references
  - Acquire at least 3 references per vendor
  - Ensure the 3 references are customers, not a client.

Examples of unacceptable references

Supplier the vendor buys materials from

Sub-contractor to the vendor

Attorney of the vendor

Accountant of the vendor

Bonding company vendor uses

PHA employee

If reference(s) are unacceptable, Contact Procurement to request updated reference list

If reference(s) does not answer, leave message

Document time/date the reference was called and note that a message was left on form

Call back at least one more time (next day or later)

If no response, call contacts from current/past projects

- **Quality of Respondent's services-**use reference feedback to obtain this information
- **Respondent's past performance-** use reference feedback to obtain this information
  - use the last 3 projects conducted with the Port Authority. If Respondent has never done a project with the Port Authority, use other similar clients
- **Availability and dedication of resources to Port Houston projects, including the ability to perform multiple projects at the same time-**use current projects listed. If none, contact Procurement Services to request information.

### **Personnel (Including Subconsultant Personnel, if Applicable) Qualifications and Experience:**

- **Background, reputation, qualifications, and relevant experience of assigned personnel**
  - The relevant projects and resumes of assigned personnel should indicate the type of experience required for the project

- If professional engineers have been involved in any professional litigation, it discuss with Procurement Services
- Valid references, including contact email address and phone numbers of individuals with personal knowledge of the personnel's involvement and quality of work on relevant projects, should be documented
- **Availability and dedication of qualified personnel to Port Houston**
  - Is the consultant available for majority of the project?
  - Did the respondent include an example of a project that assigned personnel were involved in that posed risks and how those risks were mitigated?
- **Certifications, registrations, and licenses of available and dedicated personnel**
  - All professional personnel should be in good standing with the Texas board of professional engineers (unexpired) and include valid licenses/certifications – if not contact Procurement Services to request
- **Personnel's past performance**
  - This mean in the industry, not just with PHA
  - If the personnel has not done work with PHA in the past, then the respondent should not be penalized.
  - Use references from similar project examples to obtain this information

#### **Performance Plan and Other Benefits:**

- **The methodology proposed to perform Port Authority projects and services**
  - For design projects, this includes a work breakdown structure, high-level schedule (30%, 60%, 90%, and final completion), execution plan, interface and communication plan and organization chart
  - Outline what are the important issues to consider in this RFQ and whether they have addressed such task in the past
- **Any unique or specialized processes, organization, capabilities, safety or environmental considerations, best practices, or quality control methods**
  - the team and proposed process to minimize errors

#### **Overall Compliance with Port Authority Policies:**

- **Demonstrated understanding of the RFQ and its objectives** (Any submitted information (such as example projects, Respondent's experience, etc.) that are not related to this RFQ will be considered lack of understanding)
- **Clarity and brevity of the Response**
  - Any response that is not clear or unorganized will be scored accordingly
- **Thoroughness of Response, including submission of all items required by RFQ**
  - All documentation and information are submitted as outlined by this RFQ





## Sole Source Affidavit

A sole source purchase can be made by the Port of Houston Authority without going through the competitive procurement process when there are no other goods or services available in the marketplace that will have the same fit, form, and/or function of the items being purchased.

To comply with the statutory (Texas Water Code Section 60.412) sole source exemption, the procured good(s) or service(s) must be items that can be obtained only from one source. Examples of sole source purchases include:

- (a) Items for which competition is precluded because of the existence of patents, copyrights, secret processes, or natural monopolies;
- (b) Films, manuscripts, or books;
- (c) Public utility services; and
- (d) Captive replacement parts or components for equipment.

I have carefully reviewed the provisions of Texas Water Code Section 60.412 (7) and hereby certify that we comply with the aforementioned Code for the procurement of:

\_\_\_\_\_  
Business Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

Web Site: \_\_\_\_\_ E-Mail Address: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_



**PORT HOUSTON**

## Sole Source Justification Form

This Sole Source Justification Form shall contain written sufficient facts and rationale to justify the need for some feature or characteristic (specification) that is unique to the requested product or service that cannot be provided by any other vendor's product or service. (Refer to Article 10 of the Procurement Manual.)

Requisition No.: \_\_\_\_\_

Requesting Department: \_\_\_\_\_

Explain the need for the unique requirements of the requested product(s) or service(s):

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Explain what makes the requested product(s) or service(s) unique:

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Explain why a competitor's product(s) or service(s) are not satisfactory:

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If the sole source is approved, will it obligate the Port of Houston Authority to purchase similar goods or services from a particular vendor/manufacturer in the future? Yes \_\_\_\_ No \_\_\_\_

Attach additional information/justification if needed.

Name of Requestor: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



**PORT HOUSTON™**

[Date]

[Recipient Name]

[Contractor]

[Address]

City, State / Province, Country, ZIP / Postal Code

Name of Project:

Contract Number:

**Subject:** Notice of Termination for Convenience

Dear [Mr. / Ms. / Mrs. / Dr. Name]:

You are notified that contract [Contract name & number] is terminated [completely/partially] for the Port of Houston Authority's convenience under the terms and conditions of [Contract name & number]. The termination is effective immediately upon receipt of this notice.

You shall take the following steps:

- a. Cease all work, make no further shipments, and place no further orders relating to the contract, except for the following:
  1. The continued portion of the contract, if any
  2. Work in process that the Port of Houston Authority authorizes you to continue for safety precautions, to clear or avoid damage to equipment, to avoid immediate complete spoilage of work in process having a definite commercial value, or to prevent any other undue loss to the Port of Houston Authority.
- b. Keep adequate records of your compliance with subparagraph a. above showing the following:
  1. Date you received the Notice of Termination;
  2. Effective date of the termination; and
  3. Extent of completion of performance on the effective date.



Mr. John Doe

Date

- c. Furnish notice of termination to each immediate subcontractor and vendor that will be affected by this termination. The notice shall:
  - 1. Specify your Port of Houston Authority contract number;
  - 2. State whether the contract has been terminated completely or partially;
  - 3. Provide instructions to stop all work, make no further shipments, place no further orders, and terminate all subcontracts under the contract, subject to the exceptions in subparagraph a. above;
  - 4. Provide instructions to submit any settlement proposal promptly; and
  - 5. Request that similar notices and instructions be given to its immediate subcontractors.
- d. Notify the Director of Procurement Services of all pending legal proceedings that are based on subcontracts or purchase orders under the contract, or in which a lien has been or may be placed against termination inventory to be reported to the Port of Houston Authority. Also promptly notify the Director of Procurement of any such proceedings that are filed after this notice.
- e. Take any other action required by the Director of Procurement Services or under the Termination clause in the contract.

As instructed by the Director of Procurement Services, transfer title and deliver to the Port of Houston Authority all termination inventory of all types or classes, including subcontractor termination inventory that you have the right to take:

To settle your proposal, it will be necessary to establish that all prime and subcontractor termination inventory has been properly accounted for, in accordance with applicable laws.

You remain liable to your subcontractors and vendors for proposals arising because of the termination of their subcontracts or orders. You are requested to settle these settlement proposals as promptly as possible. For purposes of reimbursements by the Port of Houston Authority, settlements will be governed by the applicable laws, and the applicable terminations clause(s) in the above referenced contract.

Notify the Port of Houston Authority of the number of items completed under the contract and still on hand, and arrange for their delivery or other disposal.

Invoice acceptable completed end items under the contract in the usual way and do not include them in the settlement proposal. If practical, urge subcontractors to take similar actions described in the paragraph above.

The Director of Procurement Services is responsible for the settlement of this termination and will, upon request, provide the necessary settlement forms. Matters not covered by this notice should be brought to the attention of the undersigned.

Sincerely,

Sender's Name



[Date]

[Recipient Name]

[Contractor]

[Address]

[City], [State/Province], [Country], [Postal Code]

Name of Project:

Contract Number:

Subject: Termination for Default

[Mr./Ms./Mrs./Dr. Name]:

Your company is hereby found in default under [Contract name & number] due to [Reason]. Therefore, you are hereby notified that the Port of Houston, by this written notice, terminates the above referenced contract, including your right to proceed with performance thereunder, effective immediately.

This notice constitutes the decision of the Port of Houston Authority that you are in default as specified above. It has been determined that your failure to perform did not arise out of causes beyond your control or without your fault or negligence.

In accordance with the Default clause of [Contract name & number], the decision shall be final and conclusive as provided therein, unless a written notice of dispute is mailed or otherwise furnished to the Director of Procurement Services or designee within 10 calendar days. The notice of dispute may be signed and submitted by you as the contractor or by an attorney acting on your behalf.

You are advised that the supplies and/or services required under the referenced contract may be re-solicited, and you will be held for any excess costs occasioned thereby. In addition, the Port of Houston may also consider your firm to be a nonresponsible bidder and place your company on the Port of Houston's debarred list.

Notwithstanding the foregoing, the Port of Houston Authority reserves all rights and remedies provided by law or under the contract. You will be advised at a later date as to the amount of such excess costs, if any.

Sincerely,

Sender's Name