

Port of Houston Authority
PROCUREMENT POLICY
Amended March 2019



I. Purpose

The Port Commission of the Port of Houston Authority (the “Port Authority”) hereby establishes this policy (the “Procurement Policy”) for the procurement of goods and services.

II. Policy Statement

It is the policy of the Port Authority that its procurement of goods and services should conform to the Port Authority’s mission and applicable law.

III. Definitions

A. “Item” means any service, equipment, goods, or other tangible or intangible personal property, including insurance and high technology items.

B. “Formal Procurement” means the procurement of goods and services that must be approved by the Port Commission pursuant to Texas Water Code Chapter 60.

C. “Misconduct” means a violation of law or Port Authority procurement policies, standards, or procedures, by a Port Commissioner, employee, or third-party acting in connection with the Port Authority.

D. “No-Contact Period” for a particular solicitation for Formal Procurement proposals means the period commencing on public issuance by the Port Authority of such solicitation, and ending when the Port Authority publicly posts notice of the agenda for the Port Commission meeting, during which award of the Formal Procurement subject to such solicitation is scheduled for action.

E. “Respondents” means actual and prospective respondents (including their representatives and persons acting on their behalf) to a Formal Procurement, including those who have not been chosen as finalists for a solicitation for a Formal Procurement.

F. “Task Force” means the Port Commission Procurement and Small Business Development Task Force.

IV. Authority of the Port Commission

Port Authority procurement is under the sole control of the Port Commission, which approves and oversees Port Authority expenditures in conformity with the Texas Water Code and this Procurement Policy. This Procurement Policy is not intended to restrict the authority of the Port Commission as permitted by law.

V. Adoption of Applicable Procurement Laws

The Port Commission hereby reaffirms its prior adoption of applicable Texas procurement laws, including without limitation, Texas Water Code Chapter 60, Subchapter N “Competitive Bidding Requirements.”

VI. Solicitation of Formal Procurements

A. Port Commission Determination of Best Value. Prior to the advertisement or award, as applicable, of a Formal Procurement, the Port Commission shall determine which Formal Procurement purchasing method provides “best value” for the Port Authority.

B. Customary Best Value Methods. Unless the Port Commission otherwise takes action, the following purchasing methods (the “Customary Best Value Methods”), are determined to provide “best value” to the Port Authority:

1. Solicitation of “Competitive Sealed Bids” for:

a. construction, repair, rehabilitation, or alteration of facilities, for which the scope is limited, and price is the material evaluation factor (e.g. parking lot construction, annual concrete repair, annual painting, annual fencing, etc.);

b. construction, repair, rehabilitation, or alteration of facilities, in which the costs would be paid or reimbursed by third parties (e.g., “damage claims”); and

c. commodity-type or other simple non-construction Items for which price is the material evaluation factor (e.g. paper products, lighting equipment, parts and repair services, facility maintenance, etc.).

2. Solicitation of “Competitive Sealed Proposals” for:

a. construction, repair, rehabilitation, or alteration of facilities, for which the scope is complex and criteria in addition to price are material evaluation factors (e.g. wharf construction/rehabilitation, container yard construction/rehabilitation; installation or replacement of rail and switch equipment, crane painting, etc.); and

b. non-construction Items for which the scope is complex and criteria in addition to price are material evaluation factors.

3. Solicitation of “Requests for Proposals” for Items for which the proposals

may be negotiated to obtain “best and final offers,” including information technology Items, “high-technology” Items, insurance services, professional services (*other than* engineering, architectural, land surveying), etc.

C. Requests for Qualifications. The Port Authority shall select providers of architectural, engineering, and land surveying services on the basis of demonstrated competence and qualifications to perform the services, in accordance with Texas Government Code Sec. 2254.004.

D. Approval to Advertise or Solicit Bids, Proposals, or Qualifications. In the event that a method other than the applicable Customary Best Value Method may offer “best value” to the Port Authority for a specified Formal Procurement for construction services, Port Authority staff may:

1. request that the Port Commission determine whether another statutory purchasing method may offer “best value” to the Port Authority for such Formal Procurement; and
2. request approval to advertise or solicit bids, proposals, or qualifications, as applicable.

E. Delegation of Authority. In the event that the Port Authority is considering using a method other than the applicable Customary Best Value Method for the purchase of non-construction Items, or the “Request for Qualifications” set out in subsection D, the Executive Director is delegated the authority to determine the purchasing method that provides the best value to the Port Authority. By its approval of the award of contract, the Port Commission shall ratify such best value determination.

VII. Formal Procurement Communications

A. Respondent Restrictions. Except as provided below, during the No-Contact Period, Respondents are prohibited from communicating with members of the Port Commission and Port Authority employees regarding the subject Formal Procurement.

B. Port Commission and Port Authority Staff Restrictions. Except as provided below, during the No-Contact Period, any Port Commissioner and any Port Authority employee contacted by a Respondent regarding the subject Formal Procurement shall instruct the Respondent to contact the Director of Procurement Services or his or her designee, and shall not otherwise communicate with the Respondent regarding such Formal Procurement.

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

1. Formal responses to the Port Authority's solicitation;
2. Publicly-made communications at the Port Authority's pre-bid/pre-proposal conferences, and public meetings of the Port Commission and Port Commission committees and task forces;
3. Written questions or clarification requests made to the Director of Procurement Services or his or her 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 the subject 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 a Port Authority employee.

VIII. Formal Procurement Awards

The following procedures apply to Formal Procurements using the "Competitive Sealed Proposals," "Requests for Proposals," or "Requests for Qualifications" purchasing methods. Awards using the "Competitive Sealed Bids" purchasing method shall be governed by Texas Water Code Section 60.408.

A. Customary Staff Responsibilities for Evaluation of Proposals.

1. 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 using the "Competitive Sealed Proposals" or the "Requests for Proposals" purchasing methods.
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. Following the staff selection process, a staff “executive committee” should review the preliminary evaluations of proposals.

a. The executive committee should include (i) the Executive Director, (ii) the Chief Officers, (iii) the Director of Procurement Services, (iv) the Senior Director of Small Business and Education Outreach, (v) the applicable department director, and (vi) any other responsible director or manager, unless the Executive Director reasonably determines otherwise.

b. Following its review, the executive committee may

i. Approve, modify, or reject each selection committee recommendation,

ii. Require that the selection committee reevaluate the proposers or service providers, or

iii. Require that staff conduct a new solicitation.

4. Following this two-step staff process, staff should submit its evaluations and rankings to the Port Commission for action at a public meeting.

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 in the event the Port Commission authorized such Formal Procurement.

B. Port Commission Action on Proposals.

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 require that staff conduct a new solicitation, or

c. Reject all proposals and terminate the Formal Procurement.

2. In the event that Port Commission authorizes negotiation with the proposer offering the best value, but staff cannot negotiate a satisfactory contract with that proposer, staff shall formally end negotiations with that proposer in accordance with applicable law.

If Port Commission approved a ranking of the additional proposers, staff may then continue to the next most highly ranked proposer and attempt to negotiate a contract with that proposer.

3. 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.

C. Customary Staff Responsibilities for Evaluation of Qualifications.

1. Port Authority staff should evaluate, on the basis of demonstrated competence and qualifications to perform the services, the qualifications received by the Port Authority in response to a Formal Procurement using the “Request for Qualifications” purchasing method.

2. Thereafter, the staff should:

a. Select the most highly qualified provider of those services, on the basis of demonstrated competence and qualifications, and

b. Consider ranking one or more “next most highly qualified” provider(s) by the level of their qualifications, on the basis of demonstrated competence and qualifications.

3. Following the staff selection process, the staff executive committee should review the preliminary evaluations of qualifications.

a. Following its review, the executive committee may

i. Approve, modify, or reject each selection committee recommendation,

ii. Require that the selection committee reevaluate the qualifications, or

iii. Require that staff conduct a new solicitation.

b. Provided that the executive committee has approved the selection committee’s recommendation of the most highly qualified provider and the ranking, if any, of the next most highly qualified provider(s), the executive committee may authorize staff to negotiate a contract at a “fair and reasonable price” with the most highly qualified proposer.

4. Following this two-step staff process, staff should submit its selection and ranking to the Port Commission for action at a public meeting.

5. Staff may also request that the Port Commission consider taking action to award the contract at that time, in the event that staff has determined in good faith that only one provider is the most highly qualified on the basis of demonstrated competence and qualifications to perform the required services and staff has negotiated with the provider a contract at a fair and reasonable price.

6. Staff may terminate the Formal Procurement in the event that it determines that no proposal offers the most highly qualified provider of the required services on the basis of demonstrated competence and qualifications, provided staff shall notify the Port Commission of such termination and obtain its concurrence in the event the Port Commission authorized such Formal Procurement.

D. Port Commission Action on Qualifications.

1. The Port Commission may:

- a. Approve the staff's selection of the most highly qualified provider and (i) authorize negotiation of a contract, or (ii) award the contract (as applicable),
- b. Reject all proposals and require that staff conduct a new solicitation, or
- c. Reject all proposals and terminate the Formal Procurement.

2. In the event the Port Commission authorizes negotiation with the most highly qualified provider, but staff cannot negotiate a satisfactory contract with that provider, staff shall formally end negotiations with that provider. If the Port Commission approved a ranking of the additional providers in order of qualifications, staff may then continue to the next most highly qualified provider and attempt to negotiate a contract with that provider.

3. Following the successful negotiation of a contract for a fair and reasonable price, subsequent Port Commission action is required to award such contract, except as otherwise described in subsection D(1)(a)(ii) above.

IX. Vendor Debarment

A. 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, as provided in this Procurement Policy.

B. 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 a 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 applicable to the performance of the contract; or

iii. Failing to fully perform any other contract obligations.

b. Knowingly using a Debarred Proposer as a subcontractor or supplier.

c. Falsifying or misrepresenting the Proposer'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.

f. Any other conduct that evidences the inability of the Proposer to responsibly perform a contract on behalf of the Port Authority.

2. Conviction or civil adjudication of the Proposer, or the Proposer's officers or owners, of a criminal offense or civil misconduct in connection with the Proposer's business.

3. A Proposer may be Debarred for actions taken in connection with work undertaken for the Port Authority, other public entities, or private entities.

C. Debarment Procedure.

1. In the event that grounds to Debar a Proposer 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 Proposer to be Debarred.

a. Notice of such hearing, and the Proposer's alleged conduct, shall be provided to the Proposer 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 Proposer of its determination whether, and for what period of time, the Proposer should be Debarred.

2. In the event that the hearing officer recommends that the Port Authority Debar such Proposer, the Proposer 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 Proposer 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 Proposer, and any other interested parties; and

b. Oral presentations by the staff, the Proposer, 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 Proposer 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 Proposer.

X. Other Staff Responsibilities

A. Routine Procurements. Except as may otherwise be provided by the Port Commission from time to time, the Executive Director and his or her designees shall have the authority to make routine purchases or contracts as permitted by Texas Water Code Section 60.403, as amended from time to time.

B. Emergency Procurements. Except as may otherwise be provided by the Port Commission from time to time, the Executive Director and the Chief Operating Officer shall have the authority to make emergency purchases or contracts or emergency amendments to existing purchase orders or contracts as permitted by Texas Water Code Section 60.4035, as amended from time to time.

C. Staff Procurement Standards and Procedures.

1. Staff shall prepare and from time-to-time update standards and procedures consistent with this Procurement Policy for Port Authority staff administration of procurement services.

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

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

XI. Policy Authority

A. Statutory.

1. Texas Government Code, Chapter 2254
2. Texas Special District Local Laws Code, Chapter 5007
3. Texas Water Code, Chapters 60, 61, and 62

B. Port Commission-enacted.

1. Bylaws

2. Amended and Restated Code of Ethics
3. Procurement and Small Business Development Task Force Charter
4. Amended Local Preference Program and Policy
5. Amended Local Preference Program Standards and Procedures
6. Promotion and Development Fund Policy and Standards
7. Small Business Development Program Policies and Procedures (Revised)
8. Surplus, Salvage, and Unclaimed Property Disposition Policy
9. Vendor Protest Procedure

XII. Policy Responsibility

A. Procurement Policy Updates. The Task Force shall evaluate this Procurement Policy's effectiveness and recommend updates as needed to the Port Commission for possible action at regularly scheduled meetings.

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

XIII. Adoption

This Procurement Policy was originally adopted by the Port Commission 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.

Policy Owner: Procurement Services
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