

**BOARD OF PORT COMMISSIONERS  
CITY OF OAKLAND**

12/12/19  
Item No.: 5.1  
KM/msr  
JLM MHA

ORDINANCE APPROVING AMENDMENTS TO AND THE  
RESTATEMENT OF THE PURCHASING AUTHORITIES AND  
PROCEDURES ORDINANCE AND REPEALING ALL PRIOR  
VERSIONS THEREOF, AND ADOPTING BY REFERENCE CHAPTER  
2.12 OF THE OAKLAND MUNICIPAL AND PLANNING CODE.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item No. 5.1, dated December 12, 2019 (the "Agenda Report") and related agenda materials, has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; and,

WHEREAS, pursuant to Oakland City Charter ("Charter") Section 706, the Board has the power and duty (listed by subsection of Section 706) ("Purchasing Powers"):

"(14) To manage the business of the Port and promote the maritime and commercial interests by proper advertisement of its advantages, and by the solicitation of business, within or without the port, within other states or in foreign countries, through such employees and agencies as it may deem expedient";

"(16) To purchase materials and supplies";

"(17) To enter into contracts, agreements, or stipulations (other than leases) germane to the scope of its powers and duties";

"(18) To let all work by contract, or order it done by any labor, as the Board may determine"; and

WHEREAS, Section 710 of the Charter requires that all contracts of the Port shall be made and entered into in accordance with the conditions and procedures established by the Board, but subject only to the "bid limit" for supplies and Public Works established by the City Council of the City of Oakland ("City Council"); and

**WHEREAS**, the Board hereby finds and determines that the City Council has established the bid limit as set forth in Municipal Code Section 2.04.050(A) or its successor ordinance (\$50,000 as of the date of this Ordinance) whereby the award of contracts for services (except professional services), supplies or combination costing over the bid limit amount requires formal advertisement and bidding subject to waivers and exceptions set forth in this Ordinance; and

**WHEREAS**, the Board desires to establish conditions and procedures for the exercise of its Purchasing Powers in order to ensure that supplies and services necessary for the operation of the Port are obtained in an open competitive and fair process, and to define authority for the purchasing and contracting function; and

**WHEREAS**, the Board furthermore desires to affirm and finds that any individual or organization engaged by contract shall provide services on a temporary basis and for the limited duration of the contract and such contract does not constitute "permanent places of employment" as described in Section 714 of the Charter; and

**WHEREAS**, that in acting upon this matter, the Board has exercised its independent judgment based on substantial evidence in the record and adopts and relies upon the facts, data, analysis, findings, and conditions set forth in the Agenda Report, and in related agenda materials, including the proposed "Purchasing Authorities and Procedures" attached as Exhibit "A" to the Agenda Report, and in testimony received; and now, therefore,

**BE IT ORDAINED** by the Board of Port Commissioners of the City of Oakland as follows:

**Section 1.** All findings and determinations by the Board set forth above in the "WHEREAS" clauses of this Ordinance are hereby adopted and incorporated herein.

**Section 2.** Ordinance No. 4321, which the Board adopted on February 26, 2015, and all prior versions thereof are hereby repealed.

**Section 3.** The Board hereby approves the amendments to and the restatement of the "Purchasing Authorities and Procedures," as described in Agenda Report Item No. 5.1 dated December 12, 2019, which are shown in Exhibit A to this Ordinance (which Exhibit is on file with the Secretary of the Board for public inspection) ("Purchasing Procedures"), as the conditions and procedures for the exercise of the Board's Purchasing Powers and delegation of authorities in order to ensure that supplies and services necessary for the operation of the Port are obtained in an open competitive and fair process, and to define authority for the purchasing and contracting function.

**Section 4.** The Executive Director is hereby authorized and directed to promulgate and adopt administrative procedures and implement controls sufficient to carry out the intent of this Ordinance and the Purchasing Procedures.

**Section 5.** As part of the Purchasing Procedures, the Board hereby adopts by reference and incorporates into the Purchasing Procedures all provisions of Chapter 2.12 of the Oakland Municipal and Planning Code - "Debarment Program," and as they may be later amended ("City Debarment Provisions") as the due process and administrative procedures and remedies of the Port for the debarment of Port contractor(s). In adopting the City Debarment Provisions, it is the intent of the Board that the Port's debarment program and procedures are uniform and consistent with that of the City of Oakland, with the following amendments and exceptions to the City Debarment Provisions:

a. All definitions of terms in Section 2.12.010 shall apply only to and be used only for the purposes of Section 13 of the Purchasing Procedures.

b. All references to "City" or the "City of Oakland" shall be amended to read the "Port" or the "Port of Oakland" respectively.

c. All references to the "City Administrator" shall be amended to read the "Executive Director."

d. All references to the "City Council" shall be amended to read the "Board of Port Commissioners."

e. All references to the "City Attorney" shall be amended to read the "Port Attorney."

f. For the purpose of service on the Debarment Hearing Board (as provided in Section 2.12.070(D)(2)(a) of the City Debarment Provisions), the address for service shall be "The Office of the Port Executive Director, 530 Water Street, Oakland, California 94607."

**Section 6.** If any section or part of this Ordinance or any section of the Purchasing Procedures shall be found to be invalid for any reason, the remainder of this Ordinance or the Purchasing Procedures shall not be invalidated thereby, but in accordance with the intention of the Board hereby expressed, shall remain in full force and effect, all parts of this Ordinance and the Purchasing Procedures being hereby declared to be separable and independent of all others.

**Section 7.** The Board determines and finds that this Ordinance is exempt from the California Environmental Quality Act ("CEQA") under Section 15061(b)(3) because the adoption of revisions and amendments to the Purchasing Procedures is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

**Section 8.** This Ordinance is not evidence of and does not create or constitute (a) a contract, or the grant of any right, entitlement or property interest, or (b) any obligation or liability on the part of the Board or any officer or employee of the Board.

\_\_\_\_\_  
**President.**

**Attest:** \_\_\_\_\_

**Secretary.**

**Approved as to form and legality:**

\_\_\_\_\_  
**Interim Port Attorney**

**EXHIBIT A TO PORT ORDINANCE NO. \_\_\_\_\_**

**PURCHASING AUTHORITIES AND PROCEDURES**

**(ADOPTED: \_\_\_\_; PORT ORDINANCE NO. \_\_\_\_)**

**SECTION 1 - DEFINITIONS:**

The following words and phrases whenever used in this "Purchasing Authorities and Procedures" ("Purchasing Procedures") shall be construed as defined in this section:

- A. **"Board"** shall mean the Board of Port Commissioners of the City of Oakland.
- B. **"Contractor" or "Supplier"** shall mean a person, firm, corporation, or entity which is bidding or proposing for a contract or a Purchase Order with the Port of Oakland ("Port") or which has entered into a contract or a Purchase Order with the Port to sell Supplies or provide Services to the Port.
- C. **"Emergency"** shall mean a sudden, unexpected occurrence that poses a clear and imminent danger or that disrupts essential operations of the Port, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services or business operations.
- D. **"Executive Director"** shall mean the Executive Director of the Port and, for the purposes of exercising the authority delegated or performing the duties assigned to the Executive Director in these Purchasing Procedures, **"Executive Director"** shall include any employee of the Port designated by the Board or the Executive Director in writing to exercise the authorities and/or to perform the duties on behalf of the Executive Director, as specified in the writing.
- E. **"Executive Director Contracting Authority"** shall mean the Executive Director's authority to execute any Purchase of, or contract for, Supplies or Services pursuant to the Board's delegation of authority set forth in Section 3 (A) of these Purchasing Procedures.
- F. **"Formal Competitive Procurement" or "Formal Competitive Solicitation"** shall mean the competitive process of soliciting bids, formal Request for Proposals or formal Request for Qualifications as set forth in Section 5 of these Purchasing Procedures and Section 6 of these Purchasing Procedures required for the procurement of Supplies or Services above the thresholds set forth in Section 4 of these Purchasing Procedures.

- G. **"General Services"** shall mean general labor services that are not considered Professional Services.
- H. **"Informal Competitive Procurement" or "Informal Competitive Solicitation"** shall mean the informal method of obtaining multiple price quotes or proposals for the procurement of Supplies or Services that are at or below the Formal Competitive Procurement threshold set forth in Section 4 of these Purchasing Procedures as established by the Executive Director by administrative procedures.
- I. **"Professional Services"** shall mean services that (1) are of an advisory nature provided by personnel with professional or technical expertise, (2) must be performed by appropriately licensed personnel, or are so technical or complex in nature that such services must be performed by persons possessing unique or special training, education, or skills, or (3) consist of managing, coordinating, and executing the procurement of Supplies and/or Services from multiple sources and with different labor skills, performed by personnel with specialized experience in such management, coordination, and execution in order to provide the Port with the appropriate combination or management of Services and/or Supplies. Examples of Professional Services that are advisory, or requiring licenses or technical skills include, but are not limited to, Services provided by architects, engineers, attorneys or legal experts, information technology consultants, leasing or real estate professionals, recruiters, government relations specialists, security consultants, management or operations consultants, and such similar professionals or experts. Examples of specialized management and coordination of Supplies and Services include, but are not limited to, landscaping maintenance, parking management, facilities security services, and building maintenance. Notwithstanding the above, Professional Services shall not include contracts for Services between the Port and the City of Oakland or another public entity. Professional Services shall not include Public Works.
- J. **"Proposer"** shall mean and intend any person, firm, or corporation submitting a proposal for the work contemplated to be done in response to the Port's Request for Proposals or Request for Qualifications.
- K. **"Public Works"** shall mean the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind, including Supplies necessary for the performance of such work. A **"Public Works Contract"** shall mean a contract for such work and Supplies.
- L. **"Purchase"** shall mean and include rental, lease, or purchase of

Supplies or Services.

- M. **"Purchase Order" or "PO"** shall mean a written document, the form of which is approved by the Port Attorney, that specifies the terms and conditions of a Purchase, including term, price, performance or delivery schedule (which may be one specific date or repetitive throughout the term of Purchase Order), delivery location, specifications of the Supplies and/or Services, insurance requirements, warranty and/or indemnity requirements, and payment terms. The issuance of a Purchase Order shall constitute an offer of a contract and the supplier's first delivery of Supplies or commencement of performance of Services shall constitute the acceptance of a contract that is binding on the Port and the Supplier.
- N. **"Purchasing Manager"** shall mean the Manager, Port Purchasing, and shall include any employee of the Port delegated the authority to perform the duties of the Purchasing Manager, as specified in writing.
- O. **"Request for Proposals" ("RFP") or "Request for Qualifications" ("RFQ")** shall mean a Formal Competitive Procurement procedure through invitation to submit proposal and/or qualifications applying to, but is not limited to, contracts for Professional Services.
- P. **"Secretary of the Board" or "Secretary"** shall mean the Secretary of the Board, and shall include any employee of the Port delegated the authority to perform the duties of the Secretary, as specified in writing.
- Q. **"Services" (or "Service")** shall mean and include labor, General Services, Professional Services, or Public Works, or a combination thereof.
- R. **"Sole Source"** shall mean a particular Supply or Service is available from only one source, because it is either proprietary or that Supply or Service must match an existing condition at the Port; and therefore, the Port has no choice but to procure that Supply or Service from the one person, firm, or corporation. A Sole Source purchase is not a competitive procurement, but is allowed so long as it can be demonstrated that only one company exists, usually due to a proprietary nature.
- S. **"Subcontractor"** shall mean a person, firm, corporation, or entity which has entered into or is proposing to enter into a contract or agreement directly with a Contractor or another Subcontractor (but not the Port) to perform work or Services required under a contract for Supplies or Services.
- T. **"Supplies" (or "Supply")** shall mean and include products, goods,

materials, commodities, equipment, and rental equipment.

**SECTION 2 - ADMINISTRATIVE PROCEDURES:**

The Executive Director shall promulgate and adopt administrative procedures and implement controls sufficient to carry out the intent of these Purchasing Procedures.

**SECTION 3 - BOARD APPROVAL REQUIREMENTS AND THE EXECUTIVE DIRECTOR'S AUTHORITY:**

All Purchases of, or contracts for, Supplies and Services shall be awarded by resolution of the Board and subject to the limitations set forth in this Section 3, except that the Executive Director shall have delegated authority to bind the Port by written contract or Purchase Order as set forth below without previous specific action of the Board.

- A. **Executive Director's delegated authority for Supplies or Services:** The Executive Director is hereby delegated the authority to execute any Purchase Order or contract for Supplies or Services of less than or equal to two hundred and fifty thousand dollars (\$250,000) ("Contracting Authority"), inclusive of any change order or expansion of scope, or amendment to contract. The Port Attorney is hereby delegated the same authority the Executive Director has under this Section 3 with respect to contracts for special counsel, legal experts (including technical experts related to legal matters), legal assistants, or research services.
- B. **Extensions, amendments, or renewals.**
  - 1. **Compensation.** The requirement for Board approval shall apply to all expenditures, extensions, amendments, or renewals of an existing or expired contract or term agreement whenever aggregated expenditures under the original contract or term agreement, and any extensions, renewals, or amendments thereof exceed the Contracting Authority set forth in Section 3(A) above.
  - 2. **Change of Name.** The Executive Director is hereby delegated the authority to execute any amendments to Purchase Orders or contracts where the sole purpose of the amendment is to document a change in name of the Contractor or Supplier.
  - 3. **Assignments.** The Executive Director is hereby delegated the authority to execute any assignments of Purchase Orders or contracts, provided that the original party to the Purchase Order or contract (assignor), or a party wholly owned or controlled by the assignor, remains liable under the Purchase Order or contract.



4. **Term.** The Executive Director is hereby delegated the authority to execute any amendments to Purchase Orders or contracts where the sole purpose is to extend the term by up to one year.
- C. **Order Splitting:** No work, project, or Purchase may be split or separated into smaller work orders, projects, or Purchases for the purpose of evading the Contracting Authority or the Formal Competitive Procurement requirements set forth in these Purchasing Procedures.
- D. **Validity of contracts.** Legislative actions of the Board approving or authorizing the execution of any contract are not evidence of and shall not create or constitute a contract or the grant of any right, entitlement or property interest, or any obligation or liability. No contract shall be binding or of any force or effect unless and until it is signed on behalf of the Board as authorized by the legislative action, is signed and approved as to form and legality by the Port Attorney, and is delivered to the other contracting party.
- E. **Change orders for Public Works.**
1. **Contracts Approved by the Board Where Change Order Authority Is Established.** For those contracts that are approved by the Board where the Board has specifically established the change order authority, the Executive Director has no authority to increase the change order authority established by the Board without further approval of the Board.
  2. **Contracts Approved by the Board Where No Change Order Authority Is Established by the Board.** For those contracts that are approved by the Board but no change order authority is established by the Board, the Executive Director is authorized to execute change orders in the aggregate amount not to exceed the lesser of 15% of the original contract amount or \$250,000 as long as the total amount of the contract, including the change orders, is within the budget approved by the Board.
  3. **Contracts Not Approved by the Board.** For those contracts that are not approved by the Board, the Executive Director is authorized to execute change orders such that the aggregate amount of all change orders (inclusive of the original contract amount) does not exceed \$250,000.
- F. **Emergency procurement.** In the case of an Emergency, for the purpose of the immediate preservation of public property or the public peace, health, or safety, the Executive Director may authorize and execute a contract or Purchase Order without advertising or previous specific approval or authorization by the Board, for Supplies or Services or a combination thereof,

to be furnished to the Port. Any action to execute such contract or Purchase Order shall be subject to the provisions of Section 7(c) of these Purchasing Procedures.

#### **SECTION 4 - FORMAL COMPETITIVE PROCUREMENT THRESHOLDS:**

Formal Competitive Procurement procedures shall be used for the following, unless excepted or waived pursuant to Section 7 of these Purchasing Procedures.

- A. **Procurement of Supplies, Public Works and General Services (excluding Professional Services).** Formal Competitive Procurement procedures set forth in Section 5 shall be followed for procurement by bidding of Supplies, Public Works Contracts and Services, or combination, other than Professional Services, exceeding the bid limit amount established by the Oakland City Council (\$50,000, or as later amended as specified in Section 2.04.050 (A) - Bid procedure - of the City of Oakland Municipal Code).
- B. **Procurement of Professional Services.** Formal Competitive Procurement procedures set forth in Section 6 shall be followed for procurement of Professional Services exceeding \$250,000.

#### **SECTION 5 - FORMAL COMPETITIVE PROCUREMENT PROCEDURES AND REQUIREMENTS FOR SUPPLIES, PUBLIC WORKS CONTRACTS AND SERVICES, FOR OTHER THAN PROFESSIONAL SERVICES ("BID PROCEDURE"):**

Purchase of or contract for Supplies or Services subject to Formal Competitive Solicitation pursuant to Section 4(A) shall follow the following formal bid procedures:

- A. **Advertising:** The Executive Director shall call for bids by advertising once in a local paper of general circulation not less than ten (10) calendar days prior to the date set for receiving said bids. The Executive Director, when he or she deems it to be advisable, may require more than one advertising of the call for bids.
- B. **Bid security:** Whenever the Port calls for bids for Public Works Contracts, each bidder shall be required to submit with the bid as bid security, a surety bond or either cash, a certified check, or a cashier's check of or on some responsible bank in the United States, in favor of and payable at sight to the Port of Oakland, in an amount not less than ten percent (10%) of the aggregate amount of the bid, unless otherwise required by law. Whenever the Port calls for bids primarily for the procurement of Supplies or General Services, the Executive Director may require bid security if he or she deems it appropriate considering the business needs and the nature of the Supplies or General Services

being procured.

1. Any bid security in the form of a surety bond must be furnished by a surety authorized to do a surety business in the State of California, guaranteeing to the Port that said bidder will enter into the contract and file the required bonds within said period.
2. If the bidder to whom the contract is awarded fails or neglects to enter into the contract and file the required bonds and evidence of insurance within forty-five (45) calendar days or such other shorter time period set forth in the bid document after the Port delivers the contract to the bidder, then the bid security shall be forfeited. Upon forfeiture of the bid security, the Executive Director shall draw the money due on such bid, and under no circumstances shall it be returned to the defaulting bidder. Failure of the bidder to enter into the contract and file the required bonds and insurance as specified in the contract shall result in a forfeiture of the amount specified in the surety bond in the same manner as for other forms of bid security. With the approval of the Executive Director, prospective bidders may file annual surety bonds covering all bids to be made by such bidder during a calendar year. For the purposes this Section, the Port shall have delivered the contract to the bidder on the date that the Port transmitted by electronic mail or placed in the United States Postal Service or another mail delivery service a copy of the contract to the address provided by the bidder in its bid or other communications to the Port for execution by the bidder.

C. **Forms and declaration of non-collusion:** All bids shall be made upon forms to be prepared by the Port and furnished upon application. Each bid shall have thereon the declaration of the bidder that such bid is genuine and not sham or collusive, or made in the interest or in behalf of any person not therein named, and that the bidder has not, directly or indirectly, induced or solicited any other bidder to put in a sham bid, or any other person, firm, corporation or entity, to refrain from bidding, and that the bidder has not in any manner sought by collusion to secure to himself or herself an advantage over any other bidder. Any bid made without such declaration or in violation thereof, and also any contract let there under, shall be absolutely void. All bids shall be clearly and distinctly written without any erasure or interlineations.

D. **Submission of bids:** All bids shall be sealed, identified as bids on the envelope, and submitted to either the Secretary or the Purchasing Manager (as specified below) at the place and time specified in the public notice inviting bids. Bids for Public Works Contracts shall be submitted to and be opened by the

Secretary in public, at the time and place designated in the notice inviting bids. Bids for Supplies or General Services shall be submitted to and opened by the Purchasing Manager in public, at the time and place designated in the notice inviting bids. Any bids received after the specified time shall not be accepted and shall be returned to the bidder unopened.

- E. **Award:** The contract shall be let to the lowest responsive responsible bidder. The Board, or the Executive Director for contracts within the Contracting Authority, may reject all bids and waive any informalities or minor irregularities in the bids.

1. **Responsive:** A bid must conform to all terms and requirements of all bid documents. The Port shall notify any bidder determined to be non-responsive. The bidder may submit materials and evidence why the bid submitted is responsive. The Port retains the discretion to determine responsiveness of any bid and to require strict compliance with bid specifications.

2. **Responsible:** A bidder must be a responsible bidder by demonstrating the attributes of trustworthiness, quality, fitness, capacity and experience to satisfactorily perform the contract.

- F. **Small local business:** The Port may award preference points to bidders in accordance with the Port's current Non-Discrimination and Small Local Business Utilization Policy or any successor policy.

- G. **Disposition of bid security:** As soon as practicable after the bid opening, all bid securities and bid surety bonds shall be returned to the unsuccessful bidders, except the bid securities and bid surety bonds of the three lowest bidders submitting valid bids which shall be retained until award of the contract to the successful bidder. Upon such award, the bid securities and bid surety bonds of all but the successful bidder's bid security shall be returned. If there are three or fewer bidders, all bid securities and bid surety bonds shall be retained until award of the contract to the successful bidder, whereupon the bid securities and bid surety bonds of all but the successful bidder's bid security shall be returned. The bid security and bid surety bond of the successful bidder shall be returned after execution of the contract and deposit of the necessary bonds and submission of the evidence of insurance in the contract.

- H. **Requirements for faithful performance, labor and material payment bonds; waiver:** For procurement of Supplies and Services, performance and labor and material payment bonds shall be required in a form approved as to form and legality by the

Port Attorney as follows:

1. *For Public Works Contracts over \$25,000:* Both the faithful performance, and labor and material payment bonds, each in an amount equal to a minimum of fifty percent (50%) of the contract price, unless otherwise required by law, shall be required by Port specifications or contracts.
2. *For Supplies:* When the Executive Director, in his or her sole discretion, deems a contract for Supplies to require unique Port specifications or time-sensitive delivery or the existences of other business needs, he or she may require the furnishing of a faithful performance bond in a contract for the Purchase of Supplies in an amount equal to at least twenty-five percent (25%) of the total amount of the contract price.
3. *For Services other than Public Works:* When the Executive Director, in his or her sole discretion, deems a contract for Services to require Port-specific performance criteria or time-sensitive delivery or the existences of other business needs, he or she may require the furnishing of a faithful performance bond and/or a labor and material payment bond in a contract for the Purchase of Services in an amount equal to at least fifty percent (50%) of the total amount of the contract price.
4. *Waiver of bonds:* The Executive Director may waive the faithful performance bond, and/or the labor and material bonds for contracts with a value less than \$100,000 after a finding that it is in the best interest of the Port to waive such requirement.

I. **Time of completion and acceptance of work:** Each contract shall specify the time within which the work shall be commenced and when it shall be completed in accordance with the specifications.

1. The Executive Director is hereby authorized and delegated the power in his or her reasonable discretion (a) to extend the work commencement or completion date for acts of the Port, acts of God, weather or strikes, or other circumstances over which the Contractor has no control, and (b) on behalf of the Board, accept work upon its final completion and to assess liquidated damages in such amounts and under such circumstances as are set forth in the contract.
2. For Public Works Contracts, each of the Chief Engineer and the Director of Engineering is hereby authorized and delegated the power in his or her reasonable discretion (a)

to extend the work commencement or completion date for acts of the Port, acts of God, weather or strikes, or other circumstances over which the Contractor has no control, and (b) on behalf of the Board, accept work upon its final completion and to assess liquidated damages in such amounts and under such circumstances as are set forth in the contract.

- J. **Failure to complete contract:** In case of failure on the part of the Contractor to complete its contract within the time specified in the contract or within said extension of said time as provided by the contract, the contract may be terminated and the Contractor shall not be paid or allowed any further compensation for any work done by it under said contract, except to the extent allowed under the contract; and the Board or Executive Director may proceed to complete such contract either by reletting or otherwise, and the Contractor and its surety shall be liable to the Port for all loss or damage which the Port may suffer on account of its failure to complete the contract on time.
- K. **No responsive bid received:** If no responsive bid is received from a responsible bidder after advertising as required by these Purchasing Procedures, the Executive Director or the Board may proceed to hire or have the Services performed or Purchase the equipment or Supplies without further complying with provisions of these Purchasing Procedures.
- L. **Rejection of bids:** The Board, or the Executive Director for procurements within the Contracting Authority, may reject any and all bids.

**SECTION 6 - FORMAL COMPETITIVE PROCUREMENT PROCEDURES (REQUEST FOR PROPOSALS ("RFP") AND REQUEST FOR QUALIFICATIONS ("RFQ") FOR PROFESSIONAL SERVICES:**

Contracts for Professional Services subject to Formal Competitive Solicitation pursuant to Section 4(B) shall be selected through a RFP or RFQ:

- A. **Advertising or solicitation:** To ensure sufficient competition considering the complexity, value, and timeline as well as other relevant factors of the contract to be awarded, the Executive Director shall solicit responses to RFPs or RFQs by any one of the following methods:
1. soliciting responses from selected Contractors known in the relevant industry or profession to provide the required Professional Services;
  2. advertising in publications or media likely to reach or to be

read by relevant Contractors; or

3. soliciting responses from Contractors that have provided the same or similar Professional Services to the Port, the City of Oakland or another public or governmental agency.

- B. **Evaluation and selection:** The selection and award of contracts for Professional Services shall be based on demonstrated competence and qualifications for the types of Services to be performed, at fair and reasonable prices to the Port, but shall also take into account compliance with applicable Port purchasing policies, including but not limited to living wage and non-discrimination and small local business utilization policies as well as applicable state, federal, or other regulatory agency requirements. The Executive Director may evaluate said competence, qualifications, and compliance based on criteria or factors set forth in the RFP or RFQ as he or she deems reasonable.
- C. **Administrative procedures:** The Executive Director shall adopt administrative procedures setting forth the procedures for issuance of RFPs and RFQs and the award of Professional Services contracts.

**SECTION 7 - EXCEPTIONS TO, OR WAIVER OF, FORMAL COMPETITIVE PROCUREMENT PROCEDURES:**

Formal Competitive Procurement requirements shall not apply to the following contracts for Services or Supplies. The Executive Director shall promulgate administrative procedures setting forth the requirements for any Informal Competitive Procurement that may apply to any of the following exceptions.

- A. **Informal Competitive Procurement procedures:** Any contract which amount is at or below the threshold set forth in Section 4 of these Purchasing Procedures.
- B. **Findings waiving Formal Competitive Procurement procedures.** Upon the finding and determination in each applicable instance by the Board, or by the Executive Director for contracts within the Contracting Authority, that any of the following conditions exist, the Formal Competitive Procurement procedures shall be waived and shall not apply.
  1. When calling for bids on a competitive basis is impracticable, unavailing, or impossible;
  2. When it is in the best interests of the Port to waive Formal Competitive Procurement procedures; or

3. When an alternative competitive procurement procedure adopted by the Board, or by the Executive Director for contracts within the Contracting Authority, is in the best interest of the Port considering the complexity, value, and timeline as well as other factors of the contract.

**C. Emergency:**

1. In the case of an Emergency as determined and declared by the Executive Director in writing to the Board and subject to the conditions set forth below, the Executive Director is authorized to repair or replace a Port facility, take any directly related and immediate action required by that Emergency and procure the necessary equipment, Services, and Supplies for those purposes, without giving notice for bids to let contracts or follow the Formal Competitive Procurement procedures.
2. The Executive Director shall inform the Board of the declaration of Emergency not later than seven (7) days after such declaration. At the next regularly scheduled Board meeting, the Executive Director shall inform the Board of any actions taken pursuant to Paragraph (C)(1) of this Section, the Board shall review the circumstances of the Emergency, and, to the extent further actions are required, the Board may authorize the Executive Director to take such actions.

**D. Additional exceptions:** Formal Competitive Procurement requirements shall not apply to the following:

1. Placements of insurance coverage;
2. Purchases of books, newspapers, magazine subscriptions, periodicals, trade journals, and similar type subscriptions;
3. Placement of advertisements or notices in newspapers, magazines, trade journals, playbills, television, radio, internet, digital billboards, billboards, bus wraps, sides of buildings, sporting arenas, theaters, performing art venues, and other similar media outlets;
4. Contracts for the same Supplies or Services awarded by the California Department of General Services or another governmental agency provided the award of the contract was based on that agency's published competitive procurement or bidding procedures and not based on the waiver of such competitive procedures. Such contract may include Purchases through master agreements, multiple award schedules, cooperative purchase agreements, or such similar multi-agency agreements that leverage the collective purchasing powers of



two or more governmental agencies;

5. Installation, maintenance, or repair of any finished products, materials or equipment as a Service performed by the manufacturer or Supplier of the same product, materials, or equipment;
6. Performance of Public Works by the Port with its own employees; or
7. For Sole Source contracts.

#### **SECTION 8 - GENERAL PROCUREMENT REQUIREMENTS:**

Port procurements must adhere to the following general requirements:

- A. **Informal Competitive Procurement procedures:** All Purchases for Supplies or Services not requiring the application of or excepted from Formal Competitive Procurement procedures set forth in these Purchasing Procedures shall be Purchased by any applicable Informal Competitive Procurement administrative procedures established by the Executive Director.
- B. **Unauthorized Purchases:** Any Purchase or contract for Supplies or Services for the Port other than as herein prescribed in these Purchasing Procedures or administrative procedures established by the Executive Director shall be unauthorized. Unauthorized Purchases shall be invalid and shall not bind the Port. Any Purchases or contracts made in violation of these Purchasing Procedures or by persons not authorized under these Purchasing Procedures to make Purchases or enter into contracts are void and not binding on the Port.
- C. **Finding of exception from civil service:** Individuals or organizations engaged by contract shall provide Services on a temporary basis and for the limited duration of the contract. They shall not be in permanent places of employment in and under the Board and shall not be included within the personnel system of the City of Oakland or the competitive civil service. The Board may by specific action provide permanent places of employment for individuals or organizations engaged by contract for Services and may except such individuals or organization from competitive civil service pursuant to Oakland City Charter Section 902(e) if the Board finds that:
  1. the service provided is of a professional, scientific or technical nature and is temporary in nature, or
  2. by two-thirds of members of the Board, the performance of General Services by contract, regardless of nature or term,

is in the public interest because of economy or better performance; and

3. the contract shall not result in the loss of employment or salary by any person having permanent status in the competitive service.
- D. **Conflict of interest:** No Board member, officer, employee or consultant of the Port may approve, execute or participate in making a contract in which he or she is financially interested. No Board member, officer, employee, or consultant may make, participate in or in any way attempt to use his or her official position to influence the making or award of a contract in which he or she knows or has reason to know he or she has a financial interest. For the purposes of determining financial interest, provisions of and regulations promulgated under California Government Code Section 1090 and the Political Reform Act of 1974 (California Government Code Section 87100 et. seq.) shall apply.
- E. **Multiple prime bids or prime proposals:** No person, firm, entity, or corporation shall be allowed to make or file or be interested in more than one prime bid or prime proposal for the same Supplies, Services, or both. However, a person, firm, entity, or corporation shall be allowed to make subcontract bids or proposals to multiple prime Contractors submitting a prime bid or prime proposal to the Port.
- F. **Sufficiency of funds:** Prior to the execution of any contract and the procurement of any Supplies and Services, the Executive Director shall verify that funds have been budgeted and appropriated for in the applicable fiscal year operating or capital budget for the payment of the contract or Purchase.

**SECTION 9 - PROTEST PROCEDURES FOR BIDS, REQUEST FOR PROPOSALS, AND REQUEST FOR QUALIFICATIONS:**

Any party that has timely submitted a responsive bid or proposal that contends or claims that the Port's proposed award of the subject contract fails to comply with the Port's rules and regulations or with law must file a protest in accordance with the provisions set forth below:

- A. **Written protests required.** Any protest must be submitted in writing to the Secretary by the date and time specified in the solicitation documents. If no submission deadline is specified, then the protest shall be submitted to the Secretary before 5:00 p.m. of the third (3rd) business day following publication of the identity of the apparent successful bidder/Proposer.
  1. The initial protest document must contain a complete statement of the basis for the protest.

2. The protest must refer to the specific portion of the solicitation documents that forms the basis for the protest.
  3. The protest must include the name, address, and telephone number of the person representing the protesting party.
- B. **Administrative hearing or investigation.** The Executive Director is hereby delegated the power and authority to consider and decide any protest submitted pursuant to this Section 9. The Executive Director, or such other person as the Executive Director may designate (the "Hearing Officer") shall investigate and review, and make a determination relating to the protest. The Hearing Officer may conduct a hearing in person or telephonically or may decide the protest based upon the Hearing Officer's own investigations and review of protest documents submitted without a hearing. If a hearing is held, the Hearing Officer shall conduct the hearing in a manner at his or her discretion to hear and consider evidence presented by the party filing the protest, the Port, and other witnesses. The Port shall be represented at any hearing by a representative of the Port Attorney's Office. The failure of the protesting party to attend a scheduled hearing shall be deemed a withdrawal of the protest and a waiver of any right to further pursue the protest, including the filing of a claim pursuant to Division 3.6 of Title 1 of the Government Code and legal proceedings. Related protests may, at the discretion of the Hearing Officer, be consolidated into one hearing or investigation.
- C. **Determination final.** After his or her investigation and any hearing(s) he or she deems necessary, the Hearing Officer shall then issue a written decision on the disposition of the protest. The decision of the Hearing Office shall be final.
- D. **Stay of award during protest.** When a timely protest has been submitted in accordance with this Section, the Board or the Executive Director shall not award the contract until a decision has been made regarding the protest, unless the Board, or the Executive Director for procurements within the Contracting Authority, makes a finding that the award of the contract without delay is necessary to protect the substantial interests of the Port.
- E. **Attorneys' fees.** All parties shall bear their own attorneys' fees arising from any protest filed under these Purchasing Procedures.

**SECTION 10 - SUBCONTRACTING AND SUBLETTING PRACTICES FOR PUBLIC WORKS PROJECTS:**

In the solicitation of bids for Public Works Contracts, the Executive

Director is hereby delegated the authority and shall have the duty to comply with the requirements of the Subletting and Subcontracting Fair Practices Act (Public contract Code §4100 et seq.) ("Act"), except where the Act conflicts with any provision of these Purchasing Procedures, in which case the applicable provision of these Purchasing Procedures shall govern, and except as follows:

- A. **Design documents are incomplete at the time of solicitation:** When the Board waives standard bidding procedures and authorizes the Executive Director to award a Public Works Contract utilizing a project delivery process in which the contract is awarded prior to completion of the design documents, the bidders shall submit a list of the names of Subcontractors and their California contractor's license numbers, not later than the date specified in the contract documents for the project. Under no circumstances shall the date specified in the contract documents for the submission of Subcontractor information by bidders be after the date on which the Port approves the design for construction of the project. If the work of a contract is separated into more than one phase, the Port shall specify dates for the submission of Subcontractor information, which are not later than the date on which the Port authorizes construction for each phase.
- B. **Design documents are complete at the time of solicitation:** When the Board waives standard bidding procedures and authorizes the Executive Director to award a Public Works Contract utilizing a project delivery process in which the design-documents are complete at the time of solicitation, the bidders shall submit a list of the names of Subcontractors and their California contractor's license numbers, not later than the date specified in the contract documents for the project. Under no circumstances shall the date specified in the contract documents for the submission of Subcontractor information by bidders be after execution of the contract by the Contractor.

The Executive Director or his or her designee is duly authorized to implement the Act, including, but not limited to, approving or rejecting requests to substitute a Subcontractor, conducting hearings, making findings, and imposing penalties. The Board may by resolution exempt any contract from the application of the Act, either prospectively or retroactively.

#### **SECTION 11 - PAYMENT OF PREVAILING WAGES:**

In administering contracts for Public Works, the Executive Director is hereby delegated the authority and shall have the duty to comply with the requirements of Article 1 of Chapter 1 of Part 7 of Division 2 of the California Labor Code (Section 1720 et. seq.) and state regulations issued pursuant thereto ("Prevailing Wage Law"). For the purposes of this Section

11, "Public Works" shall be defined as set forth in California Labor Code Section 1720, including works paid in part or in whole out of public funds. Each Contractor and Subcontractor shall pay to all its workers employed on Public Works at the rate and in the manner set forth in the Prevailing Wage Law and shall comply with all provisions of the Prevailing Wage Law.

#### **SECTION 12 - APPLICATION OF LAW TO PUBLIC WORKS CONTRACTS:**

- A. **Exemption from California Public Contract Code:** It is the intention of the Board in enacting these Purchasing Procedures and it is so declared that the Board and the Port is exempt from any and all provisions of the California Public Contract Code, except where a particular provision has been finally judicially declared to be a matter of statewide concern or where the Port stipulates to the application of any provision(s) of the Public Contract Code, through resolution or contract with respect to any particular work. In no event shall the Port's exercise of its power to stipulate to the application of any particular provision(s) of the Public Contract Code be interpreted as a waiver of the terms of this Section.
- B. **Application of law at time of approval of plans and specification:** Unless otherwise specifically provided by Port ordinance or other applicable law, the law applicable to a Port Public Works Contract, including bidding procedures for such contract, shall be that law that is in effect on the date the Board by resolution approves the plans and specifications for such contract, or the date the Director of Engineering or Chief Engineer approves the plans and specifications for such contract pursuant to his/her delegated authority under Section 14 of these Purchasing Procedures.
- C. **Adoption of standard contract provisions:** The Board may, by resolution, adopt various standard contract provisions for Public Works Contracts. Unless otherwise approved by resolution or order of the Board, the most recently-adopted standard contract provisions shall be deemed incorporated by reference into contracts. Pursuant to Section 706(20) of the Oakland City Charter, the Port Attorney shall pass upon the form and legality of all standard contract provisions. The Secretary shall maintain for public inspection a copy of the most-recently adopted standard contract provisions.

#### **SECTION 13 - DEBARMENT OF A CONTRACTOR:**

- A. **Effect of debarment:** Any Contractor debarred under this Section 13 of these Purchasing Procedures shall be deemed to be non-responsible. The Port shall not accept any bid or response to any RFP or RFQ from or enter into any contract for Supplies or Services with any Contractor that has been determined to be

debarred (and remains debarred) pursuant to this Section 13.

- B. **Delegation of duty and authority to the Executive Director:** The Executive Director is hereby delegated the power and authority and shall have the duty to carry out and administer the provisions of this Section 13 and to made determination of debarment pursuant to the procedures set forth in this Section 13.
- C. **Adoption of City of Oakland Debarment Procedure:** The Board hereby adopts by reference and incorporates into this Section 13 all provisions of Chapter 2.12 of the Oakland Municipal and Planning Code - "Debarment Program", and as they may be later amended ("City Debarment Provisions") as the due process and administrative procedures and remedies of the Port for the debarment of Port contractor(s). In adopting the City Debarment Provisions, it is the intent of the Board that the Port's debarment program and procedures are uniform and consistent with the that of the City of Oakland, with the following amendments and exceptions to the City Debarment Provisions:
1. All definitions of terms in Section 2.12.010 shall apply only to and be used only for the purposes of this Section 13 of these Purchasing Procedures.
  2. All references to "City" or the "City of Oakland" shall be amended to read the "Port" or the "Port of Oakland," respectively.
  3. All references to the "City Administrator" shall be amended to read the "Executive Director."
  4. All references to the "City Council" shall be amended to read the "Board of Port Commissioners."
  5. All references to the "City Attorney" shall be amended to read the "Port Attorney."
  6. For the purpose of service on the Debarment Hearing Board (as provided in Section 2.12.070(d)(2)(a) of the City Debarment Provisions), the address for service shall be "The Office of the Port Executive Director, 530 Water Street, Oakland, California 94607."

**SECTION 14 - DELEGATION TO CHIEF ENGINEER AND THE DIRECTOR OF ENGINEERING:**

In addition to the Board, the Director of Engineering, and the Chief Engineer are hereby authorized to approve the plans and specification for any public improvement or works in advance of construction, pursuant

to Government Code Section 830.6.

**SECTION 15 - NON-DISCRIMINATION AND SMALL LOCAL BUSINESS UTILIZATION POLICY:**

The Executive Director shall promulgate administrative procedures to implement the Non-Discrimination and Small Local Business Utilization policy as adopted by the Board, for the procurement of Supplies and Services.

**SECTION 16 - SURPLUS SUPPLIES:**

All departments and divisions of the Port shall submit to the Executive Director at such times and in such form as he or she shall prescribe, reports showing all Supplies which are no longer used or which have become obsolete or worn out ("surplus"). The Executive Director shall have authority as follows:

- A. **Exchange or trade-in the surplus Supplies** towards the Purchase of new Supplies, regardless of the value.
- B. **Dispose of the surplus Supplies with an aggregate value less than or equal to fifty thousand dollars (\$50,000)** which have become unsuitable for Port use, by selling at public auction or private sale, scrapping or recycling, destroying or abandoning, and/or donating to public organizations, charitable and civic or non-profit organizations.

Disposal of surplus Supplies exceeding an aggregate value of fifty thousand dollars (\$50,000) shall require Board approval.

**SECTION 17 - FORBIDDANCE OF COLLUSION WITH BIDDERS AND PROPOSERS:**

Any officer or employee of the Port, who shall aid or assist a bidder or a Proposer in securing a contract to furnish labor, material, equipment, Supplies, or Services at a higher price than that proposed by any other bidder or a Proposer, or who shall favor one bidder or a Proposer over another by giving or withholding information or who shall willfully mislead any bidder or a Proposer in regard to the character of the material or Supplies called for, or who shall knowingly accept materials or Supplies or a quality inferior to those called for by the contract, or who shall knowingly certify to a greater amount of labor performed than has been actually performed, or to the receipt of a greater amount or different kind of material or Supplies than has been actually received, shall be deemed guilty of malfeasance and shall be removed from office, and be forever ineligible to hold any office or employment in or under the Port.

## **SECTION 18 - PROHIBITION AGAINST CONTINGENT FEE CONTRACTS:**

The Board hereby finds and determines that arrangements by contractors and lessees to pay contingent fees for soliciting or obtaining Port contracts or leases are contrary to public policy because such arrangements may lead to attempted or actual exercise of improper influence.

No person or entity who enters into any contract or lease with the Port shall have employed or retained any person or agency to solicit or obtain the lease or contract upon any agreement or understanding for a contingent fee, except a bona fide employee or agency. For violation of this Section the Port, at its option, may annul the contract or lease or deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee; provided, however, that the Board may approve and authorize the execution of a contract or lease which provides, in lieu of such option, that the Port may deduct three times the full amount of the contingent fee.

The following definitions apply for the purposes of this section:

- "Bond fide agency" means an established commercial or selling agency, maintained by the Contractor or lessee for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence.
- "Contingent Fee" means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Port contract.
- "Improper influence" means any influence that induces or tends to induce a Port Commissioner, employee or officer to give consideration or to act regarding a Port contract on any basis other than the merits of the matter.

## **SECTION 19 - VALIDITY OF ORDINANCE:**

If any section or part of any section of these Purchasing Procedures shall be found to be invalid for any reason, the remainder of the Purchasing Procedures shall not be invalidated thereby, but in accordance with the intention of the Board hereby expressed, shall remain in full force and effect, all parts of these Purchasing Procedures being hereby declared to be separable and independent of all others.

**Revised:** \_\_\_\_\_  
**Port Ordinance No.:** \_\_\_\_\_