

SUPPLEMENTAL INFORMATIONAL REPORT

Report: Overview and Summary of the Port of Oakland's Purchasing Authorities and Procedures – Port Ordinance No. 4321 and Potential Revisions for Possible Adoption by the Board of Port Commissioners at a Future Meeting. **(Port Attorney)**

MEETING DATE: 9/10/2020

SUBMITTED BY: Michele Heffes, Port Attorney

APPROVED BY: Danny Wan, Executive Director

SUMMARY

At the September 10, 2020, meeting, Port of Oakland ("Port") staff will present an overview of the Port's Purchasing Authorities and Procedures Ordinance 4321 ("Purchasing Ordinance"). Staff will outline the proposed amendments to the Purchasing Ordinance to clarify and clean-up various provisions that could be considered for adoption by the Board of Port Commissioners ("Board") at its September 24, 2020, Board meeting. A draft Agenda Report summarizing the proposed changes to the Purchasing Ordinance and a proposed revised Purchasing Ordinance redlined against the existing Purchasing Ordinance are attached to the this Informational Report as Attachment A.

DRAFT AGENDA REPORT

Ordinance: Adopt Amendments to the Port of Oakland's Purchasing Authorities and Procedures Ordinance No. 4321. **(Port Attorney)**

MEETING DATE: 9/24/2020

AMOUNT: \$0

SUBMITTED BY: Michele Heffes, Port Attorney

APPROVED BY: Danny Wan, Executive Director

ACTION TYPE: Ordinance

EXECUTIVE SUMMARY

This Agenda Report describes the proposed amendments to the Port of Oakland's Purchasing Authorities and Procedures Ordinance No. 4321 ("Purchasing Ordinance") for consideration by the Board of Port Commissioners ("Board"). After receiving input from the Board in open session on December 12, 2019, and reviewing procedures and processes internally, Staff has simplified and reduced the proposed changes to the Purchasing Ordinance to primarily include only clarifying and "clean-up" changes to various provisions. These proposed revisions to the Purchasing Ordinance are redlined against the current Purchasing Ordinance and are attached to this Agenda Report. Staff recommends that the Board adopt an ordinance that amends and supersedes the existing Purchasing Ordinance. Attached as Exhibit "A" to this Agenda Report in a redline of the existing Purchasing Ordinance against the proposed new Purchasing Ordinance that would amend and supersede the existing Purchasing Ordinance.

BACKGROUND

Under the Charter of the City of Oakland, the Board has the duty and authority to "purchase materials and supplies" and to "let all work by contract, or order it done by any labor, as the Board may determine." In the By-Laws and Administrative Rules of the Board of Port Commissioners ("By-Laws"), the Board delegated to the Executive Director certain authority to make purchases of materials, supplies and services and to let contracts pursuant to and subject to the limitations of any ordinance adopted by the Board.

The current Purchasing Ordinance was adopted by the Board in 2015 and replaced a prior version. The Purchasing Ordinance has been the Board's legislation prescribing: i) the Executive Director's authority (and the Port Attorney's authority for legal services) to

make purchases of materials and services; and ii) the limitations and procedural requirements (including requirements for competitive bidding and proposals) for the exercise of that authority.

In response to questions and comments from Board members in various open session Board meetings, the Port Attorney's Office ("Office") spearheaded the effort to make proposed revisions to the Purchasing Ordinance that would amend and supersede the 2015 version. The Office sought and obtained input from a broad spectrum of Port staff including staff in the Executive, Finance, Engineering, Maritime, and Aviation departments. Staff presented the proposed amendments to the Board on December 12, 2019, including proposed increases to the Executive Director's limits for some contractual spending and approvals of waiver of formal competitive bidding to create consistent authority levels for all types of spending. During the December 12, 2019, open session Board meeting, the Board raised several questions regarding the proposed increases and asked staff to return with a review and analysis of the current purchasing process, including the interface between the Purchasing Ordinance and the inclusion of small and local businesses through the Port's Non-Discrimination and Small Business Utilization Policy ("LBU Policy") which was adopted by the Board.

Following December's meeting, staff from various departments, including the Port Attorney's Office, the Executive Office, and Finance, met and discussed various ways to present the Board with a "Purchasing 101." These efforts were delayed in part due to the COVID-19 pandemic and the associated March 26, 2020, emergency declaration by the Board that granted the Executive Director additional spending and other powers which expired on July 31, 2020.

Purchasing Overview

Pursuant to the Purchasing Ordinance, the Executive Director is authorized to make purchases for the Port up to \$150,000 for professional services and \$250,000 for goods, supplies, and other services. These purchases are made using a variety of contracting mechanisms, including purchase orders, contract purchase agreements, and professional services agreements.

The Port issued an average of 7,000 purchase orders per year from July 1, 2013, through June 30, 2018, based on data provided by the Purchasing Department. These purchase agreements range in dollar value from \$13 to over \$29 million for a single agreement. The average annual purchasing spend during this 5-year period was \$119,631,479.

The Purchasing Ordinance requires that the Port use "formal competitive procurement procedures" for purchase agreements above \$50,000 for goods, general services and public works, and for purchase agreements above \$150,000 for professional services. The methods of "formal competition" are described in the Purchasing Ordinance and can be summarized as follows:

For Public Works, Goods and General Services:

- Advertising in a local newspaper ten (10) days prior to the bid date;
- Bid bonds or other bid security (10% of bid amount for public works, otherwise at the discretion of the Executive Director); and
- Sealed bids submitted to and opened by the Secretary of the Board or the Purchasing Manager, depending upon bid type.

For Professional Services:

- Soliciting responses from selected Contractors known in the relevant industry or profession;
- Advertising in publication or media likely to reach the relevant audience; and
- Soliciting responses from companies that have provided the same or similar services to the Port, the City, or another public or governmental agency.

If a purchase falls below the applicable threshold, it falls within an informal procurement process. Informal does not equal “no process” or a method that allows full discretion of staff to determine with whom the Port contracts. Informal procurement means that staff is not required to solicit bids through advertisement as proscribed in the Purchasing Ordinance.

Both formal and informal procurement methods require development of a scope of work by Port staff and establishment of evaluation criteria and weighting of criteria to evaluate bidders. The main difference is whether Port staff advertises in a newspaper or trade journal (formal) or if staff does a targeted solicitation to qualified businesses.

There are several benefits to informal procurements including the ability to target small and local businesses and shorter procurement periods which is especially useful for time-sensitive products or services.

LBU Policy Overview:

The Port’s LBU Policy, is a separate Board adopted policy. The Purchasing Ordinance simply applies whatever the current policy is to public works contracts and professional services agreements. Staff is not seeking changes to or consideration of the LBU Policy with this informational report, as further discussed below.

For public works contracts, the LBU Policy allows for bidders to earn “preference points” for the use of small and local contractors. These “preference points” are converted to a percentage discount on the bid amount for purposes of determining the low bidder. The final contract award amount does not contain this discount. Points can be awarded as follows:

- Up to ten (10) preference points (percentage discount)
 - Up to six (6) points for local impact area (Oakland, Emeryville, Alameda, San Leandro) or local business area (Alameda and Contra Costa Counties)
 - Up to four (4) points for small or very small business

Below is an example of the “preference point” policy implementation:

- Bidder A: \$950,000 (with zero points)
- Bidder B: \$1,000,000 (with 8 points)
- After factoring in points: Bidder B wins contract:
 - Bidder B - Adjusted Bid Amount: \$920,000 (\$1,000,000 minus \$80,000 (8% of total bid amount of \$1,000,000))
 - Bidder A: -Adjusted Bid Amount: \$950,000

For professional services agreements, the LBU Policy allows proposers to earn a maximum of up to 15 points for the use of small and local consultants and vendors in their proposal submission and workforce development programs?. These points are part of a 100-point total evaluation criteria. Points can be awarded as follows:

- Up to eight (8) points for local impact area (Oakland, Emeryville, Alameda, San Leandro) or local business area (Alameda and Contra Costa Counties)
- Up to four (4) points for small or very small business
- Up to three (3) points for demonstrated community commitment or mentoring program

Both the maximum amount of preference points for public works contracts and the maximum number evaluation points for professional services agreements are proscribed by the LBU Policy. Changes in the allowances would require modification of that separate policy by the Board.

In addition and in response to the Board’s prior questions on this topic, the Social Responsibility Department is working on the disparity analysis with its consultants. In November, California voters will be asked to repeal Proposition 209, the 2007 statewide ban on consideration of race and gender in government contracts. Staff plans to return to the Board with the results of the disparity analysis, the results of the Proposition 209 repeal efforts, and any proposed changes to the Purchasing Ordinance or LBU Policy.

At this time, staff proposes that the Board move forward and approve limited Purchasing Ordinance changes. The proposed amendments to the Purchasing Ordinance are described in detail below and generally fall into one of two categories: i) clarifications confirming interpretation of the existing Purchasing Ordinance; and ii) general “clean up” of language. Some of the key revisions include the following:

- 1) Removal of definition of “Budgeted supplies and services” and clarifying that all supplies and services contracted within the Executive Director’s authority are part of the Board-approved total budget;
- 2) Delegation of authority to the Executive Director for Purchase Order and contract amendments for changes in name, assignments, and term extensions under specific, limited circumstances;
- 3) Increase of the threshold Executive Director authority to dispose of surplus Supplies from \$20,000 to \$50,000; and
- 4) Clarification of timing and reporting for declaration of an Emergency.

ANALYSIS

The below table describes in more detail the proposed substantive amendments to the Purchasing Ordinance, by Section Number.

<u>SECTION(S)</u>	<u>PROPOSED AMENDMENT</u>
1. Definitions.	The proposed amendments include several new definitions for the Board, Director of Engineering, Chief Engineer, Principal Engineer, Purchasing Manager, Secretary of the Board, and Sole Source. These definitions are consistent with the companion Administrative Policy (“AP”) 700 Purchasing Policy and Procedures. The proposed amendments also capitalize the defined terms throughout the Purchasing Ordinance.
3. Board Approval Requirements and the Executive Director’s Authority.	The proposed amendments to Subsection A and former Section B simplify the Executive Director’s delegated authority by collapsing budgeted and unbudgeted supplies and services into one larger category of Supplies and Services. The prior category of “unbudgeted” supplies and services was a misnomer – in that it incorrectly implied that the Executive Director could contract for Supplies and Services in amounts in excess of the total capital and operating budgets approved annually by the Board. Staff is proposing to eliminate the definition of “budgeted supplies and services” and provide that the Executive Director’s contracting authority for professional services is \$150,000 and the contracting authority for goods, supplies, and other services is \$250,000. These contracting authority limits remain unchanged from the prior Ordinance. The unbudgeted limits were eliminated, as the Executive Director does not have authority pursuant to the

<u>SECTION(S)</u>	<u>PROPOSED AMENDMENT</u>
	<p>Purchasing Ordinance to contract for supplies and services that would increase the total Board-authorized budget – such actions would need Board approval.</p> <p>The amendments to former Subsection C (now Subsection B) add the following delegated authorities to the Executive Director: i) to execute any amendments to Purchase Orders and contracts where the sole purpose of the amendment is to document a legal change in name of the Contractor or Supplier; ii) to execute any assignments of Purchase Orders or contracts, provided that the original party thereto, or a party wholly owned or controlled by that original party, remains liable thereunder; and iii) to execute any amendments to Purchase Orders or contracts where the sole purpose is to extend the term by up to one year.</p>
<p>5. Formal Competitive Procurement Procedures – Public Works, Goods & General Services</p>	<p>Proposed amendments to Subsection D expressly allow for electronic submission of bids</p> <p>Proposed amendments to Subsection I as well as Sections 12 and 14 provide the ability of the Principal Engineer, as well of the Director of Engineering the ability to extend the commencement or completion time of a contract and to approve plans and specifications in advance of construction.</p>
<p>7. Exceptions to, or Waiver of, Formal Competitive Procurement Procedures.</p>	<p>Amendments to Subsection B clarify the conditions upon which the Board, or the Executive Director for contracts within his or her Contracting Authority, can waive Formal Competitive Procurement procedures, including circumstances where calling for bids is impractical, where an alternative bidding procedure is in the best interests of the Port, and/or in circumstances where waiver of formal competitive procedures is in the best interests of the Port.</p> <p>Amendments to Subsection C clarify the timing for when the Executive Director will inform the Board: i) of a declaration of an Emergency (not later than seven (7) days after such declaration); and ii) of any actions taken pursuant thereto (at the next regularly scheduled Board meeting). They also clarify that the Board shall review the circumstances of the Emergency at the next regularly scheduled Board meeting and, to the extent further actions are required, authorize the Executive Director to take such actions.</p>
<p>9. Protest Procedures for Bids, Request for Proposals, and</p>	<p>The proposed amendments to Subsection A (which requires, among other things, that all protests be in writing) eliminates the obligation of a protestor to transmit a copy of the protest to all other bidders.</p>

<u>SECTION(S)</u>	<u>PROPOSED AMENDMENT</u>
Request for Qualifications.	
12. Application of Law to Public Works Contracts.	<p>The proposed amendments in Subsection A add language to clarify that the Port is exempt from the Public Contract Code regarding and notwithstanding the provisions of Public Contract Code section 1100.7.</p> <p>The proposed amendments to Subsection B add language to clarify the law applicable to a Port Public Works contract. Generally speaking, the applicable law is the law 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 such plans and specifications pursuant to his/her delegated authority to do so.</p>
19. Surplus Supplies.	The proposed amendments to Subsection B change the threshold for Executive Director authority to dispose of surplus Supplies from \$20,000 to \$50,000.

BUDGET & STAFFING

Certain of the proposed amendments will further streamline Port purchasing procedures, which, in turn, will increase staff efficiency and result in a savings of Port staff time to execute administrative type items without requiring Board agendaizing and resolutions. Otherwise, the proposed action does not have any budget or staffing impact.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The matters included in this Agenda Report do not fall within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA), and the provisions of the MAPLA do not apply.

STRATEGIC PLAN

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Business Plan (2018-2022).

<https://www.portofoakland.com/wp-content/uploads/Port-of-Oakland-Strategic-Plan.pdf>

- Goal: Improve Customer Service

- Goal: Pursue Employee Excellence

The ordinance would further clarify the Board's delegation of duties and powers and promote the efficient management of Port operations.

LIVING WAGE

Living wage requirements, in accordance with the Port's Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the "Living Wage Regulations"), do not apply because the requested action is not an agreement, contract, lease, or request to provide financial assistance within the meaning of the Living Wage Regulations.

SUSTAINABILITY

Port staff have reviewed the Port's 2000 Sustainability Policy and did not complete the Sustainability Opportunities Assessment Form. There are no sustainability opportunities related to this proposed action because it does not involve a development project, purchasing of equipment, or operations that presents sustainability opportunities.

ENVIRONMENTAL

The California Environmental Quality Act (CEQA) Guidelines, Section 15061(b)(3) ("the general rule") states that CEQA applies only to projects that have the potential for causing a significant effect on the environment. No such effect is anticipated here.

GENERAL PLAN

This action does not change the use of any existing facility, make alterations to an existing facility, or create a new facility; therefore, a General Plan conformity determination pursuant to Section 727 of the City of Oakland Charter is not required.

OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)

This action is not subject to the Port's Owner Controlled Insurance Program (OCIP) as it is not a capital improvement construction project.

OPTIONS

- Adopt and approve the proposed amendments to the Purchasing Ordinance. This is the recommended action.
- Direct staff to adopt different amendments to the Purchasing Ordinance.
- Do not amend the Purchasing Ordinance and leave it as it is.

RECOMMENDATION

Staff recommends that the Board approve and adopt an ordinance amending and superseding the Purchasing Ordinance, effectuating the revisions described in this Agenda Report and the attachment hereto, which redlines the proposed changes against the current Purchasing Ordinance.

DRAFT

Exhibit “A”

PURCHASING AUTHORITIES AND PROCEDURES

(ADOPTED: ~~FEBRUARY 26, 2015~~; ____; PORT ORDINANCE NO. ~~4324~~) ____)**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. ~~“Budgeted supplies or services”~~ shall mean ~~those supplies or services for which the costs of purchasing or contracting are included in a program, public works project, supplies or services line item in the operating or capital improvement budget adopted by the Board.~~
- A. ~~“Board”~~ shall mean ~~the Board of Port Commissioners of the City of Oakland.~~
- B. ~~“Chief Engineer”~~ shall mean ~~the Chief Engineer of the Port, and shall include any employee of the Port delegated the authority to perform the duties of the Chief Engineer, as specified in writing.~~
- B.C. ~~“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 Purchase Order with the Port to sell suppliesSupplies or provide servicesServices to the Port.~~
- D. ~~“Director of Engineering”~~ shall mean ~~the Director of Engineering of the Port, and shall include any employee of the Port delegated the authority to perform the duties of the Director of Engineering, as specified in writing.~~
- C.E. ~~“Emergency”~~ shall mean ~~a sudden, unexpected occurrence that poses a clear and imminent danger, or that disrupts essential operations of the Port, or presents an immediate compliance risk, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services or business operations.~~
- D.F. ~~“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 mean the Executive Director or an officer or 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.G. ~~“Executive Director contracting authority:Contracting Authority”~~ shall mean ~~the Executive Director’s authority to execute any purchasePurchase of, or contract for supplies, Supplies or servicesServices pursuant to the Board’s delegation of authority set forth in Section 3 (A) of these Purchasing Procedures.~~
- F.H. ~~“Formal competitive procurementCompetitive Procurement” or “formal competitive solicitationFormal Competitive Solicitation”~~ shall mean ~~the formal process of advertising and soliciting bidscompetitive process of soliciting bids, formal requestRequest for proposalsProposals or formal requestRequest for qualificationsQualifications as set forth in Section 5 of these Purchasing Procedures and~~

Section 6 of these Purchasing Procedures required for the procurement of ~~supplies~~Supplies or ~~services at or~~Services above the thresholds set forth in Section 4 of these Purchasing Procedures.

G-I. **"General ~~services~~Services"** shall mean general labor services that are not considered ~~professional services.~~Professional Services.

H-J. **"Informal ~~competitive procurement~~" or "informal competitive solicitation~~Competitive Procurement~~" or "Informal Competitive Solicitation"** shall mean the informal method of obtaining multiple price quotes or proposals for the procurement of ~~supplies~~Supplies or ~~services~~Services that are at or below the ~~formal competitive procurement~~Formal Competitive Procurement threshold set forth in Section 4 of these Purchasing Procedures as established by the Executive Director by administrative procedures.

K. **"Principal Engineer"** shall mean a Principal Engineer, and shall include any employee of the Port delegated the authority to perform the duties of a Principal Engineer, as specified in writing.

I-L. **"Professional ~~services~~" or "consulting services"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~~Supplies and/or ~~services~~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~~Services and/or ~~supplies~~Supplies. Examples of ~~professional services~~Professional Services that are advisory, or requiring licenses or technical skills include, but are not limited to, ~~services provide~~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~~Supplies and ~~services~~Services include, but are not limited to, landscaping maintenance, parking management, facilities security services, and building maintenance. Notwithstanding the above, ~~this definition~~Professional Services shall not include contracts for ~~services~~Services between the Port and the City of Oakland or another public entity. ~~This definition~~Professional Services shall not include ~~public works~~Public Works, except for contracts where there are ancillary or de minimus ~~Public Works~~Public Works components (less than fifteen percent (15%) of the total scope of services).

J-M. **"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~~Request for ~~proposal~~Proposals or ~~request~~Request for ~~qualifications~~Qualifications.

K-N. **"Public ~~works~~" means~~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~~Supplies necessary for the performance of such work. A **"public works contract"** ~~is~~Public Works Contract shall mean a contract for such work and ~~supplies~~Supplies.

L-O. **"Purchase"** shall mean and include rental ~~or,~~ lease ~~of supplies as well as,~~ or purchase of

Supplies or Services.

- M.P. **“Purchase orderOrder” 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 purchasePurchase, including term, price, performance or delivery schedule (which may be one specific date or repetitive throughout the term of purchase-orderPurchase Order), delivery location, specifications of the suppliesSupplies and —/or services, applicableServices, insurance requirements, warranty and/or indemnity requirements, and payment terms. The issuance of a purchase-orderPurchase Order shall constitute an offer of a contract and the supplier's first delivery of suppliesSupplies or commencement of performance of serviceServices shall constitute the acceptance of a contract that is binding on the Port and the supplierSupplier.
- Q. **“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.
- N.R. **“Request for proposal (Proposals)” (“RFP”) or “requestRequest for qualifications (Qualifications)” (“RFQ”)** shall mean a formal-competitive-procurementFormal Competitive Procurement procedure through invitation to submit proposal and/or qualifications applying to, but is not limited to, contracts for professional, technical or specialized servicesProfessional Services.
- S. **“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.T. **“Services” (or “Service”)** shall mean and include labor, general services, professional services, consulting services, or public worksGeneral Services, Professional Services, or Public Works, or a combination thereof.
- U. **“Subcontractor”** shall mean a person, firm, corporation, **“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.
- P.V. **“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 contractorContractor or another subcontractorSubcontractor (but not the Port) to perform work or servicesServices required under a contract for suppliesSupplies or servicesServices.
- Q.W. **“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~~REQUIREMENTS AND ~~THE EXECUTIVE DIRECTOR~~DIRECTOR'S AUTHORITY:

All ~~purchases~~Purchases of, or contracts for ~~supplies, Supplies~~ and ~~services~~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~~Purchase Order as set forth below without previous specific action of the Board.

A. **Executive Director's delegated authority for ~~budgeted supplies~~Supplies or services (~~\$150,000 for professional services and \$250,000 for all other supplies and services~~):**Services: The Executive Director is hereby delegated the authority to execute any ~~purchase of~~Purchase Order or contract for ~~budgeted professional~~ Professional services ~~Services~~ of less than or equal to one hundred and fifty thousand dollars (\$150,000), and for all other ~~budgeted~~ Supplies ~~supplies~~ or ~~services~~ 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 ~~as~~ the Executive ~~Directed~~Director has under this Section 3 with respect to ~~contract~~contracts for special counsel, legal experts ~~and (including technical experts related to legal assistant~~matters), legal assistants, or research services.

~~B. **Executive Director's delegated authority for unbudgeted supplies and services (~~\$100,000 all supplies or services~~):** The Executive Director is hereby delegated the authority to execute any purchase of or contract for all unbudgeted supplies and services of less than or equal to one hundred thousand dollars (\$100,000). The Port Attorney is hereby delegated the same authority as the Executive Directed has under this Section 3 with respect to contract for special counsel, legal experts and legal assistant 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: ~~(1) the Executive Director contracting authority~~Contracting Authority set forth in ~~paragraph Section 3(A) above in instances where the Board has not approved the specific contracts or (2) the total contract amount or contract term approved by Board by resolution.~~

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~~Purchase may be split or separated into smaller work orders, projects, or ~~purchases~~Purchases for the purpose of evading the ~~competitive procurement~~Contracting Authority or Formal Competitive Procurement or other requirements set forth in these Purchasing Procedures.
- D. **Validity of contracts.** Legislative actions of the Board approving or authorizing the execution of any contract ~~is~~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 ~~and~~, is signed and approved as to form and legality by the Port Attorney~~;~~, and is delivered to the other contracting party.
- E. **Change orders.**~~The Executive Director is authorized to execute change orders to public works contracts provided that the aggregate of the contract amount (inclusive of the change order amount) does not exceed: (1) the Executive Director contracting authority in instances where the Board has not approved the specific public works contracts or appropriated funds for the instant projects or (2) the budget or funds appropriation approved by the Board by resolution or ordinance for the public works contract or project that is the subject of the contract.~~
- F. **Emergency procurement.** In the case of an ~~emergency~~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~~Purchase Order without advertising or previous specific approval or authorization by the Board, for ~~supplies~~Supplies or ~~services~~Services or a combination thereof, to be furnished to the Port. Any action to execute such contract or ~~purchase~~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~~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~~Supplies, Public Works, and general services~~General Services (excluding professional service).~~Professional Services.** Formal ~~competitive procurement~~Competitive Procurement procedures set forth in Section 5 shall be followed for procurement by bidding of ~~supplies, public works contracts~~Supplies, Public Works Contracts and ~~services~~Services, or combination, other than ~~professional services~~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~~Professional Services.** Formal ~~competitive procurement~~Competitive Procurement procedures set forth in Section 6 shall be followed for procurement of ~~professional services~~Professional Services exceeding \$150,000.

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~~Supplies or ~~services~~Services subject to ~~formal competitive solicitation~~Formal Competitive Solicitation pursuant to Section 4-~~(A.)~~(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~~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~~Supplies or ~~general services~~General Services, the ~~Port's~~ Executive Director may require bid security if he or she deems it appropriate considering the business needs and the nature of the ~~supplies~~Supplies or ~~general services~~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~~security shall be forfeited. Upon forfeiture of the bid ~~Security~~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 ~~herein~~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 ~~shall be~~ 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~~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~~Supplies or ~~general services~~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. The time and place designated by the Secretary or the Purchasing Manager in the notice inviting bids may include submission of the bid via electronic mail or depositing in an electronic portal or box on a before a designated date and time. 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 ~~Executive Director contracting authority~~Contracting Authority, may reject ~~any and~~ 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~~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. ~~In the event that~~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~~Supplies and ~~services~~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~~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~~Supplies: When the Executive Director, in his or her sole discretion,

deems a contract for ~~supplies~~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~~Purchase of ~~supplies~~Supplies in an amount equal to at least twenty-five percent (25%) of the total amount of the contract price.

3. For ~~services~~Services other than ~~public works~~Public Works: When the Executive Director, in his or her sole discretion, deems a contract for ~~services~~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~~Purchase of ~~services~~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~~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.

~~4.2. For Public Works Contracts, each of the Chief Engineer, and the Director of Engineering, and the Principal Engineer 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 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~~Contractor to complete ~~his~~ 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~~Contractor shall not be paid or allowed any further compensation for any work done by ~~him or her~~ 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~~Contractor and ~~his or her~~its surety shall be liable to the Port for all loss or damage which the Port may suffer on account of ~~his or her~~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~~Services performed or ~~purchase~~Purchase the equipment or ~~supplies~~Supplies without further complying with provisions of these Purchasing Procedures.
- L. **Rejection of bids:** The Board, or the Executive Director for procurements within the ~~Executive Director contracting authority~~Contracting Authority, may reject any and all ~~bids~~, and ~~re-advertise for~~ bids.

SECTION 6 – FORMAL COMPETITIVE PROCUREMENT PROCEDURES (REQUEST FOR PROPOSAL (PROPOSALS (“RFP”)) AND REQUEST FOR QUALIFICATION (QUALIFICATIONS (“RFQ”)) FOR PROFESSIONAL PROFESSIONAL SERVICES:

~~Contract~~Contracts for ~~professional services~~Professional Services subject to ~~formal competitive solicitation~~Formal Competitive Solicitation pursuant to Section 4-~~(B-)~~ shall be selected through a RFP or RFQ:

- A. **Advertising or solicitation:** ~~In order to~~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 ~~RFP’s~~RFPs or ~~RFQ’s~~RFQs by any one of the following methods:
1. soliciting responses from selected ~~contractors~~Contractors known in the relevant industry or profession to provide the required ~~professional services~~Professional Services;
 2. advertising in publications or media likely to reach or to be read by relevant ~~contractors~~Contractors; or
 3. soliciting responses from ~~contractors~~Contractors that have provided the same or similar ~~professional services~~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~~Professional Services shall be based on demonstrated competence and qualifications for the types of ~~services~~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 ~~S~~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. **No Responsive Proposal Received:** If no responsive proposal is received after advertising as required by these Purchasing Procedures, the Executive Director or the Board may proceed to hire or have the Professional Services performed without further

complying with provisions of these Purchasing Procedures.

- C.D. Administrative procedures:** The Executive Director shall adopt administrative procedures setting forth the procedures for issuance of ~~RFP's~~RFPs and ~~RFQ's~~RFQs and the award of ~~professional services~~Professional Services contracts.

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

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

- A. **Informal ~~competitive~~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 procurementFormal Competitive Procurement procedures.** Upon the finding and determination in each applicable instance by the Board, or by the Executive Director for contracts within the ~~Executive Director contracting authority~~Contracting Authority, that any of the following conditions exist, the ~~formal competitive procurement~~Formal Competitive Procurement procedures shall be waived and shall not apply.

~~1. To contracts involving professional services;~~

~~2. When 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, system or equipment at the Port;~~

~~3.1.~~ When calling for bids on a competitive basis is impracticable, unavailing, or impossible;

~~4.2.~~ When it is in the best interests of the Port to waive ~~formal competitive procurement~~Formal Competitive Procurement procedures; or

~~5.3.~~ When an alternative competitive procurement procedure adopted by the Board, or by the Executive Director for contracts within the ~~Executive Director contracting authority~~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~~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~~Emergency and procure the necessary equipment, ~~services~~Services, and ~~supplies~~Supplies for those purposes, without giving notice for bids to let contracts or follow the ~~formal competitive procurement~~Formal Competitive Procurement procedures.

~~2. If the Executive Director orders any action specified in Paragraph (C)(1) of this Section, not later than seven days after the action taken by the Executive Director, or at its next regularly scheduled meeting if that meeting will occur not later than 14 days after the action, and at least at every regularly scheduled meeting thereafter until the action is terminated, the Executive Director shall inform the Board and the Board shall review the circumstances and findings of an emergency to determine, by a four-fifths vote, that there is a need to continue the action.~~

2. The Executive Director shall inform the Board of the declaration of an 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~~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. ~~Contract with supplier awarded contracts~~Contracts for the same ~~supplies~~Supplies or ~~services~~Services awarded by the California Department of General ~~services~~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~~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 ~~of, or~~ repair of any finished products, materials or equipment as a ~~service~~Service performed by the manufacturer or ~~supplier~~Supplier of the same product, materials, or equipment;

6. Performance of ~~public works~~Public Works by the Port with its own employees; or

6-7. For Sole Source contracts.

SECTION 8 – GENERAL PROCUREMENT REQUIREMENTS:

Port procurements must adhere to the following general requirements:

A. **Informal ~~competitive~~Competitive Procurement procedures:** All ~~purchases~~Purchases for ~~supplies~~Supplies or ~~services~~Services not requiring the application of or excepted from ~~formal procurement~~Formal Competitive Procurement procedures set forth in these

Purchasing Procedures shall be ~~purchased~~Purchased by any applicable ~~informal competitive~~Informal Competitive Procurement administrative procedures established by the Executive Director.

- B. **Unauthorized ~~purchases~~Purchases:** Any ~~purchase~~Purchase or contract for ~~supplies~~Supplies or ~~services~~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~~Purchases shall be invalid and shall not bind the Port. Any ~~purchases~~Purchases or contracts made in violation of these Purchasing Procedures or by persons not authorized under these Purchasing Procedures to make ~~purchases~~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~~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~~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~~General Services by contract, regardless of nature or term, is in the public interest because of economy or better performance; ~~and~~
- ~~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 ~~know~~knows or has reason to know he or she has a financial interest. For the purposes of ~~determination~~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~~Supplies, Services, or both. However, a person, firm, entity, or corporation shall be allowed to make subcontract bids or proposals to multiple ~~Prime~~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~~Supplies and ~~services~~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~~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 ~~of the Board~~ 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. The protest may be submitted via U.S. mail, express mail or via electronic mail, as long as it is submitted and received by the Secretary on the date and time as required by this paragraph.
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.
 - ~~4. Any party filing a protest against the award of a contract pursuant to the Section 5 (E) of these Purchasing Procedures (bid award) must transmit a copy of the initial protest document and any attached documentation concurrently to all other bidders and any other parties that have requested such notice at the time of the filing of the protest.~~
- 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~~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~~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 ~~Executive Director contracting authority~~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 ~~attorney's~~s 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~~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~~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~~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~~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~~Subcontractor information by bidders be after the date on which the Port approves the design for construction of the project. ~~In the event that~~If the work of a contract is separated into more than one phase, the Port shall specify dates for the submission of ~~subcontractor~~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~~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~~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~~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~~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~~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~~Contractor and ~~subcontractor~~Subcontractor shall pay to all its workers employed on ~~public works~~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:** California Public Contract Code Section 1100.7 provides that the provisions of the California Public Contract Code apply to charter cities in the absence of an express city charter provision or ordinance exemption. As allowed by California Public Contract Code Section 1100.7, 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~~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~~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 or the Principal 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~~standard contract ~~Provisions~~provisions:** The Board may, by resolution, adopt various standard contract provisions for ~~public works contracts~~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 ~~of the Board~~ 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~~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~~Supplies or ~~services~~Services with any ~~contractor~~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 Direction, 530 Water Street, Oakland, California 94607”~~”.”~~

7. SECTION 14 – DELEGATION TO ~~CHIEF ENGINEER AND THE DIRECTOR OF ENGINEERING:~~

In addition to the Board, the Director of Engineering, ~~and the Chief Engineer,~~ and the Principal 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~~Supplies and ~~services~~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~~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~~Supplies towards the ~~purchase~~Purchase of new ~~supplies~~Supplies, regardless of the value.**
- B. **Dispose of the surplus ~~supplies~~Supplies with an aggregate value less than ~~twenty~~or equal to fifty thousand dollars (~~\$2050,000~~). ~~Except as otherwise prohibited by law, the Executive Director may dispose of surplus supplies~~ which have become unsuitable for Port use, by selling at public auction or private sale, scrapping or recycling, destroying or abandoning, and ~~and~~/or donating to public organizations, charitable and civic or non-profit organizations.**

Disposal of surplus ~~supplies~~Supplies exceeding an aggregate value of ~~twenty~~fifty thousand dollars (\$~~2050,000~~) shall require Board approval.

SECTION 17 – FORBIDDANCE OF COLLUSION WITH BIDDERS AND PROPOSERS:

Any officer ~~or employee~~ of the Port, ~~or of any department or division thereof,~~ who shall aid or assist a bidder or a ~~proposer~~Proposer in securing a contract to furnish labor, material, equipment, ~~supplies~~Supplies, or ~~services~~Services at a higher price than that proposed by any other bidder or a ~~proposer~~Proposer, or who shall favor one bidder or a ~~proposer~~Proposer over another by giving or withholding information or who shall willfully mislead any bidder or a ~~proposer~~Proposer in regard to the character of the material or ~~supplies~~Supplies called for, or who shall knowingly accept materials or ~~supplies~~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~~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~~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:

~~In the event that~~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.