

**PORT OF PITTSBURGH COMMISSION
CONTRACTING AND PROCUREMENT
POLICIES AND PROCEDURES**

1. PURPOSE

To provide the Port of Pittsburgh Commission (the "Commission") with a standard approach to the procurement of services and commodities and to provide a guide for individuals involved in the contracting process. These policies and procedures have been prepared in accordance with the Commission's enabling legislation and the Procurement Act of the Commonwealth of PA.

2. SCOPE

These policies and procedures apply to any contract for procurement of commodities or services (except as set forth hereinafter) in which the Commission is a participant, regardless of the source of funds, unless otherwise specifically provided for by law. The Act allows special procedures for contracts for procurement of professional services, as described in the Act, for contracts in support of economic development projects as such term is defined in the Act, and to any other contracts specified by the provisions of the Act.

3. DEFINITIONS

- a. **Amendment.** A written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provisions of any contract.
- b. **Assignment.** The transfer or taking over by another of a contract or any part of a contract or any contractual right or duty.
- c. **Basis for Payment.**
 - 1. **Reimbursement/Invoice Basis.** Payment based on submission of a request for reimbursement or of an invoice after cash expenditures have been made, services have been performed or goods have been received.
 - 2. **Disbursement Draw-down Basis.** Payment made to coincide with the expenditure of cash by the recipient on a grant or provider contract.

3. **Working capital Basis.** Payment made to cover estimated cash expenditures during a predetermined initial period of a grant or provider contract followed by periodic replenishments of actual cash expended during succeeding periods.
- d. **Certified Minority Business Enterprise/Women Business Enterprise, (MBE/WBE).** A small business that has applied to the Department of General Services, BCABD, and received certification as an MBE/WBE.
- e. **Comptroller.** The chief financial accounting officer of the Commission appointed by the Governor and responsible to the Deputy Secretary for Comptroller Operations in the Office of the Budget.
- f. **Contract.** A written agreement between the Commission and another party that creates, modifies, or terminates a legal relationship. For the purpose of these policies, a contract may be categorized as:
1. **Service Purchase Contract.** An agreement to acquire services or commodities, or lease personal property for the direct benefit or use of the Commission.
 2. **Grant or Provider Contract.** An agreement to fund, in whole or in part, the accomplishment of a public purpose or to provide assistance to third parties in support or stimulation of programs authorized by federal or state statutes.
- g. **Emergency.** Existence of a threat to public health, welfare, or safety, or circumstances outside the control of the Commission creating an urgency of need which does not permit the delay involved in using formal, competitive methods.
- h. **Grant.** A furnishing by the Commission of assistance, whether financial or otherwise, to any subdivision of the Commonwealth, individual, institution, and/or organization to support a Commission program authorized by law. The term does not include an award whose primary purpose is to procure construction for the grantor. A contract resulting from such an award is not a grant but a procurement contract.
- i. **Invitation for Bids ("IFB").** All documents, including those either attached or incorporated by reference, used for soliciting bids.
- j. **Multi-term Contract.** A contract for supplies, services, or construction whose term covers more than one Commission fiscal year.

- k. **Party.** Any person, corporation, unincorporated association, partnership, state governmental agency, political subdivision, authority, another state, or the government of the United States.
- l. **Requests for proposals ("RFP").** All documents, including those either attached or incorporated by reference, used for soliciting proposals.
- m. **Responsible Bidder or Offeror.** A party who possesses the capability in all respects to perform fully the contract requirements, and the integrity and reliability to assure good faith performance.
- n. **Responsive Bidder or Offeror.** A person who has submitted a bid, or proposal, which conforms in all material respects to the invitation for bids or request for proposals.
- o. **Services.** The furnishing of labor, time, or effort by a contractor not involving the delivery of a specific end product other than drawings, specifications or reports which are merely incidental to the required performance. The term shall include the routine operations or maintenance of existing structures, buildings or real property. The term does not include employment agreements or collective bargaining agreements. The term includes utility services and those services formerly provided by public utilities such as electrical, telephone, water and sewage service. Professional services as described in the Act may be exempt.
- p. **Specifications.** A description of the physical or functional characteristics or the nature of a supply, service or construction item. It may include a description of any requirements for inspecting, testing, or preparing a supply, service or construction item for delivery.
- q. **Subcontractor.** An individual, business firm, university, governmental entity, or nonprofit organization contracting to perform part or all, of another's contract.
- r. **Work Statement.** A detailed description of services to be performed by a contractor.

4. RESPONSIBILITIES

- a. **Board of Directors (Board)** will approve all contracts or obligations in excess of \$5,000 entered into by the Commission by majority vote.
- b. **Chairman or Vice-Chairman or designee** shall sign all contracts and obligations of the Commission under the Seal of the Commission.

- c. **Secretary or Assistant Secretary or designee** shall attest to all contracts or obligations of the Commission.
- d. **Executive Director** has primary responsibility for insuring that all contracting actions of the Commission are in compliance with the enabling legislation of the Commission and the policies and procedures contained herein. He or she insures that responsibilities for the various contracting functions are assigned to specific individuals and that Commission policies and procedures pertaining to the contracting process are developed and coordinated with the Comptroller. He or she also insures that the Comptroller is given the opportunity to review invitations for bids and requests for proposals and to participate in proposal evaluation and contract negotiations.
- e. **Comptroller** reviews and approves all contracts entered into by the Commission for availability of funds, fiscal responsibility and budgetary appropriateness.
- f. **Commission Legal Counsel** may draft, and must review and approve for form and legality all contracts entered into by the Commission. In addition, he or she advises the Commission in all legal matters surrounding contractor performance, adherence to laws, regulations and other legal or policy constraints.
- g. **Attorney General** reviews and approves contracts for form and legality.
- h. **Vendor Services Section, Bureau of Purchases** receives and processes information on proposed contracts for publication on the DGS website (and in the Pennsylvania Bulletin, upon request only) about requests for bids (invitations for bids and requests for proposals) for all professional services and bids for supplies and materials and/or construction of \$10,000 or more.
- i. **Treasury Department** receives and files for public reference copies of all contracts in the amount of \$5,000 or more.

5. POLICY

- a. **Contract Use.** Contracts may be used when:
 - 1. Commodities or services are needed to support the Commission's mission.
 - 2. In-house capability has been considered and found to be inadequate or unavailable.

3. Results from a contract can be anticipated.
 4. Anticipated results justify costs.
 5. The contract will not represent an employee-employer relationship and is not for managerial duties.
 6. The contract is needed to satisfy the terms of a federal or state grant program.
- b. **Contract Authorization.** No contract shall be implemented, nor shall any services be accepted or work begun on any contract that has not been processed and approved in accordance with the policies and procedures contained herein, except for emergency purchases as outlined in the following pages. Under no circumstances shall payments be made against a contract that has not been approved in accordance with these procedures.
- c. **Emergency Purchases.** Emergency purchases are authorized, without the normal contracting procedures contained herein, when it is determined by the Board or its designee that there exists a threat to public health, welfare or safety or there exists circumstances outside the control of the Commission that creates an urgency or need which does not permit the delay involved in using more formal competitive methods for acquiring such supplies, materials and/or services.
- d. **Multi-term Contracts.** Unless otherwise provided by law, a contract may be entered into for up to five years. The term of the contract and conditions of renewal or extension shall be included in any invitation for bid or request for proposal. Funds must be available for the current fiscal period at the time of contracting and payment and performance obligations for succeeding fiscal years should be shown as a contingent commitment and shall be subject to the availability and allocation of funds therefore.
- e. **Sole Source Contracts.** Contracts will normally be awarded on a competitive basis. Contracts may be awarded on a sole source (non-competitive) basis with Board approval when:
1. Only a single contractor is capable of providing the supply, service or construction;
 2. A state or federal statute or regulation or the Commission's enabling legislation exempts the supply, service or construction from the competitive process;
 3. The total cost of the services is less than \$10,000;

4. It is clearly not practical to use the competitive proposal procedure;
 5. The services involve the repair, modification or calibration of equipment and they are to be performed by the manufacturer of the equipment or by the manufacturer's authorized dealer, provided the Board or its designee determines bidding not to be appropriate under the circumstances;
 6. The contract for supplies or services is in the best interest of the Commonwealth as determined by the Commission;
 7. The written determination authorizing sole source procurement shall be included in the contract file.
- f. Subcontracts.** Contracts shall identify any known subcontractor and shall contain a provision that requires the prime contractor to obtain prior Commission approval of other subcontractors or the assignment of any rights or responsibilities.
- g. Contract Payments.** Payments on contracts will normally be made on a reimbursement/invoice basis. Other methods will not be approved or authorized except when required by law or in accordance with this paragraph and approved by the Comptroller.
1. Payments on grant or provider contracts with a governmental or other non-profit organization may be made on a disbursement drawdown basis.
 2. Payments on grant or provider contracts with a non-profit organization other than a governmental entity may be made on the working capital basis. Working capital basis payments should only be approved when it has been determined that the non-profit entity does not possess sufficient working capital, or unless specifically approved by the Commission.
 3. Payments in advance on annual maintenance contracts to guarantee service on an on-call basis may be made only when it is required by the contractor's standard maintenance agreement and the contractor will not negotiate a contract without this term or condition included. Advance payments cannot be made for services to be performed in a contingent year.
 4. Payments in advance on contracts may be made only when a cost savings to the Commission can be realized through the advance payment and it is specified in the terms of the contract.

- h. Reimbursing Contractors for Travel and Per Diem.** In those instances when it is appropriate to reimburse contractors for travel, lodging, and meals, reimbursement shall be at or below Commission rates and shall require the same documentation as required of Commission employees. The Commission may accept higher rates normally paid to a contractor, if those rates were approved by the firm's officials and published prior to entering into contract negotiations with the Commission. A copy of the minutes or other official document authorizing the rates shall be an attachment to the contract.
- i. Pen and Ink or Typewritten Changes to Contracts.** Any pen and ink, typewritten, or inter-lineated change to a contract provision shall be initialed and dated by the authorized representatives of the parties to the contract.
- j. Termination Provisions.** Contracts shall contain provisions that allow the Commission to terminate the contract for its convenience, unacceptable contractor performance, or lack of funds for the contract purpose.
- k. Contract Formats.** Contracts shall be prepared in one of the following forms:

 - 1. Form STD-278P, Service Purchase Contract.** This form may be used when services are of a routine, easily quantifiable nature and the terms and conditions printed on the reverse, as well as any additional terms and conditions included in a separate document as an addendum to the SPC, are sufficient for the purpose of the contract. The use of this form depends more on the type of service than the monetary consideration of the contract.
 - 2. Standard Contract Terms and Conditions For Services, Form STD-274.** This form must be made a part of the service bid/contract and the service purchase contract.
- l. Amendments.** An amendment shall be issued for any change to the terms, conditions, requirements, or costs of a contract except for change orders. Amendments shall require the signatures of the contractor and the same officials as the original contract. The maximum amount of a contract must be amended when additional funds or terms increase the monetary value of the original contract. To be valid, an amendment that increases the cost of a contract by more than 10% (up to 10% is a funding adjustment) must meet all the criteria necessary for a separate contract, including additional services.

- m. **Contract Document Identification.** Contracts, invitations for bids, and requests for proposals shall be numbered. All amendments shall be identified with the basic document number and appropriate amendment number.
- n. **Contract Signatures.** One copy (Commission's copy) of all contracts shall contain original signatures. Facsimile signatures may be used on other copies. Contracts shall contain the signatures of the contractor, the Executive Director (or designee), the Commission's Legal Counsel, the Comptroller (or designee), and the Attorney General (or designee).
- o. **Order of Preference.** If a dispute arises and the contract is silent, the order of preference in interpreting the contract shall be the contract, the request for proposal, and then the contractor's proposal. This is not intended to prevent the Commission from negotiating and inserting in the actual contract another order of preference for settling disputes.
- p. **Performance Bonds.** No contract shall be entered into for construction or improvement or repair of any project or portion thereof, unless the contractor provides sufficient surety or sureties approved by the Commission, and in an amount fixed by the Commission, for performance of the contract, and has complied with the provisions of the act of December 20, 1967 (P.L. 869, Section 385), known as the Public Works Contractors' Bond Law of 1967.
- q. **Standard Clauses for Construction Contracts.** All contracts that involve the construction, reconstruction, alteration, repair, improvement, or maintenance of public works, such as building, structure, highway, or bridge, shall include clauses to cover the following statutes:
 - 1. Steel Products Procurement Act (73 P.S. Section 1881);
 - 2. Trade Practices Act (71 P.S. Section 773.101);
 - 3. Public Works Contract's Bond Act of 1967 (8 P.S. Section 191) if the amount of the contract exceeds \$5,000;
 - 4. Resident Labor Requirement (43 P.S. Section 154); or
 - 5. Pennsylvania Prevailing Wage Act (43 P.S. Section 165-1) if the estimated cost of the total project is in excess of \$25,000.
- r. **Standardized Contract Clauses.** The Commission's legal counsel will develop, as necessary, standardized contract clauses to include in proposed contracts. The Commission shall periodically review and, as necessary, update standardized contract clauses.

1. **Insurance.** Contractor shall purchase and maintain at its expense, Workmen's Compensation Insurance and Comprehensive General Liability Insurance with the Commission named as an additional insured in amounts specified by the Commission.
2. **Hold Harmless.** Contractor shall be responsible for and agrees to indemnify and hold harmless the Commission and the Commonwealth from damages to property or injuries (including death) to any person(s) and any other losses, damages, expenses, claims, demands, suits, and actions by any party against the Commonwealth in connection with the work performed by contractor.
3. **Americans with Disabilities Act.** Contractor agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract. As a condition of accepting and executing any contract with the Commission, the Contractor agrees to comply with all regulations promulgated under Title II of the Americans with Disabilities Act 28 CFR 35.101 et seq., which are applicable to the benefits, services, programs, and activities provided by the Commission through contracts with outside contractors. The Contractor further covenants to be responsible for and agrees to indemnify and hold harmless the Commission from all losses, damages, expenses, claims demands, suits, and actions brought by any party against the Commission as a result of the Contractor's failure to comply with the provisions of Americans with Disabilities Act.

6. CONTRACTING PROCESS

- a. **General.** Fair and open competition is a basic tenet of public procurement. Such competition reduces the opportunity for favoritism and inspires public confidence that contracts are awarded equitable and economically. Since the marketplace is different for various services, the following is designed to provide the best competition for all services. It also permits less formal competitive procedures when the amount of the contract does not warrant the expense and time otherwise involved. IFB, RFP, small purchase, and contracts by negotiation are discussed in the following paragraphs and are recognized as valid competitive procurement methods when used in accordance with the criteria and conditions stated herein. Invitations for bids and requests for proposals will be used for most procurement. The procurement of supplies and materials which are unique and which cannot be obtained in the open market will not be subject to the requirements outlined below.

b. **Public Notice.** All IFBs and RFPs which involve the expenditure of moneys in the amount of \$10,000 or more, require that notice be published at least ten days before the award of any contract or the making of any purchase, in a newspaper of general circulation within the Port District.

c. **Invitation for Bids (IFB).**

1. **Use.** All contracts shall use an IFB unless such contract qualifies as an RFP, a sole source purchase, an emergency purchase or a small purchase contract. The IFB will include a complete description of the commodities or services required and all contractual terms, whenever practical, and conditions applicable to the procurement.

2. **Nondiscrimination.** Invitations for bids shall include a statement through the "Special Provisions" section, a notice to bidders that if a bid reflects the minimum participation level with OMWBE certified minority and/or women owned businesses there will be a presumption of responsibility in regard to nondiscrimination. If a bid does not reflect the minimum participation level, the Commission will evaluate the bidder's responsibility in regard to nondiscrimination. The IFB will include the MBE/WBE Contract Forms provided to the Commission by OMWBE. The IFB shall indicate that the Contract Forms must be completed and submitted with the bid.

3. **Bid Opening.** Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the IFB. The amount of each bid together with the name and address of each bidder and any other relevant information shall be recorded on Form STD-178, Invitation for Bids, or on the reverse side of Form STD-278P, Service Purchase Contract. The STD-178 and the winning bid must be attached to the contract when it is processed for signature. The record shall be open to the public.

4. **Bid Acceptance and Bid Evaluation.**

(a) Bids shall be unconditionally accepted without alteration or correction, except as authorized herein. Bids shall be evaluated based on the requirements stated in the IFB. The IFB shall state the evaluation criteria to be used. No criteria may be used in bid evaluation that is not stated in the IFB. The Commission's ability to reject as non-responsive any bid which does not meet the description of

service required is inherent in the definition of responsive bidder. This procedure does not permit a contract to be awarded to a bidder submitting a wider scope of services than the minimum required by the IFB unless that bidder also has the bid price evaluated lowest in accordance with the objective criteria stated in the IFB. This procedure does not permit discussions or negotiations with bidders after receipt and opening of bids. The Commission, acting through its designee, shall accept the lowest bid or bids from a responsible bidder, provided that the kind and quality of the materials or services are equal. The Commission shall have the right to reject any and all bids or select a single item from any bid.

- (b) The Commission, or its designee, will review non-selected IFBs for responsiveness and responsibility. IFBs reflecting the minimum participation level will be presumed responsible bids for the purpose of nondiscrimination.

5. **Correction or Withdrawal of Bids.** Correction or withdrawal of bids before or after bid opening requires careful consideration to maintain the integrity of the competitive bidding system to assure fairness and to avoid delays or poor contract performance. While contractors should be bound by their bids, circumstances frequently arise where correction or withdrawal of bids is proper and may be permitted, provided sufficient written justification is submitted by the contractor.
6. **Award.** The contract shall be awarded within 60 days of the bid opening by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the IFB. Bids may be awarded more than 60 days from the date of bid opening by written consent of the apparent successful bidder. The Commission shall have the right to reject any or all bids or select a single item from any bid. Within 30 days of the bid opening the Commission shall, if bid security was required by the invitation for bids, return the bid security to all but the lowest and next-to-lowest bidders then under consideration for contract award.
7. **Multi-step sealed bidding.** When it is considered impractical to prepare initially a procurement description to support an award based on price, an IFB may be issued requesting the submission of unpriced offers, to be followed by an IFB limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

d. Request for proposals (RFP).

1. **Use.** An RFP may be used to obtain services falling within the scope of these policies and procedures when the work statement is detailed, the Commission is seeking a contractor's solution to a management problem, and/or criteria is established. In addition to cost, the technical factors will be used in evaluating proposals. The RFP requires detailed information from potential contractors concerning understanding of the problem to be solved, services to be provided, and the approach to be used in solving the problem or providing the service.
2. **Format and Content.** The RFP provides potential contractors with the information needed to prepare proposals that meet the Commission's needs. The RFP must contain the information in sufficient detail to ensure full and free competition among qualified contractors.
3. **Evaluation.** The relative importance of the evaluation factors shall be fixed prior to opening the proposals. The Comptroller shall be invited to participate in the evaluation as a nonvoting member of any evaluation committee.
4. **Discussion with responsible offerors and revision of proposals.** As provided in the RFPs, discussions may be conducted with one or more responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award, for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements and for the purpose of obtaining best and final offers. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
5. **Award of contract.** The responsible offeror whose proposal is determined in writing to be the most advantageous to the Commission, taking into consideration price and all evaluation factors, shall be selected for contract negotiation; provided, however, that the Commission shall have the right to reject any or all offers or select a single item, if feasible, from any offer. The Commission may negotiate any modifications to any proposal prior to award to best reflect the needs of the Commission. The Commission may award the contract to any proposal responsive to

the RFP even if the responsive proposal is not the lowest in cost, unless the RFP indicates that the lowest cost proposal shall prevail.

6. **Contract negotiation.** After selection, the Commission shall proceed to negotiate a contract with the selected offeror.
7. **Requirement for bid security.** Bidders or offerors may be required to provide bid or proposal security for construction contracts. Bid or proposal security shall be in the form of a certified or bank check or a bond provided by a surety company authorized to do business in this Commonwealth or another form of security as specified in the RFP. Bid security, if required, shall be at least in the minimum amount or percentage of the amount of the bid as shall be specified in the advertisement, the RFP. When the RFP requires security, noncompliance with the instructions in the RFP requires that the bid or proposal be rejected unless it is determined that the bid or proposal fails to comply with the security requirements in a non-substantial manner.
8. **Selection of professional services.** It is the policy of this Commission to publicly announce requirements for professional services and to award contracts for professional services on the basis of demonstrated competence and qualification for the types of services required whenever possible and whenever it is in the best interest of the Commission.
9. **Minority and Disadvantaged Businesses.** It is the policy of The Port of Pittsburgh Commission to assist minority and disadvantaged businesses in doing business with the Commonwealth.
 - a. Minority and disadvantaged businesses shall be included on solicitation mailing lists.
 - b. The PPC will assure that minority/disadvantaged businesses are solicited on any procurement for which the businesses may be suited.
 - c. The IFB/RFP will include the MBE/WBE Contract Forms provided to the Commission by the DGS Bureau of Contract Administration and Business Development (BCABD). The IFB/RFP shall indicate that the contract forms must be completed and submitted with the bid. Once a participation level has been determined, PPC will endeavor to insure that the agreed upon level of support is maintained throughout the term of the contract.

- e. **Small Purchases.** Records of all small purchases shall be retained by the Commission. The Commission is empowered to make the following types of small purchases:
 - 1. **\$5,000 or Less.** Services and commodities costing \$5,000 or less may be procured without bids. However, the Executive Director will ensure that costs are reasonable. This provision shall not be used for multiple procurements with the total cost of the commodities or services exceeding \$5,000.
 - 2. **\$5,001 to \$10,000.** Services or commodities costing more than \$5,001 but not exceeding \$10,000 will require a minimum of three written bids. Bids may be obtained by phone, email, and fax and confirmed in writing. A Form STD-278P, Service Purchase Contract, shall be used as the procurement document.
- f. **Controlling Authority.** In the event of any conflict between the terms of these policies and procedures and the Act, or these policies and procedures and the Procurement Act, the Act or the Procurement Act as the case may be shall prevail.

8. GUIDELINES FOR PPC PROCUREMENT CARD

- d. No cash transactions.
- e. Card limit \$3,000.
- f. No personal use.
- g. Personal use or any inappropriate use will result in loss of card, disciplinary action up to and including termination.
- h. Card must be reconciled at the close of each billing cycle.
- i. Expenditures must be "coded" in a timely manner. Cardholder must attend Commonwealth sponsored training in Precisa/Works.
- j. All receipts must be kept and available for review. Along with the receipt, a written explanation/justification of the purchase is required.
- k. No fixed assets may be purchased using the card.
- l. No travel related purchases can be done with the card.

- m. No automotive repairs/purchases or gasoline may be made using the card.
- n. No repetitive services may be procured with the card.
- o. Use of the card does not negate the need to competitively award contracts. This is not a way around any purchasing guidelines.
- p. Food, meals or beverages may not be purchased with the card.
- q. No sales tax should be paid on purchases.
- r. You may purchase expendable office supplies, housekeeping supplies, books, videos, memberships, subscriptions, postage, Fed-ex, water, registration, copying services, copier maintenance, food for meetings only and parking leases. Telephone and/or inter-net services may be paid as long as there is no up charge.
- s. Purchases against statewide contracts are prohibited.
- t. All purchases will be reviewed for propriety after the fact.