



City of Galveston

City Auditor's Office

Audit Plan
May 16, 2022
F&CPG – 2022 - 1

Port of Galveston Audit of Procurement Policies

Why We Did This Memo

On August 26, 2021, the Mayor and City Council approved the City Auditor's Audit Plan for the 2022 fiscal year. This audit plan included an audit on the Port of Galveston's procurement policies.

What We Did

We audited the procurement policies made available to us by the Port of Galveston for compliance with governmental procurement.

What We Found

There were no significant findings in our analysis. We have added fourteen (14) comments that may or may not benefit the Port of Galveston's procurement policies. We will leave the addition of these comments entirely up to the decision of The Port.

Comment 1: We included an example of a Mission Statement.

Comment 2: We replaced Code 2267 with Code 2269.

Comment 3: We included Manufacturer / Vendor Rebates.

Comment 4: We added P-Card and Travel Policies to the Index.

Comment 5: We replaced Code 2267 with Code 2269.

Comment 6: We included a Section for Definitions.

Comment 7: We replaced Code 2267 with Code 2269.

Comment 8: We include the wording Statues and Regulations.

Comment 9: We included wording for Unethical Behavior.

Comment 10: We included Manufacturer / Vendor Rebates.

Comment 11: We included Forensic Science as passed with Legislation 84.

Comment 12: We included LGC 2254 as passed with Legislation 84.

Comment 13: We included Government Codes 2252, 2270, and 2274.

Comment 14: We added P-Card and Travel Policies to the Index.

Office of The City Auditor

We would like to thank you for the opportunity to be of service to The Port of Galveston. We look forward to working with you on your drafts of Procurement Procedures and Procurement Controls.

All changes made by the City Auditor's Office are in blue and underlined. CS



Galveston Wharves

PURCHASING POLICY
OF THE
BOARD OF TRUSTEES OF THE GALVESTON WHARVES

Mission Statement Our mission is to facilitate the procurement of goods and services in an open, fair, transparent, economically competitive, and respectful process with the goal of maximizing taxpayers' dollars. Therein promotes and fosters a climate of good business relationships between our suppliers and the City(for Example El Paso Ex).

I. Policy.

The purpose of this Purchasing Policy of the Board of Trustees of the Galveston Wharves (the "Policy") is to provide guidelines and procedures to ensure that public funds under the management and control of the Board of Trustees of the Galveston Wharves (the "Port") are disbursed only when necessary and for properly procured goods and services, as required by local, State, and Federal law, and to communicate these guidelines and procedures to all employees and other persons who may participate in purchasing goods and services for the Port.

Port employees must comply with all applicable requirements of Article of the Galveston City Charter, Chapter 54 of the Texas Transportation Code, Chapters 252 and 27t of the Texas Local Government Code, Chapters 791, 2253, 2254 (Subchapter A), 2258, and 2269 of the Texas Government Code, and all other laws related to competitive bidding and purchasing, each as they may from time to time be amended (collectively, "Applicable Law"). As used in this Policy, the term "Bidding Threshold" means the lesser of (1) stated dollar amount applicable to an expenditure of funds by a municipality under Section 252.021 (a) of the Texas local government code, for which competitive bids or proposals are required, or (2) \$50,000. Additionally, and where applicable, Port employees must also comply with Federal procurement and payment requirements, including the requirements, set out in 2 C.F.R. Subpart D (2 C.F.R. 200.300 et seq

This Policy is intended to replace and supersede all previous Port policies, procedures, and directives concerning the purchasing or procurement of goods or services, all of which are

repealed by the adoption of this Policy. To the extent of any inconsistency between this Policy and the provisions of any Applicable Law, the Applicable Law will control.

II. General.

The Board of Trustees of Galveston Wharves shall, through the Procurement Department, a centralized procurement system for all purchases. Centralized procurement allows the Procurement Department to purchase all required goods and services for all Port departments. Centralized procurement aids in reducing purchasing costs, such as by avoiding erroneous or duplicative orders, and promotes advantages arising from volume discounts, lower transportation costs, and inventory management.

III. Purchasing Authority.

The Port Director has delegated the authority to approve all expenditures less than fifty thousand dollars (\$50,000), either in a single expenditure or in the aggregate over a calendar year to a single payee, provided the expenditure is made in compliance with the other provisions of these procedures.

The Port Director has also delegated the authority to approve any project expenditure that equals to or exceeds fifty thousand dollars (\$50,000), either in a single expenditure or in the aggregate over a calendar year to a single payee, provided that the Board has previously approved the funding for the project in an open meeting. Any expenditures of this nature shall be reported to the Board each month on the Port Director/CEO report. Expenditures that are equal to or exceed fifty thousand dollars (\$50,000) that are approved in the budget will require Board approval before the expenditure is incurred.

All other expenditures, other than those covered by the preceding paragraphs of this Section III, must be approved by the Board of Trustees of the Galveston Wharves.

IV. Procurement Methods

The Port may use a method other than competitive bidding under Texas law unless the Board of Trustees determines, by vote in a public meeting, that the method requested provides the best value for the proposed project. For purposes of these Procedures, competitive bidding includes Competitive Sealed Bid and Competitive Sealed Proposals, both of which are in accordance with Texas Local Government Code Chapter 252, Subchapter B; as well as "Cooperative Purchasing" as defined in Section VIII (A)(4) of the attached Procedure. When using the Competitive Sealed Proposals method, price may not be weighted less than 25% unless a lesser weight for a particular procurement has been approved by the Board in an open meeting. The Procurement Department must evaluate price separately from other criteria using objective methods. and has been approved by the Board in an open meeting. The Procurement Department. The Procurement Department must evaluate price separately from other criteria using objective methods.

V. Procedures

The Galveston Wharves, under the direction of the Port Director/CEO will set procedures regarding procurement including:

- I. Procedure Statement
- II. Scope
- III. Authority
- IV. Definitions
- V. Associated Materials and Policies
- VI. Purchasing Code of Ethics
- VII. Purchasing Procedure
 - A. Purchasing Authority
 - B. [Manufacturer/Vendor Rebates \(I included this\)](#)
 - C. Obligation of Funds
 - D. Request for Acquisition
- VIII. Competitive Bidding
 - A. Competitive Bidding
- IX. Professional Services
- X. Construction Projects
- XI. Sole Source Purchase, Single Source Purchase
- XII. Pricing and Award Procedures
 - A. Obtaining Prices
 - B. Awarding Contracts
 - C. Submission, Deadline.
 - D. Completeness
 - E. Sole Bids, Identical Bids
 - F. Separate, Sequential, or Component Purchases Statute
 - G. Preference for Recycled Materials, Environmental Practices
 - H. Preference for Local Businesses
 - I. Other General Requirements
- XIII. Emergency Purchases
 - A. Requisition of Emergency Purchases
- XIV. Purchase Order and Reporting Procedures
 - A. Issuance of Purchase Order
 - B. Receiving Report
- XV. Exemptions from Policy
- XVI. Support for Business
- XVI. Purchases Funded by Federal Grants and Agreements
- [XIX. P-Card Policy \(Does the Port have one?\)](#)
- [XX Travel Policy \(Does the Port have one?\)](#)

**PURCHASING PROCEDURES
OF THE
BOARD OF TRUSTEES OF THE GALVESTON WHARVES**

I. Procedure Statement

All purchasing must be in accordance with the laws of the State of Texas, including but not limited to Chapters 252 and 271 of the Texas Local Government Code, Article XII the City of Galveston Charter, Chapter 54 of the Texas Transportation Code, Chapters 791, 2253, 2254 (Subchapter A), 2258, and 2269 of the Texas Government Code, and all other laws related to competitive bidding and purchasing, each as they may from time-to-time be amended (collectively, "Applicable Law").

II. Scope

These Procedures apply to all employees of the Board of Trustees (the "Port"), and all other persons who may assist or participate in making purchases for the Port.

These Procedures are issued pursuant to the Purchasing Policy of the Board of Trustees of the Galveston Wharves (the "Policy"), and are intended to replace and supersede all previous Port policies, procedures, and directives concerning the purchasing or procurement of goods or services. To the extent of any inconsistency between these procedures and the provisions of any Applicable Law, the Applicable law will control.

III. Authority

Article XII of the City of Galveston Charter (the "Charter") establishes the Port as a separate utility belonging to the City of Galveston. In accordance with the terms and provisions of the Charter, the Port, in the purchase of equipment, supplies, and materials and the awarding of contracts for construction and repair of the properties or for other purposes, shall, whenever practical, follow the policy of soliciting competitive bids and shall comply with the competitive bidding requirements of Applicable Law.

The Procurement Department is responsible for implementing the Policy and these Procedures. The Procurement Department may also establish supplemental practices and/or rules deemed necessary to ensure compliance with the Policy. These Procedures apply to the Procurement Department and to any other employee who may assist with a specific purchase or perform any of the Procurement Department's duties and responsibilities.

The Procurement Department employees authorized to make purchases on behalf of the Port are expected to determine, using best judgment, the most appropriate and effective method of acquisition (competitive sealed bid, competitive sealed proposal, or cooperative purchase) on each requisition or request for purchase consistent with Applicable Law.

A Procurement Department employee authorized to make purchases on behalf of the Port shall determine the most appropriate and effective method of purchasing goods, services or commodities for the Port (competitive sealed bid, competitive sealed proposal, or cooperative purchase). The staff will consider all available options when making a purchase, including State contracts, purchasing cooperatives, inter-local agreement, and Port contracts. The factors in determining how to acquire the commodity or services should be (1) meeting the needs of the department while ensuring that the method selected achieves the lowest cost and best value, (2) conformance with standards of ethical conduct as outlined in Section VI of these Procedures, and (3) compliance with all Applicable Law, rules, and regulations.

On occasion, the judgment of the authorized employee will not coincide with the judgment of the person making the requisition request. While every effort will be made to accommodate differences, The Purchasing Department's final decision regarding making purchases, and the methods used to make purchases.

The City Auditor's Office added definitions/glossary that pertains to procurement. PG 5-10.

IV. Definitions

1. Addendum: An addition, change, or supplement to a solicitation issued prior to the opening date.
2. Advertise: A public announcement of the intentions to purchase goods/services.
3. Amend or Amended: Status change to an REP, ITB, RFI, RRQ or contract that indicates a modification to that document.
4. Amendment: Written addition or change to a contract, including modifications, renewals and extensions.
5. *Applicable Law.* The laws of the State of Texas, including but not limited to Chapters 252 and 271 of the Texas Local Government Code, Article XII of the City of Galveston Charter, Chapter 54 of the Texas Transportation Code, Chapters 791, 2253, 2254 (Subchapter A), 2258, and 2269 of the Texas Government Code, and all other local, State, and Federal laws, statutes, regulations, ordinances, and orders related to competitive bidding and procurement,
6. *Assignment:* Transfer of contractual rights from one party to another party.
7. *Best Value:* Factors to be considered in determining best value in making certain purchases of goods/services as defined the Texas Government Code 252.043.

8. *Best Value Invitation to Bid (ITB)*: The procurement process is used when the requirements are clearly defined, negotiations are not necessary and the price is the primary determining factor for selections. The mandatory evaluation criteria that must be used to evaluate bids are specified by the Best Value Statutes.
9. *Bid*: A bid is a tender, proposal or quotation submitted in response to a solicitation from a contracting authority.
10. *Bidder*: An individual or entity that submits a bid. The term includes anyone acting on behalf of the individual or other entity that submits a bid, such as a agents, employees, and representatives.
11. *Bidding Threshold*: is the dollar amount of fifty thousand (\$50,000) or more for an expenditure purchased by the Port under Section 252.02(a) of the Texas Local Government code for which competitive bids and proposals are required.
12. *Bond*: Note or other form of evidence of obligation issued in temporary or definitive form, including a note issued anticipation of the issuance of a bond and renewal note.
13. *Business Entity*: An entity (other than a governmental entity, state agency, or municipality) through which business is conducted with the Port, regardless of whether the entity is for profit or non-profit.
14. *Charter*: The City of Galveston Charter. The Port does not follow the City Charter for procurement.
15. *Certificate of Filing*: The disclosure acknowledgement issued by the Texas Ethics Commission to the filing Business Entity.
16. *Competitive Sealed Proposals*: Process of advertising a request for proposal (RFP), the evaluation of submitted proposals and awarding of the contract.
17. *Consultant*: A person that provides or proposes to provide a consulting service.
18. *Contract*: An agreement (including a purchase order) where a contractor provides goods/services to the Port and the Port pays for such goods/services in accordance with the established price, terms and conditions, as well as an agreement under which a contractor is given an opportunity to conduct a business enterprise on the Port's premises in exchange for compensation to the Port.
19. *Contract Administration*: This generally refers to the processes that occur after a contract is signed and is explained in detail in the Contract Management Manual – Appendix E. The extent of contract administration will bot be the same for all contracts.

The level of contract administration should be consistent with the complexity and level of risk of the contract. The contract term, and dollar value.

20. *Contract Administrator*: A person who is employed by the Port and has significant contract management duties for the Port.

21. *Contract Management*: The objective of contract management is to ensure the contract is performed satisfactorily and the responsibilities of both parties the Port and the contractor are properly discharged.

22. *Contract Manager*: A person responsible for ensuring that the contract requirements are satisfied, that the goods and services are delivered in a timely manner, and that the financial interests of the Port are protected. They should also be experienced with the type and size of the purchase.

23. *Contractor or Vendor*: A business entity or individual that has a contract to provide goods and services to the Port.

24. *Controlling Interest*: (1) an ownership interest or participating interest in a business entity by virtue of unit's percentage, shares, stock or otherwise that exceeds 10 percent. (2) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or (3) service as an officer of a business entity that has 4 or fewer officers, or service as one of the 4 officers most highly compensated by a business entity that has more than 4 officers.

25. *Deliverable*: A unit or increment of work required by a contract, including such items as goods, services, reports or documents.

26. *Emergency*: a purchase made when an unforeseen and/or a sudden unexpected occurrence creates a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

27. *Exclusive Acquisition*: Purchase of goods/services that exceed the authorized direct procurement dollar threshold of \$15,000 from a single vendor, without soliciting competitive offers or proposals. The term includes proprietary/sole source purchases.

28. *Goods*: Supplies, material, or equipment, including a transportable article of trade or commerce that can be bartered or sold. Goods do not include construction services or real property.

29. *Historically Underutilized Business (HUB)*: A minority-owned, women-owned or certain disabled veteran-owned businesses as defined by *Texas Government Code*, Title 10, Subtitle D, Chapter 2161. (<http://www.window.state.tx.us/procurement/prog/hub/>).

30. *Invitation for Bids (IFB)*:Used when products and services are standardized or uniform. In determining best value, price and whether the goods or services meet specifications are the principal considerations.

31. *Interested Party*: (1) a person who has a Controlling interest in a Business Entity with whom the COG contracts; or (2) a person who actively participates in a facilitation the contract or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the Business Entity.

32. *Negotiations*: A consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed. In a contractual sense, negotiation means the “dealings conducted between two or more parties for the purpose of reaching an understanding.”

33. *Payment Bond*: A bond executed in connection with a contract which secures the payment requirements of contractor.

34. *Performance Bond*: A surety bond that provides assurance of a contractor’s performance of a certain contract. The amount for the performance bond is based on the value of the contract.

35. *Pre-proposal Conference*: A meeting chaired by Port personnel that is designed to help potential bidders/proposers/respondents understand the requirements of a solicitation. Also known as a pre-bid conference.

36. *Professional Services*: Services directly related to professional practices as defined by the Professional Services Procurement Act (Texas Government Code, §2254.002). These include services within the scope of the practices, as defined by state law of: accounting; architecture; land architecture; land surveying; medicine; optometry, professional engineering; real estate appraising; professional nursing; or forensic science. Services provided by professionals outside the scope of their profession (for example, management consulting services provided by accounting firms) are not considered professional services. Contracted services provided by professionals that fall outside their scope of practice are governed by the Best Value Statutes applicable to the purchase of goods/services.

37. *Proposal*: An executed offer submitted by a respondent in response to a Request for Proposals (RFP) and intended to be used as a basis to negotiate a contract award.

38. *Proposer*: An entity submitting a proposal in response to a solicitation. The term includes anyone acting on behalf of the individual or other entity that submits a proposal, such as agents, employees and representatives (See Respondent).

39. *Proprietary Purchase*: A proprietary product is one that is manufactured and marketing by a person or persons having the exclusive right to manufacture and see the product.
40. *Procurement Department*: The office designated to purchase goods/services above the direct procurement dollar threshold for the Port.
41. *Purchasing Cooperatives*: A group of people or organizations with similar needs that band together to collectively procure goods and/or services for their group. Refer to Texas Local Government Code 271.
42. *Renewal*: Extension of the term of an existing contract for an additional time period in accordance with the terms and conditions of the original or amended contract.
43. *Request for information (RFI)*: A general invitation to contractors requesting information for a potential future competitive solicitation. The RFI is not a competitive solicitation and a contract may not be awarded as the result of an RFI. An RFI is typically used as a research and information gathering tool for preparation of a competitive solicitation.
44. *Request for Proposal (RFP)*: A solicitation requesting submittal of a proposal in response to the required specifications and SOW and usually includes some form of a cost proposal. The RFP process allows for negotiations between a respondent and the Port. The mandatory evaluation criteria that must be used to evaluate proposals are specified by the Best Value Statutes.
45. *Request for Qualifications (RFQ)*: A solicitation requesting submittal of qualifications or specialized expertise in response to the scope of services required. No pricing is solicited with an RFQ.
46. *Responsive*: A respondent or proposal that complies with all material aspects of the solicitation, including submission of all required documents.
47. *Respondent*: An entity submitting a proposal in response to a solicitation. The term includes anyone acting on behalf of the individual or other entity that submits a proposal, such as agents, employees and representatives (See Proposer).
48. *Responsible*: A respondent that is capable of fully performing and delivering goods/services in accordance with the contract requirements. The Port may include past performance, financial capabilities and business management as criteria for determining if a respondent is capable of satisfying the contract requirements.
49. *Scope of Work (SOW)*: An accurate, complete, detailed, and concise description of the work to be performed by the contractor.

50. *Service*: The furnishing of skilled or unskilled labor by a contractor which may not include the delivery of a tangible end product. In some cases, services and goods may be combined (such as film processing). In these instances, the Port should determine whether labor or goods is the primary factor. In the case of film processing, the labor to process the film is the primary factor, therefore film processing is considered a service.

51. *Senior Staff*. A department head, a Port Employee who has been authorized to conduct Port banking transactions, or the Port Director.

52. *Sole Source*: Sole source procurement is one in which only one supplier can provide the commodity, technology, and/or perform the services required.

53. *Solicitation*: A document requesting submittal of bids, proposals, quotes or qualifications for goods/services to be purchased. It may include a description of any requirement for inspecting, testing, or preparing goods/services for delivery.

54. *Specification*: Any description of the physical or functional characteristics or of the nature of goods/services to be purchased. It may include a description of any requirements for inspecting testing or preparing goods/services for delivery.

55. *State Agency*: An agency of the State of Texas as defined in Texas Government Code §2056.001 (excluding institutions).

56. *Statute*: A law enacted by a legislature.

57. *Sub-recipient*: A non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. A sub-recipient may also be a recipient of other federal awards directly from a federal awarding agency.

58. *Surety*: A person or entity providing a bond to a contractor to indemnify the Port against all direct and consequential damages suffered by a failure of the contractor to perform the contract and to pay all lawful claims of subcontractors, and materials vendors and laborers as applicable.

59. *Vendor (or Contractor)*: A business entity or individual that has a contract and/or Purchase Order to provide goods/services to the Port.

V. Associated Materials and Policies

Procedures for Federally Funded Personal and/or Professional Services or Third Party

Contracts (attached and incorporated hereto by reference).

VI. Purchasing Code of Ethics

The Port is committed to holding the highest ethical standards in connection with its purchasing and procurement processes. Conduct such as directing purchases to certain favored vendors or tampering with the competitive bidding process creates distrust and eliminates the "level playing field" necessary for an effective purchasing system. Such conduct can result in criminal penalties. Therefore, these Procedures must be strictly adhered to by all Port employees.

- Avoid any action that may show the intent and/or appearance of unethical or compromising practice in relationships, actions, and communications;
- Demonstrate loyalty to the Port by diligently following all lawful instructions while using professional judgment, reasonable care, and exercising only the authority granted;
- Conduct all purchasing activities in accordance with Applicable Law, while remaining alert to and advising the Port of any legal ramifications relating to purchasing decisions;
- Refrain from any private or professional activity that would create a conflict between an employee's personal interests and the interests of the Port;
- Never (1) solicit or accept money, loans, credits, and/or personal discounts or (2) accept gifts, entertainment, favors, or services from present or potential suppliers which might influence or appear to influence purchasing decisions;
- Promote positive supplier relationships through impartiality in all phases of the purchasing cycle; and
Enhance the proficiency and stature of the purchasing profession by adhering to the highest standards of ethical behavior.

The City Auditor's Office included types of unethical behavior, an explanation of affinity, and punishment for not following Ethical behavior.

Nepotism: It is unethical and a violation of Texas State Law, Port Policies, and Purchasing Policies for any City Employee who knowingly initiates a procurement with a vendor business who is related by affinity or consanguinity with the first degree of the Port employee.

Gratuities: No person or entity doing business with the Port, or any agent, employee, representative, or subcontractor of such person or entity shall offer any payment, gratuity, or inducement of any kind to any Port employee for any reason, including but not limited to any attempt to obtain a contract or other benefit from the City for any person or entity.

The Purchasing Division shall ensure that this prohibition is inconspicuously set forth in every contract and solicitation.

Kickbacks: It shall be a breach of ethics for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under contract to the prime contractor or higher tier subcontractor for any contract for the Port, or any person associated therewith, as an inducement for the award a subcontractor.

Contract Clause: The prohibition against gratuities and kickbacks prescribed above shall be conspicuously set forth in every contract and solicitation by the Port.

Sequential Purchasing: Purchasing of the same items or type of items over the course of a fiscal year may exceed the city's or state's competitive procurement requirements. Although some sequential purchasing is intentional, it usually results from needs that could not be anticipated, or from a lack of centralization of the purchasing function.

Component Purchasing: This type of purchase is typically an attempt to circumvent bid or proposal laws or other requirements by buying an item through the issuance of multiple purchase orders for the component parts of the item versus issuing a single purchase order for the entire item. Repeated purchases of additional optional equipment or parts after initial purchase may create the perception of component purchasing.

Sequential Purchase: Orders If items or services would be bought from the same provider in a single purchase under normal purchasing procedure, the purchases may not be made under separate purchase orders to avoid the need for council approval. For example, it is not consistent with the Port policy to issue a \$50,000 purchase order to the ABC Consulting Company to perform a study of fleet management in the police department and a subsequent purchase order for an amount under \$50,000 to the same company to do a study of fleet management in the solid waste department. Nor can a department issue a \$50,000 purchase order to a software vendor to buy Phase I of a document management system and a subsequent \$50,000 purchase order to buy Phase II of the same system from the same vendor. In each of the examples, it would be necessary to go to the council for approval of the second purchase order. If there is any doubt about whether a purchase is considered sequential, contact the Procurement Department.

Conflicts of Interest: Local government officers must complete a Conflict of Interest Statement (CIS) if they become aware of a conflict within seven (7) days of discovery. The form is included in the policy; electronic fillable forms are available on the Port's intranet Purchasing Department. Local government officers are agents of the local government entity who exercise discretion in the planning, recommending, selecting, or contracting of a vendor, a member of the governing body, or an executive officer. Agents of the government entity include all employees, consultants, and board members, The Board Members are also members of the governing body. Executive officers are Port

Managers. A family member is anyone related to the Local Gov't Officer within the first degree of affinity (marriage) or consanguinity (blood).

- Parent, biological or adopted child
- Spouse, step-child, parent-in-law, spouse of the child
- All of these apply to former marital relationships if there is a surviving child of the marriage.

A family relationship is a relationship between a Vendor and Local Government Officer or anyone within the third degree of consanguinity (blood) or second degree of affinity (marriage) of the local government officer, Port employee or vendor.

- Local Government Officers must fill out a form if:
- Local Government Officer exercises discretion in the planning, recommending, selecting, or contracting of a vendor, AND
- Local Government Officer has a family relationship with the vendor, OR
- Local Government Officer or family member works for a vendor who wants to do business with the City:
- Local Government Officer / family member has received more than \$2500 taxable income (other than investment income) from vendor in past 12 months, OR
- Local Government Officer / family member received gifts totaling \$100 or more from vendor in the 12 months prior to becoming aware of the vendor's relationship with the City
- Gifts include transportation, lodging, and entertainment as a guest
- Gifts do not include food as a guest.

Local government officers commit a crime if they knowingly fail to file the CIS form by 5:00 PM on the seventh business day on which they become aware of the facts that made it necessary to file a disclosure. Any failure to disclose a conflict of interest will be referred to the Department of Human Resources.

Penalties for failing to file a Conflict of Interest Statement are as follows: (per Texas Government Code Section 176.013 Enforcement)

- Contract less than \$1M = Class C Misdemeanor
- Contract \$1M - \$5M = Class B Misdemeanor
- Contract \$5M or more = Class A Misdemeanor
- The City may terminate the contract

See Texas Government Code Chapter 176. Updated by the 84th Legislature House Bill 26, effective.

VII. Purchasing Procedure

A. Purchasing Authority. Authority to obligate Port funds for the purchase of supplies, materials, equipment, and services (including repair and maintenance agreements) is held by the Port Director.

1. Expenditures Less Than \$50,000. The Port Director is delegated the authority to approve all expenditures less than fifty thousand dollars (\$50,000), either in a single expenditure or in the aggregate over a calendar year to a single payee, provided the expenditure is made in the other provisions of these procedures.
2. Board Approval Required. All expenditures of the Port that equal to or exceed fifty thousand dollars (\$50,000), either in a single expenditure or in the aggregate over a calendar year to a single payee, must be approved by the Board of Trustees of the Galveston Wharves, including all budgeted expenditures.
3. Board Approved Projects. The Port Director is also delegated the authority to approve any project expenditure that equals to or exceeds fifty thousand dollars (\$50,000), either in a single expenditure or in the aggregate over a calendar year to a single payee, provided that the Board has previously approved funding for the project which includes the project expenditure. Any expenditures of this nature shall be reported to the Board each month on the Port Director's Report.

B. Manufacturer/Vendor Rebates. The Port from time to time will make a purchase from a vendor, or manufacturer, that has a promotion/incentive for purchasing a product. Sometimes these incentives come in the form of a rebate or rebate card (gift card). If an employee receives such a rebate on behalf of the Port, the Port must make the Senior Staff aware of the rebate. The Senior Staff must utilize the rebate/gift card on a purchase that directly benefits the Port.

C. Obligation of Funds. A purchase order represents a binding written agreement between the Port and a seller. It obligates the Port to pay for specified goods or services when they are delivered in accordance with the purchase order's terms and conditions. The Procurement Department issues all purchase orders. All other commitments, written or verbal, are unauthorized purchases and, in most instances, will not be binding on the Port. Unauthorized purchases will be strictly scrutinized and subject to appropriate action, if necessary, consistent with the Port's Employee Handbook.

D. Request for Acquisition. Departments shall input requisitions into the online program, designated by the Finance Department, for all purchases of materials, supplies, and services.

1. Initial Request for Acquisition. Any Port employee requesting goods or services must complete an online form. The requesting employee must provide the information set out on the form, and the information must be accurate, legible, and complete. Through the prescribed workflow embedded in the Port's ERP system, the requisition will be presented to the requesting employee's department director or Senior Staff for consideration.
2. Requisition Process. The Port has established purchasing categories for the purchase of all goods and/or services based on the anticipated prices of such goods and/or services. Each category prescribes what information must be obtained from vendors, prior to the issuance of a purchase order by the Procurement Department. Each and every requisition must follow the prescribed workflow, with each designated requisition approver approving assigned requisitions at the appropriate monetary threshold.
3. The designated requisition approver shall ensure that funds are available in the department's budget prior to the purchase of the requested goods or services. Once approved, the requisition shall be forwarded to the Procurement Department to conduct the appropriate pricing and award procedure for making the requested expenditure.

VIII. **Competitive Bidding**

A. Competitive Bidding. The Port may use either Competitive Sealed Bidding or Competitive Sealed Proposals, as described below, for expenditures or procurements at the bidding threshold or greater. Before the competitive process begins the Procurement Department must determine which method provides the best value to the Port. The Port may not use a method other than competitive bidding authorized under Texas law unless the Board of Trustees determines, by a vote in a public meeting, that the method other than competitive bidding provides the best value for the proposed project. For purposes of these Procedures, competitive bidding includes Competitive Sealed Bids and Competitive Sealed Proposals, both of which are in accordance with Texas Local Government Code Chapter 252, Subchapter B; as well as "Cooperative Purchasing" as defined in Section VIII (A)(4) below.

1. *Specifications*. The purpose of any specification is to provide personnel with clear guides to purchasing and to provide vendors with firm criteria of minimum product and/or service acceptability:

Specifications may be prepared by the Procurement Department, the requesting department, or by a professional consultant hired by the Port. The ultimate responsibility for accurate and comprehensive specifications rests with the requesting department.

Specifications must (1) use intelligent and concise statements that apprise potential bidders of exactly what the Port wants but must not be so specific as to unnecessarily limit competition, (2) be definitive enough to place all bidders on an equal footing, (3) must not contain any limiting provisions unless such limitations are for a legitimate business purpose, and (4) must not unreasonably narrow the field of potential bidders.

This does not preclude the Procurement Department from adopting conditional or alternative specifications so long as all bids may be compared to one another.

2. *Unit price Bids.* Contracts for materials, equipment, supplies, and construction of public works may be let on a unit price basis. If it is determined that unit price will be utilized, the specifications will state the approximate quantities estimated to be purchased based on the best available information the Procurement Department has at the time of the determination.

Competitive Sealed Bid. This is a formal bid, also commonly referred to as a Request for Bid ("RFB") or Invitation for Bid ("IFB"). Notices to bidders must be publicly advertised in the newspaper for two consecutive weeks, with the first date bids must be submitted to the Procurement Department, to the attention of the Procurement Manager. A public bid opening will be conducted at the Port by the Procurement Manager. The Port will use the best value method to award contracts under the competitive sealed bid method. The Port will indicate in the bid specifications that the contract may be awarded either to the lowest responsible bidder or to the bidder who provides goods and services at the best value to the Port, reference Texas Local Code 252.043. Staff shall provide a tabulation summarizing the evaluation of the criteria used to evaluate a bid to the Board of Trustees when presenting a selected proposal for Board of Trustees approval.

3. *Competitive Sealed Proposal.* This is a formal proposal known as a Request for Proposal ("RFP"). Notices to proposers must be publicly advertised in the newspaper for two consecutive weeks, with the first date of publication being at least fourteen days prior to the opening of the proposal. All sealed proposals must be submitted to the Procurement Department, to the attention of the Procurement Manager. A public proposal opening will be conducted at the Port by the Procurement on the date and time specified in the bid documents. Requests for Proposals made under Section 252.021 must solicit quotations and must specify the relative importance of price and other evaluation factors. The Port must award the contract to the responsible offeror whose proposal is determined to be the most advantageous to the Port.

Evaluation of proposals can include the following criteria:

- Purchase Price which shall be weighted 25% or greater, unless the Board has previously approved a lesser weight for a particular procurement in an open meeting; the price must be evaluated by the Procurement Department separately from other criteria using objective methods.
- Reputation and financial responsibility of the proposer and the proposer's goods and services.
- Quality of the proposer's goods or services.
- Extent to which the goods or services meet the Port's needs.
- Proposer's past relationship with the Port.
- Impact on the ability of the Port to comply with laws and rules related to contracting with historically underutilized businesses, nonprofit organizations, employing persons with disabilities.
- Total long-term cost to the Port to acquire the proposer's goods or services.
- The criteria set out in Section XII (b) are not otherwise included herein.
- Any relevant criteria specifically listed in the request for bids or proposals.

Staff shall provide a tabulation summarizing the evaluation of the criteria used to evaluate a proposal to the Board of Trustees. When presenting a selected proposal for Board of Trustees approval use the sample form attached to these procedures as Attachment 1.

4. *Cooperative Purchases.* The Port belongs to several different purchasing cooperatives and also uses interlocal agreements with other governmental entities for purchasing, from time to time. These may be used to purchase goods and/or services for the Port.

IX. Professional Services. When obtaining any Professional Services, regardless of the cost, the Procurement Department must comply with the applicable provisions of the Professional Services Procurement Act, Chapter 2254, Subchapter A, of the Texas Government Code, as it may from time to time be amended. The term “professional services” means services:

1. within the scope of the practice, as defined by State law, of: (i) accounting; (ii) architecture; (iii) landscape architecture; (iv) land surveying; (v) medicine; (vi)

- optometry; (vii) professional engineering; (viii) real estate appraising; or (ix) professional nursing; or (x) forensic science;
2. provided in connection with the professional employment or practice of a person who is licensed or registered as: (i) a certified public accountant; (ii) an architect; (iii) a landscape architect; (iv) a land surveyor; (v) a physician, including a surgeon; (vi) an optometrist; (vii) a professional engineer; (viii) a State certified or State licensed real estate appraiser; (ix) a registered nurse or (x) a forensic analyst or forensic science expert; or provided by a person lawfully engaged in interior design, regardless of whether the person is registered as an interior designer under Chapter 1053, Occupations Code. (See also, Texas LGC 2254).

From time to time the Port's general counsel will provide the Procurement Department with guidelines that must be followed in order to comply with the Professional Services Procurement Act, and those guidelines must be adhered to by the Procurement Department.

X. Construction Projects. In connection with a contract for constructing, altering, or repairing a public building or carrying out or completing any public work, the Procurement Department must comply with the procedures of Chapter 2269, Texas Government Code.

From time to time the Port's general counsel will provide the Procurement Department with guidelines that must be followed in order to comply with Chapter 2269 and those guidelines must be adhered to by the Procurement Department.

The Port may not use a method other than competitive bidding authorized under Texas law (such other methods include but are not necessarily limited to the Construction Manager Agent method, the Construction Manager at Risk method, the Design/Build method, and the Job Order Contract method) for a construction contract unless the Board of Trustees determines by a vote in a public meeting that the method other than competitive bidding provides the best value for the proposed project. From time to time the Port's general counsel will provide the Procurement Department with guidelines that must be followed in order to comply with Chapter 2269, Texas Government Code when considering a recommendation to the Board of Trustees to use a method other than competitive bidding, and those guidelines must be adhered to by the Procurement Department.

XI. Sole Source Purchase.

Sole source Purchases, Single Source purchases. Departments shall perform price/cost analysis on all Federally funded Sole and/or Single Source Purchases prior to the purchase. pursuant to FTA Circular 4220. I F, Chapter VI, 3. i. When the Port requires supplies and/or services available from only one responsible source, and no other supplies and/or services will satisfy its requirements, the Port may make a sole-source award. When the Port of Galveston requires an existing contractor to make a change to its contract that is beyond the scope of that contract, the Port has made a sole source award that must be justified.

Departments shall make Sole and/or Single Source Purchases in accordance with Applicable Departments must provide justification for Sole and/or Single Source Purchases to Procurement Department before a purchase order number is issued authorizing the purchase. Such items may be purchased from a sole and/or single source without competitive bidding only after the department head obtains written documentation of the sole and/or single source justification from the Procurement Department and/or the CFO.

XII. Pricing and Award Procedures

A. Obtaining Prices. The Procurement Department will obtain prices for purchasing goods or services (except Professional Services, as defined below) according to the following guidelines.

1. *Purchases of Less Than \$3,000.* Three quotes by email, telephone call (must be documented with vendor name, phone number, vendor representative, and the amount quoted), or another form of written communication must be obtained. Upon approval of the Procurement Department, the requesting department may solicit the quotations or leave the responsibility with the Procurement Department. Regardless, the requesting department remains responsible for initiating the requisitions. Documentation regarding quotes must be uploaded and attached to the requisition prior to submission.

2. *Purchases of \$3,000 but Less than the Bidding Threshold,* upon approval of the Procurement Department, the requesting department may solicit the quotations or leave the responsibility with the Procurement Department. The Procurement Department or the requesting department must obtain informal written quotations from at least three vendors and the requestor must submit the written quotations to the Procurement Department for review and approval prior to the issuance of a purchase order. Documentation regarding quotes must be uploaded and attached to the requisition prior to submission.

In addition, the Procurement Department must contact at least two historically underutilized businesses in Galveston County on a rotating basis, pursuant to Chapter 2161 of the Texas Government Code. To determine what businesses within Galveston County are classified as historically underutilized businesses, the Port should use the list of such businesses provided by the Comptroller's Office. The Procurement Department should use a manner of notice such as certified mail or email that would provide a record of contact with the listed businesses.

If no historically underutilized business provides the desired goods or services in Galveston County, the Port is excused from this requirement.

3. *Purchases in Excess of the Bidding Threshold.* Unless the expenditure is exempt by Applicable Law, the Procurement Department must make any expenditure for goods or services in excess of the Bidding Threshold in accordance with and may utilize any purchasing procedure permitted by applicable law, subject to the provisions of Section VIII(A)(I) and article X relating to construction projects. From time to time the Port's general counsel will provide the Procurement Department with guidelines that must be followed in order to comply with applicable law, and those guidelines must be adhered to by the Procurement Department.

B. *Awarding Contracts.* In accordance with Sections 252.021 and 252.042 of the Local Government Code, a request for proposal must specify the relative importance of price and other evaluations factors and that the award of the contract shall be made to the responsible offeror whose proposal is determined to be the lowest and best-evaluated offer, taking into consideration the relative importance of price and other evaluation factors set forth in the request for proposals.

Except as otherwise provided, any contract awarded by the Port for goods or services (except Professional Services) may be awarded to the lowest responsible bidder or to the bidder who provides the goods or services at the best value for the Port. In determining the best value for the Port, the Port may consider:

- (a) the purchase price, which shall be weighted 25% or greater, unless the Board has previously approved a lesser weight for a particular procurement in an open meeting; price must be evaluated by the Procurement Department separately from other criteria using objective methods;
- (b) the reputation of the bidder and of the bidder's goods or services;
- (c) the quality of the bidder's goods or services;
- (d) the extent to which the goods or services meet the Port's needs;
- (e) the bidder's past relationship with the Port;
- (f) the impact on the ability of the Port to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities;
- (g) the total long-term cost to the Port to acquire the bidder's goods or services; and
- (h) any relevant criteria specifically listed in the request for informal quotes or in the request for competitive sealed bids or competitive sealed proposals, whichever is applicable.

Where feasible, the Procurement Department should award contracts to local businesses if permitted by applicable law.

- C. *Submission, Deadline.* Bids and/or proposals may be submitted by postal mail or hand-delivered to the reception desk of the General Offices of the Port. Submissions will not be accepted by fax or electronic mail unless superseded by instruction(s) within the Invitation/Request for Bid or Request for Proposal document. Bids and/or proposals must be received and time-stamped by the Procurement Department prior to the specified date and time on the notice. Late submissions will not be accepted and will be returned, unopened. Only the time designated by the time stamp issued by the Procurement Department will determine whether the submission was received at the proper time. The Galveston Wharves-reserves the right to reject or accept any or all bids for any reason.
- D. *Completeness.* Offerors should make sure to read and understand the entire scope of work and what is required when submitting a bid. Incomplete bids according to the solicitation documents will be considered non-responsive.
- E. *Sole Bids, Identical Bids.* On occasion, when a request for bids and/or proposals is issued, the Procurement Department may receive only one response. Should this occur, the Procurement Department will attempt to determine the reason(s) behind the lack of interest from the public and whether there might be greater interest generated was the competitive bidding process to begin anew. Based on the Procurement Department's findings, the Procurement Department will notify the Board of Trustees of the Galveston Wharves of the single bid, and the Board of Trustees of the Galveston Wharves will decide whether to accept the bid or proposal or reject it and order the process to begin again.

If the Port receives two or more bids from responsible bidders that are identical in nature and amount, as the lowest and best bids, the Port must enter into a contract with only one of those bidders and must reject all other bids. If only one of the bidders submitting identical bids is a resident of the City of Galveston (the "City"), the Port must select the resident bidder. If two or more of the bidders submitting identical bids are residents of the City, the Port must select one of those bidders by the casting of lots. In all other cases, the Port must select from the identical bids by the casting of lots. The casting of lots must be in a manner prescribed by the Port Director and must be conducted in the presence of the Port Director and the Chairman of the Board. All qualified bidders or their legal representatives may be present at the casting of lots. This provision does not prohibit the Port from rejecting all bids.

F *Separate, Sequential, or Component Purchases Statute.* Pursuant to Section 252.062 of the Texas Local Government Code, a Port employee commits a criminal offense if the employee intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements under applicable law.

G *Preference for Recycled Materials, Environmental Practices.* The Port must give preference in purchasing to products made of recycled materials the products meet applicable specifications as to quantity and quality.

The Port may, as additional criteria in determining best value, consider the environmental practices and considerations detailed in a submitted bid and/or proposal. In reviewing environmental practices and considerations, the Port may consider:

- The reduction of risk associated with introducing and propagating aquatic invasive organisms and pathogens associated with ballast water discharges and biofouling;
 - The reduction of greenhouse gas and air pollutant emissions;
 - The minimization of spills and leakages into the environment;
 - The reduction of cargo losses and dust generated during handling, transportation, and storage of dry bulk;
 - The reduction of noise, dust, odor and light to which people residing close to Port facilities are exposed;
 - The demonstration of environmental leadership;
 - The increase of waste diversion and the reduction, at source, of the waste arising from administrative activities and site operations; and
 - The management of underwater noise sources during ongoing activities, development/construction, and/or the Port's maintenance activities to reduce impacts on marine animals.

H. *Preference for Local Businesses.* Where feasible, the Procurement Department should award contracts to local businesses, if permitted by Applicable Law. When making this determination, the Procurement Department is guided by the following provisions of Applicable Law:

- 1 *Purchases of Property.* In purchasing any real or personal property, if the Port receives one or more bids from a bidder whose principal place of business is in the city and whose bid is within 3% of the lowest bid price received by the Port from a bidder who is not a resident of

the City, the Port may enter into a contract with (i) the lowest bidder, or (ii) the bidder whose principal place of business is in the City if the Board of Trustees determines, in writing, that the local bidder offers the Port the best combination of the contract price and additional economic development opportunities for the Port created by the contract award, including the employment of residents of the City and increased tax revenues to the City. This provision does not prohibit the Port from rejecting all bids.

2. *Expenditures for Construction Services of less than \$100,000 or for Other Purchases of less than \$500,000.* In purchasing any real or personal property or services, if the Port receives one or more competitive sealed bids from a bidder whose principal place of business is in the City and whose bid is within 5% of the lowest bid price received by the Port from a bidder who is not a resident of the City, the Port may enter into a contract for construction services in an amount of less than \$ 100,000 or a contract for other purchases in an amount of less than \$500,000 with: (i) the lowest bidder, or (ii) the bidder whose principal place of business is in the City if the Board of Trustees determines, in writing, that the local bidder offers the Port the best combination of the contract price and additional economic development opportunities for the Port created by the contract award, including the employment of residents of the City and increased tax revenues to the City. This provision does not prohibit the Port from rejecting all bids, nor does it apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C. Section 153.
3. *Nonresident Bidders from the Certain States.* The Port may not award a contract for general construction, an improvement, a service, or a public works project or for a purchase of supplies, materials, or equipment to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the State in which the nonresident's principal place of business is located. The Procurement Department shall use the information published by the Comptroller of Public Accounts under Section 2252.003 of the Government Code to evaluate the bid of a nonresident bidder. This provision does not apply to a contract involving Federal funds.

I. Other General Requirements

1. *Contracts.* After each procurement has been awarded by the Port of Galveston the files, including a copy of the executed contract, shall be kept and maintained by the Procurement Department. This includes, but is not limited to, construction projects, commodities, and professional services.
2. *Contract Management.* Requesting departments are responsible for the management of their contracts. Departments should ensure that their contracts meet the performance standards outlined in the contract and scope of work and/or specifications. A requesting department is responsible for ensuring that all contracts and renewals comply with Applicable Law.
3. *Protest Procedures.* Any actual or prospective offeror who is allegedly in connection with the solicitation or award of an offer may protest. The protest must be submitted in writing to the

Port's Procurement Department within seven days after such aggrieved person knows of, or should have known of, the facts giving rise thereto. If the protest is not resolved by mutual agreement, the Procurement Department will promptly issue a decision in writing to the person protesting. Where necessary or appropriate based on the nature of the protest and/or the issues involved, the Procurement Department shall consult with the Port Director or the CFO concerning the protest prior to issuing a decision. The Port Director or CFO shall obtain legal advice regarding the protest from the Port's legal counsel, if necessary, based on the facts and arguments raised in the protest.

All protests lodged by potential or actual offerors or contractors must be made in writing and contain the following information:

- 1 Name, address, and telephone number of the protestor;
 - 2 Identification of the solicitation or contract number and title;
 - 3 A detailed statement of the protest's legal and factual grounds, including copies of relevant documents;
 - 4 Identification of the issue(s) to be resolved and Statement of what relief is requested;
 - 5 Arguments and authorities in support of the protest; and
 - 6 A statement that copies of the protest have been mailed or delivered to all interested parties in the Invitation to Bid or Request for Proposal process.
- 4 *Reimbursements.* Reimbursement to the Port's employees for purchases of goods, supplies, and services shall require the submittal of original invoices and/or receipts, in conjunction with a check request form and/or travel reimbursement form, for processing reimbursement payment to the requesting employee(s).
5. *Disclosure of Interested Parties.* In 2015, the Texas State Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The law applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million. The disclosure requirement applies to a contract entered into on or after January 1, 2016. The process, as implemented by the Texas Ethics Commission, is as follows:
- a. A business entity must use the application to enter the required information on Form 1295 and print a copy of the form and a separate certification of filing that will contain a unique certification number.
 - b. An authorized agent of the business entity must sign the printed copy of the form and have the form notarized. The completed Form 1295 and certification of filing must be filed with the Port "at the time the business entity submits the signed contract" to the Port.
 - c. The Port must notify the Texas Ethics Commission, using the Texas Ethics Commission's filing application, of the receipt of the filed Form

1295 and certification of filing not later than the 30th day after the date the contract binds all parties to the contract.

6. *Change Orders*. If it becomes necessary to make changes in plans, specifications, or proposals after a contract has been made or if it becomes necessary to increase or decrease the quantity of items purchased, a change order is required.

In accordance with Section 252.048 of the Local Government Code, the original contract price may not be increased by more than 25% unless the change order is necessary to comply with a Federal or State statute, rule, regulation, or judicial decision enacted, adopted, or rendered after the contract was made. Also, original contract price may not be decreased or more without the consent of the contractor.

The Director is authorized to approve increases or decreases that do not exceed those prescribed by applicable law.

Required Govt Codes 2252, 2270 and 2274

7. *Contracts with a Governmental Entity*. The Port may not enter into contracts with companies engaged in business with Iran, Sudan, or any other Foreign Terrorist Organization as listed on the State of Texas Comptroller's website. (See Texas Government Code 2252, Subchapter F, Sections 2252.151-154. Effective September 1, 2017)

The Port must, also, verify with the State of Texas Comptroller's website that a company was not on the listing of companies identified by the State Comptroller. The verification must be documented by the Port in the procurement files.

The Port may not enter into a contract with a company that boycotts Israel. The Port must provide, in the contract, written verification from the company that it does not and will not boycott Israel during the contract term. Exemptions for providing the form are: a sole proprietorship, a company with less than 10 full-time employees, and the contract is valued at less than \$100,000. (See Texas Government Code Chapter 2270. Effective September 1, 2017. Modified HB 793 eff. 05-17-19)

The Port may not enter into a contract with a company that discriminates against firearm entities. In accordance with Texas Government Code Chapter 2274, the Contractor verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association. This section only applies if: (i) Contractor has ten (10) or more full-time employees and (ii) this Agreement has a value of \$100,000 or more to be paid under the terms of this Agreement; and does not apply: (i) if Contractor is a sole proprietor, a non-profit entity, or a governmental entity; (ii) to a

contract with a sole-source provider; or (iii) to a contract for which none of the bids from a company were able to provide the required certification.

The Port may not enter into a contract with a vendor that boycotts energy companies. Pursuant to Chapter 2274, Texas Government Code, the Contractor verifies (1) it does not boycott energy companies, and (2) it will not boycott energy companies during the term of this Agreement. The contractor acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate. (Note: This provision only applies in a contract that (1) has a value of \$100,000 or more that is to be paid wholly or partly from public funds and (2) is with a for-profit entity, not including a sole proprietorship, that has ten (10) or more full-time employees.)

Emergency Purchases

Emergency purchases are those needed in order to avoid interruption in Port operations or to protect public health and safety (e.g. immediately before, during, or after a hurricane or other weather-related natural disaster). Purchases made in emergency situations can be more costly than routine purchases. Therefore, such purchases must be kept to a minimum. Reasons such as poor planning overlooked requirements, or negligence is not emergencies.

An emergency purchase must meet one of the qualifications for exempt purchases as outlined by Section 252.022 of the Texas Local Government Code. These qualifications consist of (1) a purchase made because of a public calamity that requires the immediate appropriation of funds to provide for the needs of the public or to preserve the property of the Port, (2) the purchase is necessary to preserve or protect the public health or safety of the residents of the City of Galveston, and or (3) the purchase is necessary because of unforeseen damage to public machinery, equipment, or other property.

Requisition of Emergency Purchases

1. *Normal Working Hours.* All emergency purchases occurring during normal working business hours are processed through the Procurement Department as follows:
 - i. Applicable Law. The requesting department will immediately notify the Procurement Department by telephone and/or email with as much information as possible about the emergency purchase required in order to initiate appropriate responsive action.
 - ii. Requisition. The requesting department shall prepare a requisition in accordance with these procedures.
 - iii. Contact Vendors. The director of the requesting department shall contact as many vendors as necessary to arrange the emergency purchase. If time permits, the purchase order may be completed according to these procedures, Otherwise, if the purchase is completed by telephone or other means, the purchase order must be promptly completed after the fact and delivered to the vendor.

2. *Evening, Weekends, Holidays, and During Periods of Business Interruption.* For other than normal working business hours, when purchasing support is unavailable or inaccessible, the Port shall process emergency purchases as outlined below.
 - i. *Applicable Law.* In accordance with Section 252.022 of the Texas Local Government Code, the Port may forego competitive bidding procedures when making a purchase because of (1) a public calamity that requires the immediate appropriation of funds to provide for the needs of the public or to preserve the property of the Port, (2) the purchase is necessary to preserve or protect the public health or safety of the residents of the City of Galveston, and/or (3) the purchase is necessary because of unforeseen damage to public machinery, equipment, or other property.
 - ii. *Authority.* In the event of a declared local State of disaster or emergency, the Port Director shall have the authority to enter upon purchases and contracts in an amount not to exceed 10% of the Port's annual budget in accordance with Applicable Law, provided a quorum of the Board of Trustees of the Galveston Wharves is unable to be present at a meeting.
 - iii. *Whatever Steps Necessary.* Upon authorization from the Port Director, the requesting department shall take whatever steps are necessary to procure the needed supplies, services, and/or equipment to relieve the emergency situation.
 - iv. *Time Constraint.* If possible, the requesting department shall purchase only those goods, services, and/or equipment needed during the period when purchasing support is unavailable or inaccessible.
 - v. *Requisition.* On the first working day following the emergency purchase, the requesting department shall prepare a requisition in accordance with these procedures and attach any invoices, packing slips, and/or receipts to the requisition for processing.

Certification. The department director of the requesting department must certify, in writing, on the first working day following the emergency purchase, or as soon thereafter as possible, that the emergency purchase was necessary because of one of the conditions listed as an emergency exemption in Texas Local Government Code.

XIII. Purchase Order and Reporting Procedures

A. *Issuance of Purchase Order.* Upon completion of the appropriate pricing and award procedure for the requested purchase, a purchase order will be issued through the online repotting system. All purchase orders shall be accessible through the online system. Each purchase order must be authorized by the Procurement Department after the requisition has been approved through the appropriate workflow in the online system. Any voided purchase order must be recorded and accounted for. Upon issuance of the purchase order, the completed requisition and the approved purchase order should be forwarded to the appropriate personnel for placing the order with the vendor. Vendor invoices presented for payment without an authorized purchase order will not be paid by the Port.

B *Receiving Report.* Upon Receipt Of goods and/or services purchased under these procedures, the Port employee accepting the goods and/or services must complete a receiving report form, describing the goods and/or services. If a packing list or invoice is available, it should be attached to the receiving report form. All documents relating to the purchase must be sent to the Accounts

Payable Specialist prior to vendor payment. All original documents supporting the purchase must be attached to the payment voucher.

XIV. Exemptions from Policy

The following types of payments do not require completion of a Request Form or a purchase order prior to payment vouchers being issued:

- A. Utility payments (such as water, sewer, electricity, gas, and telecommunications providers);
- B. Contract payments (established by binding and executed contracts for goods or services approved by the Board of Trustees or the Port Director and made in compliance with the other provisions of these Procedures); or
- C. Payments from the Petty Cash Fund (\$0 to \$300 expenditures; requires department head or Senior Staff approval prior to purchase being made; receipt must be returned to validate the purchase).

XVI. Support for Business

In order to help assure that the Port obtains the most advantageous results when obtaining goods and services, and to foster the development of business relationships with local providers of goods and services, where permitted by applicable law, the Port Director and/or other employees designated by the Port Director are directed to adopt procedures for implementing the following policies:

- A. The Port will maintain a database of local entities or individuals desiring to conduct business with the Port, and will develop procedures for facilitating communication with them;
- B. The Port will develop educational materials and/or conduct training sessions for or with entities or individuals desiring to conduct business with the Port to assist them in being able to comply with the provisions of this Policy; and
- C. The Port encourages the use of local business, labor, and other vendors in obtaining goods and services through the implementation of this Policy, to the extent permitted by law.

XVII. Purchases Funded by Federal Grants and Agreements

In order to ensure compliance with Federal regulatory requirements in connection with purchases funded in whole or in part from Federal Grants and/or Awards, the following procedures must be followed. Depending on the specific funding source of the procurement request, solicitation efforts by the Port utilizing Federal funding shall be subject to additional procurement standards.

Applicable Law affects or may affect procurement requirements and may mandate various contract terms. Please see attached for more information.

- A. *Conflicts of Interest.* No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. Failure to comply with these requirements will be subject to disciplinary action as provided for in the Port's Employee Handbook
- B. *Prompt Payment.* Purchases made using funds received from a Federal Grant or Award shall be promptly paid for so as to minimize the time elapsing between the receipt of funds from the Federal government and payment for the purchases, and to ensure payment as required under the purchase order or contract. Additionally, the Port shall use its financial management system in processing and recording such purchasing transactions to ensure fund control and accountability.
- C. *Description of Materials, Products, or Services being Procured.* Descriptions of materials, products or services sought to be procured using funds received from a Federal Grant or Award must provide a clear and accurate description thereof, including minimum essential characteristics and standards to which they must conform to satisfy the intended use; provided, however, that such descriptions must not unduly restrict competition in connection with competitive procurements. The descriptions must also identify all requirements which offerors must fulfill, a complete description of how technical evaluations of proposals will be evaluated, and if applicable, any other factors to be used in evaluating competitive bids or proposals.
- D. *Procurement Efficiency,* Purchases must be planned and made so as to (1) avoid unnecessary or duplicative items being purchased and (2) consolidate or break-out procurements where appropriate, in order to obtain a more economical purchase. Alternatives such as teasing should also be considered, to ensure the most economical approach is used. Additionally, and where appropriate, interlocal agreement should be used with other local or State entities for procurement of common or shared goods or services. Finally, Federal excess or surplus property should be considered in lieu of new equipment or goods when such property would be feasible to use and would reduce project costs.
 - 1. *Construction Projects.* Value engineering shall be used where reasonable and appropriate. Construction contracts shall be awarded only to responsible contractors possessing the ability to perform the terms and conditions of the proposed contract successfully. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

2. *Time and Materials Contracts.* Time and materials contracts may be used only after a determination is made that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk.

3. *Employee Costs.* Port employee compensation and fringe benefit costs are addressed in the Port's Employee Handbook and in the governing documents for its group medical retirement plans. To the extent not covered by other Port policies, employee travel costs incurred in connection with projects or purchases funded in whole or in part from Federal Grants and/or Awards shall be governed by the provisions of 5 U.S.C §§ 5701-5711 and/or 48 C.F.R. 31.205-46(a), as applicable. Employee travel costs may be allowed on a case-by-case basis, subject to the limitations and requirements set out in 2 C.F.R. §200.464, if approved by the Board of Trustees of the Galveston Wharves.

- (a) Application of Policies. To the extent this section conflicts with any other Port policies in connection with purchases funded in whole or in part from Federal Grants and/or Awards, this section shall control. Otherwise, such other Port policies shall apply.

 XIX. *P-card Purchase Card Policy*

XX. *Travel Policy*

**Board of Trustees of the Galveston Wharves
Sample Evaluation Form – Competitive Sealed Proposal**

RFP No. _____

Date: _____

Estimate: \$000,000

Vendor	Proposal Amount	Small Business Information SB Goal SB Prime % SB Subs	SELECTION CRITERIA						Total Score	Comments
			1	2	3	4	5	6		
			Purchase Price	Vendor Reputation, Safety, Quality, Past Performance, Eavtr. Record	Benefit to Wharves	Small Business	Local Business	Compliance with Wharves Policies		
			37%	30%	20%	0%	3%	10%	100%	
	\$111.11	SB Goal 0%							0	1. Lowest price 2. Vendor reputation and quality of work is excellent 3. Vendor services could provide good benefit to Wharves 4. Small Business not a requirement 5. Meets Local Business criteria 6. Showed good compliance with Wharves policies
	\$222.22	SB Goal 0%							0	1. Second lowest price 2. Vendor reputation and quality of work is good 3. Vendor services could provide good benefit to Wharves 4. Small Business not a requirement. 5. Does not meet Local Business criteria 6. Showed good compliance with Wharves policies.
NON-RESPONSIVE										
Name										NON-RESPONSIVE

DB



GALVESTON WHARVES

- 123 Rosenberg Avenue 8th Floor, Galveston, Texas 77550
- Galveston (409) 765-9321 • Houston (281) 286-2484
- Fax (409) 766-6171 • Website: <http://www.portofgalveston.com>

BOARD OF TRUSTEES OF THE GALVESTON WHARVES

Harry D. Maxwell, Jr., Chairman
Todd P. Sullivan, Vice Chairman
Dr. Craig Brown, Mayor/Trustee
Sheila S. Lidstone, Trustee
E. L. "Ted" O'Rourke, Trustee
Jeff Patterson, Trustee
Victor Pierson, Trustee

PORT DIRECTOR/CEO
Rodger Rees

May 25, 2022

Office of the City Auditor
City of Galveston
P.O. Box 779
Galveston, TX 77553

By Email to: gbulgherini@galvestontx.gov

Dear Glenn:

I want to thank you, Carrie, and Leah for meeting with us last week Thursday. The documents you provided concerning your Port Procurement Procedure review along with the examples of suggested enhancements to our procedures and controls will be very helpful as we review our Procurement procedures and controls over the next year. Once we complete our desk procedure update we will share the results with the City Auditor group.

Making yourself and your staff available to Port Procurement staff for follow-up questions and clarifications will also be very helpful. Having the benefit of your knowledge of the City and Park Board will allow us to share information and best practices between entities, thereby elevating all entities.

I look forward to working with you and your staff over the next year as we review our Procurement procedures.

Sincerely yours,

Mark R. Murchison
CFO