



BPC Policy No. 110

SUBJECT: PROCEDURE FOR THE ADMINISTRATION OF CONTRACTS, AGREEMENTS, THE PURCHASING OF SUPPLIES, MATERIALS, AND EQUIPMENT, AND GRANTS

PURPOSE: To establish a policy governing the processing and administration of public projects, consulting and service agreements, the purchasing of supplies, materials, and equipment, and grants while ensuring greater and enhanced supplier diversity.

POLICY STATEMENT:

The Executive Director or authorized designee shall be responsible for following all procedures required by the San Diego Unified Port District Act and other applicable laws in the processing, letting and administration of contracts, agreements, purchase orders and grants by the San Diego Unified Port District (District). Furthermore, the District is committed to take all necessary and reasonable steps to increase its utilization of small business to have a positive economic impact on the region and foster innovation in District projects. Small businesses are inclusive of socioeconomically disadvantaged businesses based on size determined by number of employees or gross revenues using state or federal criteria.

1. Contracts for Public Projects:

1.1. This policy is adopted pursuant to California Public Contract Code (PCC) 22030 et seq. The term 'public project' is defined as the construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility, and for painting or repainting of any such facility. 'Facility' means any plant, building, structure, ground facility, utility system, real property, streets and highways or other public work improvement.

1.2. Public project' does not include maintenance work. Maintenance work includes all of the following:

1.2.1. Routine, recurring, and usual work for the preservation, protection, and keeping of any publicly owned or publicly operated facility for its intended purposes in a safe and continually usable condition for which it has been designed, improved, constructed altered or repaired;

1.2.2. *Carpentry, electrical, plumbing, glazing, touchup painting, and other craft work designed to preserve the publicly owned or publicly operated facility in a safe, efficient and continuously usable condition for which it was intended,*

including repairs, cleaning and other operations on machinery and other equipment permanently attached to the building or realty as fixtures;

- 1.2.3. Resurfacing of streets and highways at less than one inch;
- 1.2.4. Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems.
- 1.3. The Board of Port Commissioners (Board) will appropriate funding for public projects at the time it adopts the District annual budget. This appropriation will only be valid for the current fiscal year for which the budget is adopted.
- 1.4. Public Projects not requiring competition shall comply with Public Contract Code (PCC) Section § 22032(a).
 - 1.4.1. Each time a Public Project arises where competition is not required and the work is to not be performed by District staff by force account, the department requesting the work is encouraged to work with Diversity, Equity, and Inclusion to consider a small business contractor from the District's vendor database to perform the work.
 - 1.4.2. Each month a written summary shall be provided to the Board reporting those contracts so executed by the Executive Director or authorized designee for the prior month.
- 1.5. Public projects requiring informal competition shall comply with PCC § 22032(b), PCC § 22034(a), PCC § 22034(b), PCC § 22034(c), PCC § 22034(d), PCC § 22036 and Board Resolution 98-249.
 - 1.5.1. During the progress of the work under a contract awarded by informal procedures, the Executive Director or authorized designee is authorized to negotiate and execute any change orders without Board action, as long as the contract and change order aggregate total does not exceed the dollar limit threshold for informal bidding. PCC § 22032(b).
 - 1.5.2. Each month a written summary shall be provided to the Board reporting those contracts so executed by the Executive Director or authorized designee for the prior month.
- 1.6. Public projects that exceed the dollar threshold for informal bidding shall be awarded through formal bidding procedures. PCC § 22032(c), PCC § 22037, PCC § 22038(b), PCC § 22035, PCC § 22039, PCC § 22050 and Board Resolution 2000-03.

- 1.7. During the progress of the work under a contract awarded by the Board, the Executive Director or authorized designee is authorized to negotiate and execute any change order the amount of which is included in the authorized project budget of the District for that year and pursuant to the process set forth in paragraphs 1.7.1 through 1.7.3 below. All other change orders shall be presented to the Board for consideration.
 - 1.7.1. Contracts awarded for two million dollars or less, in an amount not to exceed an aggregate of 30% of the original contract award, and contracts extending time for completion for a period not to exceed one hundred twenty days. The aggregate extension of time as set forth in the change order(s) shall not exceed one hundred twenty days.
 - 1.7.2. Contracts awarded in excess of two million dollars, but not in excess of ten million dollars, in an amount not to exceed an aggregate of 20% of the original contract award, and contracts extending time for completion for a period not to exceed one hundred twenty days. The aggregate extension of time as set forth in the change order(s) shall not exceed one hundred twenty days.
 - 1.7.3. Contracts awarded for more than ten million dollars, in an amount not to exceed an aggregate of 10% of the original contract award, and contracts extending time for completion for a period not to exceed one hundred twenty days. The aggregate extension of time as set forth in the change order(s) shall not exceed one hundred twenty days.
 - 1.7.4. Each month a written summary shall be provided to the Board reporting change orders executed by the Executive Director or authorized designee for the prior month and a brief listing of those change orders executed the prior month shall also be printed each month on a regular Board meeting agenda to provide notification to the public.
 - 1.7.5. Executive Director authorization is required to issue a unilateral change order.
 - 1.7.6. The Executive Director may, at their discretion, bring any change order before the Board for action.
- 1.8. Upon the completion of public works contracts, the Executive Director or authorized designee is authorized to execute and record the "Acceptance and Notice of Completion," in accordance with California law or permitted by this policy.

- 1.9. The Executive Director or authorized designee is authorized to consent to the substitution of another person as a subcontractor in any of the situations referenced in PCC §4107.
- 1.10. Any consultant/contractor that assists the District to determine the requirements for a solicitation shall be prohibited from proposing or bidding on the same solicitation.
- 1.11. It shall be unlawful to split or separate into smaller work orders or projects any project for the purpose of evading the provisions of the article requiring work to be done by contract after competitive bidding. PCC § 22033.

2. Service and Consulting Agreements:

- 2.1. The Executive Director or authorized designee shall determine the most appropriate method for solicitation of written responses, including but not limited to Best Value procurement by Requests for Qualifications and/or Proposals, or by lowest price by Request for Quotations or Bids.
- 2.2. Best Value means the overall combination of experience, approach to the project, price, and other elements defined in the solicitation document that, when considered together, provide the greatest overall benefit to the District in response to the requirements described in the solicitation documents.
- 2.3. When the agreement expenditure is \$125,000 or less, the Executive Director or authorized designee may negotiate and execute such agreement without Board action or solicitation of written responses.
 - 2.3.1. Each time a need for services arises where competition is not required, the department requesting the work is encouraged to work with Diversity, Equity & Inclusion to consider a small business vendor from the District's vendor database to perform the work.
- 2.4. When agreement expenditure exceeds \$125,000, the process of solicitation of responses is as follows:
 - 2.4.1. The solicitation of written responses shall be 1) through publication in a newspaper of general circulation, printed and published within the jurisdiction of the District, or; 2) by electronic notification of firms having expressed interest in the work of the type under consideration and publication on the District's public website, or; 3) by a combination of printed publication, electronic notification, and publication on the District's public website as deemed appropriate by the Executive Director or designee.

2.4.2. In addition to Section 2.4.1, above, for agreements not exceeding \$500,000, the City, County, Port of San Diego Consultant Rotation List may be used when determining those firms having expressed interest in the work of the type under consideration.

2.4.3. The Executive Director or authorized designee shall interview or otherwise determine those firms most qualified.

2.5. For Agreements that exceed \$500,000, the agreement shall be authorized by the Board after the solicitation of written responses outlined in Section 2.4 above.

2.6. During the course of consulting/service agreements not requiring authorization by the Board, the Executive Director or authorized designee is authorized to negotiate and execute any amendments as follows:

2.6.1. For agreements where competition did not occur, amendments may be authorized if the aggregate agreement total does not exceed \$125,000 unless authorized by the Executive Director at their sole discretion in an amount not to exceed \$500,000.

2.6.2. For agreements where competition did occur but did not need to be authorized by the Board because they do not exceed \$500,000, the Executive Director or authorized designee may authorize amendments in an amount not to exceed a total agreement value of \$500,000 without Board action. Amendments bringing the total agreement value to an amount greater than \$500,000 shall require Board authorization.

2.7. During the course of Board authorized consulting/service agreements, the Executive Director or authorized designee is authorized to negotiate and execute any amendments without additional Board authorization as long as the aggregate amendment value does not exceed 30% of the original agreement value. Amendments to Board authorized agreements that exceed 30% of the original agreement value shall be presented to the Board for authorization.

2.8. The Executive Director is authorized to enter into single or sole source agreements without the need for competition in an amount not to exceed \$500,000. Single or sole source agreements in excess of \$500,000 shall be authorized by the Board. In either instance, a single source or sole source justification form shall be attached to a justification memorandum detailing the reasons there is no public benefit of competing such agreement, the Executive Director shall review the forms and if approved, the approved forms shall be attached to the SAP Purchase Requisition submitted for the agreement and documented with the executed agreement. In addition, if Board authorization is

required, the approved single or sole source justification form/memorandum package shall be included as an attachment to the agenda prepared for Board authorization.

- 2.9. The Executive Director, with concurrence from the Port Attorney, is authorized to grant indemnity to other public agencies, not-for-profit organizations, and educational institutions on service and consulting agreements that do not otherwise require Board authorization.
- 2.10. Notwithstanding the foregoing, authority is delegated to the General Counsel, or authorized designee, to negotiate and enter into agreements for outside legal services or consultant services, in amounts of \$500,000 or less, without Board action or solicitation of written responses. The Port Attorney, or authorized designee, shall interview or otherwise determine those firms or individuals best qualified.
- 2.11. For agreements for outside legal services or consultants in an amount in excess of \$500,000, the Port Attorney or authorized designee shall interview or otherwise determine those firms or individuals best qualified and that firm or individual shall be presented to the Board for consideration and approval.
- 2.12. Port Attorney or authorized designee may execute any amendments without Board action for Board authorized agreements as long as the amendment value does not exceed 30% more than the original agreement value.
- 2.13. Notwithstanding the foregoing, authority is delegated to the Port Auditor to negotiate and enter into agreements for outside auditing services or auditing consultant services in amounts of \$500,000 or less, without Board action or solicitation of written responses. The Port Auditor shall interview or otherwise determine those firms or individuals best qualified.
- 2.14. For agreements for outside auditing services or consultants for auditing in an amount in excess of \$500,000, the Port Auditor shall solicit written responses from those having expressed interest in providing auditing services and interview or otherwise determine those firms or individuals best qualified and that firm or individual shall be presented to the Board for consideration or approval.
- 2.15. Port Auditor or authorized designee may execute any amendments without Board action for Board authorized agreements as long as the amendment value does not exceed 30% more than the original agreement value.

- 2.16. Each month a written summary shall be provided to the Board reporting professional service or consulting agreements and/or amendments executed by the Executive Director, Port Attorney, Port Auditor or authorized designee for the prior month. Agreements for incidental services related to the purchase(s) of goods and equipment need not be reported. Agreements for minor, non-continuous repairs and/or maintenance services administered as an attachment to a purchase order need not be reported.
- 2.17. It shall be a violation of this policy to split or separate, into smaller work orders or projects, any project for the purpose of evading the provisions of this section requiring competition.
- 2.18. Any consultant/contractor that assists the District to determine the requirements for a Request for Proposal (RFP), Request for Qualifications (RFQ), or Request for Bid (RFB) shall be prohibited from proposing or bidding on the same RFP, RFQ or RFB.
- 2.19. The District may participate in collaborative solicitations with other public agencies to procure services and may develop agreements with vendors resulting from these collaborative bidding efforts. The Executive Director or authorized designee may avail the District of pricing and terms for services competitively solicited by other public agencies.
- 2.20. Agreements not expending District funds, regardless of the expenditure amount, do not need to be presented to the Board for authorization.
- 2.21. Cloud based software, also known as Software as a Service (SaaS) will be considered a service and as a result, the dollar thresholds of Section 2.3 through 2.8 of this policy will apply. In addition, all SaaS needs will undergo a 5-year Total Cost of Ownership (TCO) analysis to include the initial purchase price, implementation costs, and licensing, maintenance, support, and upgrade costs for the first 5 years. The TCO analysis will determine the procurement method used to acquire the product. In all instances, continued purchases of licensing, support, maintenance, and upgrades past the initial 5-year TCO and for the life of the SaaS will not require future competition or Board action.
- 2.22. Information Technology Services Agreements
- 2.22.1. All Information Technology Services (ITS) Agreements shall follow the procedures outlined in Section 2.3 through 2.8 of this policy as well as Section 2.21.
- 2.22.2. Authorization for limitation of liability and/or indemnification for ITS Agreements relating to the District's use and licensing of software

products, hosted applications, data and hardware, domain names, content and utilization of maintenance services.

2.22.3. The Executive Director or Port. Attorney may authorize ITS Agreements for \$500,000 or less that contain limitation of liability provisions and/or indemnity provisions for vendors as outlined below:

2.22.3.1. Limitation of liability for special, indirect, incidental, or consequential damages; lost profits; lost data; lost revenue; or business interruption, or

2.22.3.2. Indemnity for claims, actions, or demands relating to, breach of user agreements; violation of laws by employees or third parties given access to ITS; injury to persons or damage to tangible property resulting from grossly negligent acts, malicious acts or omissions of employees using ITS; infringement of patent, copyright, trademark, or other intellectual property rights of third parties, or

2.22.3.3. Such other limitations of liability, hold harmless agreements, releases, and indemnities as are common or customary for ITS Agreements.

3. Purchasing of Supplies, Materials, and Equipment (Goods)

3.1. Bid means the method determined by the Executive Director or designee to be appropriate for solicitation of the procurement of Goods, including but not limited to Best Value procurement by Requests for Proposals, or lowest price by Requests for Quotations or Bids.

3.2. Best Value means the overall combination of quality, price, warranty, and other elements defined in the solicitation document that, when considered together, provide the greatest overall benefit to the District in response to the requirements described in the solicitation documents.

3.3. The Executive Director or authorized designee shall authorize the purchase of Goods as follows:

3.3.1. Goods or services such as advertising, seminars, membership dues, etc., may be acquired by utilizing District procurement cards issued to District staff. Purchases made by procurement card shall be in accordance with District Procurement Card Procedures. (Administrative Procedure 129-100 – Procurement Card Procedures).

3.3.2. Goods priced at \$40,000 or less may be acquired by utilizing a purchase order, purchase agreement or procurement card from vendors who are capable of readily supplying the needed Goods at a fair and reasonable price as determined by the Executive Director or designee without soliciting competitive bids or proposals.

3.3.3. For purchases of Goods exceeding \$40,000, the solicitation of bids or proposals shall be 1) through publication in a newspaper of general circulation, printed and published within the jurisdiction of the District, or 2) by electronic notification of firms having expressed interest in providing the Goods under consideration and publication on the District's public website, or; 3) by a combination of printed publication, electronic notification, and publication on the District's public website as deemed appropriate by the Executive Director or designee.

3.3.3.1. The award for purchases exceeding \$40,000 shall be as follows:

3.3.3.1.1. The Executive Director or authorized designee shall execute Purchase Orders and/or Purchase Agreements in amounts not exceeding \$500,000 with the vendor having submitted the lowest acceptable price bid or best value proposal.

3.3.3.1.2. For Purchase Orders and/or Purchase Agreements that exceed \$500,000, the agreement shall be authorized by the Board after solicitation as outlined in Section 3.3.3 above. The Board shall authorize a Purchase Order or Purchase Agreement with the vendor having submitted the lowest acceptable price bid or best value proposal.

3.3.4. Payments for business related expenses including, but not limited to, City or County permits or application fees, utilities, payroll related benefits, and employee reimbursements not processed through payroll may be made via a direct payment in accordance with Administrative Procedure 127-205 and without the use of a purchase order or purchase agreement. Payments for memberships and dues, registrations, and subscriptions or for goods or services not payable by purchase order or procurement card may be made via direct payment.

3.4. The District may participate in collaborative Bids with other public agencies to procure Goods and may develop agreements with vendors resulting from these collaborative bidding efforts. The Executive Director or authorized designee may avail the District of pricing and terms for Goods competitively Bid by other public agencies.

- 3.5. The Executive Director is authorized to enter into single or sole source Goods purchases without the need for competition in an amount not to exceed \$500,000. Single or sole source purchases in excess of \$500,000 shall be authorized by the Board. In either instance, a single source or sole source justification form shall be completed and attached to a justification memorandum detailing the reasons there is no public benefit of competing such purchases. For purchases not exceeding \$500,000, the Executive Director shall review the forms, and if approved, the forms shall be attached to the SAP Requisition submitted for the purchase and become a part of the executed Purchase Order or Purchase Agreement. In addition, if Board authorization is required the approved single or sole source justification form/memorandum package shall be included as an attachment to the agenda prepared for Board action
- 3.6. IT hardware and software purchases shall follow the dollar thresholds of Section 3.3 of this policy. In addition, all IT hardware and software needs will undergo a 5-year Total Cost of Ownership (TCO) analysis to include the initial purchase price, implementation costs and licensing, maintenance, support, and upgrade costs for the first 5 years. The TCO analysis will determine the procurement method used to acquire the product. In all instances, continued purchases of licensing, support, maintenance, and upgrades past the initial 5-year TCO and for the life of the hardware or software will not require future competition or Board action.

4. Grant Funded Project Agreements

- 4.1. Grant applications shall be submitted by staff to funding agencies in support of proposed or approved District projects, programs, or activities consistent with the District's strategic plan.
- 4.2. The Executive Director, with concurrence from the Port Attorney, is authorized to grant indemnity to granting public agencies, not-for-profit organizations, and educational institutions on grant agreements that do not otherwise require Board authorization.
- 4.3. Grant awards that do not require Board authorization shall be accepted by the Executive Director or designee, and the Board shall be notified via memorandum.
- 4.4. Grant awards shall be presented to the Board for its consideration, acceptance, and authorization to enter into an agreement under any of the following circumstances:
- 4.4.1. If the grant award is for more than \$500,000 or shall obligate the District to provide resources of more than \$500,000;

- 4.4.2. If the grant award restricts the District's use of tidelands for more than five years; or
- 4.4.3. If the original grant award/agreement went to the Board for acceptance, any modifications and/or amendments to the original award/agreement shall be presented to the Board for approval.
- 4.5. Grant-funded projects shall adhere to applicable requirements specific within the grant program.
- 4.6. Where a specific granting agency has limitations that are more stringent than BPC Policy No. 110, the granting agency requirements for approval will be followed.
- 4.7. Staff will prequalify firms to assist with grant funded projects to allow the District to complete these projects within the performance period of the grant.
- 5. The Executive Director or authorized designee shall execute contracts, agreements, purchase orders, leases, and other official documents on behalf of the District except where otherwise provided by law. The Port Attorney or authorized designee shall review all contracts, agreements, leases, and other official documents as to form and legality on behalf of the District.

RESOLUTION NUMBER AND DATE: 2022-157, dated December 13, 2022 (Supersedes BPC Policy 110, Resolution 2017-056, dated May 16, 2017; Resolution 2013-34, dated February 12, 2013 2011-41, dated March 8, 2011; Resolution 2005-160, dated October 11, 2005; Resolution 2005-93, dated June 21, 2005; Resolution 2003-159, dated September 23, 2003; Resolution 2002-282, dated October 8, 2002; Resolution 2001-259, dated November 13, 2001; Resolution 98-244, dated July 28, 1998; Resolution 95-397, dated December 5, 1995; Resolution 94-376, dated October 18, 1994; Resolution 94-78, dated February 22, 1994; Resolution 88-200, dated July 5, 1988; Resolution 82-50, dated March 2, 1982; and Resolution 81-328, dated October 6, 1981)