

RESOLUTION 2017-056

RESOLUTION AMENDING BOARD OF PORT COMMISSIONERS POLICY NO. 110 - PROCEDURE FOR THE ADMINISTRATION OF CONTRACTS, AGREEMENTS, THE PURCHASING OF SUPPLIES, MATERIALS, AND EQUIPMENT, AND GRANTS TO: REMOVE SPECIFIC DOLLAR THRESHOLDS FOR PUBLIC PROJECTS AND INSTEAD REFER TO APPLICABLE SECTIONS OF THE CALIFORNIA PUBLIC CONTRACT CODE FOR DOLLAR THRESHOLDS FOR PUBLIC PROJECTS; ADDITION OF LANGUAGE REGARDING INFORMATION TECHNOLOGY HARDWARE AND SOFTWARE PURCHASES, CLARIFICATIONS AND DELEGATION OF AUTHORITY TO THE EXECUTIVE DIRECTOR AND PORT ATTORNEY FOR GRANTING INDEMNITY TO PUBLIC AGENCIES AND EDUCATIONAL INSTITUTIONS AND OTHER ADMINISTRATIVE CHANGES

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1, (Port Act); and

WHEREAS, Section 37 of the Port Act requires that the California Public Contract Code (PCC) apply to public projects of the District; and

WHEREAS, the District adopted the Uniform Public Construction Cost Accounting Act (Accounting Act) procedures of the PCC to apply to public projects of the District; and

WHEREAS, the Board of Port Commissioners (BPC) adopted BPC Policy No. 110 incorporating the provisions of the Accounting Act to govern the processing and administration of public projects; and

WHEREAS, BPC Policy No. 110 establishes a procedure for the administration of contracts, agreements and the purchasing of supplies, materials, equipment and establishing a policy governing the processing and administration of contracts; and

WHEREAS, the staff proposes the following amendments for modification and clarification of BPC Policy No. 110:

Section I - Contracts for Public Projects

- Dollar Thresholds for Public Contract Code Requirements - BPC Policy No. 110 currently references the specific dollar threshold requirements for entering into contracts and the corresponding sections of the PCC. Removing reference to the dollar thresholds with reference to the applicable PCC sections will ensure consistency with the PCC and when the dollar thresholds in the PCC change, it will not necessitate changes to BPC Policy No. 110; and
- Change Order Authority:
 - Contracts for \$2 million or less - Increasing the Executive Director or authorized designee authority to grant change orders up to 20% of the contract amount, and increasing the contract amount to \$2 million or less; and
 - Contracts for \$2 - \$10 million - Increasing the Executive Director or authorized designee authority to grant change orders up to 10% of the contract amount, and increasing the contract amount to more than two million dollars but not more than ten million dollars; and
 - Contracts for more than \$10 million - Increasing the Executive Director or authorized designee authority to grant change orders up to 5% of the contract amount, and increasing the contract amount to more than ten million dollars; and
- Unlawful to Split or Separate Projects - PCC Section 22033 provides that it is unlawful to split any project 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. Adding this requirement to BPC Policy No. 110 will add emphasis to this requirement; and

Section II - Service and Consulting Agreements

- Solicitation Requirements for Agreements over \$90,000 - Formal solicitation of written responses through competition which requires publication or electronic notification for the acquisition of services for agreements for expenditures over \$90,000; and
- Solicitation Requirements for agreements not exceeding \$500,000 - Increasing the dollar threshold for District use of the City, County, and District Consultant Rotational List from \$350,000 to \$500,000; and

- Amendments to Agreements -
 - Increasing the Executive Director authority to amend negotiated agreements up to an amount not to exceed \$175,000; and
 - Increasing the Executive Director or authorized designee authority to amend BPC authorized agreements for amendments from, 10% of the original agreement value or \$125,000 whichever is less, to 20% of the original agreement value; and
- Sole Source Agreements - Authorize the Executive Director with written justification from a District director or vice-president, to enter into single or sole source agreements without the need for competition in an amount not to exceed \$175,000; and
- Indemnity – Authorize the Executive Director with concurrence from the Port Attorney to grant indemnity to public agencies and educational institutions on service and consulting for agreements for \$175,000 or less; and
- Splitting or Breaking up Agreements - Addition of language stating it shall be a violation of this BPC Policy No. 110 to split or separate agreements or projects into smaller work orders, projects or agreements for the purpose of evading the provisions requirements of this section; and
- Collaborative Solicitations with other Public Agencies - Currently BPC Policy No. 110 allows for collaboration with other public entities on the purchase of goods and the Executive Director or authorized designee is now authorized to expand the authority to participate in collaborative solicitations with other public agencies to procure services and develop agreements with vendors resulting from collaborative bidding efforts; and
- Non-Expenditure of District Funds - Agreements not expending District funds, regardless of the expenditure amount, do not need to be presented to the BPC for authorization; and
- Software as a Service - 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 II of BPC Policy No. 110 will apply. 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; and

- If the TCO analysis determines the 5-year cost will not exceed \$90,000 in the first 5 years, competition will not be required and staff will be authorized to continue to purchase licensing, support, maintenance and upgrades for the SaaS for the life of the product without needing future competition or BPC action; and
- If the TCO analysis determines the 5-year cost will exceed \$90,000, but not exceed \$175,000, competition will be required and staff will be authorized to continue to purchase licensing, support, maintenance and upgrades for the SaaS for the life of the product without needing future competition or BPC action; and
- If the TCO analysis determines the 5-year cost will exceed \$175,000, competition will be conducted and BPC action will be required. Staff will request BPC to authorize the 5-year TCO and approval of the item will authorize staff to continue to purchase licensing, support, maintenance and upgrades for the life of the product without the need for further BPC action; and

Section III - Purchasing of Supplies, Materials, and Equipment (Goods)

- The District now only accepts electronic bids for the purchase of goods and it is recommended that the same level of competition be required for any purchase of goods exceeding \$25,000 and that the sections requiring the current different levels of informal competition be removed; and
- Removal of language awarding purchase orders and purchase agreements to the vendor having submitted the “lowest acceptable price bid” because the purchases for Goods can be made via both low bid and best value procurements it is not appropriate to state that purchases will be made to the lowest acceptable price bid; and
- The Executive Director with written justification from a District director or vice-president, is authorized to enter into single or sole source purchases without the need for competition in an amount not to exceed \$175,000; and
- IT Hardware and traditional software will be considered goods and as a result, the dollar thresholds of BPC Policy No. 110 Section III will apply. Hardware and software needs will undergo a 5-year 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; and

- If the TCO analysis determines the 5-year cost will not exceed \$25,000 in the first 5 years, competition will not be required and staff will be authorized to continue to purchase licensing, support, maintenance and upgrades for the hardware/software for the life of the product without needing future competition or BPC action; and
- If the TCO analysis determines the 5-year cost will exceed \$25,000, but not exceed \$175,000, competition will be required and staff will be authorized to continue to purchase licensing, support, maintenance and upgrades for the hardware/software for the life of the product without needing competition or BPC action; and
- If the TCO analysis determines the 5-year cost will exceed \$175,000, competition will be conducted and BPC action will be required. Staff will request BPC to authorize the 5-year TCO and approval of the item will authorize staff to continue to purchase licensing, support, maintenance and upgrades for the life of the product without the need for further BPC action; and

Section IV - Grant Funded Project Agreements

- The District will prequalify firms to assist with grant funded projects to allow the District to complete these projects within the performance period of the grant.

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District, as follows:

Amendments to BPC Policy No. 110 are adopted as set out in Attachment "B" to the agenda sheet.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL


By: Assistant/Deputy

2017-056

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 16th day of May, 2017, by the following vote:

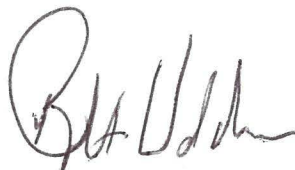
AYES: Bonelli, Castellanos, Malcolm, Merrifield, Moore, and Nelson

NAYS: None.

EXCUSED: Valderrama

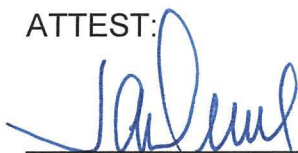
ABSENT: None.

ABSTAIN: None.



Robert Valderrama, Chair
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk

(Seal)