

**Agenda Item: Discuss and Consider an Addendum to the Procurement Policy Related to Requirements for RESTORE Grant Funding (Sheryl Rozier)****Overview:**

The Park Board has applied for two grants through Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE):

- 1) East End Lagoon -- Elevated, open-air pavilion with tables and benches, restrooms, an ADA-compliant "experience pier," parking, signage, landscaping and interpretive nature trails
- 2) Galveston Beneficial Dredge -- Placement of the dredged, beach-quality sand will begin immediately west of 61st street and continue to the west toward 103rd street.

Both grants have made the Multi-Year Implementation Plan approved by Commissioner Baker and the Office of the Governor of Texas with scopes of work and budgets identified. Factors considered in the award included whether the projects:

- Strengthen coastal resiliency,
- Stimulate local coastal economies,
- Increase tourism,
- Establish a foundation for future economic and ecosystem Restoration through careful planning and study, and
- Consideration was also given to projects that had a strong economic component in addition to ecological restoration.

Through this long process, which began in April of 2016, additional information has been requested, produced and submitted for each respective grant. The current focus is on the Park Board's procurement policy. Our current written policy is not as thorough as the U S Treasury would prefer.

Their request is to ratify and adopt the attached policy as an addendum to our current policy. Upon review, staff does not feel that this would be an issue to abide by and follow. Most of the items in the addendum are already being implemented with our FEMA projects, although it is not in our written policy.

This item was brought to the Finance and Operations Committee on June 19, 2019. The item, once finalized, was recommended to go directly to the Trustees.

**Staff Recommendation:**

Staff recommends adopting the addendum for inclusion into the Park Board Policy

**Funding Source (if a budgetary item):**

No funding for this request.

# **Park Board of Trustees of the City of Galveston**

## **Procurement Policy Addendum**

### **U.S. Treasury Department / State of Texas**

#### **(RESTORE)**

#### **Purpose:**

This policy is to establish guidelines that meet or exceed the procurement requirements for purchases or goods, services, and construction or repair projects when federal or state funds are being used in whole or in part to pay for the cost of a contract, services, or supplies. All procurement activities involving the expenditure of state or federal funds will be conducted in compliance with the Procurement Standards codified in 2 C.F.R. 200.317 through 200.326, unless otherwise directed in writing by the state or federal agency that awarded the funds. Throughout this policy, when in question please refer to the Park Board Controller, Project Manager or other Park Board subject matter experts.

#### **Code of Conduct:**

No director, employee, officer, or agent of Park Board of Trustees of the City of Galveston (Park Board) shall participate in the selection or in the award or administration of a contract supported by State of Texas or U.S. Treasury funds if a conflict of interest, real or apparent, would be involved. Such a conflict could arise if the employee, officer or agent, any member of his/her immediate family, his/her partner, or an organization which employs or is about to employ any of the above, has a financial or other interest in the firm or company selected for award.

No director, officer, employee or agent of Park Board shall solicit or accept gratuities, favors or anything of monetary value from contractors or firms, potential contractors or firms, or parties to sub-agreements, except where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value.

Any alleged violations of these standards of conduct shall be referred to the Park Board attorney. Where violations appear to have occurred, the offending director, employee, officer or agent shall be subject to disciplinary action, including but not limited to dismissal; where violations or infractions appear to be substantial in nature, the matter may be referred to the appropriate officials for criminal investigation and possible prosecution.

#### **Procurement Procedures:**

All procurement solicitations must acknowledge the use of federal or state funding for the contract and that prospective contractors must comply with all applicable federal laws, regulations, executive orders, and terms and conditions of the funding award. Additionally, all prospective bidders or offerors must acknowledge that funding is contingent upon compliance with all terms and conditions of the funding award. In addition, the Park Board shall maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

The procurement procedure shall prohibit the sole use of state, local, or tribal geographical preferences; except unless required by applicable federal law.

The director of each department of the Park Board, being responsible for procurement of services, supplies, equipment, or construction obtained with State of Texas or U.S. Treasury funds, shall review all proposed procurement actions to avoid the purchase of unnecessary or duplicative items. Such reviews shall consider consolidation or breaking out to obtain a more economical purchase. When determined appropriate by the director, an analysis to determine which approach would be the most economical shall be undertaken.

Although the Park Board does not typically work with prequalified contractor or vendor lists; it is required that all prequalified contractor or vendor lists be current, and sufficiently large for maximum open and free competition. Potential contractors or vendors must be permitted to qualify during the solicitation period.

Park Board shall take affirmative steps to assure that small and minority firms, women's business enterprises, and labor surplus firms are solicited whenever they are potential qualified sources. Park Board shall also consider the feasibility of dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small and minority firms, women's business enterprises, and labor surplus firms. Where permitted by regulations, delivery schedules will be developed which will include participation by such businesses. Affirmative steps are required to be used to ensure that minority businesses, women's business enterprises, and labor surplus area firms be used when possible. This requirement must be passed on to the contractor or vendor. Affirmative steps must include:

- placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- requiring the prime contractor, if subcontracts are to be let, to take the same affirmative steps.

Park Board shall assist the prime contractor whenever possible by providing copies of lists which identify qualified small and minority firms, women's business enterprises, and labor surplus area firms.

**Selection Procedures:**

All procurement carried out with State of Texas or U.S. Treasury funds, where Park Board is a direct party, shall be carried out in a manner that provides maximum free and open competition and the requirement of reasonable lots. Procurement procedures will not restrict or eliminate competition. Park Board shall not place unreasonable requirements on firms in order for them to qualify to do business. Nor will Park Board encourage or participate in noncompetitive practices among firms. Park Board is alert to organizational conflicts which would jeopardize the negotiation process and limit competition. Park Board will not require unnecessary experience of bonding requirements.

Pursuant to state law and federal regulations 2 CFR 200.318, all solicitations of offers shall incorporate a clear accurate description of the technical requirements for the material, service, or product to be procured. In competitive procurements, these descriptions shall not contain features which unduly limit competition. The description may include a statement of the qualitative nature of the material, product, or service and the minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications shall be avoided whenever possible. A “brand name or equal” description may be used to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.

All solicitations or offers shall clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids, proposals, or statements of qualifications.

Contracts shall be awarded only to responsible contractors/firms that possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Unless Park Board determines that the U.S. or Texas grant interest is adequately protected (20.325), contracts or subcontracts for construction or facility improvements that exceed the Simplified Acquisition Threshold will require:

- A bid guarantee from each bidder equivalent to 5% of the bid price
- A performance bond for 100% of the contract price
- A payment bond for 100% of the contract price

Purchases made above the Simplified Acquisition Threshold will include the Park Board making an independent estimate before receiving bids or proposals.

Consideration shall be given to such factors as the contractor’s/ firm’s capacity, capacity in a coastal environment, integrity, compliance with public policy, record of past performance, environmental policies, and financial and technical resources.

The Park Board and its contractors and vendors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable.

**Methods of Procurement:**

Direct procurement by Park Board shall be made by using one of the following methods depending on the type and value of service to be procured.

Micro Purchase Procedures: Typically, this does not align with Park Board procurement policy; but if activated or allowed micro-purchases must be distributed equitably among qualified suppliers. Micro-purchases do not require competition if the price is reasonable.

Small Purchase Procedures: Simple, informal procurement procedures will be used where the purchase of materials, single task services, supplies, equipment, and/or property will not cost in the aggregate more than \$150,000 (or current applicable Simplified Acquisition Threshold), except where further limited by state law or U.S. Treasury policy. The Executive Director must obtain a minimum of three oral or written price or rate quotations from qualified sources. Documentation on all quotations received

(whether oral or written) shall be made a part of the file. Selections shall be made principally on price. Payment shall be made upon delivery or completion.

Competitive Sealed Bids/Formal Advertising: Under this procedure bids are publicly advertised in accordance with the State of Texas Public Bid Law. A firm fixed price contract (either lump sum or unit price) shall be awarded to the responsible bidder whose bid is lowest in price and that conforms to all the material terms and conditions of the advertisement for bids. Competitive sealed bids can be used only when the following criteria are met: (1) there are complete, adequate, and realistic specifications or purchase descriptions; (2) there are two or more responsible bidders who are willing and able to compete effectively; (3) the procurement can be made on a firm fixed-price contract and selection of the successful bidder can appropriately be made principally on the basis of price.

When formal advertising is used the following conditions shall be met:

- (1) The advertisement for bids shall be publicly advertised in accord with state law.
- (2) The advertisement for bids, including the specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the advertisement.
- (3) All bids shall be opened publicly at the time and place specified in the advertisement for bids.
- (4) A firm fixed-price contract award shall be made by written notice to the lowest responsible bidder whose bid conforms to the advertisement for bids. Where specified in the bid documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts shall only be used to determine low bid when prior experience indicates that such discounts are generally taken.
- (5) Notwithstanding the above, any or all bids may be rejected when there are sound documented business reasons in the best interest of the State of Texas or U.S. Treasury Department.

Competitive Negotiation: (Requests for Proposals/Qualification statements)

The technique of competitive proposals is normally conducted with more than one source submitting an offer. All competitive proposals shall be conducted using a formal Request for Proposal/Request for Qualifications RFP/RFQ containing at least the minimum items in the attached outline (Attachment A). It is generally used when conditions are not appropriate for the use of sealed bids. Architectural and engineering services must be procured via requests for qualification statements; administrative consulting services must be procured via requests for proposals. Other professional services may also be procured by requests for proposals. The following procedures will be used for competitive negotiation:

- (1) Requests for proposals or qualification statements must be advertised in a newspaper in the region in accordance with the rules of the State of Texas policies. All submittals will be honored and entered into the competition. Notice to bidders must be publicly advertised in the newspaper for two (2) consecutive weeks, with the first date of publication being at least fourteen (14) days prior to the opening of the bid.
- (2) Request for proposals or qualification statements shall contain a detailed list of tasks in the proposed scope of work that is expected to be accomplished.
- (3) The request for proposals or qualification statements shall identify all significant evaluation factors or selection criteria that will be used to rate the proposals/qualification statements. Requests for proposals shall always include cost and at least one non-cost evaluation factor.
- (4) The selection official or committee (if designated) shall review all proposals and statements received and make a technical evaluation of each. This shall also include a written statement

that identifies the basis upon which the selection was made; including the importance of cost (under an RFP)

- (5) Contract award will be made to the responsible offeror whose submission is deemed most appropriate to Park Board with consideration for price, qualifications, and other factors set by local or state governing bodies. Unsuccessful offerors shall be notified in writing within ten working days of contract award. Documentation of notification shall be maintained in the contract selection file for the individual project.

For qualifications-based procurement of architectural/engineering professional services whereby competitors' qualifications are evaluated, and the most qualified competitor is selected, at least three firms will be solicited. Following the review of the qualification statements received, the most qualified competitor will be selected to enter into contract negotiation. This will always include negotiation of price to insure cost reasonableness. At the conclusion of successful negotiation, the competitor shall be invited to enter into a contract.

Noncompetitive Negotiation/Sole Source: noncompetitive negotiation shall be used when small purchase, formal advertising, or competitive negotiation procedures are not feasible. Noncompetitive negotiation will involve solicitations of a proposal from only one source. This can also occur if solicitations under the competitive negotiation procedures result in only one proposal or qualification statement. Noncompetitive negotiation shall only be used when written authorization has been obtained from State or U.S. Treasury. In order to qualify for this type of procurement, one of the following circumstances must apply:

- (1) The item or service is available only from a single source.
- (2) It is determined that a public urgency or emergency exists, and the urgency will not permit the delay beyond the time needed to employ one of the other three methods of procurement.
- (3) After solicitation of a number of sources, competition is determined to be inadequate.

### **Contract Pricing:**

Cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used. It is permissible to use Lump Sum or Fixed Hourly + Cost of Materials (with a not-to-exceed clause) type contracts.

Park Board shall perform cost or pricing analysis in connection with every procurement action including contract modifications in accordance with the requirements of state or U.S. Treasury guidelines. Costs or prices based on estimated costs shall be allowed only to the extent that the costs incurred, or the cost estimates included in negotiated prices are consistent with federal cost principals. (48 CFR Part 31) Lump sum prices will only be utilized when there is a definable work product and the quantity to be provided is certain and the contractor assumes all the risk for costs incurred. Unit prices can be utilized when there is a definable work product and the contractor assume all the risk for costs incurred, but the quantity is estimated. Cost reimbursement will be utilized when the task does not result in a definable work product or the contractor will not assume the risk of incurring the cost to complete the task. Cost reimbursement, unit or lump sum price, or a combination thereof may be utilized as appropriate.

A cost reimbursement type contract is most appropriate when the scope and extent of the work to be performed are not clearly defined, such as a professional services contract. A cost reimbursement contract must clearly establish a cost ceiling which may not be exceeded without formally amending the

contract and must identify a fixed dollar profit that may not be increased unless there is a contract amendment that increases the scope of the work.

A fixed price contract is appropriate when the scope of work is very well defined and product oriented. A fixed price contract can only be awarded when fair and reasonable prices can be established through adequate price competition and the solicitation is based principally on price. A fixed price contract must establish a guaranteed price that may not increase unless there is a contract amendment that increases the scope of the work.

Negotiation of profit is required as a separate element of the price, whenever there is no price competition and under any other circumstances where a cost analysis (rather than price analysis) is performed.

**Procurement Records:**

Park Board shall maintain records sufficient to detail the history of the procurement. The records shall include the following contract provisions and conditions:

- (1) Contracts other than small purchases shall contain provisions that allow for administrative, contractual, or legal remedies if contractors violate or breach contract terms and provide for sanctions and penalties as appropriate.
- (2) All contracts in excess of \$10,000 shall provide for termination for cause and for convenience by Park Board including the manner in which it will be done and the basis for settlement.
- (3) All construction contracts and subcontracts in excess of \$10,000 shall include provisions which require compliance with Executive Order 11246, Equal Employment Opportunity, as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60)
- (4) All contracts and subcontracts for construction or repair shall include a provision for compliance with the Copeland "Anti Kick Back" Act (18 USC 874) as supplemented by Department of Labor regulations. (29 CFR Part 3)
- (5) All contracts or subcontracts in excess of \$2,000 for construction or repair shall include a provision for compliance with the Davis-Bacon Act (40 USC 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5).
- (6) All construction or repair contracts or subcontracts in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers, shall include a provision for compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5)
- (7) Each contract shall include a notice of federal requirements and regulations pertaining to reporting and patent rights under any contract involving respect to any discovery or invention which arises or is developed in the course of or under such contract, and of the state requirements pertaining to copyrights and rights in data.
- (8) All negotiated contracts shall include a provision that makes it possible for the Comptroller General of the U.S. or the Texas Comptroller of Public Accounts, or any of their duly authorized representatives, to have access to any books, documents, papers, or records of the contractor/firm that are directly pertinent to the contract, for the purpose of making audit examination excerpts and transcriptions. Further, the contract must include a provision that all required records will be maintained by the contractor/firm for a period of five years after Park Board formally closes out each state or federal grant.

- (9) All contracts, subcontracts, and subgrants in amounts in excess of \$100,000 shall contain a provision which requires compliance with the requirements of Section 306 of the Clean Air Act (42 USC 1857 h), section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
- (10) Contracts shall recognize mandatory standards and policies relating to energy efficiency that are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163)
- (11) Contracts must not be awarded to excluded parties.
- (12) Contracts over \$100,000 must address Byrd anti-lobbying certifications.
- (13) Applicable contracts must address procurement of recovered materials.

**Contract Administration:**

Park Board shall maintain contract administration systems that insure contractors/firms perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. The accepted performance of contractors/firms will be a factor in subsequent contract negotiations and award. Remedial action by Park Board through legal processes shall be considered in instances of identified significant nonperformance.

## Attachment A (RFP/RFQ Outline)

The Request for Proposal or Request for Qualification (RFP/RFQ) will contain all of the information the proposers need in order to successfully submit a proposal. The following should be included:

- (1) Advertisement/Purpose: A cover letter or introduction that summarizes the services being solicited and the due date for proposals.
- (2) Program Information: Includes an overview of the grant/project status and a summary of the roles and responsibilities of all involved parties to provide the context for the solicited services and capture the interest of potential respondents.
- (3) Scope of Services: Includes an overview of the solicited services, summarized general expectations, specify the anticipated role of the selected firm, and provides a detailed list of tasks to be accomplished. It should be connected to the fee proposal and be detailed enough to be in the final contract.
  - Statement of Work (for RFP) will list in detail the tasks the selected consultant will be expected to perform. List must be detailed enough for consultant to provide price or estimated cost for the services.
- (4) Submission and Evaluation Requirements: Describes what sections should be included in the proposal (e.g. approach, organization chart, staffing plan, fee proposal, etc.) and what information each of those sections should contain. Also, describe the criteria the Committee will use to evaluate the proposal and the weights for each criterion. Submission requirements and evaluation criteria should be linked.
  - Approach section (for RFP): For each task identified in the scope of work, respondent is to describe how they would accomplish the task (s).
  - Project staffing: Include an organization chart, names and roles of principal staff members, time commitments for principal staff members, and attach resumes.
  - Qualifications: Include project summaries for your team's relevant experience, organized by firm or type of experience.
  - Fee proposal (RFP only): Price for services described in the approach, broken out by task.
  - Evaluation Criteria: List the criteria on which the proposals will be evaluated (e.g. creativity of approach, reasonableness of fee, quality of relevant qualifications, previous experience, etc.) and give the weighting for each criterion.
- (5) Schedule and Required Information: Provide information about the procurement not related to the actual project. This includes a schedule/timetable for the procurement, information on written questions and pre-proposal conference, contractual obligations, information on conflict of interest, and all other required clauses.
- (6) Attachments: Provide any required forms (e.g. forms for fee proposal, certifications) that further clarify the expectations by including a sample contract, copies of the roles/responsibilities checklist, and /or scopes of work for the other consultants. And include more detailed information on the project (e.g. application or project summary).