

Section 108. Purchasing Rules and Guidelines

Purchasing Procedures:

1. The Mississippi State Port Authority at Gulfport shall follow the public purchasing laws expressed in §§ 31-7-1, *et seq.* of the Mississippi Code and any applicable provisions of the Mississippi Department of Finance and Administration, Office of Purchasing, Travel and Fleet Management's Procurement Manual applicable for the purchase of all commodities, equipment and services. In the event any provision herein conflicts with the statutory provisions of §§ 31-7-1, *et seq.* of the Mississippi Code, the statutory provisions shall control.
2. Purchase requisition form is completed when an employee signs a request for purchase and a Deputy Director or Director approves the requisition with his/her signature.
3. The requisition is presented to the Purchasing Agent who then solicits prices on the goods or services requested. If the price of the good or service is under \$5,000.00, then the purchasing agent will place an order with the lower priced vendor and issue a purchase order at that time.
4. If price is over \$5,000.00 but less than \$50,000.00, two (2) written bids submitted on a vendor's letterhead or identifiable bid form and signed by authorized personnel representing the vendor must be solicited by Purchasing Agency and approved by the Executive Director. The lowest and best bidder shall be selected.
5. If the price is over \$ 50,000.00, legal advertisement must be placed in the newspaper specifying the goods or services needed according to the advertisement procedures expressed in § 31-7-13(c). After bids have been received by the Port staff, the accepted bid is presented to the Board of Commissioners of the Mississippi State Port Authority for their approval and selection of the lowest and best bidder.
6. The solicitation and contract for any purchase anticipated to cost \$50,000.00 or more shall be approved by the Board of Commissioners prior to advertisement. Any contract over \$100,000.00 has to be approved by the Mississippi Development Authority. After approval from the Mississippi Development Authority, the contract will be returned to the Mississippi State Port Authority.
7. Nothing herein shall be construed to be inconsistent with the rights provided to the Mississippi State Port Authority pursuant to § 59-5-37 of the Mississippi Code.
8. To the extent U.S. Department of Housing and Urban Development Community Development Block Grant funds are utilized in a procurement, such procurement must fully comply with the applicable requirements set forth in 24 C.F.R. § 84.44 or 85.36, OMB Circulars A-87, A-122, A-21 or A-133.

Bid Protest Procedures:

1. Authority to Resolve Protested Solicitations and Awards.

(a) Right to Protest. Any actual or prospective bidder, offerer, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Executive Director. The protest shall be submitted in writing within seven (7) days after such aggrieved person knows or should have known of the facts giving rise thereto.

(b) Authority to Resolve Protests. The Executive Director or his designee(s) shall have the authority to settle and resolve a protest of an aggrieved bidder, offerer, or contractor, actual or prospective, concerning the solicitation or award of a contract.

(c) Decision. If the protest is not resolved by mutual agreement, the Executive Director or his designee(s) shall promptly issue a decision in writing. The decision shall:

(i) state the reason(s) for the action taken; and

(ii) inform the protestant of its right to an administrative hearing before the Port Board of Commissioners.

(d) Notice of Decision. A copy of the decision under subsection (c) shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.

(e) Finality of Decision. A decision under subsection (c) of this subpart shall be final and conclusive, unless:

(i) fraudulent; or

(ii) any person adversely affected by the decision appeals administratively to the Board of Commissioners in accordance with Subsection 9 below.

2. Complaint to Procurement Officer.

Complainants should seek resolution of their complaints initially with the Procurement Officer or the office that issued the solicitation. Such complaints shall be in writing.

3. Filing of Protest.

(a) When Filed. Protests shall be made in writing to the Executive Director, and shall be filed in duplicate within seven (7) business days after the protestor knows or should have known of the facts giving rise thereto. A protest is considered filed when received by the Executive Director. Protests filed after the seven (7) day period shall not be considered.

(b) Subject of Protest. Protestors may file a protest on any phase of solicitation or award including, but not limited to, specification preparation, bid solicitation, award, or disclosure of information marked confidential in the bid or offer.

(c) Form. To expedite handling of protests, the envelope should be labeled "Protest." The written protest shall include as a minimum the following:

- (i) the name and address of the protestor;
- (ii) appropriate identification of the procurement and if a contract has been awarded, its number;
- (iii) a statement of reasons for the protest; and
- (iv) supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time in which case the expected availability date shall be indicated.

4. Requested Information; Time for Filing.

Any additional information requested by any of the parties should be submitted as expeditiously as possible to promote consideration of the protest. Failure of any party to comply expeditiously with a request for information by the Executive Director may result in resolution of the protest without consideration of any information which is untimely filed pursuant to such request.

5. Stay of Procurements During Protest.

When a protest has been filed within seven (7) days and before an award has been made, the Port Authority shall make no award of the contract until the protest has been settled unless the Executive Director makes a written determination, after consulting with the Board of Commissioners, that the award of the contract without delay is necessary to protect substantial interests of the Port Authority.

6. Making Information on Protests Available.

The Port Authority shall, upon written request, make available to any interested party information submitted that bears on the substance of the protest except where information is proprietary, confidential, or otherwise permitted or required to be withheld by law or regulation. Persons who wish to keep such information submitted by them confidential should so request by specifically identifying such information within documents submitted, and indicating on the front page of each document that it contains such information. The availability of such information shall be in compliance with the Mississippi Public Records Act of 1983, §§ 25-61-1, *et seq.* of the Mississippi Code.

7. Decision by the Executive Director.

A decision on a protest shall be made by the Executive Director as expeditiously as possible after receiving all relevant, requested information.

8. Effect of Judicial or Administrative Proceedings.

The Executive Director will refuse to decide any protest when a matter involved is the subject of a proceeding before the Board of Commissioners or has been decided on the merits by the Board. If an action concerning the protest has commenced in court, the Executive Director shall not act on the protest. This subsection shall not apply where the Board or a court requests, expects, or otherwise expresses interest in the decision of the Executive Director.

9. Appeal of Protest Decision By Executive Director or His Designee(s).

(a) Scope. This subsection applies to an appeal addressed to the Board of Commissioners of a decision under Subsection 1(c) above.

(b) Time Limitations on Filing a Protest Appeal. The aggrieved person shall file an appeal with the Board of Commissioners within seven (7) days of an adverse decision by the Executive Director or his designee(s) under Subsection 1(c) above. It is sufficient for the notice of appeal to be directed to the Chairman of the Board of Commissioners.

(c) Decision. The Board of Commissioners shall promptly decide whether the solicitation or award was in accordance with the Constitution, statutes, regulations, and the terms and conditions of the solicitation. The proceeding shall be de novo. Any prior determinations by the Executive Director or his designee(s) shall not be final or conclusive.

(d) Standard of Review for Factual Issues. A determination of an issue of fact by the Board of Commissioners under this subsection shall be final and conclusive unless arbitrary, capricious, fraudulent, or clearly erroneous.

10. Request for Hearing.

A contractor or prospective contractor that has appealed a protest decision pursuant to Subsection 9 above may request a hearing before the Board of Commissioners on the appeal. Such request must be received by the Board of Directors at the time the appeal is filed.

11. Notice of Hearing.

If a hearing is requested, the Port Authority shall send a written notice of the time and place of the hearing before the Board of Commissioners.

12. Authority of Chairman of the Board as Hearing Officer.

The Chairman of the Board, as hearing officer, in the conduct of the hearing, has the power, among others, to:

(a) hold informal conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding either by consent of the parties or upon such officer's own motion;

(b) require parties to state their positions with respect to the various issues in the proceeding;

(c) require parties to produce for examination those relevant witnesses and documents under their control;

(d) rule on motions, and other procedural items on matters pending before such officer;

(e) regulate the course of the hearing and conduct of participants therein;

(f) receive, rule on, exclude, or limit evidence and limit lines of questioning or testimony which are irrelevant, immaterial, or unduly repetitious;

(g) fix time limits for submission of written documents in matters before such officer;

(h) impose appropriate sanctions against any party or person failing to obey an order under these procedures, which sanctions may include:

(i) refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(ii) excluding all testimony of an unresponsive or evasive witness; and

(iii) expelling any party or person from further participation in the hearing;

(i) take official notice of any material fact not appearing in evidence in the record, if such fact is among the traditional matters of judicial notice.

13. Hearings Procedures.

(a) Hearings shall be as informal as may be reasonable and appropriate under the circumstances and in accordance with applicable due process requirements. The weight to be attached to evidence presented in any particular form will be within the discretion of the hearing officer. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness was present. The hearing officer may require evidence in addition to that offered by the parties.

(b) A hearing may be recorded but need not be transcribed except at the request and expense of the contractor or prospective contractor. A record of those present, identification of any written evidence presented, and copies of all written statements and a summary of the hearing shall be sufficient record.

(c) Opening statements may be made unless a party waives this right.

(d) Witnesses shall testify under oath or affirmation. All witnesses may be cross-examined.

14. Determination of Hearing Officer; Final Decision.

The Chairman of the Board, as hearing officer, shall prepare a written decision regarding the Board of Commissioner's decision on the appeal as expeditiously as possible. The Board of Commissioner's final decision shall recite the evidence relied upon. The decision shall be sent promptly to the actual or prospective bidder, offerer, or contractor who is aggrieved.

15. Determination that Solicitation or Award Violates Law.

A solicitation or award may be in violation of the law due to actions of state employees, bidders, offerers, contractors, or other persons. The Executive Director or the Board of Commissioners may determine that a solicitation or contract award is in violation of the provisions of state procurement law or regulations. Any such determination shall be made in writing after an opportunity to be heard is given, and such determination is subject to appropriate appeal.

16. Remedies Prior to an Award.

If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be:

- (a) canceled; or
- (b) revised to comply with the law.

17. Canceling or Revising Solicitation or Proposed Award to Comply with Law.

A finding by the Executive Director, after consultation with the Board of Commissioners, that the solicitation or proposed award is in violation of law will constitute a compelling reason to cancel or revise a solicitation or proposed award.

18. Remedies After an Award.

If after an award it is determined that the solicitation or award is in violation of the law, then the contract will be canceled.

19. Termination.

Contracts based on awards or solicitations that were in violation of law shall be terminated at no cost to the Port Authority, except as may be approved by the Board of Commissioners in compliance with state law.

20. Effect of Declaring a Contract Null and Void.

In all cases where a contract is voided, the Port Authority shall endeavor to return those supplies delivered under the contract that have not been used or distributed. No further payments shall be made under the contract and the Port Authority is entitled to recover the greater of:

- (a) the difference between payments made under the contract and the contractor's actual costs up until the contract was voided; or

(b) the difference between payments under the contract and the value to the Port Authority of the supplies, services, or construction if obtained under the contract.

The Port Authority may, in addition, claim damages under any applicable legal theory.

21. Appeal and Review of Board Decision on Appeal.

Any person or party receiving an adverse decision may appeal from a decision by the Board Protest Committee to the designated court or courts of the State.

22. Discontinuance of Contractor's Appeal.

After notice of an appeal to the Board of Commissioners has been filed, a contractor may not discontinue such appeal without prejudice, except as may be authorized by the Board.