

7720. RESOLUTION 98-31: REVISING RESOLUTION NO. 97-42: PROCEDURE FOR PROCUREMENT OF PROFESSIONAL SERVICES, MATERIEL AND SUPPLIES, CONSTRUCTION AND CONSTRUCTION MANAGEMENT CONTRACTS AND TRANSFER OF FUNDS. The Director presented the following Resolution.

RESOLVED, that the Authority authorizes and approves the following procedure for the solicitation, review, award and execution of certain types of Authority contracts and other action by the Executive Director as provided below:

1. a. Any professional service contract awarded to any person, partnership, corporation, company, association or similar entity or any affiliate thereof which individually exceeds \$50,000 shall be publicly announced, not less than once a week for two consecutive weeks, in one newspaper of general circulation in each of the States of Delaware and New Jersey, on each occasion when such professional services are required and each such announcement shall include (i) the project identification, (ii) general description and scope of the project, (iii) location, (iv) deadline for submissions of brief letters of interest and (v) criteria for selection including any special criteria required for any particular project, and shall indicate how interested parties can apply for consideration. For projects of an unusual or complex nature, a list of qualified bidders may also be prepared by the Authority and these persons given notice of the Project by the Authority.

b. The Executive Director of the Authority or his designees are to establish written administrative procedures for the evaluation of applicants and the following criteria shall be utilized in ranking the applicants under consideration: (i) experience and reputation; (ii) expertise (for the particular project under consideration); (iii) capacity to meet requirements (size, financial condition, etc.); (iv) location (geographical); (v) demonstrated ability; (vi) familiarity with work of the Authority, its requirements and systems; (vii) distribution of work to individuals and firms (economic considerations, and to broaden the base from which selections are to be made); and (viii) other criteria which may be required in special cases. Because of the diversity of professional services required on a variety of projects, each project must be given individual attention and a weighted average may be applied to criteria according to its importance to each project.

c. For each proposed project, the Authority shall evaluate current qualifications and performance data on file with the Authority together with those that may be submitted by other persons or firms regarding the proposed project and shall conduct discussions with such persons or firms regarding their qualifications, approach to the project and ability to furnish the required service. Compensation shall not be considered in these discussions. Based upon the criteria established by the Executive Director or his designee, as discussed above, and any specific criteria for the project and the discussions, the Authority shall rank, in order of preference, the applicants deemed to be qualified to perform the required services. Beginning with the qualified firm designated first on a preference list, the Authority shall negotiate for services at compensation which the Authority determines is fair and reasonable, and in making such determination the Authority shall conduct an analysis of the cost of the services required in addition to considering their scope and complexity. Should the Authority be unable to negotiate a satisfactory contract with the qualified person or firm designated to be first on the preference list, at a price the Authority determines to be fair and reasonable, negotiations with that person or firm shall be formally terminated and the Authority shall then undertake negotiations with the second qualified firm on the preference list. Failing accord with the second qualified person or firm, negotiations shall be formally terminated and the Authority will negotiate with the remaining persons or entities on the list. Notwithstanding the foregoing, any qualified person or firm may be rejected by the Authority if, in the opinion of the Authority or its delegated representative, it is not in the interest of the Authority to award the contract to such person or firm and, in addition, the Authority reserves

the right to refuse to negotiate with all qualified persons or firms, to publicly announce the project again, to proceed to do the work otherwise or to abandon the work if in the judgement of the Authority its best interest will be promoted thereby. Any professional services contract negotiated with any person or firm must be approved by the Commissioners prior to execution of the contract by the Authority.

d. Notwithstanding any of the foregoing, the Executive Director of the Authority is authorized to enter into contracts with any person, partnership, corporation, company, association, or similar entity or any affiliate thereof which contract exceeds \$50,000 without the contract being publicly announced and advertised where (i) because of the urgency of the particular circumstance, delay would likely result in substantial harm to the Authority or (ii) where the subject matter of the contract falls within the definition of "public business of a confidential nature" as provided by Section 4(b) of the Authority's Freedom of Information Regulations. If the Economic Development Committee deems it necessary to require outside consultants, the procurement of these services shall be specifically exempt from the requirements of this Resolution due to the confidential nature of such assignments. In circumstances subject to the exceptions stated herein, the Executive Director shall give notice to and obtain the approval of both the Chairman and Vice Chairman of the Authority and shall give notice of the execution of the contract at the next regular or Executive session of the Commissioners.

e. The term "affiliate" as used in this resolution shall mean any entity that controls, is controlled, or is under common control with another entity.

2. a. Any contract for the purchase of materiel and supplies and non-professional services for the Authority with any person, partnership, corporation, company, association or similar entity or any affiliate thereof which contract individually exceeds \$50,000, or in the combination with other contracts, exceeds \$50,000 in any one calendar year shall be pursuant to a contract entered into by the Authority after competitive bidding. The advertisement for such bids shall be published at least once a week for two consecutive weeks in one newspaper of general circulation in each of the States of Delaware and New Jersey. The advertisement shall indicate the character, quantity and location of the work or the character and quantity of materiel, the time and place where the plans and specifications or descriptions may be obtained and where proposals are to be received. This provision shall not apply to purchases by the Authority from suppliers in cases where the Authority is purchasing at prices competitively bid by the States of Delaware or New Jersey for state agencies. "Materiel" means materials, equipment, tools, supplies, or any other personal property, but does not include real property, or electric, gas, water, telephone, or similar utilities.

b. All construction management contracts and all construction contracts entered into by the Authority for construction, reconstruction, demolition, alteration, and repair work and maintenance work with any person, partnership, corporation, company association or similar entity or any affiliate thereof, which contract individually exceeds \$50,000, shall be pursuant to a contract entered into by the Authority after competitive bidding. The advertisement for such bids shall be published at least once a week for two consecutive weeks in one newspaper of general circulation in each of the States of Delaware and New Jersey. The advertisement shall indicate the character, quantity, and location of the work, the time and place where the plans and specifications or descriptions may be obtained and where proposals are to be received.

c. Any person proposing to bid on such contract may be required by the Authority to complete a questionnaire and file a financial statement containing a complete statement of that person's financial ability and experience in performing such work. If the Authority is not satisfied with the sufficiency of the answers to the questionnaire or the financial

statement, it may refuse to furnish the person submitting such unsatisfactory answers or financial statement any request for proposals or any plans or specifications for the work and the bid of any such person may be disregarded.

d. Any person to whom a construction management contract or construction contract is awarded must be bondable in the full amount of the construction contract and any request for proposals disseminated by the Authority for such a contract shall include a copy of the Authority's form of construction contract which shall be part of the proposal to be reviewed by prospective bidders. In addition, with respect to any construction management contract, the construction manager will be required to obtain at least three bids for each subcontractor category (unless it is determined by the Authority not to be in the best interest of the Authority to so require) and no work shall be awarded to any subcontractor without the prior approval of the Authority.

e. All materiel and supply contracts, non-professional service contracts and all construction management contracts or construction contracts are to be awarded to the lowest responsible bidder unless, in the opinion of the Authority or its delegated representative, the interest of the Authority is better served by awarding the contract to another bidder and, in addition, the Authority reserves the right to reject any or all bids, to advertise for new bids, to proceed to do the work otherwise, or to abandon the work if in the judgement of the Authority its best interest will be promoted thereby. In determining how the interest of the Authority is better served in making an award to other than the lowest responsible bidder, the Authority may take into consideration all relevant factors, including, but not limited to (i) the unsatisfactory performances on any previously awarded contracts by the bidder being rejected, (ii) lack of relevant experience on similar projects, (iii) lack of adequate manpower or supervisory staff; (iv) poor track record of timely completion within the industry or for the Authority; (v) track record of requesting unreasonable change orders, (vi) bonding capacity, (vii) low or no percentage of DBE, (viii) past claims or current legal problems or (ix) questionable subcontractor list.

f. A contract may be awarded without competition if the General Manager or Director of Operations of an Authority facility, or Police Administrator, prior to procurement, determines in writing that there is only 1 source for the required contract. Sole source procurement shall not be used unless there is sufficient evidence that there is only 1 source for the required contract and no other type of goods or service will satisfy the requirements of the Authority. The Authority shall examine cost or pricing data prior to an award under this paragraph. Sole Source procurement shall be avoided, except when no reasonable alternative sources exist. A written determination by the General Manager or Director of Operations for the sole source procurement shall be included in the Authority's contract file.

3. The Budget and Finance Committee in consideration of the overall procurement process, operational needs and issues, the need for uniformity and continuity in materiel and services required by the Authority, the unique and special needs of the Authority including, but not limited to, the desirability of owner furnished materiel and supplies in vessel repair, maintenance, renovation and rehabilitation, may increase or waive the thresholds established in paragraphs 1 and 2 of this Resolution, and shall report their action at the next meeting of the Commissioners.

4. Contracts for materiel and supplies and non professional services, awarded to any person, partnership, corporation, company, association or similar entity or any affiliate thereof, which contract in combination with other contracts in the aggregate are less than \$50,000 in any one calendar year, do not require formal solicitation of competitive prices (although informal price solicitations are encouraged) and, if more than \$25,000 but less than \$50,000 in the aggregate require the solicitation of three written quotes or all available sources, whichever is less, all quotes to be appropriately recorded by the Authority. Construction management contracts or construction

contracts awarded to any person, partnership, corporation, company, association or similar entity or any affiliate thereof, which are less than \$50,000 do not require formal solicitation of competitive prices (although formal price solicitations are encouraged) and, if more than \$25,000 but less than \$50,000 require the solicitation of three written quotes or all available sources, whichever is less, all quotes to be appropriately recorded by the Authority.

5. a. Notwithstanding the provisions of paragraphs 1, 2, 3 and 4, when the Projects Committee, based upon a recommendation of the Executive Director of the Authority, determines that the use of competitive bidding is either not practical or not in the best interest of the Authority (for example, where a design-build process is necessary or desirable in order to assure that the Authority deals with a single source provider for the design, installation, implementation and/or maintenance of an integrated system or installation), a contract may be entered into through competitive proposals. The determination to use competitive proposals may be made if the Projects Committee determines that it is necessary to (i) use a contract other than a fixed price type, (ii) conduct oral or written discussions with applicants concerning technical and price aspects of their proposals, (iii) afford applicants an opportunity to revise their proposals, (iv) compare the different price, quality and contractual factors of the proposals submitted, (v) award a contract in which price is not the determining factor or (vi) the Authority is unable to draft specifications in sufficient detail to be applicable to competitive bidding. Proposals shall be solicited through a request for proposal published at least once a week for two consecutive weeks in one newspaper of general circulation in each of the states of Delaware and New Jersey, which shall include (i) the project identification, (ii) general description and scope of the project, including the type of material or services required and a description of the work involved, (iii) location, (iv) where to obtain a copy of the Authority ' s request for proposal and (v) the deadline for submission of proposals.

b. The request for proposal shall contain (i) the project identification, (ii) general description and scope of the project, including the type of material or services required and a description of the work involved, (iii) location, (iv) the type of contract to be used, (v) a statement that discussions may be conducted with applicants who submit proposals determined to be likely to be selected for award, (vi) the minimum information the proposal must contain, (vii) the relative importance of price and other evaluation factors and (viii) the deadline for submission of proposals.

c. Any person proposing to submit a proposal for such a project may be required by the Authority to complete a questionnaire and file a financial statement containing a complete statement of that persons financial ability and experience in performing such work. If the Authority is not satisfied with the sufficiency of the answers to the questionnaire or the financial statement, it may determine that it will not receive any proposal from such person, and any proposal submitted by such person may be disregarded.

d. The Executive Director of the Authority or his designees are to establish written administrative procedures for the evaluation of applicants submitting proposals, and the following criteria shall be used in evaluating the relative merit of applicants under consideration: (i) the applicant ' s financial, physical, personnel or other resources, including subcontracts, (ii) the applicant ' s experience and reputation and record of performance and integrity, (iii) whether the applicant is qualified legally to contract with the Authority, (iv) capacity to meet requirements (size, financial, condition etc), (v) location (geographical), (vi) demonstrated ability, (vii) familiarity with work of the Authority, its requirements and systems, (viii) distribution of work to individuals and firms (economic considerations and to broaden the base from which selections are to be made) and (ix) other criteria which may be required in special cases. The Authority may determine that an applicant is non-responsive and/or non-responsible, and such determination shall be a basis for rejecting the proposal made by such applicant. Any applicant whose proposal is rejected under this

paragraph 5.d shall be notified in writing of the rejection. The reasons for the rejection shall be stated in the determination.

e. The Executive Director of the Authority or his designees shall establish written administrative procedures for the evaluations of proposals made by applicants determined to be acceptable to the Authority. Based on such procedures, the Authority shall determine that a proposal is either likely to be selected for award or is not acceptable. A determination that a proposal is unacceptable may be made for one or more of the following reasons: (i) the applicant is determined to be non-responsive or non-responsible pursuant to paragraph 5.d., (ii) the proposed price is unreasonable, or (iii) the proposal is otherwise not advantageous to the Authority. If the Authority determines that an applicant's proposal is unacceptable, it shall reject the proposal and shall notify the applicant of the rejection. After rejection of an applicant's proposal, the applicant shall not be afforded an opportunity to modify his proposal.

f. The Authority shall have the right to negotiate with individual applicants after their proposals are opened. The Executive Director of the Authority or his designees shall establish procedures and schedules for conducting such negotiations. Disclosure of one applicant's price to another and any other information derived from competing proposals shall not be permitted. Following negotiations conducted in accordance with the foregoing provisions of this paragraph, the Authority may issue a written request for best and final offers. Requests shall set forth the date, time and place for the submission of best and final offers. The request for best and final offers shall inform applicants that if they do not submit a notice of withdrawal or a best and final offer, their immediately previous offer will be construed as their best and final offer. Best and final offers shall be requested only once unless the Authority determines that it is advantageous to the Authority to conduct further negotiations or change the Authority's requirements. Prior to the time and date set for receipt of best and final offers, any applicant with whom negotiations have been held may withdraw its proposal or correct any mistake by modifying the proposal. Notwithstanding the foregoing, any qualified person or firm may be rejected by the Authority at any time in the negotiating process if, in the opinion of the Authority or its delegated representative, it is not in the interest of the Authority to award the contract to such person or firm, and, in addition, the Authority reserves the right to refuse to negotiate with all qualified persons or firms, to publicly announce the project again, to proceed to do the work otherwise or to abandon the work if in the judgement of the Authority its best interest will be promoted thereby. Any contract negotiated with any person or firm pursuant to the paragraph 5 must be approved by the Commissioners prior to execution of the contract by the Authority.

6. A General Manager, Director of Operations of an Authority facility, or Police Administrator may waive any or all provisions of this Resolution to meet the critical needs of the Authority as required by emergencies or other conditions where it is determined to be in the best interest of the Authority. The General Manager, Director of Operations, or Police Authority may determine an emergency condition exists by reason of extraordinary conditions or contingencies that could not reasonably be foreseen and guarded against. An emergency condition creates an immediate and serious need for materiel and supplies and/or construction services that cannot be met through normal procurement methods for the protection of public health, safety or property. A critical need creates a need for professional services that cannot be met through normal procurement methods.

a. Any procurement pursuant to this subsection shall be limited to those (i) materiel and supplies and/or construction services required due to an emergency condition and (ii) professional services necessary to satisfy a critical need.

b. A copy of each critical need determination processed under this procedure

shall be kept on file by the Authority.

7. All materiel and supply contracts, professional and non-professional service contracts, construction management contracts or other contracts required to be publicly advertised or bid pursuant to the provisions of paragraphs 1, 2 or 5 herein, must be approved by the Commissioners prior to execution of the contract by the Authority.

8. Whenever a budget adopted by the Authority contains an item relating to the maintenance, repair or rehabilitation of any Authority facility or property which is in operation, or to the making of capital improvements and additions thereto, or the construction of an Authority project, or to major repairs, or major rehabilitation to any Authority project, or any Authority property, or to the purchase of materiel and supplies, or to the furnishing of utility or other services which do not require public advertising or competitive bidding pursuant to the provisions of paragraphs 1, 2, 3 or 5 herein, the Executive Director (unless otherwise directed by the Budget and Finance Committee or the Commissioners) shall have the power to make purchases of services, materiel and supplies and to enter into construction management and construction contracts with any person, partnership, corporation, company, association or similar entity or any affiliate thereof.

9. The Executive Director shall continue to have the authority to authorize the transfer of funds from one line to the other within budget units of the Authority as long as such transfer does not exceed the total expenditures of the Authority as authorized in the budget. In addition, the Executive Director shall continue to have the authority to change allotment of positions within budget units, as long as the total number of positions does not exceed those authorized in the annual budget. Further, the Executive Director shall notify the Chairman of the Budget and Finance Committee and the Chairman and the Vice Chairman of the Authority before making any such position changes.

The Director recommended approval of this Resolution.

On motion by Mr. Schaeffer, seconded by Mrs. Koebig, the recommendation of the Director was approved by a roll call vote of 12 - 0.