



PROCUREMENT AND CONTRACTING POLICY

The Port Authority of Kansas City, Missouri (“Port KC”) believes in procuring and contracting for Goods and Services in a fair, open, equitable and lawful manner.

This Procurement and Contracting Policy outlines the processes utilized by Port KC for any contract awarded by Port KC and which Port KC is party to. NOTE: Contracts procured and awarded by a third-party developers and/or their general contractors are not governed by this Procurement and Contracting Policy. The processes and procedures for such contracts are instead governed by Port KC’s “PROCUREMENT POLICY FOR CHAPTER 68 BOND FINANCED SALE-LEASEBACK PROJECTS” and its related contracting policies.

While this Procurement and Contracting Policy incorporates Missouri law, it is not intended to be all inclusive of the State and Federal requirements that may apply to Port KC and/or any Contractor. Contractors are responsible for having knowledge of and adhering to any and all additional State and/or Federal requirements that may be applicable to Contractors and which are not explicitly contained herein.

Capitalized terms not otherwise defined within the text of this Procurement and Contracting Policy shall be defined as provided in the Appendix.

I. GENERAL POLICIES

A. General Applicability

This Procurement and Contracting Policy applies to the procurement of all Goods and Services unless the funding source mandates specific or additional procedures for letting contracts as a condition to receipt of funds, in which case Port KC may use such specific or additional required procedures.

B. Disqualification/Debarment

Port KC prohibits the award of any Contract to any Person that has been disqualified from contracting with the United States of America, State of Missouri, City of Kansas City, Missouri, or any agency, department or instrumentality of the foregoing, until such time as the period of disqualification or debarment shall have expired.

C. Gifts/Gratuities

Port KC prohibits the acceptance of personal gifts or gratuities of any kind from any Contractor or potential Contractor on projects that may include federal funding or under circumstances in

which the acceptance of such gifts or gratuities would otherwise violate the term of any applicable grant agreement or result in a violation of state, federal, or local law.

D. Conflicts of Interest

A Person is eligible for award of any Contract under this Procurement and Contracting Policy so long as the Contract does not create an actual, potential, or apparent conflict of interest. A prohibited conflict of interest exists when (i) because of other activities, relationships, or contractual services, a Person is or may be unable to render impartial, objective assistance or advice to Port KC, (ii) a Person's objectivity in performing its obligations under the Contract is or might be otherwise impaired, or (iii) a Person would receive an unfair competitive advantage. Prohibited conflicts of interest include, but are not limited to, the following:

1. Any Person providing Design Professional Services to Port KC for a project will be ineligible for award of a Contract to construct and/or manage the construction of the improvements said Person designed or assisted in designing; provided, however, this shall not operate to preclude the use of Design Build or Progressive Design-Build.
2. Any Person assisting Port KC in the preparation of any procurement document(s) for a project will be ineligible for award of a Contract with respect to such procurement, whether individually or as part of a team; provided, however, this shall not operate to preclude the use of Design Build or Progressive Design-Build.

Port KC shall not award any Contract to the following:

1. Individuals employed by Port KC or related to individuals employed by Port KC within the 4th degree by blood, marriage or adoption;
2. Profit-making firms or businesses in which any Port KC employee(s) or Board member(s) serve as officers, principals, partners, or shareholders, unless the applicable Port KC employee(s) and/or Board member(s), as applicable, shall have recused themselves from any action with respect to the procurement and award of the Contract;
3. Individuals who, within the immediately preceding twelve (12) months, were employed by Port KC in positions of substantial responsibility with respect to the nature of the Goods and Services to be obtained, or who participated in any way in developing any procurement documents with respect to the Goods and Services to be obtained; and/or
4. Profit-making firms or businesses in which the former employees described in clause (3) serve as officers, principals, partners or major shareholders.

Port KC's General Counsel will, upon written request, provide a determination with respect to any potential conflict of interest for a specific project, function or procurement. In the event the General Counsel determines that a conflict of interest exists, a written appeal may be made by the affected Person to the President within five (5) calendar days of notice from Port KC of

the conflict. The President shall determine the adequacy of the appeal and make a subsequent final decision. No further appeal shall be considered.

E. Indefinite Delivery/Quantity

Port KC may elect to procure and award any Contract on an indefinite delivery, indefinite quantity (IDIQ) basis under circumstances in which it is unable to determine, above a specified minimum, the precise quantities of Goods and Services that it may require during a defined period.

F. Request for Qualifications

Notwithstanding anything to the contrary in this Procurement and Contracting Policy, Port KC shall have the authority to issue a Request for Qualifications for purposes of screening and identifying those Persons deemed to possess the requisite skills and experience to provide certain Goods and Services that Port KC may elect to procure from time-to-time. In the event Port KC elects to issue a Request for Qualification, it may thereafter elect to establish one or more lists of pre-qualified Persons and restrict any subsequent procurement to those Persons having been so pre-qualified. Any list of pre-qualified Persons established by Port KC for the purposes set forth herein shall be maintained for a period of no greater than five (5) years, after which Port KC may elect to re-issue the applicable Request for Qualifications. This durational limit is imposed for purposes of ensuring that additional Persons developing the requisite qualifications to provide Goods and Services to Port KC are not unduly restricted from opportunities to compete for such work.

Any such Request for Qualifications shall be publicly advertised in a newspaper of general circulation within Kansas City, Missouri for a minimum of twenty (20) calendar days prior to the due date for any Statement of Qualifications.

G. Prohibited Communications

No Person or representative thereof shall have any communications with any member of the Board or with any of Port KC's staff, advisors, contractors or consultants involved with a procurement, except for communications expressly permitted by the procurement documents. The foregoing restriction shall not, however, preclude or restrict any communications with regard to matters unrelated to the procurement or participation in public meetings.

Unless otherwise directed pursuant to procurement documents, all communications to Port KC during any active procurement shall be directed via email to info@portkc.com. Any Person engaging in prohibited communications may be disqualified in the sole discretion of Port KC. Additional requirements and limitations on communications may be included in the procurement documents for a project.

H. Disclaimer of Liability

Unless otherwise stated in the procurement documents, under no circumstance shall Port KC, the State of Missouri, Kansas City, Missouri, or any department or agency of any of the foregoing be liable for or reimburse the costs incurred by any Person, regardless of whether

they are selected or if the procurement process is delayed, altered or terminated. Unless expressly waived in the procurement documents, any and all information Port KC makes available is provided solely as a convenience and without representation or warranty of any kind.

I. Role of President

Any decision or power allocated to Port KC by this Procurement and Contracting Policy may be exercised on behalf of Port KC by the President.

J. Public Notice and Document Availability

Port KC will issue public notices of its procurements consistent with applicable legal requirements. Notices will generally describe the project scope or services desired, indicate the recipient of and the deadline for responses and will contain such other information as Port KC deems appropriate for the project.

K. Liability for Private Obligations

Port KC and its Board, President and staff, the State of Missouri, and any political subdivision or subsidiaries of any of the foregoing, are not, and shall not be, liable for any financial or other obligation except as explicitly agreed in a Contract or as otherwise explicitly required by applicable law. The credit of Port KC or the State of Missouri will not be pledged by any counterparty under any procurement or otherwise; provided, however, that the foregoing is not intended to restrict or limit the ability of Port KC, the State of Missouri, or any other Person or governmental entity to act as a conduit issuer of any bond or other financing, including private activity bonds, or to initiate any federal, state, or local funding or financing tool (e.g., the federal TIFIA, INFRA, BUILD, or similar programs) or credit facility process with any federal, state or local governmental entity.

L. Sovereign Immunity

Nothing in this Procurement and Contracting Policy shall, or shall be deemed to, waive the sovereign immunity of either or both Port KC and the State of Missouri pursuant to applicable law.

M. Contract Award

Contracts procured pursuant to a Request for Bids will be awarded to the Lowest Most Qualified Bidder. Contracts procured pursuant to a Request for Proposals will be awarded to the Lowest Most Qualified Proposer. In determining the apparent Lowest Most Qualified Bidder or Lowest Most Qualified Proposer, as applicable, Port KC may elect to utilize ad-hoc committees of people with knowledge of the subject matter to assist it in making its determinations and recommendations to the Board.

N. Required Authorization

The President shall have the authority to approve any Contract not to exceed fifty thousand dollars (\$50,000.00).

The President and the Board's chairperson shall have the authority, by their mutual consent, to approve any Contract the cost of which exceeds fifty thousand dollars (\$50,000.00) but is not greater than one hundred thousand dollars (\$100,000.00).

The Board shall have the sole authority to approve any Contract the cost of which is greater than one hundred thousand dollars (\$100,000.00).

No Contract approved by the President shall subsequently be amended in a manner that causes Port KC's financial obligation to exceed \$50,000 unless the amendment shall be jointly approved by the President and the Board's chairperson, for expenditures not to exceed \$100,000, and by the Board via Resolution, for expenditures in excess of \$100,000. No Contract approved by the President and the Board's chairperson shall subsequently be amended in a manner that causes Port KC's financial obligation to exceed \$100,000 unless the amendment shall be approved by the Board via Resolution.

For purposes of determining which approval threshold is applicable, the total costs that Port KC might incur, inclusive of any renewal options, shall be utilized. By way of example, a Contract that continues for one year at \$50,000, with two annual renewal options at \$50,000 per annum, shall be regarded as a \$150,000 Contract for purposes of this section; provided, however, this provision shall not be construed as obligating Port KC to renew any such Contract for any one or more successive terms.

Notwithstanding the foregoing, in the event of an Emergency, the President shall be authorized to approve any Contract or amendment thereto, regardless of dollar amount and without approval of the Board's chair or Board, as applicable, provided the President communicate the nature of the Emergency to the Board's chair or Board, as applicable, as soon as practically feasible. The President shall endeavor to ensure that any such Contract is terminable by Port KC at will, with payment due only for services rendered prior to said termination, so as to preserve, to the maximum extent feasible, the authority of the Board's chair and/or the Board, as applicable, with respect to such expenditures.

O. Reporting of Contracts

Any Contract in excess of five thousand dollars (\$5,000) must be reported to the Board or the Board's Finance & Administration Committee, for informational purposes only, at the next regularly scheduled Board or Committee meeting.

P. Piecemealing of Contracts

No scope of services shall be piecemealed and awarded as multiple contracts to the same Person in any fiscal year solely for purposes of avoiding the applicability of any provisions of

this Procurement and Contracting Policy unless the Board shall approve the same by Resolution.

Q. Maximum Term

Except as otherwise provided herein, no Contract shall be awarded, amended, or renewed in a manner as to extend its total term beyond five (5) years unless the Board shall approve the execution or amendment of such Contract by Resolution. Notwithstanding the foregoing, any Contract awarded on an IDIQ basis shall not be subject to this maximum term provided the President & CEO shall have determined that the anticipated cost savings to Port KC outweigh the additional costs that Port KC might reasonably be anticipated to incur in the procurement of a new Contractor.

R. Additional Procurement Methods

This Procurement and Contracting Policy addresses only the most common procurements undertaken by Port KC and is not all-inclusive. In the event any additional procurement methods are or subsequently become authorized under Missouri law, or are not otherwise precluded by Missouri law, Port KC reserves the right to utilize any one or more of those methods as it deems to be in the best interests of Port KC.

S. Reservation of Right to Waive Requirements

Port KC, at its sole discretion, may waive or deviate from any or all of the requirements under this Procurement and Contracting Policy where it deems such waiver or deviation to be in the best interest of Port KC. Without limiting the foregoing, Port KC reserve the sole right to do any one or more of the following:

1. Modify any procurement processes to address applicable law and/or the best interests of Port KC as determined by the President;
2. Modify the terms of any procurement documents;
3. Reject any and all submittals or responses to any procurement at any time;
4. Terminate or cancel any procurement at any time prior to the execution of a Contract;
5. Suspend and/or terminate negotiations, elect not to commence negotiations, or engage in negotiations with any Person responding to the procurement, regardless of ranking;
6. Negotiate with a Proposer without being bound by any provision in the Proposal or the applicable Request for Proposals;
7. Negotiate a revised Bid with the apparent Lowest Most Qualified Bidder, including changes in Bid requirements, price, scope, specifications or quantity, if the Bid exceeds the appropriation or relevant budget for that project and Port KC determines that resoliciting Bids is not in its best interests;

8. Require confirmation of information furnished by any Person, require additional information, require additional evidence of qualifications to perform the work, including holding meetings and exchanging correspondence;
9. Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to any procurement documents;
10. Add or delete responsibilities from the information contained in any procurement documents;
11. Revise and modify the evaluation factors or otherwise revise or expand the evaluation methodology at any time;
12. Initiate a new procurement after withdrawal of the original procurement;
13. Issue addenda, supplements and modifications to any procurement documents;
14. Appoint committees and subcommittees to review procurement documents, make recommendations and seek the assistance of outside technical, financial, legal, and other experts and consultants;
15. Waive immaterial deficiencies, accept and review non-conforming submittals, or permit clarifications or supplements to submittals;
16. Disqualify any Person for violating any rules or requirements of the procurement set forth in the procurement documents or in any other communication, document or signed agreements;
17. Disclose information contained in a response submitted to Port KC to the extent required by applicable law;
18. Exercise any other right reserved or afforded to Port KC under the procurement documents or applicable law or in equity; and/or
19. Disqualify any Person for any conflict of interest, including use of any key former Port KC employee or member of the Board hired within 12 months of any solicitation under this Procurement and Contracting Policy or such longer period as may be imposed by applicable law.

Additional reservations of rights may be included in the applicable procurement documents for a particular solicitation. Except as set forth in the procurement documents, should the procurement process or negotiations be suspended, discontinued or terminated, no Person shall have recourse against Port KC, including reimbursement of any costs or losses incurred, directly or indirectly, with regards to the procurement.

Notwithstanding the foregoing, Port KC may not waive or deviate from any requirement(s) that are imposed by, or in a manner as to conflict with or violate, applicable local, state, or federal law.

T. Savings Provision

Nothing in this Procurement and Contracting Policy shall serve to invalidate or call into question any Contract awarded prior to September 1, 2024. Furthermore, in the event any Contract shall hereafter be awarded in a manner inconsistent with this Procurement and Contracting Policy, the presumption shall be that Port KC elected to waive the requirements under this Procurement and Contracting Policy in the best interest of Port KC.

II. MANDATORY CONTRACT TERMS

Certain contractual terms are required pursuant to Missouri law and/or Port KC policy and shall be included, when and as applicable, as material terms of any procurement and Contract. Refer to the following Sections of this Procurement and Contracting Policy for purposes of identifying the applicable requirements to be included:

Workforce Protections	-	Section VI
Affirmative Action	-	Section VII

III. GENERAL PROCUREMENTS

While Port KC has adopted a variety of procurement methods, the method to be utilized for a particular procurement is to be determined by (i) cost and (ii) the nature of the Goods and Services being procured.

Regardless of procurement method, Port KC shall strive to clearly identify and define the Goods and Services being procured and any expected evaluation factors so that a Person electing to respond is able to do so in an informed manner.

Notwithstanding anything contained herein, in the event of an Emergency, the President shall be authorized to procure any Contract, regardless of cost or nature of the Goods and Services, in such manner as he or shall reasonably determine to be in the best interests of Port KC with due regard to the nature of the Emergency.

A. The following methods can be utilized for any Goods and Services ***except*** Design Professional Services, provided the estimated cost does not exceed the amounts specified herein:

1. Micro-Purchase (\$10,000.00)

Goods and Services that are not estimated to cost more than \$10,000.00 may be procured through this procedure. No Request for Bids/Request for Proposals are required, provided the costs of such Goods and Services are reasonable. Action to verify price reasonableness need only be taken if information indicates that the price is unreasonable, or no comparable pricing information is readily available.

Any Port KC staff member procuring a Contract utilizing the foregoing method shall make their estimate as to the total cost in good faith. In the event the quoted price

exceeds \$11,000.00, the Port KC staff member shall terminate the procurement and proceed anew under Section III.A.2.

2. Request for Bids/Request for Proposals (\$25,000.00)

Goods and Services that are not estimated to cost more than \$25,000.00 may be procured through this procedure. Bids may be solicited by phone or email from an adequate number of sources to promote competition to the maximum extent practicable. Solicitation from at least four (4) sources should be considered to promote competition to the maximum extent practicable, with at least two (2) of the four (4) sources contacted coming from the City of Kansas City, Missouri certified MBE/WBE and/or SLBE lists (assuming the City of Kansas City, Missouri has certified MBE/WBE and/or SLBE's in the scopes of Goods and Services being solicited). The procurement opportunity need not be publicly advertised in any publication or on Port KC's website, though doing so is not prohibited.

Any Port KC staff member procuring a Contract utilizing the foregoing method shall make their estimate as to the total cost in good faith. In the event the quoted price exceeds \$27,500.00, the Port KC staff member shall terminate the procurement and proceed anew under Section III.B.

- B. The following method can be utilized for any Goods and Services except Design Professional Services, regardless of estimated cost:

Request for Bids/Request for Proposals

Goods and Services of any value may, and those estimated to cost more than \$25,000.00 shall, be procured through this procedure.

1. Notice of the Request for Bids/Request for Proposals shall be publicly advertised in a newspaper of general circulation within Kansas City, Missouri for a minimum of twenty (20) calendar days prior to the due date for any submittal. Notwithstanding the foregoing, in the event a particular procurement has been limited to those Persons having been pre-qualified as provided in Section I.E, this publication requirement shall be deemed satisfied.
2. The Request for Bids/Request for Proposals shall be posted on Port KC's website for a minimum of twenty (20) calendar days prior to the due date for any submittal. Notwithstanding the foregoing, in the event a particular procurement has been limited to those Persons having been pre-qualified as provided in Section I.F, this posting requirement shall be deemed satisfied, and the Request for Bids/Request for Proposals shall instead be delivered only to those Persons having been so pre-qualified.

IV. DESIGN PROFESSIONAL SERVICES PROCUREMENTS

Port KC shall procure and award any Contracts for Design Professional Services on the basis of demonstrated competence and qualifications for the type of services required. Only after a Person

is selected on the basis of qualifications are a scope of work and fee negotiated. There is no monetary threshold as cost is negotiated after selection based on qualifications.

Port KC will:

1. Publicize or deliver a Request for Qualifications, providing a period of not less than twenty (20) calendar days for submittal of a Statement of Qualifications;
2. Evaluate the Statements of Qualifications. If soliciting for Goods and Services similar to those for which a Request for Qualifications was previously issued by Port KC, Port KC may also elect to include and evaluate those Persons previously qualified, provided their qualifications have been updated within the past two (2) years and are on file with Port KC;
3. After evaluating Statements of Qualifications, list the three (3) Persons determined to be highly qualified;
4. Select the Person considered best qualified and capable of providing the desired Goods and Services;
5. Prepare a written description of the scope of the proposed Goods and Services, as a basis for negotiation; and
6. Negotiate a Contract for the Goods and Services with the selected Person. If Port KC is unable to negotiate a satisfactory Contract with the selected Person, negotiations with that Person shall be terminated. Port KC shall then undertake negotiations with another of the qualified Persons selected. If there is a failing of accord with the second Person, negotiations with such Person shall be terminated and Port KC shall then undertake negotiations with the third qualified Person. If Port KC is unable to negotiate a contract with any of the selected Persons, it shall reevaluate the necessary Design Professional Services, including the scope and reasonable fee requirements, again compile a list of qualified firms (either firms on file or that respond to another Request for Qualifications), and proceed with the process of evaluation and negotiation again.

Except and only to the extent preempted by applicable law, Port KC shall use the following evaluation criteria:

1. The specialized experience and technical competence of the Person with respect to the type of Goods and Services required;
2. The capacity and capability of the Person to perform the work in question, including specialized services, within the time limitations fixed for the completion of the project;
3. The past record of performance of the Person with respect to such factors as control of costs, quality of work, and ability to meet schedules; and
4. The Person's proximity to and familiarity with the area in which the project/facility is located.

Regardless of the initial dollar amount of any Contract entered into under this Section IV, Port KC may elect to use the same Person on a subsequent phase or for additional work without a new qualification-based selection process.

V. SPECIALIZED PROCUREMENTS

In lieu of utilizing a traditional bid-design-bid-build process for projects that include the design and construction of facilities and public infrastructure, Port KC reserves the right to utilize alternative project delivery methods including, but not limited to, the following:

1. **Construction Manager At-Risk** - An alternative delivery method in which a Contractor assumes the risk for the construction, rehabilitation, alteration, or repair of a project at the contracted price as a general contractor and provides consultation services to Port KC regarding construction during and after the design of the project.

Port KC may use the Construction Manager At-Risk method for:

- a. Civil Works Projects in excess of two million dollars (\$2,000,000.00); and/or
- b. Noncivil Works Projects in excess of three million dollars (\$3,000,000.00)

Required Solicitation: Port KC shall undertake a two-phase Construction Manager At-Risk procurement in accordance with the provisions of Section 67.5050, RSMo, as the same may be amended from time-to-time.

2. **Public-Private Partnerships** - An alternative delivery method in which a Contractor is responsible for planning, designing, constructing, financing, operating and maintaining, or any combination of the foregoing, a facility or service.

Port KC may use the Public-Private Partnership method for:

- a. Civil Works Projects, regardless of dollar amount; and/or
- b. Noncivil Works Projects, regardless of dollar amount.

Required Solicitation: Port KC shall undertake a Public-Private Partnership procurement in accordance with such processes and procures as shall be approved by the President, with consideration given to the nature of the project at issue.

3. **Design-Build** - An alternative project delivery method in which a Design-Builder selected pursuant to a multi-phase qualifications-based process is responsible for furnishing design and construction services pursuant to a single Contract.

Port KC may use the Design-Build method for:

- a. Civil Works Projects, regardless of dollar amount; and/or
- b. Noncivil Works Projects in excess of seven million dollars (\$7,000,000.00)

Required Solicitation: Port KC shall undertake a three-phase Design-Build procurement in accordance with the provisions of Section 67.5060, RSMo, as the same may be amended from time-to-time.

4. **Progressive Design-Build** - An alternative project delivery method in which a Design-Builder selected pursuant to a single-phase qualifications-based process is responsible for furnishing design and construction services through a series of project delivery phases which may include, without limitation, preliminary design, final design, and construction.

Except to the extent prohibited by applicable state law or the terms of any applicable grant, Port KC may elect to utilize Progressive Design-Build where:

- a. The construction activities are highly specialized, and a Progressive Design-Build approach is critical in developing the construction methodology;
- b. The project is of a nature as to provide opportunity for greater innovation or efficiencies between the designer and the builder through the use of Progressive Design-Build; or
- c. Significant savings in project delivery time are reasonably expected to be realized through the use of Progressive Design-Build.

Required Solicitation: At least one week prior to solicitation Port KC shall publicly disclose at a regular Board meeting its intent to utilize Progressive Design-Build via a Resolution approved by the Board.

Port KC shall determine the scope and level of detail required to permit interested Design-Builders to submit their qualifications in accordance with Port KC's requirements given the nature of the Progressive Design-Build project and shall prepare and issue a Request for Qualifications in order to select a Design-Builder to execute the project. The Request for Qualifications shall include, but is not limited to, the following elements:

1. Documentation of the size, type, and desired design character of the project and any other information deemed necessary to adequately identify Port KC's needs, including the expected cost range, the methodology that will be used to evaluate the Design-Builder's qualifications, the procedure for final selection, and any other information deemed necessary by Port KC to inform interested parties of the contracting opportunity;
2. The factors that Port KC will consider in evaluating qualifications, including technical design and construction expertise, and all other nonprice-related factors; and
3. The relative importance or the weight assigned to each of the factors identified in the Request for Qualifications.

The Request for Qualifications shall include the following elements, in addition to any others which Port KC may elect to require:

- a. Identification of those persons or firms known at the time of the statement of qualification submission who will perform work on the project;
- b. Evidence that the Design-Builder has completed, or has demonstrated the experience, competency, capability, and capacity to complete, projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project;
- c. A financial statement that ensures that the Design-Builder has the capacity to complete the project;
- d. The licenses, registration, and credentials required to design and construct the project, including, but not limited to, information on the revocation or suspension of any license, credential, or registration;
- e. Evidence that establishes that the Design-Builder has the capacity to obtain all required payment and performance bonding and insurance; and
- f. If the proposed design-build entity is a corporation, limited liability company, partnership, joint venture, or other legal entity, a copy of the organizational documents or agreement committing to form the organization.

Under no circumstances shall price or fees be considered as part of the evaluation criteria in ranking or selecting a Design-Builder. Port KC shall evaluate the qualifications of all Design-Builders solely in accordance with the criteria prescribed in the Request for Qualifications. A short list containing a minimum of two and maximum of five qualified Design-Builders determined to have the best and most relevant qualifications to perform the services required of the project may proceed further in the selection process; provided, however, if Port KC receives responsive qualifications from less than four Design-Builders, all Design-Builders shall remain eligible until such time as a Contract has been executed.

In the event Port KC determines it is in its best interest to proceed with Progressive Design-Build, Port KC shall enter into negotiations with the top ranked Design-Builder. If Port KC is unable to negotiate a satisfactory Contract, negotiations with that Design-Builder shall be terminated. Port KC shall then undertake negotiations with the firm that received the next highest number of points, and continuing in the same manner thereafter, until such time as a mutually agreeable Contract has been negotiated or Port KC elects to terminate the procurement.

VI. WORKFORCE PROTECTIONS

Various provisions of state law require that certain protective measures be implemented, depending on the nature of Goods and Services being procured and their dollar value. Port KC shall require the following as material terms of any Contract, as applicable:

A. Bonds (*Applicable only to Construction Contracts in excess of \$50,000.00*)

1. Payment Bond

The Contractor shall obtain and deliver to Port KC a payment bond naming Port KC as obligee, which payment bond shall be in an amount not less than the total Contract amount. The payment bond shall be secured and delivered to Port KC prior to execution of the Contract, or such sooner time as Port KC may elect to require as a term of the procurement.

2. Performance Bond

Port KC does not routinely require that a Contractor obtain and deliver a performance bond, but reserves the right to do so in its sole discretion or when required as a term of any federal, state and/or local funding source.

3. Bid Bond

Port KC does not routinely require that a Contractor obtain and deliver a bid bond, but reserves the right to do so in its sole discretion or when required as a term of any federal, state and/or local funding source.

B. Prompt Pay (*Applicable only to Construction Contracts of any value*)

The Contractor shall pay to its subcontractors and material suppliers, within fifteen (15) days after each payment from Port KC (or such shorter time as their respective contract(s) might provide for), those sums due the same under the terms of their respective contract(s), except that any retention shall not exceed five percent (5%). In the event that a payment is not timely made by the Contractor, in whole or in part, on the grounds that the work, or any portion thereof, was not deemed suitable for payment, the Contractor shall provide the subcontractors and material suppliers with a written explanation for the withholding or deductions. If the Contractor shall fail to make a payment in full within the time allotted herein, without reasonable cause, the Contractor shall pay its subcontractors and material suppliers, in addition to any payment due them, interest in the amount of not less than one and one-half percent per month (or such greater interest as their respective contract(s) might provide for), calculated from the date payment was due.

C. OSHA 10-Hour (*Applicable only to Construction Contracts of any value*)

The Contractor shall provide a ten-hour Occupational Safety and Health Administration

(OSHA) construction safety program for their On-Site Employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the State of Missouri's Department of Labor and Industrial Relations which is at least as stringent as an approved OSHA program, unless such On-Site Employees have previously completed the required program. All On-Site Employees who have not previously completed the program are required to complete the program within sixty (60) days of beginning work on the project. Any On-Site Employee found on a work site subject to this paragraph without documentation of the successful completion of the required course shall be afforded twenty (20) days to produce such documentation and the Contractor shall cause those failing to do so to be removed from the work site until such time as they shall be in compliance.

The failure to comply with the requirements of this paragraph C may subject the Contractor to the payment of statutory penalties to Port KC. The Contractor shall incur a statutory penalty of two thousand five hundred dollars (\$2,500) plus one hundred dollars (\$100) for each On-Site Employee employed by the Contractor, for each calendar day, or portion thereof, such employee is employed without the required training within the time limits allotted herein. In the event that Port KC shall become entitled to statutory penalties, Port KC shall be entitled to collect the same in any manner authorized by the provisions of the Contract. Any statutory penalties shall be imposed and collected, if due, consistent with the procedures established by Section 292.675, RSMo.

The Contractor shall contractually require its subcontractors of every tier to adhere to the requirements of this paragraph C in every regard.

For purposes of this paragraph C, the following definitions shall be applicable:

"Directly engaged in construction" shall mean work performed in the actual erection of the structure or completion of the project. In addition, employees working at a nearby or adjacent facility used by the Contractor or its subcontractors for construction of the project shall be deemed on-site employees. Individuals engaged solely in the transportation of materials, fuel, or equipment to the site of the project shall not be deemed to be directly engaged in construction.

"On-site employee", laborers, workmen, drivers, equipment operators, and craftsmen employed by the Contractor or its subcontractors to be directly engaged in construction at the site of the project.

D. E-Verify (*Applicable to any Contract in excess of \$5,000.00*)

The Contractor shall not employ any person on the project who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. 1324a(h)(3). The Contractor shall execute an "Employee Eligibility Verification Affidavit" and shall attach thereto documentation sufficient to establish the Contractor's enrollment and participation in an electronic verification of work program

operated by the United States Department of Homeland Security (E- Verify) or an equivalent federal work authorization program authorized by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986. For those Contractors enrolled in E-Verify, the first and last pages of the E- Verify Memorandum of Understanding that the Contractor will obtain upon successfully enrolling in the program shall constitute sufficient documentation for purposes of complying with this paragraph D. The required documentation shall be secured and delivered to Port KC prior to execution of the Contract, or such sooner time as Port KC may elect to require as a term of the procurement.

The Contractor shall contractually require its subcontractors of every tier to adhere to the requirements of this paragraph D in every regard.

E. Prevailing Wage (*Applicable only to Construction Contracts, excluding painting and decorating or repair, in excess of \$75,000.00*)

The “Prevailing Wage Requirements” shall collectively refer to the following:

1. Sections 290.210 to 290.340, RSMo, the State of Missouri Prevailing Wage Law (“Law”); and
2. 8 CSR 30-3.010 to 8 CSR 30-3.060, the Prevailing Wage Law Rules (“Rules”); and
3. The applicable Annual Wage Order (“Wage Order”) issued by the State of Missouri’s Department of Labor and Industrial Relations for the county in which the work is performed; and
4. Any applicable Annual Incremental Wage Increase (“Wage Increase”) to the Wage Order.

In accordance with the provisions of the Prevailing Wage Requirements, the Contractor will pay or cause to be paid the applicable prevailing hourly rate of wages to all workers entitled to the same. If and to the extent the Prevailing Wage Requirements are applicable, the Contractor will take whatever lawful steps are necessary to ensure that prevailing hourly rate of wages are paid by the Contractor and all subcontractors thereunder, of every tier, according to the type of work being performed.

In order to monitor the payment of the prevailing hourly rate of wages, the Contractor shall do the following:

- i. Post and require all subcontractors to post and keep posted a clearly legible statement of all prevailing hourly rate of wages to be paid to the workers in a prominent and easily accessible place at the location of the work; and

- ii. Complete and require all subcontractors to complete Port KC's "Daily Labor Force Report" for each calendar day that work is being performed, and remit the same not less than weekly; and
- iii. Complete and require all subcontractors to complete Port KC's "Certified Payroll Report" for each calendar week that work is being performed, and remit the same not more than two weeks after the close of the applicable payroll reporting period; and
- iv. Complete weekly interviews with randomly selected workers to identify any potential compliance issues; and
- v. Review every Daily Labor Force Report in conjunction with the applicable Certified Payroll Report and identify any errors, omissions, or entries inconsistent with the Prevailing Wage Requirements; and
- vi. Correct and require all subcontractors to correct any errors, omissions or entries inconsistent with the Prevailing Wage Requirements that are identified during such review of the same, and to remit to the affected workers any additional sums determined to be due as a result of such corrections; and
- vii. Remit to Port KC, once per month, the Certified Payroll Reports as corrected, if applicable. (The corresponding Daily Labor Force Reports shall **not** be submitted to Port KC but shall be retained as otherwise provided for herein, and are subject to review by Port KC and its authorized agents upon their request); and
- viii. File with Port KC, not more than thirty (30) days following the completion of the work, the "Affidavit of Compliance With Prevailing Wage Requirements" for the purpose of certifying their compliance with the Prevailing Wage Requirements.

All records submitted with respect to the Prevailing Wage Requirements or otherwise herein required shall be retained by the Contractor for not less than three (3) full year following the date upon which Contractor submits to Port KC the "final" Certified Payroll Reports, and shall be made available for review by Port KC and its authorized agents upon request. Port KC shall have the absolute right to audit the Contractor's compliance with the provisions of this document and to examine, in whole or in part, any records which the Contractor is required to obtain and retain, and to interview any workmen in connection therewith. The Contractor shall grant Port KC or its authorized representative access to such records and workmen, if applicable, during business hours, and shall make such records and workmen available at the location of the work or such other location in reasonable proximity thereto as Port KC may identify.

The Contractor is solely responsible for ensuring that its subcontractors comply with the provision of the Prevailing Wage Requirements and shall be the sole point of contact for

Port KC with respect such matters. The Contractor shall not instruct its subcontractors to submit any documentation directly to Port KC unless Port KC and the Contractor shall have mutually agreed otherwise in writing. Any documentation not otherwise submitted through the Contractor may be rejected by Port KC in its sole discretion, in which case the Contractor shall resubmit such materials.

If any allegations or inquiries are made with respect to any potential violations of the Prevailing Wage Requirements, or if the Contractor's review of the Daily Labor Force Reports and Certified Payroll Reports indicates a violation, the Contractor must notify Port KC in writing within five (5) days of learning of such allegation, inquiry or violation. The Contractor must follow up with the relevant contractor(s) and subcontractors thereunder until all allegations, inquiries or violations are satisfactorily resolved and disclose the resolution to Port KC, in writing, within five (5) days following the resolution of all such allegations, inquiries or violations.

If any violations of the Prevailing Wage Requirements are not resolved to the satisfaction of Port KC, Port KC may identify, by written notice to the Contractor, the workers claiming to have been underpaid, the days they claim to have been underpaid, and the amounts they claim to have been underpaid. The Contractor will have ten (10) days following receipt of such notice, or such longer time as Port KC may authorize in writing, to respond to the notice. The Contractor will be given reasonable notice and an opportunity to be heard on the matter. Based on the information in the notice, the Contractor's response, and such additional information as Port KC determines relevant, Port KC will render a written decision as to the amount, if any, of additional wages Port KC concludes is owed. Within ten (10) days following the Contractor's receipt of such Port KC determination, the Contractor shall either (i) promptly pay or cause to be paid any such wages that Port KC determines are owed, or (ii) notify Port KC in writing that it disputes Port KC's determination. In the event the Contractor elects (ii) above or fails to respond within the allotted time, the matter shall be referred to the State of Missouri's Department of Labor and Industrial Relations for further enforcement action. Notwithstanding the foregoing, nothing herein shall be construed as precluding the Contractor from any additional civil and criminal liability imposed by the Prevailing Wage Requirements.

The failure to comply with the Prevailing Wage Requirements may subject the Contractor to the payment of statutory penalties to Port KC. The Contractor shall incur a statutory penalty of one hundred dollars (\$100.00) for each worker employed, for each calendar day, or portion thereof, such worker is paid less than the prevailing hourly rate of wages for any work done on behalf of the Contractor and all subcontractors thereunder. Any statutory penalties shall be imposed and collected, if due, consistent with the procedures established by the Prevailing Wage Requirements.

VII. AFFIRMATIVE ACTION

Port KC has adopted Minority/Women Business Enterprise and Construction Workforce programs to implement the Port KC's policy of supporting the fullest possible participation of firms owned

and controlled by minorities and women, and the utilization of minority and women workforces in the performance of Contracts. The applicability of these programs is dependent on the nature of Goods and Services being procured and their dollar value. Port KC shall require the following as material terms of any Contract, as applicable:

A. **Minority/Womens' Business (M/WBE) Enterprise** (*Applicable to any Contract in excess of \$300,000.00*)

Contracts shall be subject to the following M/WBE goals unless otherwise waived, in whole or in part, pursuant to this policy:

MBE - 14.7%

WBE - 14.4%

The goals are expressed as a percentage of the total compensation to be paid to the Contractor. Although it is not a requirement that the Contractor meet or exceed the goals, the Contractor is required to objectively demonstrate to Port KC that good faith efforts have been made.

1. Definitions:

Commercially Useful Function: Real and actual services that are a distinct and verifiable element of the contracted work based upon private sector trade or industry standards. Determination that an M/WBE performs a commercially useful function will be made based on the following considerations:

- a. An MBE or WBE performs a commercially useful function when it is responsible for execution of the ordinary and necessary work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the MBE or WBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining the quality and quantity, ordering the material, installing (where applicable) and paying for the material itself. To determine whether an MBE or WBE is performing a commercially useful function, one must evaluate the following:
 1. The amount of work subcontracted;
 2. Industry practices;
 3. Whether the amount the enterprise is to be paid under the contract is commensurate with the work it is actually performing;
 4. Whether the MBE or WBE has the skill and expertise to perform work for which it is being utilized;

5. The credit claimed for its performance of the work; and
 6. Other relevant factors.
- b. An MBE or WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of MBE or WBE participation. In determining whether an MBE or WBE is such an extra participant, one must examine similar transactions, particularly those in which MBEs or WBEs do not participate.
 - c. An MBE or WBE firm is not performing a commercially useful function if the MBE or WBE subcontracts a greater portion of the work on a contract or purchases a greater amount of material than would be expected on the basis of normal industry practice for the type of work involved.
 - d. Whether the MBE or WBE is participating in the contract as a middle person or broker in the normal course of that business or trade by purchasing the goods and/or services from another business, thereby qualifying expenditures for such goods and/or services to be counted toward utilization requirements for MBEs and WBEs.
 - e. Whether the MBE or WBE is responsible for the purchase and quality of, and payment for, materials used to perform its work under the contract.

There shall be a rebuttable presumption that, when the MBE or WBE subcontracts a greater portion of the contract work than normal industry practice, the MBE or WBE is not performing a commercially useful function.

Disadvantaged Business Enterprise (DBE): A business concern that meets the federal requirements for certification as a DBE.

Good Faith Waiver: A waiver that is granted by Port KC based upon a showing by the Contractor that despite undertaking in good faith the actions outlined in this Policy, the Contractor may be unable to achieve the M/WBE Goal.

Minority: A person who is a citizen or lawful permanent resident of the United States and who is:

- a. African American, a person whose origins are in any of the Black racial groups of Africa, and who has historically and consistently identified himself or herself as being such a person;

- b. Hispanic American and/or Latino American, a person whose origins are in Mexico, Central or South America, or any of the Spanish speaking islands of the Caribbean, (for example Cuba and Puerto Rico) regardless of race, and who has historically and consistently identified himself or herself as being such a person;
- c. Asian and/or Pacific Islander American, a person whose origins are in any of the original peoples of the Far East, Southeast Asia, the islands of the Pacific or the Northern Marianas, or the Indian Subcontinent, and who has historically and consistently identified himself or herself as being such a person; or
- d. Native American, a person having origins in any of the original peoples of North America, and who maintains tribal affiliation or demonstrates at least one-quarter descent from such groups, and who has historically and consistently identified himself or herself as being such a person.

Minority Business Enterprise (MBE): A for-profit small business concern that:

- a. Is at least 51 percent owned, managed, and independently controlled by one or more minorities;
- b. Performs a commercially useful function; and
- c. Has been certified by the City of Kansas City, Missouri's Civil Rights & Equal Opportunity Department, another state or a political subdivision thereof, or by a reputable chamber or organization whose mission includes the promotion of minority owned business interests, as provided by this policy.

Woman: A person who is a citizen or lawful permanent resident of the United States and who is a female.

Women's business enterprise (WBE): A for-profit small business concern that:

- a. Is at least 51 percent owned, managed, and independently controlled by one or more women;
- b. Performs a commercially useful function; and
- c. Has been certified by the City of Kansas City, Missouri's Civil Rights & Equal Opportunity Department, another state or a political subdivision thereof, or by a reputable chamber or organization whose

mission includes the promotion of minority owned business interests, as provided by this policy.

2. Selection of M/WBEs:

The selection of M/WBEs working on the project shall be made by the Contractor, but shall be drawn from the following sources only:

- i. Those M/WBE entities listed in the Certified Directory maintained by the City of Kansas City, Missouri's Civil Rights & Equal Opportunity Department;
- ii. Those M/WBE entities listed in the Certified M/WBE Vendors Directory maintained by the Missouri Office of Equal Opportunity;
- iii. Those M/WBE entities certified as such by another state or a political subdivision thereof; and/or
- iv. Those M/WBEs (or their substantive equivalent) as so certified by any reputable chamber or organization whose mission includes the promotion of minority and women owned business interests.

In the event that M/WBE entities cannot be obtained in an amount sufficient to achieve the M/WBE goals, entities certified as DBEs may be credited towards the M/WBE goals if drawn from the following sources:

- v. Those DBE entities listed in the Certified Directory maintained by the City of Kansas City, Missouri's Civil Rights & Equal Opportunity Department;
- vi. Those DBE entities listed in the Missouri Regional Certification DBE Directory maintained by the Missouri Department of Transportation; and/or
- vii. Those DBE entities certified as such by another State or a political subdivision thereof.

Any DBE so utilized shall be classified for purposes of M/WBE credit as an MBE or WBE consistent with the status of the person or persons having managerial control of the DBE.

Port KC strongly encourages Contractors to utilize M/WBE firms certified as such by the City of Kansas City, Missouri's Civil Rights & Equal Opportunity Department (subparagraph i above) or the Missouri Office of Equal Opportunity (subparagraph ii above) before drawing from any other

source. Those firms listed on such directories will be accepted by Port KC without further inquiry. Port KC reserves the right to require that Contractors reasonably establish the basis for its determination that any other entity selected from any other source should be regarded as an M/WBE for purposes of this policy.

3. Required Submission Prior to Contract Award:

Contractors will submit a proposed Contractor Utilization Plan/Request for Waiver prior to the execution of any Contract. An automatic request for waiver shall be considered by Port KC if the proposed participation is less than the established M/WBE goals, and the Contractor has made a Good Faith Effort to obtain M/WBE participation but was unable to achieve the M/WBE goals.

4. Required Monthly Submissions:

Contractors must electronically submit the following document to compliance@portkc.com by the last calendar day of each calendar month until such time as the construction of the project has been fully completed.

M/WBE Monthly Utilization Report: This form identifies the M/WBEs utilized and the amounts paid to each throughout the construction of the project.

5. M/WBE Participation Credit:

The following shall be credited towards achieving the M/WBE goals:

- a. One hundred percent (100%) of the dollar amount paid to the Contractor or a subcontractor that is a qualified M/WBE, except as otherwise expressly provided for herein.
- b. Sixty percent (60%) of the total dollar amount paid to obtain supplies or goods from a supplier who is a qualified M/WBE.
- c. Ten percent (10%) of the total dollar amount paid to obtain supplies or goods from a supply broker who is a qualified M/WBE.
- d. One hundred percent (100%) of the total dollar amount paid to a manufacturer of construction supplies who is a qualified M/WBE.

NO CREDIT, however, will be given for the following:

- a. The dollar amount paid to an M/WBE that does not perform a Commercially Useful Function; and
- b. The dollar amount that a M/WBE subcontracts to any contractor not a qualified M/WBE; and

- c. Materials and supplies used on the project unless the M/WBE is responsible for negotiating the price, determining quality and quantity, ordering the materials and installing (where applicable) and paying for material itself; and
- d. Work performed by an M/WBE in a scope of work other than that in which the M/WBE is certified.

6. Methods for Securing Participation of M/WBEs and Good Faith Efforts:

In the event the Contractor does not meet M/WBE goals, the efforts taken by the Contractor will be evaluated to determine whether Good Faith Efforts were made to secure participation. Good Faith Efforts are efforts that, given all relevant circumstances, the Contractor actively and aggressively demonstrates in attempting to meet the M/WBE goals.

In evaluating Good Faith Efforts, Port KC will consider whether the Contractor has performed, or caused to be performed, the following, along with any other relevant factors:

- a. Advertisement. Advertised opportunities to participate in the contract in general circulation media, trade and professional association publications, small and minority business media, or publications of minority and women's business organizations at least fifteen (15) calendar days prior to any Bid or Proposal due date.
- b. Notice. Provided notice to minority and women' s business organizations of specific opportunities to participate in the project at least fifteen (15) calendar days prior to any Bid or Proposal due date.
- c. Direct Contact.
 - i. Sent written notices, by certified mail, e-mail or facsimile, to not less than eighty percent (80%) of the M/WBE' s listed in the Certified Directory maintained by the City of Kansas City, Missouri' s Civil Rights & Equal Opportunity Department at least fifteen (15) calendar days prior to any bid or proposal due date.
 - ii. Attempted to identify portions of the work for qualified M/WBE participation in order to increase the likelihood of meeting the goals, including breaking down the scope(s) of work into economically feasible units where reasonably practical.

- d. Contact with Port KC. Requested assistance in achieving the M/WBE goals from the President and acted on the President's recommendations, if any.
- e. Conference. Conferred with qualified M/WBEs and explained the scope and requirements of the work for which their bids or proposals were solicited.
- f. Negotiations. Attempted to negotiate in good faith with qualified M/WBEs to perform specific scopes of the project, not rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities.

Written notices and advertisements to be provided pursuant to (a)-(c) above shall include the following information:

- The bid or proposal due date;
- The name of the project;
- The address or general location of the project;
- The location of plans and specifications for viewing;
- Contact information for the Contractor;
- A general description of the scopes of work that are the subject of the solicitation;
- The date and time of any pre-bid meeting(s), if any, which have been scheduled; and
- Any other information deemed relevant by the Contractor.

7. Access to Documents and Records:

The Contractor will permit Port KC's duly authorized agents or employees access at all reasonable times to the applicable books and business records of the Contractor as may be necessary for the limited purposes of ascertaining compliance with these requirements. The Contractor will require its subcontractors to likewise make its applicable books and records available to the same extent as is applicable to the Contractor.

8. Remedies; Liquidated Damages:

If the Contractor fails to achieve the M/WBE goals as ultimately established in the Contractor Utilization Plan/Request for Waiver approved by Port KC, Port KC will sustain damages, the exact extent of which would be difficult or impossible to ascertain. Therefore, in order to liquidate those damages, thirty percent (30%) of the monetary difference between the amount of the M/WBE goals as ultimately established in the Contractor Utilization Plan/Request for Waiver and the amount actually paid to

qualified MBEs and WBEs for performing a commercially useful function will be due from the Contractor as liquidated damages. In the event that Port KC is entitled to liquidated damages, Port KC shall be entitled to collect the same in any manner authorized by the provisions of the Contract.

Liquidated damages are separately calculated, e.g., excess MBE participation will not offset any shortfall in WBE participation, and vice versa.

In the event the Contractor fails to submit its M/WBE Monthly Utilization Reports as required by this policy for one or more given months, Port KC shall be entitled to assume that there were no amounts paid to qualified MBEs and WBEs during said months. In the event Developer has failed without good cause to submit the Affidavit(s) of Final Payment as required by this policy for one or more M/WBEs listed on an M/WBE Monthly Utilization Reports, Port KC shall be entitled to assume that there were no amounts paid to such MBEs and WBEs.

Liquidated damages will not be imposed when, for reasons beyond the control of the Contractor, the M/WBE goals as ultimately established in the Contractor Utilization Plan/Request for Waiver are not met and the Contractor otherwise establishes its Good Faith Efforts.

B. Construction Workforce (*Applicable only to Construction Contracts in excess of \$300,000.00 and requiring more than 800 Construction Labor Hours to complete*)

Contracts shall be subject to the following goals, unless otherwise waived, in whole or in part, pursuant to this policy:

Minorities - 10%

Women - 2%

The goals are expressed as a percentage of the total Construction Labor Hours performed by minorities and women. Although it is not a requirement that the Contractor meet or exceed the goals, the Contractor is required to objectively demonstrate to Port KC that good faith efforts have been made. This policy shall not be construed as requiring or encouraging that employment decisions be made, or that the terms and conditions of employment otherwise be altered, based upon race or gender.

1. Definitions:

Construction Labor Hour: A sixty-minute period of time devoted by a worker in constructing, reconstructing, improving, enlarging or altering any permanent building or structure.

Good Faith Waiver: A waiver that is granted by Port KC based upon a showing by the Contractor that despite undertaking in good faith the actions outlined in this policy, the Contractor was unable to achieve

the goals.

Minority: A person who is a citizen or lawful permanent resident of the United States and who is:

- a. African American, a person whose origins are in any of the black racial groups of Africa, and who has historically and consistently identified himself or herself as being such a person;
- b. Hispanic American and/or Latino American, a person whose origins are in Mexico, Central or South America, or any of the Spanish speaking islands of the Caribbean, (for example Cuba and Puerto Rico) regardless of race, and who has historically and consistently identified himself or herself as being such a person;
- c. Asian and/or Pacific Islander American, a person whose origins are in any of the original peoples of the Far East, Southeast Asia, the islands of the Pacific or the Northern Marianas, or the Indian Subcontinent, and who has historically and consistently identified himself or herself as being such a person; or
- d. Native American, a person having origins in any of the original peoples of North America, and who maintains tribal affiliation or demonstrates at least one-quarter descent from such groups, and who has historically and consistently identified himself or herself as being such a person.

Woman: A person who is a citizen or lawful permanent resident of the United States and who is a female.

2. Required Monthly Submissions:

Contractors must electronically submit the following document to compliance@portkc.com by the last calendar day of each calendar month until such time as the construction of the project has been fully completed.

Project Workforce Monthly Utilization Report: Two copies of this report must be submitted to the Port KC each month. The first copy will be utilized to report Contractor's workforce compliance data with regard to the project. The second copy will be utilized to report consolidated workforce compliance data for every subcontractor retained by Contractor on the

project.

3. Methods for Securing Participation and Good Faith Efforts:

The Contractor is required to make good faith efforts to achieve the goals. If Contractor will be unable to secure enough minority and female participation to meet or exceed the goals, the Contractor must, within a reasonable time after so learning, request a waiver or modification of the goals by Port KC. Port KC will examine the request and the documentation of good faith efforts and grant or deny a Good Faith Waiver, in whole or in part. Port KC will grant a waiver only if the Contractor shows a good faith effort has been made to secure minority and female participation in the construction of the project.

In evaluating good faith efforts, Port KC will consider whether Contractor has performed, or caused to be performed, the following, along with any other relevant factors:

- a. For those Contractors that are not signatory to a collective bargaining agreement with organized labor:
 1. Requested in writing the assistance of Port KC with respect to efforts to promote the utilization of minorities and women in the workforce and acted upon Port KC's recommendations;
 2. Advertised in minority or women trade association newsletters and/or minority or women owned media at least 15 calendar days prior to the utilization of any construction services and used terminology that sufficiently describes the work available, the pay scale, the application process, and anything else that one might reasonably be expected to be informed of relevant to the position being advertised;
 3. Maintained copies of each advertisement and a log identifying the publication and date of publication;
 4. Conducted real and substantial recruitment efforts, both oral and written, targeting resident, minority and women community-based organizations, schools with a significant minority student population, and training organizations serving the recruitment area;
 5. Established and maintained a current list of residents, minority and women recruitment sources, providing written notification to the recruitment sources of available employment opportunities, and maintained records of the notices submitted to the organizations and any responses thereto;
 6. Maintained a current file for the time period of the project

with the name, address, and telephone number of each resident, minority and woman job applicant, the source of the referral, whether or not the person was hired, and in the event that the applicant was not hired, the reason there fore;

7. Promoted the retention of minorities and women in its workforce with the goals of achieving sufficient annual hours for minorities and women to qualify for applicable benefits; and
 8. Required by written contract that Contractor's subcontractors comply with the above efforts.
- b. For those Contractors that are signatory to collective bargaining agreements with organized labor:
1. Requested in writing from each labor union representing crafts to be employed in the construction of the project that: (i) the labor union make efforts to promote the utilization of residents of the city, minorities and women in the workforce; and (ii) the labor union identifies any residents of the city, minorities and women in its membership eligible for employment;
 2. Collaborated with labor unions in promoting mentoring programs for journeypersons intended to assist minorities and women in increasing retention with the goal of achieving sufficient annual hours to qualify for applicable benefits;
 3. Maintained a current file with the name, address, and telephone number of each resident, minority and woman worker identified by the labor union, whether or not the person was hired, and in the event the person was not hired, the reason(s) therefore; and
 4. Required by written contract that that Contractor's subcontractors comply with the above efforts.

To the extent that the good-faith effort requirements set forth in this section are in conflict with the procedures implemented pursuant to a competitive bargaining agreement, such other procedures, as may be approved by Port KC in writing, may be substituted in order to accomplish the purpose and intent of this section.

4. Access to Documents and Records:

The Contractor shall permit Port KC's duly authorized agents or employees access at all reasonable times to the applicable books and business records of the Contractor as may be necessary for the limited purposes of ascertaining compliance with the requirements of this policy. The Contractor shall require its subcontractors to likewise make its applicable books and records available to the same extent as is applicable to

Contractor.

5. Remedies; Liquidated Damages:

The Contractor shall be liable for compliance with the Construction Workforce Program. If the Contractor fails to achieve the goals and the same have not otherwise been waived or modified, Port KC will sustain damages, the exact extent of which would be difficult or impossible to ascertain. Therefore, in order to liquidate those damages, Port KC shall be entitled to collect the sum of three thousand dollars (\$3,000) for each calendar year during which construction on the project shall have occurred. In the event that Port KC is entitled to liquidated damages, Port KC shall be entitled to collect the same in any manner authorized by the provisions of the Contract.

Liquidated damages will not be imposed when, for reasons beyond the control of the Contractor, the goals are not met and the Contractor otherwise establishes Good Faith Efforts.

APPENDIX

The following definitions apply to this Procurement and Contracting Policy, except to the extent a term is specifically defined in another Section or the context clearly suggests an alternative meaning:

Bid: Any offer submitted to Port KC in response to a Request for Bids.

Bidder: A Person submitting a Bid in response to a Request for Bids.

Board: The Board of Commissioners for Port KC.

Civil Works Project: Roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water distribution and wastewater conveyance facilities, airport runways and taxiways, storm drainage and flood control projects, and/or or transit projects commonly designed by professional engineers

Construction Contract: A Contract that provides for the erection, construction, reconstruction, demolition, alteration, painting and decorating, or repair or improvement of any building, road, street, utility or other public facility owned by Port KC.

Contract: Any agreement for Goods and Services and to which Port KC is a party.

Contractor: Any Person who enters into a Contract.

Design-Builder: A Contractor providing design services and general contracting services in which services within the scope of the practice of professional architecture or engineering are performed respectively by a licensed architect or licensed engineer and in which services within the scope of general contracting are performed by a general contractor or other legal entity that furnishes architecture or engineering services and construction services either directly or through subcontractors or joint ventures.

Design Professional Services: Architectural services as defined in Section 327.091, RSMo, engineering services as defined in Section 327.181, RSMo, and/or land surveying services as defined in Section 327.272, RSMo.

Emergency: A threat to human life or substantial threat to property, public health or public safety or when immediate expenditure is necessary in order to protect against severe loss of or damage to property, or to prevent or minimize a serious disruption in services.

Goods and Services: Any equipment, supplies, materials and/or work provided or performed by a Contractor pursuant to Contract.

Lowest Most Qualified Bidder: The Bidder whose Bid amount, when factored alongside factors such as ability to perform, timeliness, character and reputation, quality of past performance, compliance with applicable laws, quality and availability, ability to provide future maintenance and services where applicable, and compliance with the Request for Bids specifications is ranked best. The Person submitting the lowest Bid by dollar value may not be the lowest most qualified bidder.

Lowest Most Qualified Proposer: The Proposer whose Proposal amount, when factored alongside factors such as ability to perform, timeliness, character and reputation, quality of past performance, compliance with applicable laws, quality and availability, ability to provide future maintenance and services where applicable, and compliance with the Request for Proposals specifications is ranked best. The Person submitting the lowest Proposal by dollar value may not be the lowest most qualified proposer.

Noncivil Works Project: Buildings, site improvements, and other structures, habitable or not, commonly designed by architects.

Person: One or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, limited liability companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries and other entities or organizations; except "Person" does not include any local, state or federal governmental entity.

President: The President of Port KC.

Proposal: Any offer submitted to Port KC in response to a Request for Proposals.

Proposer: A Person submitting a Proposal in response to a Request for Proposals.

Request for Bids: An invitation to submit a Bid.

Request for Proposals: An invitation to submit a Proposal.

Request for Qualifications: An invitation to submit a Statement of Qualifications.

Statement of Qualifications: A submittal evidencing a Person's qualifications to provide certain Goods and Services submitted to Port KC in response to a Requests for Qualifications.