




MEMORANDUM

September 10, 2021

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Willie Adams, Vice President
Hon. John Burton
Hon. Gail Gilman
Hon. Doreen Woo Ho

FROM: Elaine Forbes
Executive Director 

SUBJECT: Informational presentation on a Competitive Selection Process
Communications Policy to support the integrity of the competitive selection
process for Port contracts

DIRECTOR'S RECOMMENDATION: Information Only – No Action Required

EXECUTIVE SUMMARY

The Port awards numerous leases, licenses and contracts following a competitive selection process as required by law and policy. The competitive selection process is an important function in the Port's role as a government agency, and the integrity of the process is critical to promote trust and accountability by those who are participating in the process. This process ultimately increases competition and benefits the Port. The Port has long-standing policies and practices in place for contract and lease procurements to ensure integrity at each stage through consistency, transparency and fairness.

On January 11, 2021, the San Francisco Controller's Office issued its Preliminary Assessment of San Francisco City Commissions' and Boards' Ethical Standards for

Awarding Contracts, as part of its ongoing public integrity review.¹ Although the report is focused on the Airport Commission in particular, it also made general recommendations for all City commissions and boards.

One of the Controller's recommendations is that City departments should state clearly and in writing the restrictions on communications by and with potential and actual proposers for City contracts. On August 4, 2021, the San Francisco Controller's Office published the Public Integrity Review 12-Month Update, including recommended department actions to be taken to implement a policy prohibiting officials and employees from communicating with contract proposers/bidders and potential proposers/bidders.²

The proposed Competitive Selection Process Communications Policy would formalize many practices the Port already has in place to assure that no party receives selective assistance to confer a competitive advantage to obtain award of a Port lease, license or contract.

STRATEGIC OBJECTIVE

This Competitive Selection Process Communications Policy will support the goals of the Port's Strategic Plan as follows:

Productivity:

By attracting tenants and contractors to build an economically successful and vibrant waterfront through consistency, transparency and fairness.

Engagement:

By promoting trust with the public and ensuring integrity for those participating in the competitive solicitation process.

THE POLICY

The proposed Competitive Selection Process Communications Policy would formalize the Port's existing practices and policies by restricting communications during a competitive solicitation.

¹ San Francisco Controller's Office, "Preliminary Assessment of San Francisco City Commissions' and Boards' Ethical Standards for Awarding Contracts as Part of Public Integrity Review"
<https://sfcontroller.org/preliminary-assessment-san-francisco-city-commissions%E2%80%99-and-boards%E2%80%99-ethical-standards-awarding>

² Public Integrity Reviews 12-Month Update Implementation Status of Recommendations from Assessments to Date.
<https://sfcontroller.org/sites/default/files/Documents/Auditing/Public%20Integrity%20Assessments%20--%20Recommendation%20Implementation%20Status%20-%2008.04.21.pdf>

Currently, under the Port's Statement of Incompatible Activities, Port Commissioners and employees are prohibited from providing selective assistance to confer a competitive advantage to a proposer. Recent Request for Proposals (RFP) have also included a prohibition against communications with Port officials, employees, or selection panel members.

The proposed policy would go a step farther and formally implement this prohibition for Port-issued Request for Qualifications (RFQ), RFPs, Request for Bids, Advertisement for Bids, or any other type of competitive solicitation for a lease, license or contract. The policy would restrict employees and Commissioners from engaging in communications with a potential or actual proposer about a specific business opportunity that could constitute real or perceived selective assistance to confer competitive advantage. The proposed policy establishes a restricted communications period which begins when a contract is advertised or RFP or RFQ is published, and would end when the Commission awards a contract or otherwise terminates the competitive process (the "Restricted Communications Period").

During the Restricted Communications Period, no City or Port official, employee, or any other individual with any role in the competitive process may communicate with a proposer, potential proposer, or their representatives, to provide selective assistance to confer a competitive advantage. Providing information about an opportunity including emailing a press release or link to a selection opportunity is not considered to convey a competitive advantage as that information is already in the public domain.

The policy exempts:

- (i) all communications that would normally occur between staff and interested parties for regular business not related to the opportunity;
- (ii) communications necessary to conduct a selection process. Necessary communications during the selection process include dialogue at pre-proposal or pre-bid meetings, responding to questions about the solicitation documents, and referrals to technical assistance providers and City entities;
- (iii) public comment made at Port Commission meetings; and
- (iv) communications with entities that have been selected by the Port Commission through a competitive process as part of a prequalified pool.

The policy also makes clear that any proposer that solicits selective assistance from a Commissioner or employee may be subject to disqualification from the competitive process altogether.

To provide visibility into which competitive solicitations are within the Restricted Communications Period under the proposed policy at any given time, staff will attach a list of active published competitive solicitations to each Port Commission agenda.

NEXT STEPS

Port staff will return to the Port Commission at a future meeting to request approval of a resolution adopting the attached Competitive Selection Communications Policy.

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For: Elaine Forbes
Port Director

Attachments:

- A. Competitive Selection Process Communications Policy and Document Provisions
- B. Sample Attachment to future Port Commission meeting agendas with Restricted Communications Period Report

San Francisco Port Commission Competitive Selection Process Communications Policy and Document Provisions

Statement of Policy. "Public office is a public trust and all officers and employees of the City and County shall exercise their public duties in a manner consistent with this trust." (Charter §15.103.) The competitive selection of contractors and tenants must reflect the exercise of public duties in a manner that maintains the integrity of the competitive process. Generally, to avoid real or perceived interference in the competitive process, members of the Port Commission will not engage in communications regarding any specific business opportunity at the Port at any time except in a public meeting. Specifically, the Port Commission hereby adopts a Competitive Selection Process Communications Policy to assure that no party receives selective assistance to confer a competitive advantage to obtain award of a Port lease, license or contract.

In addition, Charter section 4.102 restricts how the Port Commission may deal with the administrative affairs of the Port. Administrative affairs include, but are not limited to contracting and purchasing decisions, and the Port Commission shall deal with such matters solely through the department head or his or her designees.

Definitions.

City official/employee: Any member of the Port Commission; City and County of San Francisco employee, including any Port of San Francisco employee; Port consultant or contractor; selection panel member; or other individual participating in the selection, award, or approval process on behalf of the City for the award or potential award by the Port Commission of a lease, license or contract.

Proposer: (1) Any potential or actual bidder or proposer; and/or (2) the entity that submits a response to an RFP.

Restricted Communications Period: The period of time during which a competitive process for a Port lease, license or contract is pending. The Restricted Communications Period for any competitive process shall commence immediately upon the Port's publication of an RFP and shall expire the earlier of either: (a) when the Port Commission has awarded the lease, license or contract; or (b) when the Port has otherwise terminated the competitive process.

RFP: Any Port-issued Request for Qualifications, Request for Proposals, Request for Bids, Advertisement for Bids, or any other type of competitive solicitation for a lease, license or contract.

Restriction on Communications and Disqualification. During a Restricted Communications Period, no City or Port official/employee shall engage in communication with a Proposer that could constitute selective assistance to confer a competitive advantage. Any Proposer that solicits selective assistance from a City official/employee may, at the sole discretion of the Port, be subject to disqualification from the competitive or negotiation process. A communication by a lobbyist, representative, agent, or subcontractor/subconsultant, or any other party soliciting selective assistance for a Proposer shall be imputed to that Proposer and likewise may be grounds for disqualification. Any person receiving or aware of a communication in violation of this Policy shall promptly report such communication to the Controller's whistleblower program (whistleblower@sfgov.org or (415) 701-2311).

Exceptions. The restriction on communications during the Restricted Communications Period does not apply to the following: communications consistent with RFP instructions; communications initiated by Port staff regarding the competitive process, including but not limited to RFP addenda, clarification inquiries to a Proposer, rejection of one or all bids or proposals, or lease, license or contract negotiations; public comment directed to the Port Commission; communications advertising an RFP; or regarding business unrelated to the RFP.

In addition, this Policy is not intended to apply to communications with entities that have been selected by the Port Commission through a competitive process as part of a prequalified pool.

Document Provisions

RFP Prohibition and Disqualification. RFPs shall include the following provision:

XX. Restricted Communications Prior to Contract Award

From the date this RFP is issued until the date the competitive process for this RFP is completed either by cancelation of the RFP or by final action of the Port Commission, Proposers and potential Proposers, and/or their representatives, subcontractors or subconsultants, or other interested parties, shall communicate with the Port only as instructed in this RFP (see RFP, at Section _____).

Any attempt to communicate with or solicit any person involved in the evaluation, selection, award, or approval process, except as instructed in this RFP, is prohibited. The persons with whom communication is prohibited includes, but is not limited to, any City and County of San Francisco elected official, member of the Port Commission, City or Port personnel, or any selection panel member. Failure to comply with the communications protocol of this RFP shall, at the sole discretion of the Port, result in the disqualification of the Proposer or potential Proposer from the competitive process. Prohibited communications made on behalf of a Proposer or potential Proposer shall be imputed to the Proposer.

The above restriction does not apply to communications with the Port or City regarding business unrelated to this RFP.

Proposer Attestation of Compliance. The following provision shall be added to RFPs, in a location and manner administratively appropriate to the RFP: By submitting this [Statement of Qualifications/Proposal/Bid], the [Proposer] attests compliance with RFP Section _____, *Restricted Communications Prior to Contract Award*.

Selection Panel Member Acknowledgment. The following provision shall be added to panel member conflict of interest forms:

By signing below, I represent that I have not communicated and will not communicate with any Proposer or any person representing a Proposer regarding this selection process. I further acknowledge that RFP Section ___, *Restricted Communications Prior to Contract Award* applies to me as a member of this panel.

Attachment B: Sample Attachment to Future Port Commission Meeting Agendas with Restricted Communications Period Report

Port Commission
Competitive Selection Process Communications
Restricted Communications Period Report
Date of Report: September 10, 2021

The following competitive solicitations are published and are within or will soon be within the Restricted Communications Period under the forthcoming Port Commission Competitive Selection Process Communications Policy.

Division	Title	Publication Date	Contract Manager
Real Estate	Crane Cove Park Buildings	4/14/2021	Stephanie Tang & Jamie Hurley
Finance & Administration	Implementation of Government Accounting Standards Board Statement Number 87	7/14/2021	Stephanie Tang