

EXHIBIT A

DULUTH SEAWAY PORT AUTHORITY PURCHASING AND CONTRACTING POLICY

1. **DEFINITIONS.**

- 1.1. “Authority” means the Duluth Seaway Port Authority.
- 1.2. “Award” means a written acceptance of a bid/quote or proposal to provide goods, services, or construction, which shall be binding upon execution of a Contract.
- 1.3. “Board of Commissioners” or “Board” means the Board of Commissioners of the Duluth Seaway Port Authority.
- 1.4. “Contract” means any written instrument or electronic document containing the elements of offer, acceptance, and consideration to which the Authority is a party, including an amendment to or extension of a Contract, and including contracts with vessel owners or operators and including leases.
- 1.5. “Direct negotiation” means obtaining two or more quotations for a Contract when possible, and without advertising for bids or otherwise complying with the requirements of competitive bidding.
- 1.6. “Executive Director” means the Executive Director of the Duluth Seaway Port Authority.
- 1.7. “Open market” means a direct solicitation with a specific vendor or individual without obtaining additional quotes.
- 1.8. “Policy” means this Purchasing and Contracting Policy.
- 1.9. “Procurement Manager” means the Authority’s Facility Manager or his/her designee or such other person as may be designated by the Authority to act on behalf of the Authority pursuant to this Purchasing and Contracting Policy.
- 1.10. “Request for proposal” or “RFP” means a formal solicitation for services not subject to competitive bidding, and may be a single or multi-step process. RFPs may be utilized to achieve a Contract most favorable to the Authority where price is not always the primary evaluation factor. RFP provides for the negotiation of all terms, including price, prior to award of a Contract.
- 1.11. “Sealed” means a method of the solicitation process to prevent the contents from being revealed or known before the deadline for submission of responses.
- 1.12. “Solicitation” means the process used to communicate procurement requirements and to request responses from interested vendors.

2. **GENERAL REQUIREMENTS.**

- 2.1. **Executive Director and Board Approval.** All Contracts must be approved by the Executive Director or Board of Commissioners as provided for herein.

2.2. **Contract Review.** All Contracts must be approved as to form and execution by the Authority's legal counsel. Authority and legal counsel will develop forms and procedures covering general Contract requirements and solicitation requirements in accordance with this Policy for use by Authority staff.

3. **PROFESSIONAL SERVICES.**

3.1. **Contract Approval.** All professional services Contracts must contain a "not to exceed" Contract amount or have the services identified on an Authority budget line item. Professional services Contracts of less than a not to exceed contract amount of \$25,000 may be approved by the Executive Director unless otherwise required by resolution of the Authority. Professional services Contracts in excess of \$25,000 or more must be approved by the Board of Commissioners.

3.2. **RFP.** An RFP may be utilized for professional services upon the determination of the Executive Director.

3.3. **Prevailing Wage Rate Verification.** All professional services Contracts related to construction will contain the following clause: "For any Authority Project that includes prevailing wage rate requirements, Consultant shall collect certified payroll records with any application for payment or pay request submitted by a contractor or subcontractor carrying out work on the project. Payroll records must be current to within twenty-one (21) days of the date of the application for payment or pay request. Consultant shall be responsible for reviewing certified payroll records to ensure compliance with prevailing wage requirements. Consultant shall not approve final payment to a contractor or subcontractor until Consultant has established that contractor has complied with prevailing wage requirements."

4. **CONSTRUCTION CONTRACTS.**

4.1. **Responsible Contractor Affidavit.** For any Contract for construction where the Contract is awarded pursuant to Section 8.5 of this Policy, Minn. Stat. §16C.285 requires the completion of a Responsible Contractor Affidavit at the time any proposal, quote, or bid is submitted.

4.2. **Prevailing Wage.** Prevailing wage rates shall be required for all work performed on any Contract for all Authority construction projects. Wages paid on such projects must be at the prevailing rate for St. Louis County as determined by the Minnesota Department of Labor and Industry and at its threshold requirements.

4.3. **Project Labor Agreements.** A project labor agreement shall be required on all Authority construction projects estimated to exceed \$150,000, the bidder/proposer must provide a fully executed project labor agreement at the time the Contract, bonds and other required documents are returned to the Authority. The form of project labor agreement shall be as approved by the Authority's legal counsel.

5. **EQUIPMENT PURCHASES.**

5.1. **Budgeted Items.** Items of equipment that are categorized as capital items that are identified on an approved budget of the Authority may be purchased without Board approval, but with the approval of the Executive Director pursuant to Section 8.1.

5.2. **Non-Budgeted Items.** Capital items that are not identified on an approved budget of the Authority that cost less than \$25,000 may be approved by the Executive Director pursuant to Section 8.1.

Purchases of capital items with a cost of \$25,000 or more shall be approved by the Authority at a regular or special meeting.

5.3. **Procurement Procedures.** The provisions of Section 8 of this Policy shall be followed in connection with the acquisition of any capital item pursuant to this Section 5.

6. **OTHER PURCHASES.**

6.1. **Budgeted Items.** Purchases of non-capital items or supplies that are identified on a budget approved by the Authority may be purchased with the approval of the Executive Director.

6.2. **Non-Budgeted Items.** Purchases of non-budgeted capital items or supplies that are not identified on a budget approved by the Authority may be purchased pursuant to Section 8.1 of this Policy.

6.3. **Procurement Procedures.** The provisions of Section 8 of this Policy shall be followed in connection with any purchases pursuant to this Section 6.

7. **SOLE SOURCE PURCHASES.**

7.1. **Sole Source Purchase.** Competitive bidding is not required when by reason of a copyright, patent, or franchise, purchases can only be made at a standard, fixed, or uniform price and no advantage can be secured by advertisement and competitive bidding because of the noncompetitive nature of the item(s) to be purchased. Circumstances which may permit sole source purchasing could include purchases from other governmental bodies, such as the United States, State of Minnesota, counties, or cities. Sole source purchases may also apply to contract services such as technical and professional where no competition exists, or where rates are fixed by law or ordinance. Sole source purchases may also apply to goods required for the repair of furniture, fixtures, and equipment already owned by the Authority.

7.2. **Executive Director Approval.** Any sole source purchase must be reviewed and approved by the Executive Director.

8. **BIDDING PROCEDURES AND CONTRACT APPROVAL.**

8.1. **Approval of Contracts.** Contracts of any nature with a total contract amount less than \$25,000 may be approved by the Executive Director. Contracts for budgeted capital items and budgeted non-capital items and supplies may be approved by the Executive Director unless otherwise required by resolution of the Authority. All contracts approved by the Executive Director shall be reported to the Board, at the next regular or special meeting. Contracts of \$25,000 or more for:

8.1.1. Professional services;

8.1.2. Construction;

8.1.3. Non-budgeted capital items; and

8.1.4. Non-budgeted non-capital items or supplies shall be approved by the Authority at a regular or special meeting.

8.2. **Statutory Authority and Change in Law.** The amounts specified in Section 8.3 reflect the present provisions of Minnesota Statutes § 471.345, Subd. 5, the amounts specified in Section 8.4 reflect the present provisions of Minnesota Statutes § 471.345, Subd. 4 and the amounts specified in Section 8.5 reflect the present provisions of Minnesota Statutes § 471.345, Subd. 3. If the provisions of Minnesota Statutes § 471.345, Subd. 3, Subd. 4 or Subd. 5 are modified by legislative action, then, upon the modifications becoming effective, the amounts specified in Sections 8.3, 8.4 and 8.5 hereof shall change to be the same as the corresponding provisions of Minnesota Statutes § 471.345.

8.3. **Contracts Less than \$25,000.** If the amount of the Contract is estimated to be less than \$25,000, the Contract may be made either upon quotation or in the open market, in the discretion of the Executive Director. If the Contract is made upon quotation it shall be based on at least two quotations which shall be kept on file for a period of at least one year after their receipt.

8.4. **Contracts exceeding \$25,000 but not \$175,000 (“Quote Contracts”).** If the amount of the Contract is estimated to exceed \$25,000 but not to exceed \$175,000, at the discretion of the Executive Director, the Contract may be made either upon sealed bids or by direct negotiation, by obtaining two or more quotations for the purchase or sale when possible, and without advertising for bids or otherwise complying with the requirements of competitive bidding. All quotations obtained shall be kept on file for a period of at least one year after receipt thereof.

8.5. **Contracts Exceeding \$175,000 (“Public Notice Contracts”).** If the amount of the Contract is estimated to exceed \$175,000 or if the Executive Director deems it to be in the best interests of the Authority to conduct public bidding for a Contract, sealed bids shall be solicited by public notice pursuant to the provisions of this Purchasing and Contracting Policy. Public Notice Contracts shall be approved by the Board of Commissioners.

8.5.1. **Solicitation of Public Notice Contract Bids.** When sealed bids are required, bids shall be solicited by public notice inserted at least once in a local legal ad newspaper in Duluth, Minnesota. All invitations for bids shall allow sufficient time between the date of publication of the notice and the opening of bids to allow prospective bidders adequate time to prepare and submit bids, in no case shall the period of time between the date of the first publication of the notice and the opening of bids be less than ten (10) days. Notice may also be sent to any party or placed in such trade magazines or publications as the Executive Director shall determine appropriate.

8.5.2. **Contents of Public Notice Contract Bid Notice.** The public notice for bids for Public Notice Contracts shall include the following:

8.5.2.1. A general description of the construction project, goods or services which are the subject of the Contract;

8.5.2.2. A statement indicating where bid blanks and specifications may be obtained;

8.5.2.3. A statement indicating the time and place for the opening of bids;

8.5.2.4. A statement describing required compliance with Minn. Stat. §16C.285, Responsible Contractor Affidavit, where applicable;

8.5.2.5. A statement describing prevailing wage requirements, where applicable;

8.5.2.6. A statement describing the required project labor agreement, where applicable;

8.5.2.7. A statement indicating that bidding and awarding the contracts are subject to the provisions of this Policy; and

8.5.2.8. A statement that the Authority reserves the right to reject any or all bids.

8.5.3. Seal and Email Public Notice Contracts Bids. The Executive Director shall receive and seal all bids for Public Notice Contracts not previously sealed, and all bids received by email shall be sealed by the Executive Director. The Executive Director may open any unidentified bids solely for the purpose of identification. If a sealed bid is opened by mistake, the opener shall immediately enter his/her/its signature on the envelope and deliver it to the Executive Director, who shall note the reason for the opening and the date and time of the opening.

8.5.4. Deposit for Public Notice Contract Bids. The Executive Director may require that each bidder for a Public Notice Contract submit with each bid a deposit equal to five percent (5%) of the total amount of the bids, or such other amount as the Executive Director may determine appropriate under the circumstances.

8.5.4.1. The deposit, which must be in the form of a certified check or bonds, shall be subject to forfeiture for failure to contract within twenty (20) days after award.

8.5.4.2. Deposits of unsuccessful bidders/proposers will be returned upon award of a Contract.

8.5.4.3. The successful bidder's deposit may be retained for sixty (60) days after delivery to ensure compliance with the specifications, or until such time as a performance bond and payment bond have been furnished.

8.5.4.4. Any bid that requires a performance bond and/or payment bond will also require a bid deposit.

8.5.4.5. Failure of a bidder to furnish a bid deposit, as specified, may be cause for rejection of the bid.

8.5.5. Late Bids for Public Notice Contracts. Bids for Public Notice Contracts received after the date and time set for the opening of bids shall not be considered for award except as provided in this subdivision.

8.5.5.1. A late bid received before award may be considered only if:

8.5.5.1.1. It was sent by registered or certified mail for which a postmark on the receipt has been obtained, and it was determined by the Executive Director that its late arrival was due solely to a delay in the mail for which the

bidder was not responsible. If the postmark does not show a date, the bid shall be deemed to have been mailed late unless evidence from the Post Office establishes timely mailing; or

8.5.5.1.2. The bid was actually received by the Authority employee or agent by the date and time set for opening.

8.5.5.2. When the Executive Director receives a late bid which is not subject to the exceptions outline, the Executive Director shall promptly notify the bidder that the bid shall not be considered.

8.5.5.3. When the Executive Director determines that a late bid appears to fall within the exceptions outlined in this subdivision, the bidder shall be promptly notified and given an opportunity within a period of time designed by the Executive Director to establish that the bid falls within the exception. A bid/quote which is deemed, in the best judgment of the Executive Director to be subject to the exceptions outlined in this subdivision, shall then be considered with all other bids timely submitted.

8.5.6. Amendment of Public Contract Bid. If, after public notice of a Public Contract Bid is given, it becomes necessary to revise, correct or amend specifications or procedures prior to the opening of bids, the Executive Director may issue an amended public notice. The amended public notice shall be published in the same manner in which the original public notice was published. The amended public notice shall be sent to any prospective bidder who has requested a bid form or to any bidder who has previously submitted a bid. If less than ten (10) days exist between the publication of the amended public notice and the bid opening date the amended public notice shall include an extension of time for the opening of bids which will allow bidders to amend, revise or correct their bids. The period of extension shall be determined by the Board of Commissioners or the Executive Director.

8.5.7. Opening of Public Notice Contract Bids. Bids for Public Notice Contracts shall be opened in public on the date and at the time stated in the public notice required. Bids shall be read aloud to those present and shall be recorded by the Executive Director. The original bids shall be safeguarded, while copies of the originals shall be made and available for public inspection. All bids, along with all documents pertaining to the award of the Contract, shall be retained by the Executive Director as part of a permanent file to be open for public inspection.

8.6. Award of Bids/Quotes. All Contracts shall be awarded to the lowest responsible bidder in the case of Public Notice Contracts or lowest responsible proposer in the case of other Contracts or highest responsible bidder/proposer in the case of sales for which competitive bids for a sale of goods are used.

8.6.1. In the event that two or more bidders/proposers supply identical responsible bids, the Executive Director shall award the Contract to one of the tie bidders/proposers by the flip of a coin.

8.6.2. In a particular bid/quote wherein the unit price and total price do not agree, the unit price will prevail. If the total bid/quote price, obtained by multiplying the unit price by the bid/quote item quantity, is incorrectly calculated, the Authority will use the unit price to recalculate the total bid/quote price.

8.7. **Lowest Responsible Bidder/Proposer.** The following factors, in addition to price, shall be considered in determining the lowest responsible bidder/proposer.

8.7.1. The quality of the item or service proposed to be provided by the bidder/proposer;

8.7.2. The quality, suitability and adaptability of the item or services for the use for which they are intended;

8.7.3. The ability, capacity and demonstrated skill of the bidder/proposer to perform and/or provide the required service;

8.7.4. The capability of the bidder/proposer to perform the Contract promptly or within the time specified, without delay or interference;

8.7.5. The character, integrity, reputation, judgment, experience and efficiency of the bidder/proposer;

8.7.6. The bidder/proposer's quality of performance on any previous contracts, including but not limited to the bidder/proposer's history of preserving and protecting the property of the Authority in the performance of a Contract or in connection with the use of Authority property;

8.7.7. The indemnification by bidder or proposer of any property damage or environmental damage occurring on property of the Authority that Authority reasonably believes was caused by bidder/proposer in connection with a previous Contract.

8.7.8. The bidder/proposer's responsiveness if any property damage or environmental contamination that Authority reasonably believes was caused by bidder/proposer during the bidder/proposer's use of Authority property;

8.7.9. The sufficiency of the bidder/proposer's financial resources as they relate to performance of the Contract; and

8.7.10. The ability of the bidder/proposer to timely and effectively provide future maintenance and service for the use of the work performed in the Contract during the expected life of the work.

In the event a bidder or proposer whose price is not the lowest price is determined to be the lowest responsible bidder/proposer, the Executive Director or Authority, as the case may be, shall create and adopt findings of act setting forth Sections 8.7.1 through 8.7.10 above that support the determination that his/her/its bid or quote was the lowest responsible bid or quote even though his/her/its price was not the lowest price.

8.8. **Withdrawal or Modifications.** Any bid/quote may be withdrawn or modified by written notice submitted to the office designated in the public notice no later than the date and time set for the opening of bids. The bidder/proposer may withdraw a bid/quote in person prior to the time and date set for the opening of bids, after signing a receipt for the bid/quote.

8.9. **Specifications and Compliance with Information.** The Authority shall provide a written specification with respect to any request for quotes for a Quote Contract or bids for a Public Bid Contract that contains a clear description of the product or services desired to be obtained by the Authority. All

bids or quotes shall be based on the written information distributed by the Authority or on file for review at the Authority administration office. Parties providing quotes or bids shall not base their bids or quotes on verbal information. In case errors or omissions are found in the request for quotes or bid form, bidders/proposers or parties providing quotes shall at once inform the Executive Director who will immediately publish the correction to all bidders/proposers or persons providing quotes.

8.10. **Split Bids.** Bids or request for quotes shall not be split for the purpose of causing the dollar levels for contracts set forth in Section 8 hereof to be negated.

9. **REJECTION OF BIDS.**

9.1. **Authority's and Executive Director's Right to Reject.** The Board of Commissioners or the Executive Director shall have the right to reject any and all bids if such rejection is deemed to be in the best interest of the Authority. All public notices, forms and information supplied to prospective bidders/proposers or parties from whom quotes are solicited shall clearly state the Board of Commissioners or Executive Director's right to reject bids.

9.2. **Rejection of All Bids.** Reasons for rejection of a bid or quote include, but are not limited to, the following:

9.2.1. That the services or supplies are no longer needed;

9.2.2. That the specifications or public notice contained inadequate, ambiguous or otherwise deficient specifications;

9.2.3. All bids or quotes received are at unacceptable prices;

9.2.4. The Authority has insufficient funds to proceed with the Contract.

9.3. **Rejection of Individual Bids.** Any individual bid/quote may be rejected upon a determination that such action is in the best interest of the Authority. Reasons for rejection include, but are not limited to, the following:

9.3.1. Failure to conform to the requirements imposed by the Authority or the Executive Director governing the submission of bids, including;

9.3.1.1. Specifications;

9.3.1.2. Time deadlines; and

9.3.1.3. Deposits.

9.3.2. Failure to meet the requirements of a responsible bidder/proposer under Section 8.7.

10. **MISTAKES.**

10.1. **Clerical Mistake.** Any clerical mistake apparent on the face of a bid/quote may be corrected by the Authority or the Executive Director prior to award, if the Authority or the Executive Director has first obtained verification from the bidder/proposer of the bid/quote actually intended.

10.2. **Correction of Bid/Quote.** The Authority or the Executive Director may permit a bidder/proposer to correct his/her/its bid/quote prior to award where clear and convincing evidence establishes both the existence of the mistake and the bid/quote actually intended. Evidence of the bid/quote actually intended shall be ascertainable solely from the bid/quote itself.

11. **DEBARMENT.** Suspension and Debarment of Contractors (Minn. Stat. §161.315; Minn. Stat. §469.055) and Section 469.068:

11.1. **Purpose.** The purpose of this Section is to provide for the suspension, disqualification, or debarment of any person, vendor, contractor, or other entity from consideration for awards for Authority contracts. This action shall be based upon certain types of criminal convictions, civil judgments or contract violations or damage to the property of the Authority during such person's use of Authority property, or for any other cause, in order to promote the general welfare of the Authority.

11.2. **Definitions.** The terms used in this Section shall have the meanings given them in this subdivision.

11.2.1. "Affiliate" means a predecessor or successor of a person by merger, reorganization, or otherwise, who is, or that has as an officer or director an individual who is, a relative of the person or an individual over whose actions the person exercises substantial influence or control, or a group of entities so connected or associated that one entity controls or has the power to control each of the other entities. "Affiliate" includes the affiliate's principals. One person's ownership of a controlling interest in another entity or a pooling of equipment or income among entities is prima facie evidence that one entity is an affiliate of another.

11.2.2. "Contract crime" means a violation of state or federal antitrust law, fraud, theft, embezzlement, bribery, forgery, misrepresentation, making false statements, falsification or destruction of records, or other criminal offense in connection with obtaining, attempting to obtain, or performing a public or private contract or subcontract.

11.2.3. "Conviction" has the meaning given it in Minnesota Statutes § 609.02, subdivision 5.

11.2.4. "Debar" means to disqualify a contractor from receiving benefits of a Contract pursuant to this Section 11.

11.2.5. "Person" means a natural person or a business, corporation, association, partnership, sole proprietorship, or other entity formed to do business as a contractor, subcontractor, or material supplier and includes an affiliate of a person.

11.2.6. "Pooling" means a combination of persons engaged in the same business or combined for the purpose of engaging in a particular business or commercial venture and who all contribute to a common fund or place their holdings of a given stock or other security in the hand and control of a managing member or committee of the combination.

11.2.7. "Relative" means an individual related by consanguinity within the second degree as determined by the common law, a spouse, or an individual related to a spouse within the second degree as determined by the common law, and includes an individual in an adoptive relationship within the second degree as determined by the common law.

11.2.8. "Suspend" means to temporarily disqualify a contractor from receiving the benefits of a Contract as provided for in this Section 11.

11.3. **Causes for Debarment or Suspension.** The causes for debarment or suspension include, but are not limited to, the following:

11.3.1. Conviction of any person or subsidiary or affiliate of any person for commission of a criminal offense arising out of obtaining or attempting to obtain a public or private Contract or subcontract, or in performance of such Contract or subcontract;

11.3.2. Conviction of any person or any subsidiary or affiliate of any person under any statute of the federal government, this state or any other state for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of property;

11.3.3. Conviction of any person or any subsidiary or affiliate of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which affects such person's responsibility as an Authority contractor;

11.3.4. Conviction of any person or a civil judgment against any person finding a violation by any person or any subsidiary or affiliate of any person under state or federal antitrust statutes;

11.3.5. Violations of contract provisions of a character which are deemed to be so serious as to justify debarment action, including, but not limited to, the following:

11.3.5.1. Knowingly failing without good cause to perform in accordance with the specifications or within the time limits provided therein;

11.3.5.2. Failure to perform, or unsatisfactory performance of, the terms of one or more contracts, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.

11.3.5.3. Damage or environmental contamination that Authority reasonably believes was caused by such person during such person's use of Authority property and that was not resolved to the reasonable satisfaction of the Authority. Entering into a settlement agreement with a person that Authority believes to have caused damage or environmental contamination to avoid litigation is not to be considered in determining whether the damage or environmental contamination was resolved to the satisfaction of the Authority.

11.4. **Written Determinations.** A written determination to debar or suspend shall be issued and contain:

11.4.1. The reasons for the action taken;

11.4.2. The action taken and the effective date and length of time the action shall be in effect;

11.4.3. Inform any debarred or suspended party involved of their right to an administrative appeal;

11.4.4. A copy of the decision shall be mailed or otherwise furnished to any debarred or suspended party; and

11.4.5. That contractor may apply for re-instatement at any time after the period of debarment has expired.

11.5. **Authority to Debar or Suspend.** The Procurement Manager is delegated authority to debar or suspend a party from participating in Authority contracts.

11.6. **Period of Debarment.** The period of time for debarment shall not exceed three (3) years from the date of the determination. If debarment is based solely upon debarment by another governmental agency, the period of debarment may run concurrently with the period established by the other debarring agency.

11.7. **Debarment Decisions.** A decision made under this Section 11 shall be final and conclusive unless, within five (5) calendar days from the date of receipt of the decision, the protestant or claimant files a written appeal with the Executive Director. The Executive Director shall have the jurisdiction and authority to review and determine any appeal by an aggrieved party from a determination by the Procurement Manager regarding a debarment decision. Such decision shall be final and conclusive.

12. **EXECUTIVE DIRECTOR DESIGNATION.** The Executive Director may from time to time delegate such duties under this Purchasing and Contracting Policy as the Executive Director deems appropriate.

ADOPTED: May 13, 2020

DULUTH SEAWAY PORT AUTHORITY

By: 
Rick Revoir, President

(SEAL)

ATTEST:

By: 
Patrick Boyle, Secretary