

RESOLUTION NO. 2016-20

RESOLUTION DETERMINING THE MANNER OF ENTERING INTO CERTAIN CONTRACTS PURSUANT TO OHIO REVISED CODE SECTION 4582.31(A)(18)(e)(i) PERTAINING TO THE CONSTRUCTION, MAINTENANCE, REPAIR, FURNISHING, OR EQUIPPING OF PROPERTY IN FURTHERANCE OF THE PORT AUTHORITY'S INDUSTRIAL REVITALIZATION STRATEGY

WHEREAS, the "authorized purposes" of the Port of Greater Cincinnati Development Authority ("Port Authority") include activities that enhance, foster, aid, provide, or promote transportation, economic development, governmental operations, culture or research throughout the City of Cincinnati, Ohio ("City") and the County of Hamilton, Ohio ("County") and other activities authorized within the State of Ohio ("State") by Article VIII, Sections 13 and 16 of the Ohio Constitution; and

WHEREAS, in support of such authorized purposes, the Port Authority may acquire and improve, and sell, lease, exchange or otherwise dispose of property, structures, equipment and facilities within the State for industry, commerce, distribution and research and, pursuant to such authority and a comprehensive strategic planning process, the Port Authority has developed, adopted and begun to implement an Industrial Revitalization Strategy to acquire, improve, assemble, reposition and otherwise develop and redevelop former commercial and industrial sites, together with other necessary or desirable parcels, to create newly marketable sites attractive for commercial, industrial and mixed-use redevelopment by or together with commercial development partners, including to repurpose and prepare underperforming industrial sites for high-impact, next-generation manufacturing, all of which will promote economic development and create and preserve jobs and employment opportunities within the City and the County ("Program Purposes"); and

WHEREAS, in furtherance of the Program Purposes, this Board has previously adopted, without limitation, Resolution No. 2016-09, Resolution No. 2016-13, Resolution No. 2016-14, Resolution No. 2016-15, Resolution No. 2016-16 and Resolution No. 2016-17 (collectively, "Existing Resolutions") and, for the reasons further stated in the Recitals to the Existing Resolutions, which Recitals are incorporated herein by reference, among other things: (i) authorized the issuance of revenue bonds and notes to provide moneys to pay costs associated with the Program Purposes, (ii) authorized the acquisition and redevelopment of certain sites for the Program Purposes, and (iii) consistent with the budget of the Port Authority, authorized the use of available grants and other identified moneys, including revenue bond and note proceeds, to pay costs associated with the Program Purposes ("Program Funds"), and appropriated amounts sufficient to pay capital expenditures associated with the Program Purposes (collectively, "Board Matters"); and

WHEREAS, this Board anticipates adopting resolutions from time to time (in addition to the Existing Resolutions) to address Board Matters relating to property acquired for the Program Purposes, including the identification of Program Funds to be used to pay associated costs (such resolutions together with the Existing Resolutions, the "Program Resolutions"); and

WHEREAS, this Board has previously determined and hereby confirms that the implementation of the Program Purposes, as contemplated by the Industrial Revitalization Strategy, is in furtherance of economic development within the City and County, includes the acquisition, construction, enlargement, improvement or equipping, and the sale, lease, exchange or other disposition, of property, structures, equipment or facilities within the State for industry, commerce, distribution or research to create or preserve jobs and employment opportunities and improve the economic welfare of the people of the State, and constitutes an activity contemplated by Article VIII, Section 13 of the Ohio Constitution; and

WHEREAS, pursuant to Ohio Revised Code Section 4582.31(A)(18)(e)(i) and except as otherwise provided in Ohio Revised Code Section 4582.31(A)(18)(e)(iii), any contract with a person or governmental entity that pertains to the acquisition, construction, maintenance, repair, furnishing, equipping, or operation of any real or personal property, or any combination thereof, related to, useful for, or in

furtherance of an activity contemplated by Section 13 or 16 of Article VIII, Ohio Constitution, may be made in such manner and subject to such terms and conditions as may be determined by this Board; and

WHEREAS, this Board anticipates that the Port Authority will need to enter into contracts from time to time pertaining to the construction, maintenance, repair, furnishing, or equipping of real or personal property, or any combination thereof, related to, useful for or in furtherance of the Industrial Revitalization Strategy and the Program Purposes (herein "Work"), and that it should now determine the manner, and subject to what terms and conditions, certain of the contracts payable from or secured by Program Funds for the Work (herein "Contracts") shall be made; and

WHEREAS, this Board determines that it is of the utmost importance to the Port Authority and to the success of the Industrial Revitalization Strategy that Contracts for the Work be procured through a fair and equitable process that provides a level playing field for all interested and qualified contractors, while promoting efficiency and ensuring that the Work results in sites of the highest quality in order to attract and retain high-impact manufacturing jobs and employment opportunities; and

WHEREAS, in order to establish a process that provides a level playing field, ensures products of the highest quality, and preserves efficiency within the organization, as supplemental authority for entering into Contracts pertaining to the construction, maintenance, repair, furnishing, or equipping of real or personal property, or any combination thereof, in furtherance of the Industrial Revitalization Strategy and for which procurement is not otherwise authorized consistent with Ohio law and actions and policies of this Board (including standing authority to enter into contracts, including contracts for the Work, in amounts not exceeding (or anticipated to exceed) \$100,000 or the amount as adjusted at the applicable time under Ohio Revised Code Section 4582.31(A)(18)(b)(ii)), this Board has determined that such Contracts shall be entered into in the manner described in, and subject to the terms and conditions included in or established pursuant to the process described in, this resolution, including Attachment A hereto, incorporated herein by this reference (herein "Industrial Strategy Contracting Process"); and

WHEREAS, this Board has determined and hereby finds that Contracts made for the Work consistent with the Industrial Strategy Contracting Process are (i) related to, useful for, or in furtherance of an activity contemplated by Section 13 of Article VIII, Ohio Constitution, (ii) shall not be subject to any other provision of law that might otherwise apply including, without limitation, any requirement of notice, any requirement of competitive bidding or selection or any requirement for the provision of security, and (iii) the Contracts shall be paid from Program Funds and, accordingly, will not be (A) secured by or to be paid from moneys raised by taxation (or proceeds of obligations secured by a pledge of moneys raised by taxation) or (B) secured exclusively by or to be paid exclusively from the general revenues of the Port Authority;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Port of Greater Cincinnati Development Authority:

Section 1. This Board hereby adopts, confirms and restates, as fully as if set forth in this Section 1, the recitals to this resolution (including the recitals to the Existing Resolutions incorporated therein by reference), all of which are incorporated herein by reference as a statement of the findings and determinations of this Board, including as to the public purposes of the Port Authority in implementing the Industrial Revitalization Strategy, adopting the Program Resolutions and this resolution, approving Board Matters for the Program Purposes, adopting the Industrial Strategy Contracting Process for making Contracts for the Work, and entering into those Contracts.

Section 2. This Board hereby adopts and establishes the Industrial Strategy Contracting Process, as further described in Attachment A incorporated herein by reference, as the process for making

Contracts for the Work to the extent such Contracts are consistent with the Program Resolutions as to Board Matters and are payable from Program Funds. All such Contracts shall be made in the manner, and subject to the terms and conditions of, the Industrial Strategy Contracting Process. The Industrial Strategy Contracting Process is supplemental to, and is not in derogation of, any other contracting authority available under and consistent with Ohio law and actions and policies of this Board ("Other Contracting Authority"), and any contracts for the Work may be made either pursuant to the Industrial Strategy Contracting Process or pursuant to any such Other Contracting Authority; provided that, with respect to Board Matters, such contracts shall be consistent with the Program Resolutions.

Section 3. This Board finds and determines that all formal actions of this Board and any of its committees concerning and relating to the adoption of this resolution were taken, and that all deliberations of this Board and of any of its committees that resulted in such formal action were held, in meetings open to the public, in compliance with the law.

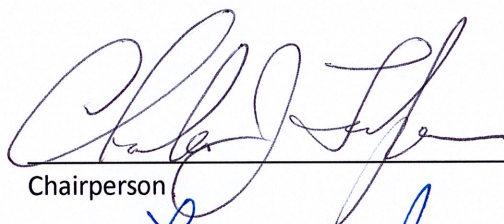
Section 4. This resolution shall be in full force and effect upon its adoption.

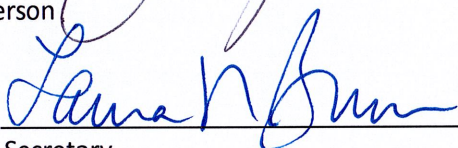
Adopted: 9-7-16

Yeas: 7

Nays: 0

Abstention: 0


Chairperson


Attest: _____
Secretary



Attachment A

Contracting Process – Industrial Revitalization Strategy

Overview

This document describes the manner in which, and outlines the process by which, the Port Authority will enter into certain contracts (herein “Contracts”) pertaining to the construction, maintenance, repair, furnishing or equipping of real or personal property, or any combination thereof (herein “Work”), related to, useful for or in furtherance of the Industrial Revitalization Strategy of the Port Authority (the “Strategy”). The purposes of this process include providing a level playing field for all interested and qualified contractors, ensuring products of the highest quality and enhancing efficiency within the organization in carrying out the necessary Work to implement the Strategy. This process is supplemental to, and does not derogate from, any other contracting authority consistent with Ohio law and actions and policies of the Port Authority Board, including standing authority to enter into contracts, including contracts for Work, in amounts not exceeding the higher of \$100,000 or the amount as adjusted under Ohio Revised Code Chapter 4582.31(A)(18)(b)(ii).

Step 1: Pre-Qualification

Port Authority staff shall periodically identify potential contractors that it believes will be interested in and qualified to enter into Contracts for the Work and notify such potential contractors of the potential availability of Work and of the process for obtaining such Contracts, including the need for pre-qualification. In addition, upon receiving any inquiries from any potential contractor expressing an interest in obtaining Contracts for Work, Port Authority staff shall notify such potential contractors of the process for obtaining such Contracts, including the need for pre-qualification.

In the event any potential contractor (a “Contractor”) is interested in performing requiring a Contract Work for the Port Authority, Port Authority staff will provide such Contractor with the relevant Port Authority Statement of Contractor’s Qualifications form, such form to be modified as necessary by Port Authority staff consistent with the terms and conditions of this process and the goals and timing requirements of the Strategy. Each such Contractor will be required to complete the Statement of Contractor’s Qualifications form in its entirety, after which Port Authority staff will vet each such contractor to determine whether the Contractor has the necessary expertise, experience, facilities, track record, bonding capacity and professionalism (“Qualifications”) required to perform, produce and deliver high-quality work and/or products in a timely fashion as required by the Port Authority and the Strategy. Contractors that fail to be approved under this pre-qualification process will not be considered for Contracts at that time, although they may re-apply

for pre-qualification after the beginning of the following calendar year. Contractors that are approved under the pre-qualification process (“Pre-Qualified Contractors”) will be considered for invitations to bid on Work that requires a Contract.

Step 2: Invitation to Bid

After the Port Authority has identified Work that requires a Contract and is ready to move forward, Port Authority staff will evaluate all Pre-Qualified Contractors to determine which Contractors possess the necessary Qualifications for the specific Work (“Qualified Contractors”). Such determination shall be made in the discretion of Port Authority staff and approved by the President consistent with the terms and conditions of the Work and this process, the goals and timing requirements of the Strategy and the preliminary plans and/or specifications developed by or on behalf of the Port Authority staff for the Work, including any requirements for the provision of bid, payment or performance security, as developed in the discretion of Port Authority staff consistent with the requirements of the particular Work (as revised from time to time consistent with this process, “Preliminary Specifications”).

All Qualified Contractors will be invited to bid on the Work by the Port Authority in writing (in any manner determined by Port Authority staff) based on an invitation to bid prepared by Port Authority staff for the particular Work (as modified from time to time consistent with this process, “Invitation”) and the Preliminary Specifications, either of which may thereafter be supplemented, modified or otherwise revised by Port Authority staff from time to time at or prior to the award of the Contract consistent with the invitation to bid.

Step 3: Evaluation of Bids

Port Authority staff will review and make a determination on which bid is the lowest and best and on which bid would have been the lowest and best bid if the lowest and best bid had not been submitted (the “next lowest and best bid”). Each such determination shall be made in the discretion of Port Authority staff consistent with the terms and conditions of the Work (as reflected in the Invitation and Preliminary Specifications), the purposes of this process, and the goals and timing requirements of the Strategy. Upon execution and delivery of a Contract for the Work, each such determination made by Port Authority staff shall be conclusive and binding on the Port Authority.

In determining which bid is the lowest and best bid (or next lowest and best bid), Port Authority staff may take into consideration not only the amounts of the bids, but such of the following criteria as Port Authority staff, in its discretion, deems appropriate, and may give such weight thereto as it deems appropriate consistent with the terms and conditions of the Work (as reflected in the Invitation and Preliminary Specifications), the purposes of this process, and the goals and timing requirements of the Strategy:

- a) The bidder’s financial condition and ability to complete the Contract successfully without resort to its surety;

- b) The bidder's prior experience, including experience with similar work on comparable or more complex projects;
- c) The competency and experience of the bidder's proposed supervisory and management staff;
- d) The bidder's prior history for the successful and timely completion of projects;
- e) The bidder's prior efforts to foster economic inclusion on its projects;
- f) The bidder's ability to perform the Work in accordance with the Port Authority Economic Inclusion Policy;
- g) The bidder's owned and rented equipment and facilities;
- h) The adequacy, in numbers and experience, of the bidder's work force to complete the Contract successfully and on time;
- i) The bidder's prior experience on other projects of the Port Authority, including the bidder's demonstrated ability to complete its work on these projects in accordance with the Contract, on time, and in accordance with the Port Authority Economic Inclusion Policy;
- j) The bidder's history of compliance with federal, state, and local laws, rules, and regulations;
- k) The Port Authority's prior experience with the bidder's surety;
- l) The bidder's interest in the Work as evidenced by its attendance at any pre-bid meetings or conferences for bidder;
- m) The bidder's ability to work with the Port Authority and its consultants as a willing, cooperative and successful team member;
- n) The bidder's certification that it has not had a professional license revoked in the past five years in Ohio or in any other state;
- o) The bidder's certification that it has not been debarred from any public contract, federal, state or local, in the past five years;

Step 4: Award of Contract

Following determination of the lowest and best bid, and confirmation by the Secretary and Fiscal Officer or any Assistant Secretary and Fiscal Officer (a "Fiscal Officer") that such bid is within existing appropriations and budgetary authority, the Port Authority may attempt to enter into a Contract for the Work with the applicable bidder. In the event the Contract with that bidder fails to be made or the Contract is terminated, upon confirmation by a Fiscal Officer that the next lowest and best bid is within existing appropriations and budgetary authority, the Port Authority may attempt to enter into a Contract with the applicable bidder. The President/CEO of the Port Authority or, in her absence or unavailability, the Chair or Vice Chair of the Port Authority Board, shall execute each such Contract. In the event no bid is determined to be acceptable by Port Authority staff, the project may be re-bid at a later date in the same manner described above.