

POATRI PROCUREMENT POLICY

Property Owners Association Terlingua Ranch, Inc. (POATRI) shall establish and maintain a procurement system which shall ensure the fair and equitable treatment of all persons or firms involved. Management shall ensure that all supplies and services (including construction) are procured efficiently, effectively, and at the most favorable prices available to POATRI. Periodic reviews of prior purchases, as well as future requirements will be made to find areas where procurement actions can be improved.

DEFINITIONS

The term “procurement” as used in this policy includes the procuring, purchasing, leasing, or renting of: goods, supplies, equipment or materials, construction contracts, and maintenance or service agreements.

The term “management” as used in this policy refers to the General Manager that is in charge of POATRI’s administration and operations.

The term “BOD” shall mean the POATRI Board of Directors.

PROPERTY OWNER ACCESS TO PROCUREMENT INFORMATION

Procurement information is generally not considered proprietary and will be made available to property owners upon written request per POATRI Policy and Procedures Manual, Section III-6.

ETHICS AND CODE OF CONDUCT

No employee of POATRI (or member of the BOD or any member of any POATRI Committee or Task Force) shall participate in the selection, or in the awarding or administration of any procurement or contracting if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when an employee, an ex employee, or agent of POATRI, any member of his or her immediate family, his or her partner, or an organization, which employs, or is about to employ, any of the above, has a financial interest in the firm selected for award of a contract or services. Immediate family includes; his/her relative (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister).

No POATRI employee, (or member of the BOD or any member of any POATRI Committee or Task Force) shall solicit or accept favors or anything of monetary value from contractors, potential contractors, or other parties involved in the procurement of goods or services for POATRI.

FINANCIAL POSITION

Before any procurement action is taken, management and/or the BOD shall ensure that sufficient funds are available to cover the anticipated cost associated with the procurement action.

PETTY CASH PURCHASES

Purchases under \$100 may be handled through the use of a Petty Cash account established in accordance with Section III-1 of the POATRI Policy and Procedures Manual.

PURCHASE PROCEDURES

For any amounts above the Petty Cash ceiling, but not exceeding \$10,000, management shall obtain a reasonable number of quotes (preferably three). For purchases of less than \$2,000 only one quote is required provided the quote is considered reasonable. To the greatest extent feasible, and to promote competition, purchases should be distributed among qualified sources. Quotes may be obtained orally (either in person or by phone), by fax, in writing, or through e-procurement. Award shall be made to the qualified vendor that provides the best value to POATRI. If award is to be made for reasons other than lowest price, management shall provide documentation in the vendor file explaining the reason for not going with the lowest price.

Management shall not break down purchases into two or more smaller purchases to avoid the requirements placed upon larger purchases.

SEALED BIDS

Sealed bidding shall be used for contracts that exceed the small purchase limit of \$10,000. Under sealed bids POATRI will advertise and publicly solicit bids for a 30 day period and then award a firm fixed-price contract (lump sum or unit price) to the responsible bidder whose bid, conforming with all the material terms and conditions, is the lowest price. Sealed bidding is the preferred method for procuring construction contracts, supply and non complex service contracts that are expected to exceed \$10,000.

A solicitation for bids shall be issued which includes the specifications and all contractual terms and conditions applicable to the procurement, and a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the solicitation. The solicitation for bids must be advertised and it must state the time and place for receiving the bids

Sealed Bids shall be opened by management, date stamped and analyzed for accuracy and compliance with the specifications and contractual terms. An analysis of the proposal, including comments and recommendations, will be prepared by management and submitted to the BOD no later than five working days after receipt of the proposal. The BOD will respond with a decision and instructions for disposition within five working days after receipt of the proposal. The contract will be awarded to the lowest responsible and responsive bidder. If only one bid is received, award shall not be made unless the bid (price) can be determined to be reasonable based on a cost or price analysis.

Correction or withdrawal of bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the solicitation for bids prior to the time set for bid opening. After bid opening, corrections in bids may be permitted only if the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made. All decisions to allow correction or withdrawal of a bid shall be supported by a written determination signed by management. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of POATRI or fair competition shall not be permitted.

NONCOMPETITIVE PROPOSALS

Procurement by non competitive proposals (single source) may be used only when the award of a contract is not feasible and if one of the following applies:

1. The item is available only from a single source, based on a good faith review of available sources;
2. An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to POATRI. In such cases, there must be an immediate and serious need for supplies, services, or construction.
3. After solicitation of a number of sources, competition is determined inadequate.

Each procurement based on noncompetitive proposals shall be supported by a written justification by management for the selection of this method. Poor planning or lack of planning is not justification for emergency or sole-source procurements. The justification, to be included in the procurement file, should include an explanation of the requirement for the purchase and a history of prior purchases of a similar nature along with a description of the efforts made to find competitive sources.

BONDING REQUIREMENTS

Construction contracts that exceed \$50,000 must contain bonding requirements as follows:

- A. Bid Bonds shall be required from each bidder equivalent to 5% of the bid price.
- B. The successful bidder shall furnish a payment bond as an assurance of completion. This assurance may be any one of the following four:
 1. A performance and payment bond in a penal sum of 100% of the contract price; or
 2. Separate performance and payment bonds, each for 50 % or more of the contract price; or
 3. A 20 % cash escrow; or
 4. A 25 % irrevocable letter of credit.

Effective December 23, 2009

CONTRACTOR QUALIFICATIONS AND DUTIES

POATRI shall not award any contract in excess of \$50,000 until the prospective contractor has been determined to be responsible and can demonstrate the following:

- A. Have adequate financial resources to perform the contract, or the ability to obtain them;**
- B. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all the bidder's/offerer's existing commercial and governmental business commitments;
- C. Have a satisfactory performance record;
- D. Have a satisfactory record of integrity and business ethics;
- E. Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
- F. Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and,

If a prospective contractor is found to be non-responsible, management shall provide a written determination of non-responsibility to be included in the official contract file, and the prospective contractor shall be advised of the reasons for the determination.

VENDOR LISTS

All interested business shall be given the opportunity to be included on vendor mailing lists. Any list of persons, firms, or products which are used in the purchase of supplies and services (including construction) shall be kept current and include enough sources to ensure competition.

CONTRACT TYPES AND PRICING ARRANGEMENTS

Any type of contract which is appropriate to the procurement and which will promote the best interests of POATRI may be used, provided the cost-plus-a-percentage-of-cost and percentage-of-construction-cost methods are not used. All solicitations and contracts shall include the clauses and provisions necessary to define the rights and responsibilities of both the contractor and POATRI. For all cost reimbursement contracts, management must include a written determination as to why no other contract type is suitable. Further, the contract must include a ceiling price that the contractor exceeds at its own risk.

CONTRACT CLAUSES

All contracts should identify the contract pricing arrangement as well as other pertinent terms and conditions, as determined by POATRI.

CONTRACT ADMINISTRATION

Management shall ensure that contractors perform in accordance with their contracts. These systems shall provide for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on major projects including construction contracts, and similar matters

SPECIFICATIONS

All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying POATRI needs. Specifications shall be reviewed prior to issuing any solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items. Function or performance specifications are preferred. Detailed product specifications shall be avoided whenever possible. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

APPEALS AND REMEDIES

It is POATRI policy to resolve all contractual issues informally and without litigation. When appropriate, a mediator may be used to help resolve differences.

BOARD APPROVAL OF PROCUREMENT ACTIONS

The Board shall review and approve all contracts or service agreements that exceed \$10,000. It is the responsibility of management to make sure that all procurement actions are conducted in accordance with the policies contained herein.

DELEGATION OF CONTRACTING AUTHORITY

Further, and in accordance with this delegation of authority, management shall, where necessary, establish additional operational procedures to implement this Policy.

DOCUMENTATION

All Procurement records shall be retained in accordance with POATRI Policy and Procedures Manual Section III-7.

Effective December 23, 2009