PORT OF GALVESTON
REQUEST FOR DISCUSSION AND TRUSTEES ACTION

BUSINESS ITEM

PREPARED BY: Laura Camcioglu  Director of Administration  December 17, 2015

SUBJECT: Consider and Approve Contract Management Policy of the Board of Trustees of the Galveston Wharves.

BACKGROUND: Port of Galveston staff have created a taskforce to draft and recommend policies for the Port of Galveston. This is an ongoing process. Staff shall submit proposed policies for consideration by the Board of Trustees of the Galveston Wharves as they become available. Staff will maintain procedures required to effectively manage these proposed policies.

RECOMMENDATIONS: The Board of Trustees of the Galveston Wharves is respectfully requested to review the recommended policy and approve with any suggested revisions.

ADDITIONAL INFORMATION ATTACHED: X Yes  □ No

Respectfully Submitted By: ____________________________

RODGER REES, Port Director/CEO

DATE ACTION TAKEN: ____________________________

Approved:  ____________________________

Motion By:  ____________________________

Disapproved:  ____________________________

Seconded By:  ____________________________

Deferred To:  ____________________________

Unanimous: □ Yes  □ No

Incorporated into Minutes:  ____________________________

By:  ____________________________
PORT OF GALVESTON

Briefing

CONSIDER AND APPROVE CONTRACT MANAGEMENT POLICY OF THE BOARD OF TRUSTEES OF THE GALVESTON WHARVES

Background
Port of Galveston staff have created a taskforce to draft and recommend policies for the Port of Galveston. Policies identify the key activities and provide a general strategy to decision-makers on how to handle issues as they arise. They are the clear, concise statements of the parameters by which an organization conducts its business.

This is an ongoing process. Staff shall submit proposed policies for consideration by the Board of Trustees of the Galveston Wharves as they become available. Staff will maintain procedures required to effectively manage these proposed policies.

Current Situation
The Contract Management Policy of the Board of Trustees of the Galveston Wharves, with the related Contract Management Procedures of the Board of Trustees of the Galveston Wharves, is attached in draft form (the “Proposed Draft”) and is recommended for approval, with any suggested revisions, by the Board of Trustees of the Galveston Wharves.

After drafting, the Proposed Draft underwent informal rounds of internal review, including review by the Director of Administration and other Port of Galveston staff. Additionally, review by the Port’s legal counsel was requested and remains pending.

Novel in nature, the Port anticipates that the Proposed Draft will need to be amended from time-to-time to reflect the workflow and processes currently being planned for utilization in NetSuite. It should be noted that processes and procedures outlined in the Proposed Draft may require amendment upon full implementation of NetSuite (i.e. the Proposed Draft contains contract management guidelines drafted for use without full NetSuite implementation). As NetSuite utilization continues, it is anticipated that additional provisions to the Proposed Draft may be necessary or required from time-to-time to reflect blossoming practices.

Fiscal Impact
None.

Staff Recommendation
The Board of Trustees of the Galveston Wharves is respectfully requested to review the recommended policy and approve with any suggested revisions.
CONTRACT MANAGEMENT POLICY
OF THE
BOARD OF TRUSTEES OF THE GALVESTON WHARVES

I. Policy

The purpose of this Contract Management Policy of the Board of Trustees of the Galveston Wharves (the "Policy") is to provide guidelines and procedures to ensure that contracts under the management and control of the Board of Trustees of the Galveston Wharves (the "Port") are properly managed and to communicate these guidelines and procedures to all employees and other persons who may participate in contract management for the Port.

Port employees must comply with all applicable requirements of Article XII of the Galveston City Charter, Chapter 54 of the Texas Transportation Code, Chapters 252 and 271 of the Texas Local Government Code, Chapters 791, 2253, 2254 (Subchapter A), 2258, and 2267 of the Texas Government Code, and all other laws related to competitive bidding, purchasing, and contracting, each as they may from time to time be amended (collectively, "Applicable Law"). Additionally, and where applicable, Port employees must also comply with Federal procurement, payment, and contracting requirements, including the requirements set out in 2 C.F.R. Subpart D (2 C.F.R. §200.300 et seq).

This Policy is intended to replace and supersede all previous Port policies, procedures, and directives concerning contracts for the purchase or procurement of goods or services, all of which are repealed by the adoption of this Policy. To the extent of any inconsistency between this Policy and the provisions of any Applicable Law, the Applicable Law will control.

II. General

The Board of Trustees of the Galveston Wharves shall, through the Administration Department, administer and utilize a contract management procedures, practices, and processes. Contract management is the process of managing contract creation, execution, and analysis to maximize operational and financial performance at an organization, all while reducing financial risk.

Contract management is a function of all Departments. Department directors and/or their designees are responsible for coordinating with the Administration Department regarding any departmental contracts made or entered into on behalf of the Port.

III. Procedures

The Galveston Wharves, under the direction of the Port Director/CEO and the Director of Administration, will set procedures regarding contract management including:
I. Procedure Statement
II. Scope
III. Definitions
IV. Associated Materials and Policies
V. Contract Management Procedure
   A. Upstream or Pre-Award Activities
   B. Award Activities
   C. Downstream or Post-Award Activities
CONTRACT MANAGEMENT PROCEDURES
OF
THE BOARD OF TRUSTEES OF THE GALVESTON WHARVES

I. Procedure Statement

All contracts must and shall be made in accordance with the Purchasing Procedures of the Board of Trustees of the Galveston Wharves as well as the laws of the State of Texas, including but not limited to Chapters 252 and 271 of the Texas Local Government Code, Article XII the City of Galveston Charter, Chapter 54 of the Texas Transportation Code, Chapters 791, 2253, 2254 (Subchapter A), 2258, and 2267 of the Texas Government Code, and all other laws related to competitive bidding, purchasing, and contracting, each as they may from time-to-time be amended (collectively, “Applicable Law”). Additionally, and where applicable, Port employees must also comply with Federal procurement, payment, and contracting requirements, including the requirements set out in 2 C.F.R. Subpart D (2 C.F.R. §200.300 et seq).

II. Scope

These Procedures apply to all employees of the Board of Trustees of the Galveston Wharves (the “Port of Galveston”), and all other persons who may assist or participate in managing contracts for the Port.

These Procedures are issued pursuant to the Contract Management Policy of the Board of Trustees of the Galveston Wharves (the “Policy”), and are intended to replace and supersede all previous Port policies, procedures, and directives concerning contracts for the purchase or procurement of goods or services. To the extent of any inconsistency between these procedures and the provisions of any Applicable Law, the Applicable Law will control.

The Administration Department is responsible for implementing the Policy and these Procedures. The Administration Department may also establish supplemental practices and/or rules deemed necessary to ensure compliance with the Policy.

III. Definitions

A. Applicable Law. Generally, the laws of the State of Texas, including but not limited to Chapters 252 and 271 of the Texas Local Government Code, Article XII of the City of Galveston Charter, Chapter 54 of the Texas Transportation Code, Chapters 791, 2253, 2254 (Subchapter A), 2258, and 2267 of the Texas Government Code, and all other local, State, and Federal laws related to competitive bidding and purchasing, each as they may from time-to-time be amended. Additionally, where applicable, Federal procurement, payment,
and contracting requirements including the requirements set out in 2 C.F.R. Subpart D (2 C.F.R. §200.330 et seq).

B. **Senior Staff.** A Port Employee who has been authorized to conduct Port banking transactions and who has the authority to approve a purchase or requisition.

IV. **Associated Materials and Policies**

*Purchasing Policy of the Board of Trustees of the Galveston Wharves*

*Purchasing Procedures of the Board of Trustees of the Galveston Wharves*

V. **Contract Management Procedure**

Contract management is the process of managing contract creation, execution, and analysis to maximize operational and financial performance at an organization, all while reducing financial risk. A contract specifies the activities entered into between two companies wishing to do business with each other and the terms through which the partnering business will each fulfill their respective obligations.

Generally, contract management involves three key stages: (1) up-stream or pre-award activities, (2) award activities, and (3) down-stream or post-award activities.

**A. Up-Stream or Pre-Award Activities.** The foundation for contract management relies on the implementation of successful post-award and upstream activities. During the pre-award stage, employees should focus on the reason for establishing the contract and if the supplier can fulfill the terms of the agreement.

Additional consideration is needed to understand how the contract will work once awarded. Avoiding unwanted surprises require careful research and clarity of purpose in the actual contract.

Contract management requires a level of flexibility for both parties involved and a willingness to adapt contract terms to reflect any changing circumstances. Problems are inevitable, which means organizations must be prepared for the unexpected and be able to adjust contract terms when needed.

1. **Preparing the Business Case and Securing Management Approval.** All contracts are predicated on the need to obtain managerial commitment and approval at the appropriate level. This involves the formulation of a sound business case aligned to the Port of Galveston’s operational and functional strategies.

The business case sets out the policy, contract objectives, and the issues that will affect the decision and the investment. It should seek to establish that the proposed contract will meet the need, that it is achievable and affordable, and it should address the following issues:

- the outcome(s) of the contract,
- critical success factors,
- the possible alternatives, including existing contracts,
- the risks including the extent and where they may fall,
- identification of any contingent needs and ramifications of proceeding, and
- timescale.

The business case should be prepared with the involvement of internal stakeholders and should be approved by the requesting department's Senior Staff.

The business case is a working document and should form the basis of the post-implementation review and used as a management tool to ensure that the original outcomes and benefits have been achieved.

If the project is large, complex and, in particular, innovative in nature, the market should be approached concurrently with the preparation of the business case, in order to review and address such issues as feasibility, capacity, capability, approach, and level of interest.

2. **Assembling the Project Team.** The need to assemble a team to manage a contractual procurement program will be determined not only by the scale, nature, complexity, and significance of the procurement, and the necessary skills and experience, but also by the extent to which it is considered appropriate, beneficial, or a requirement to comply with organizational policy to involve stakeholders in the project. In assembling the project team, the requesting department should consult and coordinate with the purchasing agent, or similar designee, as well as the Port of Galveston's *Purchasing Policy of the Board of Trustees of the Galveston Wharves* and *Purchasing Procedures of the Board of Trustees of the Galveston Wharves*.

When assembling the team, the nature of the project should be considered. The project team may be drawn from any and all departments at the Port of Galveston as appropriate and relevant. Depending on the size and complexity of the project, this core group will meet regularly.

In addition to the need to identify the necessary technical skills, knowledge, and experience with the appropriate level of authority required of the members of the team, the importance of the ability of team members to work together effectively and the significance of the role of the project leader should be recognized.

3. **Developing Contract Strategy.** The strategy relating to a particular contract should accord with the Port of Galveston's *Purchasing Policy of the Board of Trustees of the Galveston Wharves* and *Purchasing Procedures of the Board of Trustees of the Galveston Wharves*.

The development of a contract strategy is designed to establish the form of the procurement and provide assistance in determining the formulation and award of the contract and the style and type of management to be adopted for the subsequent service delivery, relationship management, and contract administration.

The latter aims can be characterized by the need to address understanding, measurement, and communication post- contract award. A successful contract
management strategy should achieve benefits by:

- managing the Port of Galveston's own responsibilities during the contract,
- ensuring the supplier meets the minimum performance criteria, and
- allowing the achievement of both short and long term performance improvement through developing effective relationships.

In developing the contract strategy, the following issues need to be addressed:

- nature, scale, and significance of the need to the Port of Galveston,
- value of need,
- type of specifications,
- complexity of the need, including innovation level, attractiveness to the market, market capacity, timescale, and phasing, and
- level of understanding of the need by stakeholders and potential vendors and/or suppliers.

The use of supplier and/or vendor positioning matrices will also assist in determining the contract strategy, the nature of any negotiations that may need to be conducted, and the form of the supplier relationship following the award of contract.

**SUPPLIER AND/OR VENDOR POSITIONING MATRIX (EXAMPLE)**

Concurrently with determining the contract strategy, consideration should be given to the evaluation strategy that sets the direction for the overall evaluation of
suppliers and/or vendors and the associated tender process. It covers such considerations as:

- business aims,
- critical success factors,
- relative priorities of the requirement,
- communication plans,
- criteria for determining quantifiable and non-quantifiable items,
- overall evaluation procedures,
- personnel involved in the evaluation, and
- supplier and/or vendor selection criteria.

Another important consideration in establishing contract strategy is whether to utilize Service Level Agreements. The purpose of Service Level Agreements and setting service levels is to enable the Port of Galveston to monitor and control the performance of the service received from the supplier and/or vendor against agreed standards. It should be understood that service levels should be agreed and should be:

- established at a reasonable level,
- prioritized by the Port of Galveston in order of importance and on an agreed scale,
- unambiguous and understandable by all parties, and
- open to re-negotiation.

There are advantages and disadvantages in using Service Level Agreements. Among the advantages are:

- the Port of Galveston has a greater awareness of the services received and the additional services that can be provided,
- the Port of Galveston's needs are identified and the associated costs are made clear,
- services and service levels adding value can be more easily identified and distinguished,
- greater awareness of costs/benefits of services and levels,
- service level monitoring is facilitated,
- failure reports enable improvements to be readily introduced, and
- understanding and trust is created between the Port of Galveston and the vendor and/or the supplier.

4. Risk Assessment. Risk can be defined as the probability of an unwanted outcome happening. Risk assessment should be viewed in the overall context of risk management and seen as one of the three key activities – risk analysis, risk assessment, and risk mitigation - which facilitate the taking of decisions and actions to control risk appropriately.

Risk analysis is the process of identifying all the potential issues that can go wrong
with an activity and, then, estimating the probability of each happening. It should 
form part of any significant contract management process and is a fundamental part 
of determining the contract strategy. The process can range from a simple listing of 
risks on an informal, intuitive basis to a formal process involving set procedures 
and working with other departments in brainstorming and technically and 
financially evaluating potential risks. A more formal process may involve the 
establishment of a risk register for each potential contract and, following contract 
award, the transfer of the register of the successful bid to the contract management 
team for use in risk assessment.

In addressing the fundamentally important issue of risk in contract management, 
the purchasing agent or similar designee should adopt a continuous “what if” 
mentality throughout the procurement of products and services. Risk management 
requires a professional who possesses knowledge of techniques, an analytical mind 
set, objectivity, and a knowledge and thorough understanding of the Port of 
Galveston’s operations and strategic master plan. It is advisable to seek to mitigate 
and remove risk whenever possible before contract award.

Risk assessment is the process of assessing the likely impact of a risk on the Port 
of Galveston. Highly predictable risks may have low impact and it is possibly not 
worth taking action to control or avoid such risks. Conversely, low probability risks 
may have a significant impact demanding action to be taken to avoid or mitigate 
the risk.

Other issues for consideration in risk assessment:

- the costs of identifying, controlling, or avoiding the risk,
- the need for insurance for risk not readily managed or avoided,
- the need for “sensitivity analysis” on risks of an unknown level or magnitude,
- the impact of time, external factors, and project actions on risk and the need 
  for frequent assessment, and
- the impact of product and/or service life cycle including disposal and 
  obsolescence.

Having assessed the risks and identified those requiring action, responsibility for 
managing and mitigating them should be allocated. This allocation should be 
dependent on the assessment of the likelihood and consequence of the risk.

Other issues to be considered in risk mitigation:

- identifying the most appropriate body to manage or control the risk in 
terms of expertise, time, and/or resources,
- establishing a fair and reasonable reimbursement mechanism,
- insurance, and
- risk transfer to suppliers and/or vendors.

A further issue, usefully classified under a consideration of risk in contract
management, is fraud. The need to address potential areas for fraud in contractual relationships and measures to mitigate their impact should be considered at this early stage in upstream activities, particularly contract formulation.

5. Developing a Contract Exit Strategy. A contract will conclude when both parties have satisfactorily fulfilled their responsibilities under the terms of the contract. This, for example, will occur when the goods and/or services have been supplied, payment made, and/or at the end of a pre-agreed period of time. This situation, however, does not remove the need to develop a contract exit strategy as part of the process of risk identification and reduction, and reinforces the importance of establishing the foundations of sound contract management.

It is important to identify the circumstances under which early contract exit may be required or indeed desired. The following is merely a list of examples and is certainly not an exhaustive list:

- major default (e.g., contractual breaches, changed circumstances, technical inability, capacity, etc.), and
- frustration of the contract.

While many of these sets of circumstances are generally predictable, and “standard” terms and conditions are widely included in contracts today, it does not detract from the need to carry out this aspect of risk assessment and to ensure that clear and comprehensive terms and conditions are drawn up which address the identified circumstances and the rights and responsibilities of the parties and the means by which any damages or costs may be mitigated are set out. This include the method by which the goods and/or services may continue to be provided and, if possible, seamlessly transferred to another supplier or contractor to ensure business continuity. It is also important to clarify any notice period to be given and any timescale constraints associated with the exit process itself.

6. Developing a Contract Management Plan. During pre-contract award stages, it is normal for time to be devoted to the preparation of the business case, drafting specifications, and other procurement documents. However, time and effort must also be spent on determining how the contract will work once it has been awarded.

It is vital that a contract management plan is drawn up in advance of the award of a contract. This plan should set out how the obligations of all parties should be carried out effectively and efficiently.

Contract management success factors, the conditions that should be met if a contract is to be managed successfully, are:

- the arrangements for service delivery,
- expected business benefits,
- responsiveness of the service and/or goods provider,
- the Port of Galveston knows its obligations under the contract,
- there are no disputes,
- there are no surprises, and
satisfactory delivery progress is demonstrable.

In addition to these success conditions, it is worthwhile noting the foundations of successful contract management and the need for preparing a management plan:

- the need for flexibility by the parties, particularly in partnership agreements,
- a willingness to adapt the terms of the contract to reflect change and unforeseen problems,
- the need for the Port of Galveston to have clear business objectives, coupled with a clear understanding of why the contract will contribute to them,
- the need to understand the provider's business objectives and drivers,
- the ability to recognize and obtain agreement to the need for the provider to achieve their objectives and to make a reasonable margin, and
- the need for staff with the right interpersonal and management skills to manage these relationships at multiple levels in the organization.

Other issues to be addressed and appropriate processes and procedures set out in the contract management plan include:

- the processes for managing the contract which provide the level of control the Port of Galveston needs,
- the retention of sufficient expertise to understand the technical direction in which the provider is taking the Port of Galveston and to retain the ability to enter into effective dialogue with the supplier,
- to ensure, as far as is possible, that the supplier is able to provide sufficient skilled resources, given the risk that another customer's account might take priority,
- the possibility of the supplier team changing after award of contract, leading to a lack of continuity,
- to set down how the members of any supplier handle a variety of different types of issues, so as to ensure that problems are resolved quickly and constructively,
- to set down how members of a supplier should share common quality management systems and escalation procedures,
- to set down the timescale and methods by which the provider's level of knowledge and understanding of the Port of Galveston can be gained and transferred to the supplier's successive team members, and
- roles and responsibilities of individuals of the parties to the contract, including issues such as:
  - adopting the principles of good communication, awareness of new demands in partnership arrangements, leadership, appropriateness and capability of existing management structures, understanding the responsibilities of the various parties, clear understanding of what is expected and effective ways of reporting progress, having a framework defining responsibilities, reporting arrangements and policies
o establishing the performance measures to cover all aspects of the service such as:
  ▪ cost and value obtained,
  ▪ performance and customer satisfaction,
  ▪ delivery improvement and added value,
  ▪ delivery capability,
  ▪ benefits realized, and
  ▪ relationship strength and responsiveness.

It is important that the performance measures selected and set out in the contract offer clear and demonstrable evidence of the success (or otherwise) of the relationship. Once chosen, the requirements underpinning the performance measures should be the primary focus for contract management. They should provide the framework around which provider information requirements and flows, contract management teams, skills, processes and activities are developed.

7. **Drafting Specifications and Requirements.** A specification is a statement of needs, and its purpose is to present to potential suppliers a clear, accurate, and comprehensive statement of the Port of Galveston’s needs in order that they can propose solutions to those needs. At the same time, the specifications should enable the Port of Galveston to readily evaluate offers, provide the basis for performance measurement, and be a record of evidence in any dispute.

The successful drafting of specifications is one of the most important responsibilities of the purchasing agent or similar designee.

The starting point for the preparation of the specifications, particularly in the case of large and complex projects, is the business case. The drafting process is concerned with breaking down the overall scope set out in the business case into more detail and then, progressively and iteratively, refining into schedules of detailed requirements.

All contracts are different and the following process is not intended to be prescriptive but to act as a checklist for issues that should usefully be considered when preparing the specifications:

- define in detail the scope of the need including the essential or core requirement, optional and “desirable” needs,
- establish sources of information about the need from:
  - business owners,
  - customers and users,
  - other stakeholders,
  - technicians, and
  - the supply market.
- gather information on:
  - background to the need
  - future developments
  - detailed requirements
metrics required for performance measurement

- decide the type of specification to be used and then prepare a draft, including:
  o introduction,
  o scope of the requirement,
  o background to the requirement,
  o detailed description of the functional requirements,
  o description of the performance requirements,
  o timescale/timetable,
  o performance measurement requirements,
  o other requirements,
  o constraints,
  o contract management requirements,
  o contractual requirements,
  o procurement procedures, and
  o appendices.

The process of preparing the specification should also include drafting of the evaluation model criteria.

The specification document should be reviewed and signed off by a person with the necessary knowledge, experience, and authority. The review should ensure that the specification is complete and accurate, meets the Port of Galveston's needs, addresses, future requirements, addresses identified risks, complies with and addresses the issues identified by the original business case, is capable of being met by the market, and complies with Applicable Law.

8. Establishing the Form of Contract. Contracts can range from a single, ad hoc agreement for the provision of a product or service of relatively low monetary value, requiring little more than a short-term, formal relationship, or an overarching framework agreement, through contracts for long term product or service contracts, to a series of contracts for large, complex construction or development contracts with high values requiring the establishment of strategic partnerships and alliances.

B. Award Activities. In determining specific Award Activities, the requesting department should consult and coordinate with the purchasing agent, or similar designee, as well as the Port of Galveston’s Purchasing Policy of the Board of Trustees of the Galveston Wharves and Purchasing Procedures of the Board of Trustees of the Galveston Wharves, for procurement and contract award practices and processes. The following provisions only concern the Purchasing Policy of the Board of Trustees of the Galveston Wharves and Purchasing Procedures of the Board of Trustees of the Galveston Wharves as they relate to contract management.

1. Negotiation. It is not the intention of this guide to provide guidance on negotiation techniques. Negotiation is covered here in the context of the formal stages of contract management covered by these Procedures.

It is the aim of every purchasing professional to conclude the best deal for the
organization he or she represents. This is often achieved by post-tender negotiation and is an activity to be considered and planned for in the formulation of the contract strategy.

Post-tender negotiation ("PTN") is the negotiation, after receipt of formal responses to a procurement request and before the award of a contract to a supplier or vendor that submitted the lowest acceptable offer, with a view to obtaining an improvement in price, delivery, or content, in circumstances that do not put other offerors at a disadvantage or adversely affect the trust in the Port of Galveston’s competitive procurement procedures. PTN does not apply, for example, where there is no formal response process, there is only one supplier and/or vendor, there are ongoing discussions to clarify bids, there is a need to correct problems from poor pre-contract preparation, or there are normal price adjustment requests or contract variations during the life of the contract by either party.

When the Port of Galveston has decided that PTN will be conducted, the following matters should be considered:

- the criteria for conducting PTN,
- contract value,
- the balance between potential savings, the cost of carrying out PTN, and the likely benefits,
- time,
- effect on the market,
- Applicable Law, and
- ethical issues.

The methodology and conduct in undertaking PTN is, in principle, the same as that for any negotiations outside the context of a formal procurement process, although the activity may possibly be less complex or drawn out. The following matters, however, should be considered in determining the negotiation strategy:

- the approach, such as adversarial or partnership (respectively, a “win-lose” or “win-win” situation),
- identification of the implicit and explicit objectives of both parties,
- the fall-back or Best Alternative to a Negotiated Agreement ("BATNA") positions of both parties (as far as possible),
- the negotiation goals,
- the results of undertaking “what if” and sensitivity calculations on the tendered prices,
- the negotiators,
- identifying the buyer’s and the supplier’s respective negotiation situations, strengths, and weaknesses, and
- time and degree of urgency of the purchase.

Consideration must also be given to the negotiating process itself and issues such as:
- **Pre-negotiation stage:**
  - deciding upon a team or individual approach,
  - allocating roles and ensuring the appropriate level of expertise will be present,
  - the venue,
  - information gathering, including analysis of strengths, weaknesses, opportunities, and threats,
  - determining the objectives, and
  - deciding the strategy and tactics at the actual negotiation stage.

- **Actual negotiation stage:**
  - establishing the stages and procedural rules,
  - agreeing on the agenda,
  - determining the issues to be resolved,
  - agreeing on common goals,
  - removing barriers to achieving goals, final agreement, and closure, and
  - adopting the appropriate behavioral tactics necessary.

- **Post negotiation stage:**
  - drafting agreement statements,
  - communicating the agreement to stakeholders, and
  - implementing the agreement and monitoring the implementation.

This is not intended to form an exhaustive checklist of the issues to be kept in mind when it is proposed to conduct PTNs, but it will act as a prompt to the type and nature of the matters to be addressed.

2. **Awarding the Contract**

This stage should include activities such as:

- ensuring that all relevant parties are aware of their roles and responsibilities in the immediate implementation and transition process, including a meeting between the procurement agent or similar designee, the party awarded the contract, and the Port of Galveston staff who will be managing the awarded contract,
- checking that the agreed processes for contract management are in place by all parties,
- that knowledge transfer from the procurement or project team (which may not have included members of the contracts management team) to the contracts management team takes place to ensure successful management of the contract
- that, where necessary, the continuity plans for the seamless transition of the service from one contractor to the new contractor will be carried out as agreed.

As already mentioned, it is beneficial for the Port of Galveston to debrief the successful offeror to gain their view of the procurement process recently
undertaken, to gain better understanding of that market, to improve communications, to maintain good practice processes, and to establish a good working relationship with the new supplier and/or vendor at the earliest opportunity.

It is equally beneficial to brief unsuccessful offerors. It assists suppliers and/or vendors to improve their competitive performance, not only with the Port of Galveston in the future but in markets elsewhere. In addition to the benefits gained from briefing the successful offeror, the Port of Galveston benefits by developing a potentially wider range of suppliers and/or vendors, thus increasing the potential for improved value for money, by receiving better quality bids in the future and gaining useful market intelligence.

Debriefing should be constructive and as open as possible, not defensive and secretive. In general, it should be seen as helping to demonstrate procurement professionalism and establishing the Port of Galveston's reputation as a fair and ethical buyer with whom suppliers and/or vendors would want to do business.

Following selection and award, the communication advising offerors of their success or otherwise should thank them for their participation in the procurement request and offer them a debriefing opportunity. If unsuccessful offerors respond, requesting debriefing sessions, these should take place as soon as is conveniently and practically possible after award.

It is important that the debrief parameters are made clear, ideally confined to such topics as offeror selection, contract award, and offeror withdrawal issues, if applicable. It will not provide an opportunity to change any decisions, and it will be confined to the offeror's own offer.

C. Downstream or Post-Award Activities. Having carried out the pre-award activities associated with contract formulation and award, the process now turns to post-award activities. These can be grouped into three general areas: the management of service delivery, the management of the relationship with the supplier and/or vendor, and contract administration. The first is concerned with ensuring that the service is being delivered in accordance with the agreed performance and quality levels set out in the contract, the second is concerned with maintaining and developing an open and constructive relationship with the supplier and, the last, with the formal management of the contract.

I. Changes within the Contract. Changes are almost inevitable during the period of a contract, particularly in the case of large, complex construction and service contracts. They should not necessarily be seen as causes for concern but, effectively managed, as opportunities to improve the contract outputs. Changes of any significance will affect the scope and, potentially, the viability of the contract for either party.

Change can be driven by a number of factors. Amongst the more common are amendments to the strategies and objectives of the parties, the changing business
needs of a contracting party, market changes, developments in technology, economic trends which affect the viability of the contract, and legislative changes. These, in turn, can lead to changes in the service required, the metrics needed, service infrastructure, and workload.

Changes are easier to manage when planned. Even the effects of an unexpected, externally driven change can often be mitigated through, for example, on-going effective risk assessment and the phasing-in of any implementation. Changes will require negotiation with the provider(s) and the introduction of amendments carefully scheduled to avoid workload peaks and year-end activities where possible. The implementation of the change should be effectively managed using change control procedures.

Particular care should be taken when making changes to construction, building, and information technology contracts. What are apparently quite small changes can have unexpected effects on other costs, particularly, for example, if a construction sequence is affected. Wherever possible, the outcome should be agreed with the supplier and/or before instructing such a change.

Changes within a particular contract should accord with the Port of Galveston’s Purchasing Policy of the Board of Trustees of the Galveston Wharves and Purchasing Procedures of the Board of Trustees of the Galveston Wharves.

2. Service Delivery Management. This activity is concerned with the fundamental aspect of contract management, that of ensuring that the actual service provided by the supplier and/or vendor is in accordance with the agreed standards and prices. The ability to measure the performance of the supplier - sometimes called vendor rating - and to provide feedback is critical to successful contract management and supplier and/or vendor development.

Performance measures to cover all aspects of a contract should be designed to suit the requirements of a particular contract and should be set out in the contract documentation to ensure suppliers and/or vendors are fully aware of both the measures and the measurement methodology before any contract is awarded. It is important that the performance measures selected provide clear and demonstrable evidence of the success (or otherwise) of the relationship and, in principle, issues such as the following should be covered:

- cost and value obtained,
- performance and customer satisfaction,
- delivery improvement and added value,
- delivery capability,
- benefits realized, and
- relationship strength and responsiveness.

It is important to ensure that the actual metrics selected are not over-specified, that they are, as far as possible, readily obtained from the direct performance of the contract, and that they are focused on issues such as those outlined above which
impact most heavily on the Port of Galveston. It should be remembered that there are costs attached to the production and maintenance of metrics by the supplier and/or vendor who will seek to pass them on in the form of higher prices or charges.

Once chosen, the requirements underpinning the performance measures should be the primary focus for contract management. They should form the framework on which information needs and flows and contract management teams, skills, processes, and activities are developed and improved in conjunction with the supplier.

They should not be seen as a method of control, but as a proactive means of improving the performance of a supplier and/or vendor. Suppliers and vendors should always be requested to improve their performance.

There are three aspects to performance measurement:

- gathering of factual, objective information from the supplier and/or vendor,
- gathering feedback from users about the service received, and
- understanding the supplier's own experience of dealing with the Port of Galveston.

Performance measurement should be carried out on a selective and prioritized basis, proportionate to the value and importance of the contract to the Port of Galveston. Suppliers and vendors of high value, high risk goods and services should be closely monitored, possibly involving frequent regular meetings at the supplier's or vendor's premises or on site. High value or volume and low risk items may need only quarterly meetings to ensure satisfactory performance monitoring.

3. Relationship Management. Contractual arrangements may commit the Port of Galveston to its supplier(s) and/or vendor(s) for some time and to varying degrees of dependency. It is therefore important to make the relationship work effectively by developing mutual trust and understanding, creating an open and constructive environment and contributing to the joint management of the contract delivery.

It is primarily through the development of mutual trust and confidence that the other elements for success are created. As the supplier gains greater understanding of the Port of Galveston's business needs and style and develops a level of confidence and trust, it will be more willing to be proactive and innovative in bringing forward improvements and savings to mutual benefit, more willing to share problems, plans and concerns, more willing to negotiate, and more confident in investing for the longer term. The Port of Galveston benefits by gaining a greater understanding of the strengths and weaknesses of the supplier and/or vendor, enabling it to concentrate its management and development support in those areas.

Factors that can inhibit the development of a successful relationship include:

- frequent and rapid recourse to the formal contract to overcome problems,
• clashes in cultures which are so disparate as to prevent the creation of the level of trust and confidence required,
• reluctance by the supplier to cooperate in value for money or benchmarking tests conducted by the Port of Galveston,
• commercial issues, and
• too frequent demands for submission of competitive bids.

It should be remembered, however, that such issues should have been identified and resolved at the pre-award appraisal stage.

In addition to the elements mentioned above, other factors that encourage the development of a successful relationship include:

• securing senior level support in both organizations,
• recognizing that actions and attitudes affect the tone of the relationship,
• ensuring that the governance arrangements are fair,
• ensuring that relationships between the parties are peer-to-peer as far as possible,
• ensuring that roles and responsibilities are clearly understood by both parties and that the necessary authority levels have been ascribed,
• ensuring that escalation routes are clear and understood but that problems are resolved as early as possible and as low down the management tree as possible,
• separating strategic matters from the day-to-day service delivery issues,
• ensuring that appropriate attitudes and behavior are practiced and displayed to assist the promotion of a positive and constructive relationship, and
• communicating and sharing information at the appropriate level between the Port of Galveston and the supplier and/or vendor.

4. **Contract Administration.** This activity is concerned with the practicalities of the relationship between the Port of Galveston and/or the supplier and/or vendor and the operation of the routine administrative and clerical functions. This is one of the primary responsibilities of a contract manager.

While the level of significance and extent of the activity will vary according to the particular contract, one of the main areas critical to successful contract administration is contract maintenance and change control.

Changes will almost inevitably occur during the period of a contract and managing these changes is a particularly important activity. Formal change control procedures should be designed and set out in the original contract documentation to avoid misunderstanding and ambiguity about roles, responsibilities, and the actions to be taken in any given situation. These change control procedures should be initiated at the earliest opportunity, post-contract award. They should include procedures to keep all contract documentation up-to-date and consistent so that all parties have a common view of the agreed changes. For particularly large contracts or where there are a number of Service Level Agreements in place, a formal document
management system should be set up. The procedures need to be comprehensive but also flexible and straightforward and should cover such issues as:

- how to request changes including additional demands placed on the supplier and/or vendor,
- assessing the impact including contractual implications,
- prioritization and authorization levels,
- agreement methodology,
- controlling implementation, and
- documenting changes.

Normal price variations in the contract often fall outside change control procedures and have their own method of proposal, assessment, evaluation, and agreement.

A formal framework, defining responsibilities and reporting arrangements should have been designed and set out clearly in the contract documentation. The information called for may range from a complete suite of performance measurement reports to exception reporting. The design of reports should reflect the need for flexibility in the type and detail of the information required during the contract period and the recipients' possible need for access to greater detail. In addition, regular reporting – monthly or quarterly – may also be required.

If the nature of the contract concerns the use of the Port of Galveston funds, there will be a responsibility to ensure that the requesting department’s budget is kept up to date, the use of funds is recorded, and upgrades and replacements are planned and budgeted. The contract manager will be responsible for liaison with the Finance Department.

Other areas covered by contract administration and forming part of the responsibility of the contract manager are charges and cost monitoring, ordering and payment procedures, budget procedures, resource management and planning.

5. Assessment of Risk. The importance of risk assessment to successful contract management has already been mentioned, and the likelihood of changes arising during long term contracts has also been highlighted. It can be seen, therefore, that there is a need to conduct continuous risk analysis and assessment throughout the period of the contract in order effectively to manage the risks that arise.

While the issue of change during the contract should prompt a risk analysis activity, the need continually to assess risk in large, complex long-term contracts cannot be overemphasized.

Risk management during the contract period comprises those activities associated with identifying and controlling the risks that may potentially affect the successful fulfillment of the contract. Risks to the contract include such issues as:

- lack of capacity of the supplier and/or vendor, particularly if there are significant increases in demand,
• reduction in demand leading to higher unit costs borne by the supplier and/or vendor,
• an event which causes an increase in the total of the price to the purchaser,
• an event which causes a project delay,
• supplier and/or vendor staff changes,
• changes to the supplier’s and/or vendor’s business objectives,
• deterioration in the supplier’s and/or vendor’s financial standing,
• demand changes that cannot be met by the supplier and/or vendor,
• deterioration of quality,
• force majeure issues, and
• market fluctuations for commodities.

When a risk is anticipated or perceived, its management involves the parties working together to identify where the responsibility for it lies, methods of minimizing it, and how the risk will be managed. Issues to consider for effective management to succeed include:

• establishing a binding process to encourage early warning of issues such as those mentioned above, as soon as either a supplier/vendor or the Port of Galveston becomes aware of them,
• identifying the party best able to control the situation leading to the risk occurring,
• identifying the party best able to control the risk itself,
• identifying who should be responsible if the risk cannot be controlled, and
• establishing whether, if the risk is transferred to the supplier and/or vendor, the cost to the Port of Galveston will fall, whether new risks will arise and transfer to the Port of Galveston, and the legal position of any transfer.

It should be remembered that risks transferred to the supplier and/or vendor still require managing by the Port of Galveston and that suppliers/vendors will seek to obtain payment for any transferred risk not identified and incorporated into the original contract. Care should also be taken to ensure, in any long-term partnership based on openness and trust where the supplier and/or vendor is responsible for risk management, that the supplier/vendor fulfills its obligations effectively and comprehensively. Furthermore, the Port of Galveston should ensure that risk is not transferred back to the Port of Galveston as a result of a level of cooperation exceeding the scope of the contractual requirements by the Port of Galveston’s own representatives.

6. Performance and Effectiveness Review. Reference has been made to the necessity to measure the supplier’s performance throughout the period of the contract. Equally important, and another downstream activity, is the measurement of the Port of Galveston’s performance effectiveness and efficiency.

Effectiveness is concerned with the ability to accomplish a given goal or purpose, and efficiency is concerned with the ability to maximize productivity with the least amount of effort, money, or resources.
The aims of performance measurement of the purchasing department are to:

- ensure consensus between individual, functional, operational, and strategic aims,
- compare actual results with planned performance,
- identify reasons for substandard performance and the basis for improvement,
- improve decision making,
- identify the contribution purchasing can make to the Port of Galveston, and
- motivate and encourage staff.

A range of traditional purchasing performance measurements can be gathered from the on-going management of a contract, including metrics such as:

- savings on the purchase price,
- on-time deliveries,
- procurement cycle time,
- cost of change, and
- cost of placing orders.

These can be considered as quantitative questions which are readily monitored and measured. They are often considered to be basic, minimum performance standards.

At a higher level, effective measurement of purchasing will be concerned with establishing need, managing internal and external relationships, managing contracts and performance, managing change, customer support, infrastructure issues, business continuity, and business transition.

In relation to a particular contract, these issues can be addressed by raising questions, although more qualitative and subjective in nature than those set out above, that are concerned with the upstream and downstream management processes and relationship issues. Mention has already been made in earlier stages of a number of the metrics that may be gathered but they should include such broad issues as:

- documentation clarity, understanding, and comprehensiveness,
- pre-award contract processes, understanding, and timetables,
- change control procedures,
- communication,
- risk,
- contractual relationships,
- internal and external customer satisfaction, and
- business continuity and transition issues.

Each topic will suggest a range of questions related to the particular procurement as the measurement drills down to obtain data which will make a meaningful
contribution to the assessment of performance. Responses may be measured in terms of extent, for example “not at all”, “partially”, “largely,” or “fully.”

In addition to conducting an internal review of the project and documenting the findings, valuable information on the performance of the purchasing department can be gathered from suppliers and/or vendors during performance review meetings.

It should be recognized that some information can only be properly and usefully gathered following completion or closure of the contract, while it may be critical that other information is gathered before closure in order to implement process improvement changes for future procurement contracts.

7. **Contract Closure.** This stage concerns the activities associated with closing the project down, whether in accordance with the contract or as a result of early termination. Different activities are associated with the different forms that contract termination can take.

In the case of more complex, long-term or construction contracts ending in accordance with the original contract plan, best practice requires the need for evidence that the contract has been completed to the satisfaction of all parties. This is normally carried out in two stages; firstly, to ascertain internally that there are no outstanding matters and, secondly, to secure agreement from supplier(s) and/or vendors that, apart from agreed on-going liabilities, the contract(s) has ended.

The aim of the closure procedure is to provide a mechanism for managing the closure of the contract following the end of any retention or guarantee periods and the resolution of all other outstanding matters. The procedure is designed to:

- ensure completion of all administrative matters,
- record that all technical issues have been completed,
- determine the extent of any damages, discounts, credits, or costs associated with failure to be performed to be deducted from the contract price, and
- ensure the retention of records relating to the contract to counter any subsequent claims that may be brought.

On completion of this activity, agreement should have been reached on all technical and commercial aspects of the contract. The agreement should require the signature of the parties to a document which records the acceptance of the work or service, the obligations fulfilled, and the price paid or to be paid.

Another issue relating to the “normal” end of a contract, which should have been considered during the pre-contract award stages, but worthwhile repeating here, is the renewal or extension of the contract (if appropriate). The terms and procedures for such eventualities should be incorporated into the original contract documentation and should include the period for negotiation of terms in order to ensure business continuity, together with a deadline for agreement. This deadline should allow for risk of failure to agree and a period of time for the contract to be
procured in order to ensure the smooth transition of the work or service from the old contract to the new contract.

Another important activity conducted at this stage, particularly in the case of high value, large contracts, is the preparation of a post-contract project report. This may follow a formal post-contract review, undertaken to assess the business benefits - or losses - from carrying out the procurement, how those benefits may be furthered enhanced and/or costs and risks reduced, and how the losses can be recouped and turned to benefits. The review should also gather the lessons that can be learned from the management processes and procedures followed during the contract and implemented in the future. The review should include the views of all stakeholders, and the report should relate to the costs and benefits set out in the original business case.

**Effective** January 1, 2020.

**Board of Trustees of The Galveston Wharves**

By: ____________________________

Albert Shannon, Chairman

Approved as to form:

Counsel to the Board of Trustees of the Galveston Wharves