

**PLEASE NOTE THAT THIS POLICY WAS SUPERSEDED
ON SEPTMEBER 23, 1998 PURSUANT TO
RESOLUTION 98-29**

Adopted 8/19/97

INTERIM GUIDELINES FOR CONTRACTING AND ACQUISITION

I. INTRODUCTION

Section 104(b) of the Omnibus Parks and Public Lands Management Act of 1996 (Public Law 104-333) (the Act) grants a specific exemption, with certain exceptions, to Federal laws and regulations governing procurement by Federal agencies to the Presidio Trust, a wholly-owned government corporation, hereafter referred to as the "Trust." Section 104(b) of the Public Law further states that award of contracts for goods and services shall be on the basis of contractor qualifications, price, commercially reasonable buying practices and reasonable competition.

II. PURPOSE

The intent of these interim guidelines is to provide the National Park Service, Golden Gate National Recreation Area (GGNRA) temporary guidance in the purchase of goods and services for the Trust in accordance with the stated exemption of the Trust from established Federal procurement laws and regulations until such time as the Trust adopts formal contract and acquisition procedures. During this interim period, the Board of Directors of the Presidio Trust shall retain final approval authority over the terms and conditions of any contract entered into on its behalf by the GGNRA.

III. SCOPE

- a) Availability of funds. These interim guidelines establish direction to the GGNRA for the purpose of accomplishing procurement actions necessary to carry out Trust programs and operations. During this interim period, funding for the Trust is to be provided by the GGNRA. Accordingly, the GGNRA will ensure availability of funds prior to entering into procurement actions on behalf of the Trust. All procurement actions undertaken by the Trust through the GGNRA will be subject to the availability of funds. Once availability of funds has been assured, the Chief of Contracting, Golden Gate National Recreation Area or his designee shall be responsible for payments associated with procurement actions entered into by the GGNRA on behalf of the Trust.

- b) In carrying out procurement actions on behalf of the Trust, employees of the GGNRA will be subject to policies and procedures of the Department of the Interior related to conflicts of interest and ethical standards.
- c) These guidelines shall not create a right of action in any administrative body or Federal court of law. Acquisition actions initiated and accomplished under Section 104(b) of P.L. 104-333 are not subject to judicial review as it is the clear intent of the legislative language to preclude such review.
- d) In accordance with Section 104(b) of the Act, laws and regulations related to the Federal government contracts governing working conditions and wage rates, including the Davis-Bacon Act, and any civil rights laws otherwise applicable, shall apply to Trust procurement during the interim period covered by these guidelines.
- e) No employee, officer or agent of the Trust shall participate in any phase of the source selection process or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: (1) the employee, officer or agent; (2) any member of his or her family, immediate or extended; (3) his or her partner, or (4) an organization which employs or is about to employ any of the above has a financial interest in the firm selected for award. The employees, officers or agents of the Trust will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to agreements or subagreements. The Trust may establish minimum standards where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

IV. GENERAL INTERIM PROCUREMENT GUIDELINES

SYSTEM EFFICIENCY. The primary purpose of the procurement organization is to obtain goods and services in a timely manner, at an advantageous cost of resources, which will result in accomplishment of program goals in the most effective fashion. The exemption of the Trust from Federal laws and regulations governing Federal procurement allows the Trust to satisfy this objective free of the frequently constraining aspects of Federal acquisition.

Accordingly, the acquisition process shall encourage flexibility, innovation, responsiveness to clients, and the use of sound business judgement, consistent with general standards set forth in this interim guideline. In order to obtain maximum efficiency, internal rules, directives and policies shall be established only when the benefits of such clearly exceed the costs of development, implementation, administration and enforcement. Where uniformity contributes to efficiency and effective business relationships, the acquisition process should provide such uniformity.

Effective management of the purchasing function requires frequent communication between the Trust and the Chief of Contracting, GGNRA. At project inception, these

parties should come together to ensure that sourcing and scheduling issues are fully discussed and subsequent decisions reached in time to allow fulfillment of program requirements.

INTEGRITY: Maintaining the public trust is an essential consideration in every aspect of the acquisition process. Individuals involved in procurement actions shall be held to the highest levels of conduct in the performance of their duties and shall conduct themselves in a manner intended to avoid even the appearance of any impropriety.

CONTRACTING OFFICER AUTHORITY: Public Law 104-333 vests authority to enter into contracts with the Board of Directors of the Trust. Such authority may be delegated. In authorizing the GGNRA to enter into contracts at its request and on its behalf, the Trust shall retain the right to approve the terms and conditions of all contracts prior to their execution and/or implementation by the GGNRA. Unauthorized commitments shall not be binding on the Trust.

ACQUISITION METHODS: Contracting through the use of negotiated procedures for the acquisition of goods and services shall be the preferred method employed by the Trust. Sealed bidding procedures should be utilized only when the benefits accruing to the Trust shall, in the Trust's judgment, justify such use. The goal of the acquisition team is to negotiate the most advantageous purchase terms possible within the time constraints of the program being served. This should be dictated by quality goals, cost and conditions in the marketplace. In accomplishing low value small purchase actions, the approach used should be that of any prudent person, such as comparison shopping and asking questions.

The factors to be considered in source selection for all acquisition actions, and the relative importance of those factors, are completely within the broad discretion of the Trust. Discussions will normally encompass all elements relating to performance, including price, terms and conditions under the proposed contract. References regarding quality and timeliness of performance, including past history of performance, remaining in budgetary constraints or bids shall be sought. Award decisions shall be based on that offer which is determined to be in the best interests of the Trust; lowest price or lowest total estimated cost will not necessarily be the deciding factor in the award decision.

Source selection is an extremely critical part of the acquisition process which may generate protests, delays and confusion if not handled properly. Accordingly, technical evaluations performed on competitive procurement actions shall be fully documented to support the conclusions and recommendations of the evaluation team. A written selection decision document, discussing the relative differences between offerors' proposals and the comparative judgments resulting in the selection recommendation, shall be prepared and kept on file in the offices of the Trust and the GGNRA; provided however that documentation of reference checks and other information may, at the Trust's discretion, be deemed confidential.

COMPETITION: The benefits of competition can include significant cost savings, better quality products and more responsive services. Competition can also enhance design innovations through the diversity of ideas and approaches generally available in a competitive environment. Further, competition reduces the risk of having to rely on a single source for critical goods and services. The Trust will balance these considerations with the program benefits which may be attainable through use of a well qualified reduced supplier base.

The degree of competition sought will be influenced by knowledge of the marketplace and successful past performance records, with competition in most cases limited to a reasonable number of capable sources.

Competitive quotations will generally not be requested for procurement actions valued at less than \$5,000. Single source, or sole source procurement actions between \$5,000 and \$100,000 will be approved in writing by the Director of Intergovernmental Relations or other official designated by the Board to approve procurement actions. Sole source acquisitions above \$100,000 will be approved by the Board of Directors.

SIMPLIFIED PURCHASING: For the purpose of providing interim direction to the National Park Service, procurement actions up to \$100,000 shall be accomplished through use of any simplified purchasing procedure determined by the Board of Directors or the Director of Intergovernmental Relations, in consultation with the Chief of Contracting, GGNRA to be the most suitable, efficient and economical for the circumstances of the acquisition. Simplified purchasing is designed to reduce administrative costs and expedite delivery of needed goods and services.

REVIEWS: Internal procurement quality reviews shall be conducted in accordance with established policies, utilizing a two-tiered system with additional review as necessary for large dollar, complex acquisitions. The Board of Directors, or its designee, may request legal review at any dollar value for actions determined to involve unusually complex issues or other criteria the Board determines in its sole discretion. Legal review shall be obtained prior to issuance of Final Decisions on claims and proposed termination, whether for convenience or default.

REPORTING: In carrying out procurement actions for the Trust in accordance with these guidelines, the GGNRA shall be responsible for reporting all procurement actions to the Federal Procurement Data System, in accordance with customary procedures used by the GGNRA.

CONTRACT FILE DOCUMENTATION: The contract file shall contain all documentation necessary to record and support the basis for key decisions made and actions taken during the solicitation, evaluation, negotiation, award and administration phases of the procurement.

CONTRACT TERMS AND CONDITIONS: To the extent practicable, it is the intent of the Trust to ensure that contract terms and conditions closely resemble those customarily

used in the commercial marketplace. The GGNRA, in carrying out procurement actions for the Trust, shall work in consultation with the Board of Directors of the Trust or its designee in designing contract terms and conditions. All such terms and conditions shall be subject to approval by the Board of Directors or its designee prior to execution or commencement of the contract.

CONTRACT DISPUTES: Any claim for relief filed by a contractor shall be subject to decision by Board of Directors of the Trust or its designee, in consultation with the Chief of Contracting, GGNRA. If the parties cannot reach a mutually satisfactory agreement and/or solution after diligent pursuit of discussions, the Board shall render a final decision. The decision of the Board shall be final and binding on the parties.