

PERFORMANCE EVALUATION FOR
CONSTRUCTION CONTRACTOR SOURCE
SELECTION

November 27, 2017

A. Performance Evaluations

(1) Purpose

Performance Evaluations will be prepared for all contractors, subcontractors and construction management firms on all Port Authority construction projects, and such Performance Evaluations will be considered as a factor in future procurements, including Requests for Qualifications ("RFQ"), Requests for Proposals ("RFP") and Invitations for Bids. Bidders and Proposers are referred to hereinafter as "Current Bidders."

(2) Timing

Performance Evaluations will be prepared following completion of the work associated with a contract. For contracts spanning several years, Performance Evaluations will also be prepared on or around the anniversary of the contract execution date. At the discretion of the Port Authority, more frequent Performance Evaluations may be made.

(3) Retention

- (a) Performance Evaluations are confidential material created and used as part of the agency's internal deliberations and decision-making process. They are a factor in source selection.
- (b) Performance Evaluations should be retained in an appropriate database and not disclosed, except as required pursuant to applicable legal and regulatory requirements, including the Port Authority's Public Records Access Policy and any subsequent amendments thereto.
- (c) Information received by the Port Authority from all relevant stakeholders about a contractor's performance may be considered during the Performance Evaluation process.
- (d) The materials described in (3) (a)-(c) above will be

considered by the Port Authority as it deliberates with respect to various internal matters, including possible future procurements.

(4) Preparing Performance Evaluations

- (a) Performance Evaluations should be prepared by a knowledgeable and senior Port Authority employee. The employee should be designated by the Director of the Department primarily responsible for the project in question or the Chief Engineer and/or his or her designee.
- (b) The Port Authority employee who prepares a Performance Evaluation should consult broadly with those Port Authority employees who have actively participated in the management of the project in question.
- (c) Marginal or Unsatisfactory Performance Evaluations should be provided to the evaluated party as soon as practicable after completion of the Performance Evaluation, at which time the evaluated party shall be notified that Performance Evaluation Ratings are available for comment. Contractors shall be afforded up to fourteen (14) calendar days from the date of notification of availability of the Performance Evaluation Ratings to submit comments or additional information. The parties will use good faith efforts to resolve any dispute; however, the ultimate conclusion on the Performance Evaluation is a decision of the Port Authority.
- (d) The Port Authority shall prepare and submit all Performance Evaluations, including any information submitted by a contractor, subcontractor or construction management firm, electronically in a database or otherwise available evaluation reporting tool. The Port Authority shall update the Performance Evaluations with any contractor comments provided within fourteen (14) days, as well as any subsequent Port Authority review of comments received.

(5) Categories of Information

- (a) For convenience, Performance Evaluations may be prepared on the form attached as **Exhibit A**. Performance Evaluations may also be prepared using an alternative form covering the matters described below that is more appropriate for a given project.
- (b) Performance Evaluations should include an evaluation with respect to:
 - (i) the quality of the work;
 - (ii) whether the work is being completed in a timely fashion;
 - (iii) whether the work is being completed in a financially responsible and efficient manner, including, but not limited to, audit findings and payments to subcontractors;
 - (iv) whether the work is being completed in accordance with applicable laws, regulations and Port Authority policies;
 - (v) whether the entity performing the work is interacting in a responsive, practical, and efficient manner with Port Authority staff;
 - (vi) whether work is being performed with an appropriate focus on safety; and
 - (vii) whether the entity performing the work is approaching the change order and claims adjustment process in a reasonable manner.
- (c) Performance Evaluations should so explicitly state if an evaluated party has:
 - (i) breached the contract under which work was performed;
 - (ii) received a Notice of termination from the

Port Authority for the contract under which work was performed;

(iii) been engaged in litigation, dispute resolution or arbitration with the Port Authority with respect to the contract under which work was performed;

(iv) had liquidated damages assessed by the Port Authority for the contract under which work was performed;

(v) been the subject of any ethics or integrity concerns, to the best of the person performing the Performance Evaluation's knowledge; or

(vi) received an unsatisfactory or marginal rating from the Port Authority within the past three years.

The Port Authority may also evaluate other categories of information that are relevant to a particular project.

(6) Ratings

- (a) With respect to each category of information, a rating should be selected, from 1 (lowest) to 5 (highest). An explanation of the significance of each rating is set out in **Exhibit B**.
- (b) Each rating should be accompanied by a brief narrative explanation for why that rating was selected.
- (c) Any rating of 1 or 5 requires approval from the Director of the Department in question or the Chief Engineer or his or her designee.

B. Past Evaluations and Current Procurements

(1) Relevance of Performance Evaluations

- (a) Performance Evaluations of an evaluated party will be considered when reviewing submissions when:
 - (i) the Current Bidder is the evaluated party;

(ii) an affiliate, subsidiary or parent company of the evaluated party is the Current Bidder;

(iii) the evaluated party is a substantial component part of the Current Bidder or exerts substantial control over the Current Bidder;

(iv) the Current Bidder was a substantial component of the evaluated party or exerted substantial control over the evaluated party;

(v) the Current Bidder has some of the same key senior personnel as the evaluated party;

(vi) the Current Bidder is comprised of different entities and any number of the entities were evaluated parties;

(vii) the Current Bidder received an unsatisfactory or marginal rating from the Port Authority within the past three years prior to the earliest date of submission of any subsequent procurement; or

(viii) other circumstances where the Port Authority believes the Performance Evaluations would provide helpful input to a source selection process, provided that, in such circumstances, the Chief Procurement Officer determines that it is appropriate to refer to the Performance Evaluations in question and the General Counsel certifies that doing so is lawful.

(b) Consideration of the Ratings

(i) Performance Evaluations performed at any time during the previous three years will be considered in contract award determinations. Current Bidders will be required to disclose any Marginal or Unsatisfactory Performance Evaluations received from the Port Authority within the past three years.

(ii) Performance Evaluations performed at any time during the previous three years will be considered in decisions as to whether to approve a firm being proposed for use as subcontractor on any Port Authority project.

(iii) With respect to RFQs and RFPs:

- a. Current Bidders should be aware that Port Authority will consider any Current Bidder's Unsatisfactory or Marginal Performance Evaluation as an important factor in determining whether the Current Bidder is deemed qualified, or recommended for ultimate contract award.
- b. The Port Authority will not qualify, or recommend for award, any Current Bidder that has received one or more Marginal or Unsatisfactory ratings unless, in the sole discretion of the Chief Engineer or his or her designee with information from the evaluation committee, the Current Bidder has provided substantive information showing that the root cause of the adverse performance has been identified and definitively corrected or the circumstances giving rise to the Performance Evaluations have changed and will not reoccur. The determination of the Chief Engineer or his or her designee will be conclusive.
- c. Although the Port Authority is not required to specify the weighting of specific factors it considers, the weighting of Performance Evaluations will be an important factor and will be consistent for all Current Bidders in a particular RFQ or RFP procurement.

(iv) With respect to Invitations for Bids, the Port Authority will not award to any Current Bidder with one or more Unsatisfactory or Marginal Performance Evaluations, unless the Chief Engineer or his or her designee finds, in his or her sole discretion, that the root cause of the adverse performance has been identified and definitively corrected or the circumstances giving rise to the Performance Evaluations have changed and will not reoccur.

In making such a determination, the Chief Engineer or his or her designee may initiate a Hearing. At the Hearing, the Contractor will have to demonstrate to a committee of Port Authority staff that the circumstances leading to the Marginal or Unsatisfactory rating have been mitigated, and that the factors that led to the rating are no longer applicable in order to be approved for award of the contract.

Where a Current Bidder has not satisfactorily demonstrated that the circumstances surrounding the Marginal or Unsatisfactory rating have been successfully mitigated, the Port Authority may determine that award to the Current Bidder is not in the best interest of the Port Authority and the Current Bidder will be removed from consideration for award.

The determination of the Chief Engineer or his or her designee will be conclusive.

EXHIBIT A
EVALUATION FORM

Contract Number	Facility		
Term of Contract		☐ Prime ☐ Subcontractor	
Firm Name		Principal Contact	
Business Address		Business Phone	
NOTE: Any rating of (5) or (1) should be accompanied by approval from the Director of the Department in question or from the Chief Engineer or his or her designee.			
Category	Numerical Rating¹	Remarks	
Quality of Work			

¹Ratings should be in accord with the attached Exhibit B, called Evaluation Rating Definitions.

Category	Numerical Rating	Remarks
Timeliness		
Financial Responsibility/ Efficiency		

Category	Numerical Rating	Remarks
Adherence to applicable laws, regulations and Port Authority policies		
Responsiveness		

Category	Numerical Rating	Remarks
Safety		
Change Orders and Claims Adjustment		

Additional questions; provide an explanation if the answer to any of these questions is "Yes":

1. Has the evaluated party breached the contract? ☐ YES ☐ NO
2. Has the evaluated party received a Notice of termination from the Port Authority? ☐ YES ☐ NO
3. Has the evaluated party been engaged in litigation with the Port Authority with respect to the contract under which work was performed? ☐ YES ☐ NO
4. Have liquidated damages been assessed? ☐ YES ☐ NO
5. Is the person performing the Performance Evaluation aware of any ethics or integrity issues regarding the evaluated party's performance of work under the contract? ☐ YES ☐ NO
6. Has the evaluated party received an unsatisfactory or marginal rating within the past three (3) years? ☐ YES ☐ NO

Explanation regarding additional questions answered in the affirmative

Rater	
Signature	Date

Approval of Director/Chief Engineer or his or her designee for any rating of (5) or (1) (Name and Title)	
Signature	Date

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EXHIBIT B
EVALUATION RATINGS DEFINITIONS

Rating	Definition
(1) Unsatisfactory	Performance does not meet reasonable expectations. Failure to meet a substantial number of major contractual requirements.
(2) Marginal	Performance is less than satisfactory, and does not meet reasonable expectations. Failure to meet certain major contractual requirements.
(3) Satisfactory	Performance is generally satisfactory, and meets reasonable expectations. Performance meets major contractual requirements.
(4) Good	Performance is generally good, and exceeds reasonable expectations. Performance meets some major contractual requirements and exceeds some major contractual requirements.
(5) Excellent	Performance is generally excellent, and substantially exceeds reasonable expectations. Performance exceeds major contractual requirements.