

Port of Skamania County

RESOLUTION 8-2024

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF SKAMANIA COUNTY
ADOPTING A PROCUREMENT AND PUBLIC WORKS POLICY**

WHEREAS, the Port of Skamania County Board of Commissioners recognize the importance of implementing a policy for the management of Procurement and Public Works activities; and

WHEREAS, a policy has been developed to establish official procedures and guidelines of the management process; and

WHEREAS, The Port of Skamania County Finance Manager, Port Executive Director and Commissioners have discussed and reviewed said policy; and

NOW THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Port of Skamania County hereby adopt the Procurement and Public Works Policy dated 20 August 2024 (see exhibit A).

PASSED IN SESSION THIS 20th day of August 2024.

PORT OF SKAMANIA COUNTY COMMISSIONERS

APPROVED BY:



Commissioner Ray Broughton, (District 1)



Commissioner Jennifer Taylor, (District 2)



Commissioner Todd Kingston, (District 3)

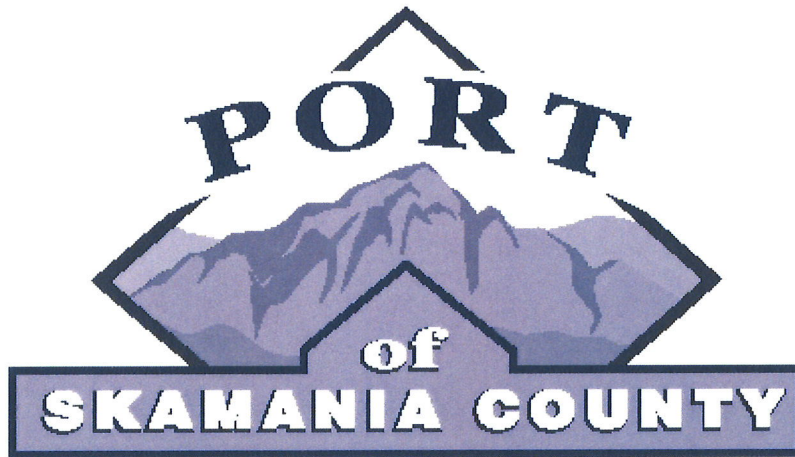
ATTEST:



Pat Albaugh, Executive Director

Exhibit A

See Attached Policy



PROCUREMENT AND PUBLIC WORKS POLICY

Adopted 08/20/2024

Contents:

- I. General Guidelines
- II. Public Works
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- IV. Professional Services (Architect/Engineer)
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I. GENERAL GUIDELINES

1. Delegation of Authority

The Port of Skamania County (the “Port”) delegates certain authority to its Port Manager by way of annual resolutions (“Delegation of Authority”) that contain policy directives, including limitations on dollar amounts for contracts entered into without Port Commission (the “Commission”) preapproval. The portions of the Delegation of Authority related to procurement and public works are hereby incorporated by reference.

The Port Manager shall be the designated purchasing representative with policy and operational level oversight of implementation of this policy. The Port Manager may, at his or her discretion, designate an alternate purchasing representative (“Designee” or “Purchasing Representative”). This designation must be in writing. The designation can be for a limited time frame or can be for an unlimited time frame. The Port Manager retains ultimate responsibility for compliance with this policy.

The purchasing representative is responsible for:

- Compliance with applicable law and Port policy regarding purchasing and public works;
- Training Port staff on the use of this purchasing policy and ensuring compliance to same;
- Functioning as the primary point of contact for ALL PURCHASES;
- Identifying the appropriate acquisition method;
- Soliciting bids, requests for proposals, and requests for quotes from vendors;
- Evaluating and awarding bids or recommending award to the Commission as appropriate;
- Administering purchase orders from award to completion; and
- Initiating, approving, or signing purchase orders on behalf of the Port.

Unless authority is expressly granted to the Port Manager or Designee in this policy or in the Delegation of Authority, the Commission must approve the award of any specific contract.

2. Local Preference

All things being equal in terms of cost, delivery, and vendor support, preference will be given to vendors and/or service providers operating within the Port district. Consideration should be given to American-made products.

3. Conflicts of Interest

Employees have an obligation to conduct business within guidelines that prohibit actual, potential, or perceived conflicts of interest. See Sections VII and VIII.

4. Availability of Funds

The Purchasing Representative shall ensure that purchases are initiated only where budgeted funds within a particular account are sufficient to cover the anticipated cost. This applies to both operating budget line items and capital budget accounts.

5. Emergency Purchases

Pursuant to RCW 39.04.020 and RCW 39.04.280, when an emergency shall require the immediate acquisition of materials, equipment, supplies services, or public works, the Port Manager or Designee is authorized to make a written finding of the existence of such emergency and execute any contract for the acquisition of materials, equipment, supplies, services, or public works necessary to respond to the existing emergency. An “emergency” means unforeseen circumstances beyond the Port’s control that either (i) presents a real, immediate threat to the proper performance of essential functions; or (ii) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken. The Port Manager or Designee shall timely notify the Commission of the emergency and any contract executed pursuant to this authority.

6. Use of Environmentally Preferable Products

The Port shall, to the extent that it is economically feasible, purchase products made from environmentally preferable materials, if such products are reasonably available, are of acceptable quality, and are generally priced the same as similar products not made from environmentally preferable materials. The determination of these types of materials shall be generally consistent with the United States Environmental Protection Agency guidelines for Environmentally Preferable Purchasing.

7. Bid Splitting

Splitting or Segmenting orders or projects for the purposes of avoiding competitive requirements is prohibited. The Port Manager or Designee should carefully review repetitive low dollar purchases for the same or similar commodities or services. Sometimes the annual amount spent on such purchases is substantial and could be perceived as order splitting or segmenting inappropriately.

II. PUBLIC WORKS

A. Public Works Contracts and Ordinary Maintenance Contracts Defined

Definition of a Public Work. A public work, per RCW 39.04.010(4), means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the Port. Public works must follow guidelines as outlined in the general rules for public works found at Chapter 39.04 RCW and specific rules for port districts found at RCW 53.08.120. The definition of “public work” excludes “ordinary maintenance”.

Definition of Ordinary Maintenance. The term “ordinary maintenance” is generally held to be reoccurring normal maintenance performed on a regularly basis to service, check, or replace parts on items that are not broken or work that is not regularly scheduled but is required to maintain the asset so that repair does not become necessary.

B. Authority.

1. Construction with the Port's Own Labor.
 - (a) The Port Manager is authorized to use necessary workers for maintenance of facilities.
 - (b) The Port Manager shall be responsible for obtaining prior Port Commission approval for projects which are new construction or major modifications of Port facilities to be carried out by Port crews.
2. Small Projects.
 - (a) The Port Manager or Designee may determine whether and when to have a public works project or ordinary maintenance contract let to a contractor for projects estimated to cost Ten Thousand Dollars (\$10,000.00) or less, except that the contract requirements and method of selecting the contractor detailed below must be followed. Public Works Projects and ordinary maintenance contracts estimated to cost more than Ten Thousand Dollars (\$10,000.00) require Commission approval.
 - (b) The Port Manager shall keep the Board fully informed about all small public works projects.

C. Public Works Contract Requirements and Methods

Five Essential Requirements for Public Works Contracts. All public works require that:

1. The contractor selection method must comply with one of the allowed methods under Washington law. The various selection methods are discussed below.
2. The Port should withhold up to five percent (5%) of each payment to the contractor (unless otherwise allowed by statute) until the end of the project. This is the “retainage” and is explained in more detail in the *Retainage* section below (See Chapter 60.28 RCW).
3. The selected contractor must provide a performance bond or other surety. This requirement is explained in more detail in the *Performance Bond* section below (See Chapter 39.08 RCW).
4. The selected contractor must pay its employees, at a minimum, the “Prevailing Wage” established pursuant law. This requirement is explained in more detail in the *Prevailing Wage* section below (See, Chapter 39.12 RCW).
5. The Port requires all contractors, prior to award of a public works contract of any size and regardless of procurement method, to verify compliance with the mandatory bidder responsibility requirements established in RCW 39.04.350 using forms provided by the Port.

Methods for Selecting a Contractor for Public Works. Washington law provides port districts with several procedures to select a contractor to undertake a public work.

1. Published bid and award to lowest responsive and responsible bidder on a set of plans and specifications created by the Port. This method provides for a bid process on a set of plans and specifications. These contracts must be awarded after published bid, are generally awarded to lowest responsive and responsible bidder, and may include the use of supplemental bidder responsibility criteria (See, RCW 53.08.120 and RCW 39.04.350).

2. Published bid and award to the “best bidder” submitting their own plans and specifications. In this method, the Port specifies the desired performance and then selects the best bid. (For example, the Port could seek the erection of a building of a certain size, and each bidder could propose plans for the building.) The lowest price is not necessarily determinative (See, RCW 53.08.120).

3. Small Works Roster. For projects with a price less than Three Hundred Fifty Thousand Dollars (\$350,000.00), the Port may utilize a small works roster established pursuant to State law such as the MRSC (Municipal Research and Service Center) Roster (www.mrscrosters.org). The Port will use the following provisions when selecting contractors under the small works roster process established by State law. The Port will use the MRSC roster unless the Port has established, either on its own or by interlocal agreement, an independent roster pursuant to RCW 39.04.151.

(a) For small works projects estimated to cost less than Three Hundred Fifty Thousand Dollars (\$350,000), the Port will solicit bids from all contractors on the small works roster interested in performing work in the Port’s geographic area.

(b) For small works projects estimated to cost less than One Hundred Fifty Thousand Dollars (\$150,000), the Port may direct contract with contractors (instead of soliciting bids from all contractors) on the small works roster as follows:

(i) If there are six (6) or more contractors meeting the State’s “small business” definition on the roster interested in performing work in the Port’s geographic area, the Port can direct contract with one (1) of those six (6) small businesses. If the Port utilizes direct contracting under this subsection (i), it must rotate through the small business contractors on the small works roster and must utilize different contractors on different projects when multiple qualified contractors are available from the roster who may perform the work or deliver the services within the budget described in the notice or request for proposals.

(ii) If there are five (5) or less small business contractors on the roster, the Port can direct contract with any contractor (small business or otherwise) on the roster.

(iii) If the Port utilizes the direct contracting method to award a project, it will notify all small, minority, women, and veteran-owned businesses on the roster of such direct contracting.

(iv) If the Port elects not to utilize the direct contracting method, then it will electronically solicit bids from all contractors on the small works roster.

The Port will avoid engaging in direct contracting in a manner that favors certain contractors on the roster by repeatedly awarding contracts without documented attempts to direct contract with other contractors on the roster. The Port shall rely on the small works roster processes described

above and the direct award “best efforts” stated below as its small, minority, and veteran-owned business utilization plan and intends to supplement this plan when further best practices are promulgated by the State.

After awarding a small works project, all bids will be recorded, publicly available, and available upon request. Each year, the Port will publish a list of (i) small works contracts awarded; and (ii) all contractors contacted for direct negotiations under this small works process. These lists will include the information required by RCW 39.04.200. (See RCW 39.04.152).

4. Direct Award for Projects Less Than \$40,000. Port districts, unlike any other Washington governments, may award contracts for a total project less than Forty Thousand Dollars (\$40,000.00) to a selected contractor. This selection method is separate from the prescribed direct contracting method available to other Washington governments under the small works processes outlined above. The Port must utilize and document its “best effort to reach out to qualified contractors, including certified minority and woman-owned contractors.”

For projects less than Forty Thousand Dollars (\$40,000.00), but greater than Ten Thousand Dollars (\$10,000.00) the Port Manager should, at a minimum, obtain written quotes from at least three (3) qualified contractors. If the project is estimated to cost Ten Thousand Dollars (\$10,000.00) or less, the Port Manger may use a more informal process to select a contractor if such a process is determined to be in the best interest of the Port. When using an informal process, verbal quotes (preferably at least three (3) when available) shall be obtained prior to selection. The process used and steps taken must be documented. (See RCW 53.08.120).

5. Three-Year Unit Price Contracts. Port districts may award a unit priced contract for all material and labor to be delivered over a three (3)-year period (for example all the painting needs of the Port for three (3) years based upon a unit price of materials and a unit cost of labor, for an indefinite quantity of work). These contracts can be extended for one (1) year. These contracts must be awarded to the lowest responsive and responsible bidder and may include the use of supplemental bidder responsibility criteria (See RCW 53.08.120 and RCW 39.04.350). Unit priced contractors shall pay prevailing wage for all work that otherwise would be subject to the requirements of Chapter 39.12 RCW. Intents and affidavits for prevailing wage shall be submitted annually for all work completed within the previous twelve-month period.

D. Retainage for Public Works Contracts

In all public works contracts, the Port should reserve a contract retainage not to exceed five percent (5%) of the moneys earned by the contractor as a trust fund for the protection and payment of (i) claims of any person arising under the contract; and (ii) the state with respect to taxes, increases, and penalties which may be due from such contractor. There are alternatives available to reduce the amount of the retainage during the contract or substitute another surety for the retainage after the contract completion (See RCW 60.28.011).

For projects awarded under the small works roster process, ports may waive the retainage requirements of RCW 60.28.011(1)(a), thereby assuming liability for contractor’s nonpayment of laborers, mechanics, subcontractors, material persons, and suppliers, and taxes, increases, and penalties under Titles 50, 51, and 82 RCW that may be due from the contractor for the project (See RCW 39.04.155(2)(f)). For small public works contracts awarded through a bid solicitation, notice of any retainage reduction or waiver will be provided in bid solicitations.

Small public works contracts under \$5,000 will not require retainage.

E. Performance Bond for Public Works Contracts and Ordinary Maintenance Contracts

All contractors that engage in a public works project or an ordinary maintenance contract must provide to the Port a “good and sufficient” bond to ensure (i) faithful performance all the provisions of the contract, (ii) payment of all workers, suppliers and subcontractors; and (iii) payment of all taxes and penalties. For contracts of One Hundred Fifty Thousand Dollars (\$150,000.00) or less, a contractor may elect a ten percent (10%) retainage in lieu of a bond (See RCW 39.08.010).

Small public works contracts under \$5,000 will not require a performance bond.

F. Prevailing Wage for Public Works Contracts and Ordinary Maintenance Contracts

All contractors that engage in a public works project or an ordinary maintenance contract must pay Prevailing Wages. It is the responsibility of the contracting employee to notify the vendor of prevailing wage requirements and obtain compliance documentation prior to awarding any public works contract or ordinary maintenance contract (See RCW 39.12.030).

Public works contracts and ordinary maintenance contracts will only be awarded to contractors who document compliance with the Washington State Prevailing Wage Law. The Port Manager or designee managing the project is responsible for collecting compliance documents. Failure to follow prevailing wage laws will result in delayed or denied payment to the vendor. The Port cannot pay for public works projects or ordinary maintenance contracts that are in violation of prevailing wage laws. See RCW 39.12.020 for more information. In the case of a project using federal funds where Davis-Bacon Act requirements are applicable, the higher of the state or federal prevailing wages will be used.

Any contractor performing any type of public work or ordinary maintenance for the Port must file prevailing wage forms (Intent to Pay Prevailing Wages and Affidavit of Wages Paid) with the Washington State Department of Labor and Industries (L&I), no matter what the cost of the service or work. This includes owner/operators and all subcontractors. A combined form can be used for projects under Two Thousand Five Hundred Dollars (\$2,500.00). Contractors must also file weekly certified payroll reports with L&I for all prevailing wage jobs. The Port is not responsible for reviewing or checking the reports (See RCW 39.12.040 and RCW 39.12.120).

G. Ordinary Maintenance Contracts Requirements and Methods

Two Essential Requirements for Ordinary Maintenance Contracts. All ordinary maintenance contracts must:

- Comply with the Port’s internal policies for selection of the contractor – See process for purchased services in Section V below.

- Require that the selected contractor pay its employees, at a minimum, the “Prevailing Wage” established pursuant law. This requirement is explained in more detail in the *Prevailing Wage* section above (See Chapter 39.12 RCW).

Methods for Selecting a Contractor for Ordinary Maintenance. There is not a selection method required by state law, and retainage is not a requirement for ordinary maintenance contracts.

H. Bid Documents

All acquisition, bid, quotation, and project file documents will be retained for a period of six (6) years, or per Washington State Record Retention laws, whichever is longer.

I. Apprenticeship Utilization Requirements

All public works projects estimated to cost \$2,000,000 or more, must require no less than 15 percent (15%) of the labor hours be performed by apprentices per RCW 39.04.320. For public works contracts advertised for bid on or after July 1, 2026, estimated to cost \$1,500,000 or more must require no less than 15 percent (15%) of the labor hours be performed by apprentices. For public works contracts advertised for bid on or after July 1, 2028, estimated to cost \$1,000,000 or more must require no less than 15 percent (15%) of the labor hours be performed by apprentices.

The Port may grant good faith effort waivers adjusting the requirements of this section for a specific project for the following reasons:

- a) The demonstrated lack of availability of apprentices in specific geographic areas;
- b) A disproportionately high ratio of material costs to labor hours, which does not make feasible the required minimum levels of apprentice participation;
- c) Participating contractors have demonstrated a good faith effort to comply with the requirements of this section; or
- d) Other criteria the awarding entity deems appropriate, such as being in conflict with grant terms and conditions

Contracts shall have a specific line item specifying appropriate monetary incentives that will be paid to the contractor if apprenticeship utilization goals are met without a good faith effort waiver and imposing proper monetary penalties for not meeting the goals.

III. PURCHASES OF EQUIPMENT, MATERIALS, GENERAL SUPPLIES AND CONSUMABLES

A. General Principles

1. Authority

The Port Manager or Designee may purchase all equipment necessary for Port functions, except that:

- Purchases of equipment involving a purchase price of more than Ten Thousand Dollars (\$10,000.00) require Commission approval.

- Purchases on the open market may be made only after having obtained quotes from a representative number of suppliers. All quotes solicited shall be kept on file for at least three (3) years, or per Washington State Record Retention laws, whichever is longer.

The Port Manager may procure, and sign contracts for the purchase of, all supplies and materials necessary for Port operations, except that:

- Materials which are to be incorporated in construction projects may only be obtained in accordance with the procedures established in Section II hereof.
- Annual supply contracts in excess of Ten Thousand Dollars (\$10,000.00) shall first be submitted to the Commission for its approval.
- Purchases on the open market may be made only after having obtained quotes from a representative number of suppliers. All quotes shall be kept on file for at least three (3) years, or per Washington State Record Retention laws, whichever is longer.

B. Purchasing Methods

1. Quotes for Purchased Materials, Equipment, and Supplies

Though written quotes are encouraged, verbal quotes (preferably at least three (3) when available) shall be obtained for all purchases of materials, equipment, and supplies of less than Ten Thousand Dollars (\$10,000.00). Written quotes (preferably at least three (3) when available) shall be obtained for all purchases of materials, equipment, and supplies greater than Ten Thousand Dollars (\$10,000.00). All purchases greater than Five Hundred Dollars (\$500.00) shall be pre-approved by the Port Manager, or his/her designee if the Port Manager is absent, before funds are committed. A copy of the quotes shall be attached to the retained purchase order or, at a minimum, a list of the companies solicited with the amount quoted. Requests for quotes (if written) and records of the solicitation process shall be retained for a period of six (6) years, or per Washington State Record Retention laws, whichever is longer.

2. Purchase Orders

Purchase over \$10,000, excluding construction projects, will be issued a Purchase Order.

4. Receipt of Goods

All employees may sign for receipt of goods via a packing/shipping slip or invoice. The authorizing employee is responsible for inspection of deliveries. [insert any specific requirements for signatures on receiving documents, testing items for conformance with contracts/specifications, etc.]

5. Unauthorized Purchases

The Port shall not be obligated to pay any vendor for any purchase unless a properly authorized Purchase Order or contractual agreement has been issued.

A Purchase Order, Contract, Professional or Personal Service Agreement is the Port's legal offer to buy specific goods and/or services. Without one of these documents, the Port has no legal obligation to pay the vendor, contractor, or consultant and the individual making the purchase may be held personally responsible for payment of the goods and/or services.

6. Sole Source Service Suppliers

"Sole source" means a procurement in which only one supplier/contractor is capable of supplying the required product or service.

Purchases from a "sole source" supplier in lieu of a bid process must be approved by the Port Manager in advance of entering into a purchase commitment and be accompanied by a written explanation that adequately addresses the need for negotiating with a sole source supplier.

Solicitation from sole source suppliers should be the exception to the rule and kept at a minimum.

IV. PROFESSIONAL SERVICES (ARCHITECT/ENGINEER)

For acquisition of professional services, the process involves a request for qualification (RFQ) as required in Chapter 39.80 RCW. "Professional services" includes Architects (RCW 18.08), Engineers and Land Surveyors (RCW 18.43), and Landscape Architects (RCW 18.96). These services do not have a specified dollar threshold and are not subject to prevailing wage requirements.

- The Port shall publish in advance the Port's requirements for professional services. This announcement shall state concisely the general scope and nature of the project or work for which the services are required, and the contact information of a Port representative who can provide further details. The Port may satisfy this requirement by:
 - Publishing an announcement on each occasion when professional services are required; or
 - Announcing generally to the public its projected requirements for any category or type of professional services (See RCW 39.80.030).
- The Port shall evaluate current statements of qualifications and performance data on file, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select, based upon established criteria, the firm deemed to be the most highly qualified to provide the required services for the proposed projects. (See RCW 39.80.040).
- The Port procedures and guidelines shall include a plan to ensure that minority and women-owned firms and veteran-owned firms are afforded the maximum

practicable opportunity to compete for and obtain public contracts for services. The level of participation by minority and women-owned firms and veteran-owned firms shall be consistent with their general availability within the professional communities involved (See RCW 39.80.040).

- The Port shall negotiate a contract with the most qualified firm for an architectural and engineering service at a price which the Port determines is fair and reasonable. In making this determination, the Port shall take into account the estimated value of services, as well as the scope, complexity, and professional nature of the services being performed (See RCW 39.80.050(1)).
- If the Port is unable to negotiate a satisfactory contract with the firm selected, at a price the Port determines to be fair and reasonable, negotiations with that firm shall be formally terminated and the Port shall select other firms in accordance with RCW 39.80.040 and continue this process until an agreement is reached or the process is terminated (See RCW 39.80.050(2)).

V. PURCHASED SERVICES

A. Definition of Purchased Services

Purchased services are those provided by vendors for routine, necessary and continuing functions of a local agency, mostly relating to physical activities. These services are usually repetitive, routine, or mechanical in nature, support day-to-day operations, involve the completion of specific tasks or projects, and involve minimal decision making. Consideration must be given to whether a particular service requires prevailing wages.

B. Service Category Solicitation Procedures

State law does not contain any thresholds or processes for purchased services contracts unless the contract requires prevailing wage. Nevertheless, the Port will follow the processes noted herein.

Solicitation for purchased services can – and should – request prices.

Purchased services considerations:

- Cost or price
- Quality of previous performance
- Ability to meet deadlines for contract performance
- Responsiveness to solicitation requirements
- Demonstrated compliance with employment security and sales tax requirements (all as applicable)
- Ability, experience, and reputation
- References
- Staff readily available for the project
- Financial capacity
- Meeting applicable licensing requirements
- Safety record
- Ability to meet necessary response times for unscheduled work and emergencies

C. Dollar Thresholds for Competitive Process

1. \$0 - \$9,999.00

Minimal Competitive Process

- Seeking competition is always recommended, though not required for this dollar range.
- Telephone calls can be made to vendors describing the services desired and requested price, schedule, and qualifications to perform.
- Purchases should be made based on the Port's inquiries, experience, and knowledge of the market to obtain the best quality product at the best price.
- Document process for file.

2. \$10,000.00 - \$19,999.99

Informal Competition Process

- Select a minimum of three (3) qualified firms based on established criteria from those who have qualifications on file with the MRSC (Municipal Research and Service Center) Rosters (www.mrscrosters.org).
- OR seek bids from a minimum of three (3) vendors. The written solicitation may be emailed to them, and responses may be emailed back to expedite processing. A list of vendors can be developed from telephone listings, internet listings, a published legal notice requesting information on available services, etc.
- Written solicitation should include at a minimum: description of services required, project schedule, request for qualifications, request for bid and due date for the responses.
- Evaluate responses and make award decision.
- Negotiate contract with most successful bidder.
- Document process for file.

3. \$20,000.00 and beyond

Formal Competitive Process

- Prepare formal solicitation document. The Invitation to Bid ("Invitation") is the solicitation document most frequently used by agencies to contract for purchased services. The Invitation identifies the functional performance threshold at which the Port needs would be met, services as the basis for the applicants to respond, and also provides the foundation for the eventual contract. Include all requirements in order for proposers to understand what the Port needs and how the Port will evaluate responses.
- Publish legal notice in major daily newspapers to notify firms of upcoming solicitation. Develop bidder's list from firms responding to notice.
- Post solicitation document on the Port's website (optional).
- Develop score sheets to be used by evaluators.
- Issue Invitation to responding bidders.
- Conduct a pre-proposal conference to clarify the extent of the work and permit prospective bidders to ask questions via addenda.
- Require sealed bids and public bid opening. Date and time stamp all proposals received.
- Evaluate proposals strictly against criteria set forth in the Invitation and score sheets. Use three (3) evaluators (recommended) for scoring and score proposals using score sheets. Determine apparent successful bidder.
- Notify successful and unsuccessful firms.

- Negotiate contract with most successful contractor.
- Conduct debriefing conferences with unsuccessful firms, if requested.
- Document process for file.

VI. PERSONAL SERVICES

A. Definitions

"Personal service" means professional or technical expertise provided by a consultant to accomplish a specific study, project, task, or other work statement which may not reasonably be required in connection with a public works project meeting the definition in RCW 39.04.010(4). "Personal service" does not include purchased services as defined under subsection (8) of the personal service definitions or professional services procured using the competitive selection requirements in chapter 39.80 RCW (See RCW 53.19.010(6)).

Sample List

The following list provides samples of some of the types of consultant services that may be considered as Personal Services under the statute (this list is not all-inclusive).

- Accounting services
- Aerial mapping (if not related to a public works project)
- Analysis and assessment of processes, programs, fiscal impact, compliance, systems, etc.
- Appraisal services
- Certification service
- Economic analysis and consultation
- Environmental planning, technology, studies (except when part of a public works project)
- Executive recruitment
- Financial services
- Feasibility study services (if not related to public works project)
- Foreign trade representative services
- Grant writing
- Graphic design services
- Inventory services
- Lobbying services
- Labor negotiations and labor relations services
- Management consulting marketing services to include identifying market opportunities, conduct marketing programs, planning, promotion, market research surveys, etc.
- Medical and psychological services
- Organization development
- Public relations services
- Promotional services
- Strategic planning
- Training

B. Requirements

All personal service contracts shall be awarded pursuant to competitive solicitation, except for:

1. Emergency contracts. Emergency contracts shall be filed with the Commission and made available for public inspection within seven (7) working days following the commencement of work or execution of the contract, whichever occurs first. Documented justification for emergency contracts shall be provided to the Commission when the contract is filed (See RCW 53.19.020(1) and RCW 53.19.030).

2. Sole source contracts. Sole source contracts shall be filed with the Commission and made available for public inspection prior to the proposed starting date of the contract. Documented justification for sole source contracts shall be provided to the Commission when the contract is filed. For sole source contracts of fifty thousand dollars or more, documented justification shall include evidence that the Port attempted to identify potential consultants. The Commission shall ensure that the costs, fees, or rates negotiated in filed sole source contracts of fifty thousand dollars or more are reasonable (See RCW 53.19.020(2) and RCW 53.19.040).

3. Contract amendments. The following requirements apply:

a. Substantial changes in the scope of work specified in the contract or which are substantial additions to the scope of work specified in the formal solicitation document shall be submitted to the Commission for a determination as to whether the change warrants the work to be awarded as a new contract.

b. An amendment or amendments to personal service contracts, if the value of the amendment or amendments, whether singly or cumulatively, exceeds fifty percent (50%) of the value of the original contract must be filed with the Commission and made available for public inspection prior to the proposed starting date of services under the amendments (See RCW 53.19.020(3) and RCW 53.19.060).

4. Contracts between a consultant and a Port of less than Fifty Thousand Dollars (\$50,000.00). Note, however, that contracts of Fifty Thousand Dollars (\$50,000.00) or greater but less than Two Hundred Thousand Dollars (\$200,000.00) shall have documented evidence of competition. The Port will not structure contracts to evade these requirements (See RCW 53.19.020(4)).

5. Other Exemptions. Other specific contracts or classes or groups of contracts exempted from the competitive solicitation process by the Commission when it has been determined that a competitive solicitation process is not appropriate or cost-effective (See RCW 53.19.020(5)).

C. Competitive Solicitation

The following are competitive solicitation requirements:

1. \$0 - \$49,999.99

- Competitive solicitation process is not required by statute.
- Seeking competition is always recommended, though not required for this dollar range.

- Telephone calls can be made to vendors describing the services desired and requested price, schedule, and qualifications to perform.
- Purchases should be made based on the Port's inquiries, experience, and knowledge of the market to obtain the best quality product at the best price.
- Document process for file.

2. \$50,000.00 - \$199,999.99

- Port must solicit responses from multiple firms/vendors.
- Port will utilize an informal competition process, seeking bids from a minimum of three vendors. The written solicitation may be emailed to them, and responses may be emailed back to expedite processing.
- Written solicitation should include at a minimum: description of services required, project schedule, request for qualifications, request for bid and due date for the responses.
- Evaluate responses and make award decision.
- Negotiate contract with most successful bidder.
- Documentation showing evidence of competition must be on file.

3. \$200,000.00 and beyond

- Port must use formal competitive solicitation process (e.g., advertise in newspaper).
- Documentation of the formal competitive solicitation process must be on file.
- Selection must be based on criteria established for the project, including price.

VI. FEDERALLY FUNDED PROJECTS - SPECIAL PROVISIONS

The purpose of this policy is to implement the requirements of federal guidance, when applicable, with regards to procurement of goods and services and the bidding on public contracts for public works, goods, services, supplies, and materials. It is the Port's policy to follow state and, when applicable, federal requirements with regard to the expenditure of public funds, to provide a fair forum for those interested in bidding on public contracts, and to help ensure that public contracts are performed satisfactorily and efficiently at least cost to the public, while avoiding fraud, waste, and favoritism in their award. For federally funded purchases and contracts, the purpose of this policy is to also ensure that there is no abuse of federal funds and that all allowable costs are accorded consistent treatment.

Procurements using federal funds must meet all of the applicable federal, state, and local government specific requirements. The most restrictive threshold or method must be used. If there are no state laws or local policies that pertain to the item/service being procured, federal procurement standards will apply as outlined in Federal Uniform Guidance 2 CFR §200.

A. Purchasing Code of Ethics

No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by federal award if he or she has a real or apparent conflict of interest. Such

a conflict of interest would arise when the employee, officer, or agent, 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 parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

The officers, employees, and agents of the Port may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. Disciplinary action will be taken against any employee, up to and including termination, for any violation of these ethics and standards.

B. Procedures

The Port will avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

Subpart D of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards – 2 CFR 200 (“Uniform Guidance”) provides the federal requirements for procurement.

When federal funds are used to pay for all or a portion of goods and services, federal regulations require that the Port ensure compliance with:

- State laws and Port policies related to procurement. Federal procurement requirements apply if there is no corresponding state law covering bid requirements;
- Suspension and Debarment at www.sam.gov; and
- Davis-Bacon Act (prevailing wage) requirements.

At any dollar amount, the most restrictive of federal, state, or Port-policy level requirements will be met.

The Uniform Guidance allows for five options for the procurement of materials, supplies, equipment, services, including professional services, or public works:

- 1. Small Purchase Procedures.** Price or rate quotations must be obtained from an adequate number of qualified sources for purchases of services, supplies, or other property costing less than the Simplified Acquisition Threshold, currently set at Two Hundred Fifty Thousand Dollars (\$250,000.00). The Simplified Acquisition Threshold is periodically adjusted for inflation (See 2 CFR § 200.88, and Office of Management and Budget (“OMB”) Memorandum M-18-18).
- 2. Formal Sealed Bids.** Advertise for purchases costing the Simplified Acquisition Threshold Two Hundred Fifty Thousand Dollars (\$250,000.00) or more. If this method is used, there are specific requirements that apply at 2 CFR §200.320(c)(2).
- 3. Competitive Proposals (RFP/RFQ).** Advertise for competitive proposal purchases meeting or exceeding the Simplified Acquisition Threshold. However, there is no threshold for Professional Services (Architects/Engineers), whereby price is not a factor in the selection. If this method is used, there are specific requirements that apply at 2 CFR §200.320(d)(1)-(5).

4. **Noncompetitive Proposals.** A non-competitive purchase occurs when the Port determines competition is inadequate, the item or service is available only from a single source of supply, or there is an emergency situation where competitive bidding would cause an unreasonable delay.
5. **Micro Purchases.** Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the Micro-Purchase Threshold, currently set at Ten Thousand Dollars (\$10,000.00) (Two Thousand Dollars (\$2,000) for public works). Micro-purchases may be awarded without soliciting competitive quotations if the Port considers the price reasonable. To the extent practicable, the Port must distribute micro-purchases equitably among qualified suppliers. The Micro-Purchase Threshold is periodically adjusted for inflation. (See 2 CFR § 200.67 and OMB Memorandum M-18-18)

In all cases, the Port will maintain records sufficient to support its procurement decisions. These records will include:

- The rationale for the method of procurement;
- Selection of contract type;
- Contractor selection or rejection; and
- Basis for contract price

Suspension and Debarment

Before entering into federally funded vendor contracts for goods and services, the Port will ensure the vendor is not suspended or debarred from participating in federal assistance programs. Documentation of the verification of this status shall be maintained by the Port.

VII. CONFLICTS OF INTEREST

An organizational conflict of interest exists when the services to be performed may result in an unfair competitive advantage to the consultant or impair its objectivity in performing the services

Personal conflicts of interest can also arise. Ports are subject to the “Code of Ethics for Municipal Officers” (the “Code”). The Code governs “municipal officers,” defined to include “all elected and appointed officers of a municipality, together with all deputies and assistances of such an officer, and all persons exercising or undertaking to exercise any of the powers or functions of a municipal officer” (See RCW 42.23.020(2)).

The Code prohibits a municipal officer from having a beneficial interest in a contract made under the municipal officer’s supervision or for the benefit of his or her office. Contracts made in violation of this provision are void. Certain interests in contracts are deemed a “remote interest” and are not prohibited; however, an official with a remote interest must not participate in selecting the contractor and those remote interests must be disclosed to the governing body and noted in the official minutes prior to the formation of the contract (See RCW 42.23.030 through .050).

Three (3) key exceptions to the conflicts of interest prohibition are applicable to ports:

1. The first is the employment of any person by a municipality for unskilled day labor at wages not exceeding One Thousand Dollars (\$1,000.00) in any calendar month (See RCW 42.23.030(5)).
2. The second is the letting of any other contract in which the total amount received under the contract or contracts by the municipal officer or the municipal officer's business does not exceed Three Thousand Dollars (\$3,000.00) in any calendar month (See RCW 42.23.030(6)(a)).
3. The third arises when the Port leases Port property to a municipal officer or to a contracting party in which the municipal officer may be beneficially interested if a board of three (3) disinterested appraisers and the superior court where the property is situated finds that all terms and conditions of the lease are fair to the Port and in the public interest. The appraisers must be appointed from members of the American Institute of Real Estate Appraisers by the presiding judge of the superior court (See RCW 42.23.030(7)).

A municipal officer may not vote in the authorization, approval, or ratification of a contract in which he or she is beneficially interested even though one of the exemptions allowing the awarding of such a contract applies. The interest of the municipal officer must be disclosed to the governing body and noted in the official minutes or similar records before the formation of the contract (See RCW 42.23.030).

The Code also identifies certain "prohibited acts" for municipal officers:

- Using his or her position to obtain special privileges or exemptions for himself, herself, or others;
- Directly or indirectly, give or receive or agree to receive any compensation, gift, reward, or gratuity from a source other than the employing municipality in connection with the officer's duties;
- Accepting employment or engaging in a business or professional activity that the officer might reasonably expect would require or induce him or her to disclose confidential information gained by virtue of his or her official position; and
- Disclosing confidential information gained by reason of the officer's position or using such information for personal gain (See RCW 42.23.070).

Any employee or officer of the Port involved in the procurement process must not accept or receive, directly or indirectly, a personal financial benefit, or accept any token, membership, or service, as a result of a purchase entered into from a vendor, supplier, or contractor. There are no exceptions or minimum threshold for these prohibitions under State law (See RCW 42.23.070).