

**PORT OF SEATTLE**  
**MEMORANDUM**

**COMMISSION AGENDA**  
**STAFF BRIEFING**

**Item No.** 7d  
**Date of Meeting** October 14, 2014

**DATE:** September 29, 2014  
**TO:** Ted J. Fick, Chief Executive Officer  
**FROM:** Mark C. Griffin, Director, Real Estate Development  
**SUBJECT:** Policy briefing related to real estate development and construction work on Port-owned land leased to Port tenants

**SYNOPSIS**

The real estate development community is expressing increasing interest in Port-owned sites that are available for development now that the real estate market has recovered from the economic recession. Before bringing forward any additional proposed long-term ground lease agreements for Commission approval, staff seeks policy guidance regarding the best way to facilitate desired development while also ensuring fair opportunity is given to all contractors interested in participating in the construction work on the leased property. This briefing explains the need for policy guidance, reviews some of the Port's current practices, describes methods used by other public agencies, offers a potential policy approach, and requests direction as to the elements that should be considered for inclusion in any new policy.

**BACKGROUND**

**Current status**

The Port owns a substantial portfolio of land that is available for development consistent with the Port's goals to generate new revenue and spur regional economic development, including providing opportunities for interested contractors to participate in construction activity. The portfolio includes over 300 acres of property around the airport in Burien, Des Moines and SeaTac and over 60 acres in Seattle.

With the rebound in the real estate market, staff has begun undertaking more competitive solicitations (e.g., request for qualifications and proposals (RFQ/Ps)) to long-term ground lease these sites and take advantage of the favorable market conditions by putting more of this property into productive use. Staff is also seeing an increase in unsolicited inquiries from developers interested in long-term leases of some of the available sites.

While Port-contracted construction work will continue to be subject to public works requirements, currently there are no policies or requirements specifically related to construction work contracted by the Port's tenants on Port-owned land. The Port also does not currently impose on ground lease tenants any requirement to obtain an agreement with a labor organization, nor award preference points in any competitive solicitation process to developers

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who commit to obtaining an agreement with a labor organization. The Port does have labor harmony provisions in most leases and does have an equal opportunity and non-discrimination policy.

### **Labor harmony lease provisions**

Most of the Port's leases usually contain a provision intended to place the responsibility on tenants to maintain the continuity of service, operations or work on leased property and avoid disruption of labor. However, these provisions neither dictate the means or methods by which labor harmony is achieved nor require tenants to enter into agreements with labor organizations. The typical provision reads as follows: "Lessee agrees to use its best efforts to avoid disruption to the Port, its tenants or members of the public, arising from labor disputes involving Lessee, and in the event of a strike, picketing, demonstration or other labor difficulty involving Lessee, to use its good offices, including the utilization of available legal remedies, to minimize and/or eliminate any disruption to the Port, its tenants or members of the public, arising from such strike, picketing, demonstration or other labor difficulty."

### **Existing equal opportunity and nondiscrimination policy**

The Port Commission adopted Resolution 3668 on November 13, 2012 repealing Resolution 3166. Resolution 3166, which was adopted in 1994, required submission of specific documentation addressing affirmative action goals and reports by Port contractors, their subcontractors, Port consultants and suppliers to Port contractors or their subcontractors. The repeal of Resolution 3166 was in part a recognition of its inconsistency with state law after the passage of Initiative 200. Resolution 3668 restates Port policy relating to non-discrimination and equal opportunity in employment and subcontracting and its requirements are incorporated into the Port's leases.

Resolution 3668 requires tenants to ensure nondiscrimination against any persons on grounds of age, race, color, national origin/ancestry, ethnicity, religion, disability, Family Medical Leave Act (FMLA) use, pregnancy, sex/gender, sexual orientation, whistleblower status, military affiliation, marital status, workers' compensation use, transgender status, political beliefs, or any other protected status as guaranteed by local, state and federal laws. Resolution 3668 also compels tenants to apply equal opportunity principles in employment and subcontracting. The Port, however, does not currently have a Commission resolution adopting an affirmative action policy of preference in hiring persons based on their disadvantaged socio-economic status.

### **Guidance requested**

Staff seeks guidance to help ensure fair opportunity to all parties interested in participating in construction activity on Port-owned land when the anticipated development work will not be done by the Port and will instead be completed by the Port's tenants/ground lessees. For instance, does the status quo sufficiently promote fair opportunity for all parties interested in construction work on the Port's land? If not, are there persons or groups that are underrepresented in construction jobs on tenant-owned projects such as small businesses, union firms, women and persons of color and/or persons living in certain distressed zip codes? Policy

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direction on this issue will enhance staff's ability to ground lease the available property and realize the desired revenue and economic development goals.

There is some urgency to address this issue. There are deals currently pending staff and commission review and a business strategy to put other sites in the development pipeline while market conditions are favorable.

### **OTHER AGENCIES' APPROACH**

***This section describes some methods that other public agencies have used for publicly-funded and tenant/private-funded construction work to ensure there is a common understanding of these methods. There is, however, no discussion of the Port-specific legal and business risks associated with these methods. To the extent the Commission would like one or more of these elements included in a proposed policy, the Commission will be briefed on the legal and business risks associated with the particular proposed policy details.***

Staff researched how other public agencies, both locally and regionally, have addressed the issue of fair opportunity in construction and development activity on publicly-owned land that is not performed by the public agency. The local agencies surveyed included the City of Seattle, King County, Seattle Housing Authority and Sound Transit. Several other port authorities were also contacted including the ports of Tacoma, Oakland, and Long Beach. None of these agencies had policies that explicitly addressed tenant-contracted work. However, staff did learn some pertinent information that may inform a new policy, which is summarized below.

#### **Project labor agreements**

A project labor agreement (PLA) is a pre-bid contract between the construction project owner and a labor union (or unions) that establishes the union(s) as the collective bargaining representative for all persons who will perform work on the project. A PLA generally requires all bidders for the construction project to: (i) hire workers through the union hiring halls, (ii) follow specified dispute resolution procedures, (iii) comply with specific wage, benefit, seniority, apprenticeship and other rules, and (iv) contribute to the union benefit funds. Typically, in return for a project owner's promise to insist in its bid specifications that all successful bidders agree to be covered by a PLA, the union promises labor peace through the life of the contract. The owner of the construction will typically make assent to the terms and conditions of the PLA a condition for award of the contract. Most often, contractors do not sign an agreement with a union and employees of the contractor are not required to join the union, but all contractors and subcontractors are required by the project owner to sign a letter of assent agreeing to recognize the union(s) as the collective bargaining representative for those who will perform work on the project and to abide by the terms and conditions of the PLA.

The Port applies PLAs to construction projects owned by the Port on a case by case basis consistent with the Port's PLA policy. As noted above, however, the Port has no policy or practice of requiring bidders on projects owned by Port tenants to recognize union(s) as the collective bargaining representative for workers performing work on tenant-owned projects.

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According to research by staff, the Port of Oakland requires PLAs for certain of its maritime and aviation tenants' projects but not for its commercial real estate division leases. Oakland requires tenants to have their contractors abide by a PLA for maritime tenant projects that exceed \$150,000 in a 12-month period and aviation tenant projects that exceed either \$50,000 or \$150,000 depending on the location at the airport. The PLA's application to some tenants' work resulted from litigation that was settled by Oakland and the local building trades agreeing that the PLA would be applied to some tenant work but not all tenant work.

### **Community workforce agreements and hiring preference policies**

Like PLAs, typical community workforce agreements (CWAs) are pre-bid contracts between local governments and unions that impose certain terms and conditions that contractors and their subcontractors must assent to as a condition of contract award. In addition to the terms and conditions that are typical of PLAs, CWAs also typically express hiring preference policies aimed at incentivizing or requiring the hiring of a certain percentage of workers from "distressed zip codes" as a way to ensure that people who live in zip codes where there is higher poverty, lower graduation rates or higher unemployment than the rest of the region are given hiring preference. CWAs are a means to achieve a workforce that is more socio-economically diverse while also promoting racial diversity in a race neutral way. Some CWAs have hiring preference policies that apply to the selection of apprentices by setting percentage goals for the hiring of minority and women apprentices or percentage requirements for hiring graduates of a "preferred entry" program aimed at assisting economically disadvantaged persons to compete for openings in apprenticeship programs. A local government's expression of its hiring preference policies is not necessarily tied to entering into agreements with unions, but the zip-code based hiring preference policy appears more typically in agreements with unions. Incorporating hiring preference policies into competitive solicitation processes in which local governments award points to potential developers based on their willingness to commit to hiring preference policies is an alternative approach to expressing hiring preferences.

According to research by staff, the Seattle Housing Authority (SHA) has a CWA for the publicly-financed infrastructure elements of the Yesler Terrace redevelopment project. SHA staff reports that only a few projects have been completed under the CWA at this point and that maximizing contractor interest and bids for the projects subject to the CWA is a work in progress given the current favorable market conditions for contractors. SHA requires neither a CWA nor a PLA for the privately funded portion of the Yesler Terrace project. Instead, SHA sets aspirational goals related to local hiring and utilization of women and minority-owned businesses in its agreements for privately-funded development projects on SHA land. This appears to be an example of SHA's hiring preference policy being incorporated directly into SHA's agreements with developers as opposed to incorporated into SHA's agreements with unions that then become assented to by the developer as a condition of lease award.

In 2012, the City of Seattle approved a CWA for contractors and subcontractors on the Alaskan Way seawall replacement project. The CWA is between the City and unions that are signatory to the CWA. According to the City's announcement of agreement, the CWA is intended to establish labor-management peace and support timely construction of the seawall project while

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also providing “an unprecedented agreement towards social equity, shared prosperity and diversity for all Seattle communities.” The City’s CWA includes the following elements: recognition of the signatory unions by contractors as the sole and exclusive bargaining representative of all craft employees within their respective jurisdictions who work on the project; an aspirational goal to hire 15% of the workforce from economically distressed zip codes; provide direct entry for graduates of pre-apprenticeship programs, with a goal of one direct entry placement for each of five apprentices on the project; an aspirational goal that of the 15% of all project hours performed by apprentices, at least 21% percent of such apprentices will be people of color, and 12% shall be women; an aspirational goal that 12% of all project hours shall be performed by women and 21% of all project hours shall be performed by people of color.

Pre-apprenticeship programs serve community members who have historically been unsuccessful in apprenticeships and do not have the life skills necessary to enter the pathway to a living wage job or career by teaching them life skills and providing social support services.

Some of the reasons that some unions and some communities of color have joined together to request that local governments incorporate hiring preferences through pre-bid agreements between local governments and unions whose terms must then be assented to by contractors who win bids to perform public work are to: (i) increase access for community members who have historically been unsuccessful in competing for openings in apprenticeship programs, (ii) facilitate a coordinated workforce system that links pre-apprenticeship programs typically operated by non-profits with apprenticeship programs typically operated by unions, binding contractors and unions together to increase hiring of historically under-represented workers through the use of the purchasing power of local governments, (iii) facilitate on-going dialogue and sharing of information about the contractors' needs for future apprentices, give the operators of pre-apprentice programs information in advance to meet the needs of contractors, (iv) supply on-going services to economically disadvantaged persons and its graduates may be more likely to succeed in competing for openings in apprenticeship programs or otherwise finding living wage jobs.

Economically distressed zip codes require definition before a hiring preference policy is adopted. For the seawall project, the City indicated that the term “economically distressed zip codes” would be defined and prioritized by the City. One idea is that once a person has established residency in a zip code that qualifies as economically distressed, whether because it has higher than King County average unemployment or because it has higher levels of persons living in poverty based on Census data, the person would be qualified for a hiring preference for a certain period even if the person moved to an area that is not considered economically distressed.

As noted above, the Port does not currently have a Commission-adopted policy that specifically authorizes the Port to require that tenants adopt goals for hiring economically disadvantaged persons, nor goals for hiring women and minorities on tenant-owned projects, nor goals for hiring persons from certain zip codes.

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## **STAFF SUGGESTED POLICY**

The following staff suggested policy is offered as a starting point for discussion by the Commission. Staff expects that the Commission's comments and guidance will dictate the final proposed draft of the policy.

### **Proposed Policy Statement:**

Ensure fair opportunity for all qualified contractors to win bids for construction work on real estate development projects to be built by the Port's tenants.

### **Proposed Policy Elements:**

The proposed policy would be implemented in the following manner:

#### **1. Contractor Roster.**

- a. Advertise annually a list of Port properties that may be developed in the future and invite all interested general contractors and subcontractors to submit their names, contact information, statement of experience and qualifications, and their interest in being considered by the Port's tenants.
- b. Maintain a list of all general contractors and subcontractors who have responded to the invitation.

2. **Mandatory Distribution.** Provide the list of interested contractors to the proposed tenant prior to execution of any long-term (10+ years) lease agreement involving land development.

#### **3. Competitive Solicitations & Direct Negotiations.**

- a. Include mention of this policy in any competitive procurement documents (e.g., requests for interest/offers/qualifications/proposals) for a long-term lease agreement involving land development. This policy would not be part of the RFQ/P selection/evaluation criteria but part of the general provisions in the procurement document.
- b. If there has been no competitive procurement of the proposed transaction, include mention of this policy in any preliminary letter of intent, but not as a condition of the deal.

4. **Outreach.** Encourage the proposed developer/Port tenant to meet with any interested firms from the Port's roster—but not as a condition of the deal.

## **ATTACHMENTS TO THIS BRIEFING**

- Powerpoint presentation

## **PREVIOUS COMMISSION ACTIONS OR BRIEFINGS**

- None.