

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No. 5a

Date of Meeting June 2, 2009

DATE: May 14, 2009

TO: Tay Yoshitani, Chief Executive Officer

FROM: Ralph Graves, Managing Director Capital Development
Nora Huey, Director, Central Procurement Office

SUBJECT: Determination that competitive solicitation is not appropriate or cost-effective for procuring conflict resolution services (including arbitrators, mediators, third-party arbitrators, dispute resolution board members and hearing officers) and exempting such contracts from the requirements of Chapter 53.19 RCW.

REQUESTED ACTION

Request for Port Commission determination that competitive solicitation is not appropriate or cost-effective for procuring conflict resolution services (including arbitrators, mediators, third-party arbitrators/appraisers, dispute resolution board members and hearing officers) and exempting such contracts from the requirements of Chapter 53.19 RCW.

EXEMPTION FROM COMPETITIVE SOLICITATION (RCW 53.19.010)

Contracts for conflict resolution services, such as arbitrators, mediators, third-party arbitrators/appraisers, dispute resolution board members and hearing officers are subject to Chapter 53.19 RCW, which requires “open competition for all personal service contracts entered into by port districts unless specifically exempted under this Chapter [53.19].” Unless this class of contracts falls under one of the five exemptions in RCW 53.19.020, the contracts would be subject to “competitive solicitation” – defined as “a documented formal process providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria, in which criteria other than price may be the primary basis for consideration.”

RCW 53.19.020 lists five exemptions from competitive solicitation. The fifth exemption is for “[o]ther 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.” RCW 53.19.020(5).

In order to include the class of contracts for providing conflict resolution services (including arbitrators, mediators, third-party arbitrators/appraisers, dispute resolution board members and hearing officers) under the exemption in RCW 53.19.020(5), the Commission must make a reasoned determination that the competitive selection process would not be appropriate or cost

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effective to obtain the services that this class of contracts provides. In making the determination as to whether the proposed class of contracts should be exempt from competitive solicitation requirements, the Commission must avoid acting arbitrarily and capriciously by noting and discussing relevant facts and circumstances.

The Central Procurement Office of the Capital Development Division requests that the Commission consider the following factors and determine that subjecting the class of contracts for providing conflict resolution services (including arbitrators, mediators, third-party arbitrators/appraisers, dispute resolution board members and hearing officers) to competitive solicitation requirements would not be cost effective or appropriate:

- Conflict resolution services provided by arbitrators, mediators, third-party arbitrators/appraisers, dispute resolution board members and hearing officers, are generally required in conjunction with resolution of conflicts/disagreements under a contract to which the Port is one of several parties.
- The Port's need for these services is generally subject to time-lines dictated by the contract and may not reasonably permit competitive solicitation.
- Exempting this class of services from competitive solicitation increases the number of service providers available for selection where both parties to a contract must approve the provider.
- The selection of arbitrators, mediators, third party arbitrators/appraisers, dispute resolution board members and hearing officers, is frequently a multi-party decision that is not compatible with the Port's solicitation process.