

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

**COMMISSION AGENDA**

**Item No.** 7b

**Date of Meeting** September 1, 2009

**DATE:** August 20, 2009

**TO:** Tay Yoshitani, Chief Executive Officer

**FROM:** Tom Barnard, Research and Policy Analyst  
Ralph Graves, Managing Director, Capital Development

**SUBJECT:** Annual Review and Proposed Changes to Resolution 3605

**BACKGROUND**

On August 26, 2008, in response to several recommendations made by a 2008 Performance Audit from the State Auditor's office, the Port of Seattle Commission passed Resolution 3605. The resolution improved the transparency and accountability of the process the Commission uses with major works contacting. New procedures were added that clarified when and how Port staff gain the Commission's approval on major Port construction projects. The resolution also strengthened the Commission's relationship with the Chief Executive Officer (CEO) by clarifying his authority, the Commission's authority, and the relationship between the Commission and the CEO.

The new procedures eliminated the previous practice of "project-wide authorizations", which allowed only one review of major construction projects, and put in its place a three-step approval process. Projects costing more than \$200,000 now require separate Port Commission approval for (i) a review of project feasibility and authorization to complete design, (ii) the authorization of construction and approval to advertise, (iii) and an authorization to award the contract. This provides the Commission the opportunity to consider projects more thoroughly and openly with higher quality information. In some cases, this has led the Commission to request changes to, and even halt a project. This increased transparency and accountability resulting from the adoption of Resolution No. 3605 was well illustrated by the Port staff's and Commission's financial and construction review of the suspension and re-start of the Rental Car Facility. The new multi-stage review process has also produced more informative memos and presentations for the Commission.

## **COMMISSION AGENDA**

T. Yoshitani, Chief Executive Officer

August 20, 2009

Page 2 of 5

Since that time, Commission and Port staff have completed a number of activities centered on implementing the Resolutions successfully. In addition to the many departmental briefings that were given initially to familiarize staff with the new requirements, a “wizards” committee was formed composed of division representatives who were most familiar with the Resolution. This committee responded to more than forty requests for clarification on the meaning or implementation of individual sections of the resolution, dispensed advice and guidance on the correct procedures to follow and grappled with new 3605 issues as they arose. An FAQ page was also developed and posted to the Port intranet for questions that the Wizards received more than once.

Resolution 3605 included a provision that it must be reviewed “in twelve (12) to eighteen (18) months after it enters into force...” This was to allow the Commission an opportunity to evaluate the effect of the resolution on Port operations, including increased transparency, accountability and oversight, and to make any changes to the resolution that the Commission had not anticipated when adopting it in 2008. An initial briefing on possible changes was presented to the Commission on April 21, 2009.

This memo and the accompanying PowerPoint is the second step in that review process. It contains no proposals for new procedures or additional limitations on the Chief Executive Officer’s authority. Only one major new addition is being recommended in Section 1, and its purpose is to clarify earlier, incorrect language that was a holdover from Resolution 3181, the predecessor to Resolution 3605. Other proposals for specific language changes are being made because, as Port staff have implemented the resolution, they have encountered sections where wording is unclear, additional language is needed to indicate Commission intent or changes are needed to improve the procedures used when the Commission approves capital projects.

## **ISSUES UNDER REVIEW**

### **Replacing and clarifying the term “Authorized Budget Limits.”**

The term is used as an additional means of limiting the spending authority of the CEO, and is usually combined with the \$200,000 limit, as in “are less than or equal to Two Hundred Thousand Dollars (\$200,000) and are within **Authorized Budget Limits.**” This presents problems, as unlike other governmental bodies, we work with an accrual budget, which is continually adjusted throughout the year to achieve budget targets.

To solve this problem, we recommend the insertion of a new Section 1.5 that provides:

- General authority for the CEO to exercise his authority “in a manner consistent with the Port’s Annual Operating Budget, Annually Approved Capital Budget and Annually

## **COMMISSION AGENDA**

T. Yoshitani, Chief Executive Officer

August 20, 2009

Page 3 of 5

Approved Capital Improvement Plan.” It also grants the CEO specific authority to reallocate amounts and incur variances from the Annual Operating Budget.

- A request for the CEO to report to the Commission not less than quarterly on actual results versus budgeted amounts for both revenues and expenses and, if necessary, more frequently if there is “a material, negative variance from the Annual Operating Budget, Annually Approved Capital Budget or Annually Approved Capital Improvement Plan.”
- Finally, when seeking project approval, the CEO would indicate whether a project is within the Annually Approved Capital Budget and Annually Approved Capital Improvement Plan and, if not, how it is expected to be funded.
- We would then generally delete the phrase “and are within Authorized Budget Limits” throughout the current document.

### **Increasing the level of purchased goods requiring Commission approval from \$200,000 to \$500,000.**

This change gives the CEO authority to procure “Goods and Other Services and Purchased Services” so long as, where appropriate, such acquisitions shall be approved as part of normal monthly expenses. The current amount set that gives the CEO the authority to execute contracts without obtaining Commission approval up to \$200,000, which would be raised to \$500,000. This provision reflects the necessity at times to make major bulk purchases of materials for the day-to-day operation of the Port. The purchase of de-icer for the airport runways during the December snow storm in 2008 is one example of how this authority could be used. Overall, this is a cost-savings measure because it will allow the Port to buy in bulk the goods and services it needs for day-to-day operations.

### **Authorizing maintenance work up to \$500,000.**

This change gives the CEO authority for expense maintenance work, whether performed by Port crews or by contract that is not a public work or non-public work project, up to a value of \$500,000. This is being inserted in Section 8 to provide consistency for maintenance work that can't be considered as a capital project or does not fall under the state statute of maintenance. A project, defined as anything that physically expands a facility or provides new capability, would not be included under this section, nor would this include any kind of public or non-public work. This kind of maintenance referred to in the new language allows no authorization level in the current version of Resolution 3605. Providing one will allow big expense items involving maintenance to become visible outside the budget process. ~~Setting the amount at \$500,000 is viewed by staff as reasonable because less oversight is needed on operational expenses because the funds involved are generally for routine things like office supplies and travel.~~

## **COMMISSION AGENDA**

T. Yoshitani, Chief Executive Officer

August 20, 2009

Page 4 of 5

### **Raising all other authorization levels for Commission scrutiny to \$300,000.**

The current resolution language allows the CEO to approve Small Works Construction contracts up to the monetary limit set by R.C.W 53.08.120, which was \$200,000. In the last Washington state legislative session, HB 1196 raised that dollar amount that defines Small Works projects from \$200,000 to \$300,000. This means that Section 4.3 now gives the CEO permission to approve Small Works contracts up to \$300,000, unless that section is re-written to specify that the Commission is only granting the CEO permission at a lower level. If the Section is left unchanged, it leaves major works, public and non-public, being approved by the Commission at the current \$200,000 level, while Small Works contracts, which are normally of smaller scale, would be approved at a higher level. This change would propose all project and contract approvals be raised to \$300,000, thereby providing across-the-board consistency for all project approvals.

### **LANGUAGE CHANGES FOR CLARITY**

- Folding Section 5 on non-public work projects into Section 4 on public work projects, as there is only one process difference, easily called out in a combined section.
- Cleaning up language in sections on:
  - Non-public Work Projects
  - Change Orders
  - Small Works and Small Works Change Orders.
  - “Best Bid” definition
  - Project Changes
  - Personal Services
  - Audit and Accounting Services
  - Affirmative Action

### **NEXT STEPS**

- Receive Commission feedback on proposed changes to Resolution 3605.
- Receive Staff and Executive feedback on proposed changes to Resolution 3605.
- Make final edits to Resolution 3605.
- Return to the Commission on September 17<sup>th</sup> for First Reading, and introduce any final edits.

## **COMMISSION AGENDA**

T. Yoshitani, Chief Executive Officer

August 20, 2009

Page 5 of 5

- Return sometime in October for Second Reading/Final Passage of the amended Resolution.