

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No. _____ **7f**

Date of Meeting _____ **April 21, 2009**

DATE: April 16, 2009

TO: Tay Yoshitani, Chief Executive Officer

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

SUBJECT: Small Works Resolution Briefing

SYNOPSIS : Under RCW 39.04.155, if the Port wishes to use the small works roster process for awarding contracts, it must adopt a resolution implementing rules for its small works roster program. The rules must be consistent with the requirements in RCW 39.04.155. Attached is the proposed resolution.

BACKGROUND

In the past, the Port of Seattle (Port), through Port Construction Services (PCS), implemented and managed the Port's small works roster program. PCS established one roster with over fifty categories of work. Concerns about the Port's practices were identified in recent audits.

With the centralization of procurement activities into the Central Procurement Office (CPO), a close look at the audit findings, and an internal review of practices and state law requirements, the Port determined that it needed a resolution to ratify its small works roster program and authorize continued use of the program.

The purpose of the small works roster program is to establish a quick and less costly process to award contracts for construction, building, renovation, remodeling, alteration, repair or improvement of real property where the estimated cost is \$200,000 or less. Recent bills, if passed, may increase the \$200,000 limit in the future. Instead of advertising every project, the small works roster program only mandates that the Port advertise notices of the existence of the roster and solicit names for the roster. At the same time, rules implementing the small works roster program are intended to safeguard the competitive bid process so that every public work contract is awarded to the lowest responsible bidder consistent with public bid law.

COMMISSION AGENDA

T. Yoshitani, Chief Executive Officer

April 16, 2009

Page 2 of 3

Under RCW 39.04.155, the Port may create a single general small works roster or rosters for different specialties of anticipated work. At any time a responsible contractor submits the necessary records along with a written request to be added to a roster, the Port must add the responsible contractor to the roster. In addition to the legally mandated advertisement, the Port promotes its roster and encourages contractors to get on the roster throughout the year. The Office of Social Responsibility (OSR) plays a vital role in getting word out and encouraging small businesses to get onto the Port's roster.

The Port uses the small works roster program in two ways. Most commonly the Port has open order type contracts for specialty practice areas. As a need arises, it allows the Port to quickly order that work off of an existing contract. Open order contracts establish unit prices for labor and specific markups. The unit prices are used to price the work. The Port issues work authorizations against the open order contracts. The Port also has project-specific type contracts, in which the Port receives lump sum pricing for a specific scope of work.

CPO has initiated a number of changes to the small works roster program to bring it into compliance with state law. First, CPO sends notification and invites all contractors in a category to participate in the bidding process. To encourage and promote competition, the Port selects as many categories of work applicable to the defined scope contained in the contract. Second, for project-specific contracts, the Port includes an estimated range of value for the work. Third, the Port obtains performance and payment bonds. Finally, the Port documents decisions to use the small works roster program to ensure that the Port is not breaking any project into units or accomplishing any project in phases to avoid the maximum dollar amount of contracts for use of the small works roster program.

The Port does not currently have a program established for limited public work small works projects, those projects with a value under \$35,000. This proposed resolution would authorize the Port to implement a limited public works procurement process. For limited public works procurements, the Legislature has given local governments the option to waive performance bonds, payment bonds, and/or retainage requirements. Performance bonds are to ensure that if the contractor does not perform, the surety will make certain the project is completed for the contract price. Payment bonds are to ensure that the contractor pays its laborers, mechanics, subcontractors, materialpersons and all persons who supply them. Unless waived, in addition to the performance and payment bond that local governments must have on file from prime contractors, local governments must also withhold five percent of money due to a prime contractor until completion and/or acceptance of the contract. The money is to be set aside as a trust fund for the protection and payment of anyone who performs labor, provides materials, supplies, or equipment or subcontracts to the prime contractor. The Department of Revenue has lien rights against this fund for payment of unpaid taxes and the Department of Labor and Industries has lien rights for nonpayment of prevailing wages.

COMMISSION AGENDA

T. Yoshitani, Chief Executive Officer

April 16, 2009

Page 3 of 3

Waiving these requirements may remove potential barriers for small businesses but raises legal risk issues. A waiver would subject the Port to liability for the debts owed by the contractor to its laborers, mechanics, materialpersons, suppliers and subcontractors. It also exposes the Port to liability for taxes owed by the prime contractor to the Department of Revenue and for the prime contractor's non-payment of prevailing wages. The proposed resolution would allow the Port to study this alternative and develop criteria that would be evaluated for each limited public work project to determine if and when the CEO or designee would waive such requirements. Any decision to waive the requirements would be documented.

Another issue to implementing limited public works procurement is developing and establishing an appropriate roster and software system to manage and ensure compliance with the Port's legal requirements. The Port has identified the need to revise and improve its roster systems, including its small works roster software program. CPO, OSR, PCS, and Information and Communications Technology division will be working together on this issue later in 2009/2010.

ALTERNATIVES & IMPLICATIONS

1. Do Nothing. If the Commission does not authorize this resolution, the Port will need to stop all small works roster procurements. Those procurements would need to be advertised and conducted in the same manner as major construction procurement.
2. Pass the Resolution. Small works roster is a tool that the Port would like to maintain in its procurement toolbox. It provides the Port with opportunities to quickly secure contracts for small dollar value contracts. We recommended this action.