

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA
STAFF BRIEFING

Item No. 7a

Date of Meeting February 10, 2015

DATE: January 5, 2015
TO: Ted Fick, Chief Executive Officer
FROM: Joe McWilliams, Managing Director, Real Estate Division
SUBJECT: Real Estate Policy (RE-7): Competitive Procurement in Long-Term Leases of Real Property

SYNOPSIS

I. POLICY STATEMENT:

When the Port offers real property for lease or option for a term exceeding ten (10) years, inclusive of options to extend at the sole election of the tenant (“Long-Term Lease”), it is the Port’s policy to undertake a competitive process to select among potential tenants interested in leasing the property, subject to the exceptions described in Section II.C below.

II. DETAILS:

A. Purpose:

This policy defines when and how staff must competitively secure potential tenants interested in Long-Term Leases of Port property and the circumstances under which direct negotiations, in lieu of competition, may be justified. The Port’s existing real estate policies and procedures, RE-1 through RE-6, do not address this issue.

B. Rationale:

Generally, a competitive process yields the greatest overall return to the public (assuming the process suitably tests the market and no prevailing adverse market conditions exist). Competition most often produces the best overall value when measured in both quantitative metrics (e.g., rent, total net compensation less operation and maintenance expenses) and qualitative ends (e.g., job creation, transparency, equity, and accountability). Value includes not only the projected revenue from the lease, but also non-financial factors such as the capability, experience and creditworthiness of the potential tenant, the compatibility of the proposed use with other Port tenants and operations, as well as other economic development, community, and environmental objectives desired for the particular property offered for lease.

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An impartial, open process also maximizes desirable qualitative goals. Transparency is advanced by specifying the evaluation criteria for how and why a selection is made. Equity is fostered by providing opportunities for new enterprises and extending broader access to publicly-owned assets. This ultimately lowers the Port's risk by diversifying business tenancies. In addition, open competition increases accountability by limiting the potential occurrence of conflicts of interest or other impropriety more intrinsic in the closed nature of non-competitive procurements.

Direct negotiations are therefore not preferred in transacting Long-Term Leases of Port property. Underlying the preference for competition are the less frequent circumstances in which it can be confidently established that direct negotiations have generated the best overall return for the public in terms of economics, job generation, economic opportunity, and/or providing a public benefit that would otherwise not be enjoyed. In certain limited circumstances described below, however, direct negotiation may be appropriate and warranted.

In any event, the Port also recognizes that it has objectives that are not necessarily advanced by selecting the most favorable economic proposal presented. While economics are important, so are the objectives of job creation, provision of opportunity to under-represented segments of the business community, collaborative creation of tenant mix in any or all properties, etc.

Accordingly the Port reserves the right to select tenants based on 'best value' propositions which recognizes contributions by the tenant beyond the purely financial proposal being submitted. It further reserves the right to reject any and all proposals when appropriate as a result of changing conditions or when emerging strategic needs present themselves unexpectedly without regard to the status or progress under a competitive process.

C. Applicability:

Proposed leases or options that fall within one or more of the direct negotiation exceptions listed in Section E below are exempt from the competitive procurement requirements of this policy but are subject to the procedures outlined in Section F below. The following categories of proposed leases are entirely exempt from this policy:

- i. Leases or options for terms ten (10) years or less.
- ii. The airline signatory lease and operating agreement.
- iii. Leases with a federal, state or local government entity.
- iv. Long-Term Leases or easements with a public utility.
- v. Container terminal leases

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vi. On-Airfield Cargo leases

D. Competitive Process:

Real property offered for Long-Term Lease should receive the broadest appropriate exposure to the target market(s). A competitive procurement may take the form of one or more of the following methods:

- i. Direct marketing techniques such as Requests for Interest (RFIs), Requests for Qualifications (RFQs), and/or Requests for Proposals (RFPs).
- ii. Listing with a qualified real estate brokerage firm(s) in accordance with RE-5.
- iii. Invitational bidding to certain qualified firms when the desired use/program for the property is clearly defined and time is of the essence in the selection of a prospective tenant.
- iv. Print or electronic advertising in real estate, business, and/or community media.
- v. Any other solicitation method generally recognized as an established industry practice.

Staff may choose an appropriate method(s) based on the property's characteristics and pertinent market conditions. *See Comment III (A).*

E. Direct Negotiation Exceptions:

Subject to compliance with the procedures outlined in Section F below, staff may pursue direct negotiations rather than a competitive procurement for a Long-Term Lease when one or more of the following situations apply:

- i. The proposed lease is a renewal with an incumbent tenant in good standing, but without existing extension options at lease expiration on its existing premises when significant capital investment in the premises has been made by the Port or by the incumbent and the term is less than 10 years
- ii. The proposed lease would support expansion of an existing tenant's operations adjacent to the tenant's current leasehold or elsewhere on Port and the expansion did not include lease extension period such that the occupancy would exceed 10 years. *See Comment III (B).*
- iii. The proposed lease would enable the Port to vertically or horizontally integrate with existing tenants/sectors in a manner that collectively creates a greater

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- financial or other public benefit (e.g., the FVO shipyard at Fishermen's Terminal). *See Comment III (C)*.
- iv. The property can be leased to promote an economic development opportunity that returns substantial economic, community and/or environmental benefits (e.g., a maritime academy).
 - v. An unsolicited proposal or idea that returns substantial economic, community and/or environmental benefits and that may facilitate a unique or genuinely innovative use of Port property; provided any such proposal is consistent with the Port's strategic objectives and is accompanied by a business case detailing the feasibility and benefits of the proposed use that allows staff to evaluate the proposal consistent with the Major Transactions guidelines set forth in RE-6 (e.g., a compressed natural gas plant or other environmental or business development opportunity such as a business incubator or composite manufacturing facility).
 - vi. The property, because of legal and/or regulatory restrictions, has limited market appeal (e.g., submerged lands that become habitat restoration).
 - vii. The property has been offered for lease through an appropriate competitive solicitation and either no offers or no sufficiently responsive offers were received (e.g., when the solicitation surfaces a single bidder).

F. Direct Negotiation Procedures:

To undertake direct negotiations with a prospective tenant for a Long-Term Lease, staff must adhere to the following procedures:

- i. Staff must first notify the Chief Executive Officer ("CEO") that one or more of the direct negotiation exceptions may apply. On this basis, the Chief Executive Officer may authorize staff to enter into *exploratory discussions* to determine whether the prospective Long-Term Lease, in fact, meets one or more of the direct negotiation exceptions.
- ii. If staff believes direct negotiations are warranted based on the exploratory discussions, staff must prepare and submit to the CEO a memorandum summarizing the preliminary understanding of the lease proposal, including detail on why the direct negotiation exception applies. The CEO shall either:
 - a. Advise staff to terminate the exploratory discussions and undertake a competitive procurement; or

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- b. Authorize staff to enter to enter into formal negotiations with the prospective tenant.

The CEO must then notify the Commission of the direction given to staff.

- iii. The final step will be Commission authorization to execute the proposed Long-Term Lease. The proposed Long-Term Lease must comply with all applicable Port policies and procedures, including an appropriate valuation of the property. Certain other fundamentals are also inherent in staff seeking Commission authorization. The proposed Long-Term Lease should:

- a. Conform to the Port's strategic objectives;
- b. Reflect a feasible proposal based on an evaluation of the prospective tenant's expertise, experience and financial strength;
- c. Generate fair market rent, unless otherwise approved by the Port Commission for reasons that may relate to substantial, non-monetary public benefits; and
- d. Return substantial economic, community and/or environmental benefits. As used in this policy, "substantial" return means some combination of the following benefits:
 - i. Promotion or enhancement of the Port's mission.
 - ii. Annual net revenue generated.
 - iii. Number of jobs created or retained.
 - iv. Commitment to relevant environmental objectives, including but limited to, sustainable design, construction, operations and/or maintenance; environmental remediation; habitat restoration.
 - v. Commitment to applicable community objectives, including but not limited to, small business utilization goals; organized labor involvement; public access opportunities.

III. COMMENTS:

A. Procurement Method:

In selecting an appropriate solicitation method, staff should carefully weigh the advantages and limitations of one method versus another given the desired objectives for the property and the dynamic nature of the real estate market. For instance, while an RFP

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might be appropriate in certain circumstances, it necessarily dictates that all interested tenants respond within a narrow window and precludes consideration of other potential tenants after the response window has closed. In contrast, a brokerage listing might be more appropriate in certain circumstances to permit evaluation of potential tenants over a longer time horizon that may be better suited to the then current market conditions and/or the property's features.

B. Current Tenant Expansion:

The current tenant expansion exception recognizes that negotiating directly with a current tenant can grow the customer relationship and lead to a successful existing tenant becoming a more successful larger tenant without growing so large as to exclude other interested tenants.

C. Collective Synergy:

The collective synergy exception acknowledges that sometimes the Port has an array of tenants at a facility that represent a critical mass of individual businesses that serve a particular industry sector or community need. The individual businesses value the proximity, access and convenience of complementary businesses as part of their decision for operating on Port property. Maintaining and growing such groups of businesses mitigates potential competitive threats to the cluster and the individual businesses. This, in turn, creates added value for the Port's facility as a whole and maximizes the benefits generated for the broader community.

ATTACHMENTS TO THIS BRIEFING

Attachment PowerPoint

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

None