

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No. 5E
Date of Meeting April 7, 2020

DATE: March 23, 2020

TO: Managing Members

FROM: Dana Henderson, General Counsel

Sponsor: Kurt Beckett, Deputy Chief Executive Officer

SUBJECT: Resolution by The Northwest Seaport Alliance Delegating Additional Authority And Waiving Certain Procurement Requirements Due To Emergency Conditions

A. SYNOPSIS

This action item seeks Managing Member adoption of a proposed resolution that acknowledges the emergency situation posed by COVID-19, describes the impact that the situation poses to the homeports and the Alliance, waives certain competitive solicitation processes as needed, and delegates additional authority to the Northwest Seaport Alliance CEO to manage and respond to the emergency.

The aim of this resolution is twofold. First, to give the CEO the flexibility he may need to quickly manage certain issues (such as procurements, staffing issues, applying for relief funds) during this time of emergency. And secondly, having a resolution like this adopted around the time of the emergency may be helpful in the future if the NWSA seeks reimbursement for emergency-related expenses and losses that the Alliance may in the future claim from federal agencies such as Federal Emergency Management Agency (FEMA) or the Department of Defense (if applicable).

B. BACKGROUND

The U.S. Center for Disease Control and Prevention (CDC) has identified a public health threat posed by COVID-19 both globally and within the United States. In Washington State and King and Pierce Counties, there are documented cases of COVID-19, including deaths caused thereby. COVID-19 is highly contagious, and poses a major public health risk. Washington State Governor Jay Inslee proclaimed a public health emergency for COVID-19 on February 29, 2020 which was followed by a

declaration by the President of the United States of a public national emergency relating to COVID-19. The World Health Organization has declared COVID-19 to be a global pandemic.

The Executive Director of the Port of Seattle made a finding that an emergency exists related to Port of Seattle operations and interests related to COVID-19 on March 16, 2020. The Port of Tacoma waived the competitive solicitation process(es) for purchase of goods and services where deemed required by the Executive Director or his designee, in response to COVID-19 on March 19, 2020.

Most procurements are handled through the homeports, so it is possible that this resolution may not be needed for emergency purchasing. However, it is currently unknown what this emergency will present that may require the CEO to act quickly with regard to purchasing, staffing, completion of public works, application for emergency funding, and the like. This resolution would allow the CEO to proceed with such actions as the emergency requires, and would further require him to report to the Managing Members any action taken under this resolution. This gives the Managing Members oversight and opportunity to ratify the CEO's actions if needed.

Additionally, information has been provided through the Washington Public Ports Association that indicates that the ability to make a claim for federal relief, including from FEMA or the Department of Defense (as applicable) may be more successful if a declaration or resolution akin to the proposed resolution was been completed near in time to the emergency.

The resolution acknowledges that this emergency situation: demands immediate action by the NWSA; could preclude the operation or use of essential NWSA public services and facilities so as to necessitate seeking state, county, federal, or other supplementation of local efforts or resources; necessitates that as a marine cargo gateway, the NWSA take all reasonably necessary lawful efforts to maintain operations to keep the supply chain open and operable; and constitutes a special market condition supports the waiver of competitive bidding requirements for contracts for public works.

The resolution delegates additional authority to the CEO and waives certain procurement requirements under Title 53, RCW, RCW 53.12.270 (Delegation of powers to managing official), RCW 53.57.020(2)(c) (Port Development Authority powers), RCW 39.04.280(3) (Competitive bidding exemptions for emergency procurement), and Chapter 39. 28 RCW (Emergency public works); and 38.52.070(2) (local governments have authority to exercise emergency management powers). The CEO would be delegated authority to exercise such lawful actions through the use and direction of NWSA personnel, services, equipment and such additional acts as the CEO finds necessary in his sole discretion to properly and safely manage this emergency. If the CEO, or his designee exercises any powers or authorities

delegated under the Resolution, the CEO would be required to report such exercise to the Managing Members at the next regular Managing Member meeting with explanation as to why it was necessary to take such action to meet the emergency situation. If required by law, the Managing Members would then be able to take such action in an open session to ratify the CEO's action(s) hereunder. The Resolution would continue until December 31, 2020 unless terminated by law or by further Resolution of the Managing Members.

C. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS

- **No Action Alternative:** Do not enter into this resolution; this course will not change the CEO's delegated authority or the fact of a declaration of public health emergency by other federal, state, and local authorities. Both Homeports have already put in place options for emergency procurements, and most NWSA procurements flow through the Homeports. However, it is unknown at this time whether the CEO will need to move quickly to respond to this emergency, and this resolution would give him some flexibility in dealing with the situation moving forward. Additionally, the statements in this Resolution could prove to be helpful if NWSA later makes a claim for certain types of relief for additional costs or for losses incurred due to COVID-19.
- **Recommended Action:** Enter into the attached proposed Resolution for the reasons set forth above.

D. ATTACHMENTS TO THIS REQUEST

- Computer slide presentation.
- Resolution No. 2020-03

E. PREVIOUS ACTIONS OR BRIEFINGS

Master Policy on Delegation of Authority, Resolution No. 2020-02 (on 4/7/2020 agenda for first reading);
Master Policy on Delegation of Authority, Resolution No. 2018-01

**RESOLUTION BY THE NORTHWEST SEAPORT ALLIANCE
DELEGATING ADDITIONAL AUTHORITY AND WAIVING CERTAIN
PROCUREMENT REQUIREMENTS DUE TO EMERGENCY CONDITIONS**

RECITALS

WHEREAS, novel Coronavirus COVID-19, a respiratory disease that can result in serious illness or death, is caused by a new strain of coronavirus that had not been previously identified in humans and has proven it can easily spread from person to person; and,

WHEREAS, the U.S. Center for Disease Control and Prevention (CDC) has identified a public health threat posed by COVID-19 both globally and within the United States, including within Washington State; and,

WHEREAS, there are documented cases of COVID-19, including deaths caused thereby, within Washington State; and,

WHEREAS, the Washington State Department of Health has confirmed the person-to-person spread of COVID-19 and is finding an increasing risk of exposure and infection to the general public due to its potential to spread quickly; and,

WHEREAS, the U.S. Department of Health and Human Services declared a public health emergency for COVID-19 on January 31, 2020; and,

WHEREAS, Washington State Governor Jay Inslee proclaimed a public health emergency for COVID-19 on February 29, 2020; and,

WHEREAS, the Executive Director of the Port of Seattle made a finding that an emergency exists related to Port of Seattle operations and interests related to COVID-19 on March 16, 2020; and,

WHEREAS, the Port of Tacoma waived the competitive solicitation process(es) for purchase of goods and services where deemed required by the Executive Director or his designee, in response to COVID-19 on March 19, 2020, and,

WHEREAS, the World Health Organization declared COVID-19 a global pandemic on March 11, 2020; and,

WHEREAS, the President of the United States declared public national emergency relating to COVID-19 on March 13, 2020; and,

WHEREAS, there is an emergency public health condition present which impacts the operations of the NWSA and necessitates this Resolution.

NOW, THEREFORE, BE IT DECLARED BY THE MANAGING MEMBERS OF THE NORTHWEST SEAPORT ALLIANCE:

1. **Declaration.** The Northwest Seaport Alliance (NWSA) hereby and expressly finds and declares, based upon the Recitals above, which are adopted herein that COVID-19 has been declared by federal, state, and local authorities as a civil public health emergency which in turn creates an emergency situation that presents a real and immediate threat to the proper performance of essential functions of the NWSA, and that this situation:

A. Demands immediate action by the NWSA to preserve public health, protect life, protect public property, or to provide relief as necessary, particularly as it relates to NWSA operations; and

B. Could, if unattended, preclude the operation or use of essential NWSA public services and facilities with such magnitude or severity as to necessitate seeking state, county, federal, or other supplementation of local efforts or resources exerted or utilized in alleviating the danger, damage, suffering or hardship faced; and

C. Necessitates that as a marine cargo gateway, the NWSA take all reasonably necessary lawful efforts to maintain operations to keep the supply chain open and operable; and

D. Constitutes a special market condition and emergency that supports the waiver of competitive bidding requirements for contracts for public works contracts and purchases pursuant to RCW 39.04.280, and is an unforeseen circumstance beyond the control of the NWSA that is likely to (1) present a real, immediate threat to the proper performance of essential NWSA functions; or (2) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken, such that emergency action is warranted, pursuant to RCW 39.04.280(2)(B).

2. **Delegated Authority.** This Resolution of the NWSA Managing Members acknowledges the Washington State Governor's Proclamation 20-05, by which the Governor proclaimed a State of Emergency for all counties throughout Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State, and as a result, delegates additional authority, and waives certain procurement requirements ("Resolution"). The NWSA Managing Members authorize the NWSA Chief Executive Officer(CEO), or his designee to exercise such emergency powers as may be lawful under applicable laws, regulations, ordinances, or the NWSA's policies, as necessary, including by way of example and not limitation: general port powers under Title 53, RCW, RCW 53.12.270 (Delegation of powers to managing official), RCW 53.57.020(2)(c) (Port Development Authority powers), RCW 39.04.280(3) (Competitive bidding exemptions for emergency procurement), and Chapter 39. 28 RCW (Emergency

public works). Effective upon Managing Member approval and as further detailed in Section 3 below, the CEO is delegated authority to exercise such lawful actions through the use and direction of NWSA personnel, services, equipment and such additional acts as the CEO finds necessary in his sole discretion to properly and safely manage this emergency.

3. Exempt Contracts. Pursuant to RCW 53.19.030 (5), the Managing Members further waive the competitive solicitation process(es) for purchase of goods and services, including personal services, where deemed required by the CEO, or his designee, in response to this COVID-19 health emergency, for term specified in this Resolution.

4. Expanded delegation of authority to CEO to address emergency only. In order to properly delegate and authorize the CEO to prepare for, address, manage, prevent, respond to, and remediate this emergency situation, the CEO shall have all necessary powers to do the following, which is provided for by example and not limitation, but only to the extent that is reasonably related to and necessitated by the emergency situation: make necessary rules and regulations; obtain supplies, equipment, personal property, professional, procured or technical services, etc. (including selecting and awarding such contracts as necessary); complete such public works as defined by RCW 39.04.010; authorize overtime and/or extended leave for personnel; requisition of personnel and material; obtain emergency funding and permitting through federal, state and local agencies; and take such other lawful acts as may be necessary and reasonably related to the emergency situation declared hereunder.

3.1 The foregoing powers and authorities are to be read consistent with the NWSA's existing Delegation of Authority- Resolution No. 2020-02; however, if there is a conflict between the Delegation of Authority- Resolution No. 2020-02 and this Resolution, this Resolution shall control.

3.2 If the CEO, or his designee exercises any powers or authorities delegated under this Resolution, the CEO shall report such exercise to the Managing Members at the next regular Managing Member meeting with explanation as to why it was necessary to take such action under this Resolution to meet the emergency situation articulated herein. If required by law, the Managing Members will take such action in an open session to ratify the CEO's action(s) hereunder.

4. Termination. This Resolution shall continue in full force and effect until December 31, 2020 unless terminated by law or by further Resolution of the Managing Members.

ADOPTED by the Managing Members of the Northwest Seaport Alliance at a Meeting held this 7th day of April, 2020.



Item No.: 5E
Date of Meeting: April 7, 2020

Resolution Delegating Additional Authority And Waiving Certain Procurement Requirements Due To Emergency Conditions

Presenter: Dana Henderson
Title: General Counsel

Action Requested

Request Managing Members of the Northwest Seaport Alliance (NWSA) Adoption of a Resolution delegating additional authority to the CEO and waiving certain procurement requirements due to emergency conditions.



Background

- Emergency has been declared by federal, state, and local authorities regarding COVID-19.
- This state of emergency has adverse impacts to the NWSA.
- Both homeports have a similar declaration in place that allows for greater procurement and decision-making authority.
- CEO and staff are working diligently to respond to emergency situation, and as the situation develops, CEO may need expanded authority to act quickly.
- Funding to reimburse NWSA for costs and losses associated with this emergency may be easier to obtain if resolution to this effect is adopted by governing body.



Desired Outcome/Effect of Resolution

- Acknowledgment of the emergency situation posed by COVID-19 and description of the impact that the situation poses to the NWSA
- Waives certain competitive solicitation processes as needed
- Delegates additional authority to the NWSA CEO to nimbly manage and respond to the emergency
- Requires CEO report to MM of all actions taken under emergency resolution
- May prove to be helpful in the future if NWSA seeks to make a claim for federal relief



Legal Authority for Resolution

- General port powers under Title 53, RCW
- RCW 53.12.270 (Delegation of powers to managing official as granted by commission)
- RCW 53.57.020(2)(c) (Port Development Authority powers – PDA Managing Members have same broad authorities as granted by homeports) RCW 53.57.020 (2)(c)
- RCW 39.04.280(3) (Competitive bidding exemptions for emergency procurement); and .280 (2)(b) (the person by the governing body to act in an emergency may declare an emergency, waive competitive bidding, and award all necessary contracts on behalf to address the emergency situation)
- RCW 39.28 (Emergency public works)
- RCW 38.52.070(2) (local governments have authority to exercise emergency management powers).



Alternatives Considered and Their Implications

- No Action Alternative: Do not adopt this resolution
 - Will not change the CEO's delegated authority
 - Emergency has already been declared by other federal, state, and local authorities, NWSA's declaration could be superfluous.
 - Both Homeports have already put in place options for emergency procurements, and most NWSA procurements flow through the Homeports.
 - This resolution would give CEO some flexibility in dealing with the situation moving forward.
 - The statements in this Resolution could prove to be helpful if NWSA later makes a claim for certain types of relief for additional costs or for losses incurred due to COVID-19.
- Recommended Action: Adopt proposed resolution.





Action Requested

Request Managing Members of the Northwest Seaport Alliance (NWSA) Adoption of a Resolution delegating additional authority to the CEO and waiving certain procurement requirements due to emergency conditions.