

# COMMISSION AGENDA

Item No: 3B

Meeting: 03/19/2020

**DATE:** March 10, 2020

**TO:** Port Commission

**FROM:** Eric Johnson, Executive Director

Sponsor: Erin Galeno, CAFO

Project Manager: Mark Little, Director, Contracts and Purchasing

**SUBJECT:** Waiver of Competitive Solicitation Requirements in Response to COVID-19 Threat

## A. ACTION REQUESTED

Request approval of Resolution No. 2020-03-PT waiving the competitive solicitation processes for purchase of goods and services where deemed required by the Executive Director, and delegating to the Executive Director, or his designee, authority to make a written finding of the existence of an emergency in response to COVID-19. This Resolution applies only to the purchase of goods and services where the total value is not greater than \$300,000 for any single procurement. This Resolution will remain in effect until December 31, 2020, unless extended by the Port of Tacoma Commission.

## B. BACKGROUND

The Coronavirus Disease 2019 (COVID-19, caused by SARS-CoV-2) is a respiratory illness that can spread from person to person. It has quickly become a global health concern, is now present in the Port's region and responding to this threat may require nimble action by the Port.

On February 29, 2020, the State of Washington declared a state of emergency due to the outbreak of COVID-19. As a result, state agencies are exempt from using the competitive solicitation process for the purchase of goods and services related to COVID-19. While the Port uses contracts issued by the State of Washington, it is not a state agency. RCW 53.19.030(5) grants authority to the Port Commission to exempt specific contracts or groups of contracts from the competitive solicitation process when it has been determined that a competitive solicitation process is not appropriate or cost-effective. Approval of this requested action may substantially accelerate the delivery of needed goods and services. There have not been any prior Commission action related to this subject.

## C. FINANCIAL SUMMARY

Any expenditures associated this action will be expensed as incurred.

## D. NEXT STEPS

Amend existing procurement processes as provided under Resolution No. 2020-03-PT and obtain goods and services as required to adequately respond to the COVID-19 threat.

**A Resolution of the Port of Tacoma Commission** of the Port of Tacoma, Washington, (1) amending the Commission-exempted specific classes or groups of contracts from the competitive solicitation process purchase of goods and services in response to Covid-19 and amending Port of Tacoma Resolution 2018-01, as was previously modified by Commission vote on June 13, 2019, for a defined term, which shall sunset on December 31, 2020, (2) finding that special market conditions exist, and (3) delegating to the Executive Director authority to make a written finding of the existence of an emergency as provided herein.

WHEREAS, Chapter 53.19 RCW, establishes a policy of open competition for all personal service contracts entered into by port districts unless specifically exempted; and

WHEREAS, Chapter 53.19 RCW defines personal service as "professional or technical expertise provided by a consultant to accomplish a specific study, project, task or other work statement which may not reasonably be required in connection with a public works project meeting the definition in RCW 39.04.010(4);" and

WHEREAS, Chapter 53.19 RCW 53.19.030 (5) grants authority to the Port Commission to exempt specific contracts or groups of contracts from the competitive solicitation process when it has been determined that a competitive solicitation process is not appropriate or cost-effective; and

WHEREAS, in compliance with the requirements of the applicable RCWs, the Commission formerly exempted specific classes or groups of contracts from the competitive solicitation process for personal services within Resolution No.2019-03; and

WHEREAS, Port of Tacoma's ("Port") Master Policy, Delegation of Authority Port of Tacoma Resolution 2018-001, as was previously modified by Commission vote on June 13, 2019, directs the Port's Executive Director to maintain compliance with statutory procedures, where applicable, in connection with the procurement of all personal services contracts and contracts for the acquisition of utilities, materials, equipment and services, and

WHEREAS, RCW 39.04.280 provides uniform exemptions to competitive bidding requirements when awarding contracts for public works and contracts for purchases, and provides that competitive bidding requirements may be waived by the governing body of an agency for various events including:

- (b) Purchases involving special facilities or market conditions;
- (c) Purchases in the event of an emergency; and

WHEREAS, Coronavirus disease 2019 (COVID-19, also known as SARS-CoV-2) is a respiratory illness that can spread from person to person. The form of Coronavirus which can cause COVID-19 has quickly become a global health concern is now present in the Port's region and may require nimble action on the part of the Port to respond to this health issue, and

WHEREAS, the Commission finds that this current health concern is an appropriate basis to amend Resolution 2018-001, as was previously modified by Commission vote on June 13, 2019, to add additional classes or groups of contracts to be exempt from competitive procurement for a specified term; and

WHEREAS, the Commission also finds that pursuant to RCW 39.04.280(1)(b), this current health concern constitutes a special market condition that supports the waiver of competitive bidding requirements for contracts for purchases, and is an unforeseen circumstance beyond the control of the Port that is likely to (a) present a real, immediate threat to the proper performance of essential functions; or (b) 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.

NOW, THEREFORE, BASED UPON THE ABOVE FINDINGS, BE IT RESOLVED by Port of Tacoma Commission, as follows:

1. Waiver. The Commission waives the competitive solicitation process(es) for purchase of goods and services, including personal services, where deemed required by the Executive Director, or his designee, in response to the health concern of COVID-19, for a specified term, and pursuant to the terms of this Resolution.
2. Delegation of Emergency Declaration. The Commission authorizes the Executive Director or his designee, to act in the event of an emergency, and to declare an emergency situation exists, waive competitive bidding requirements, and award all necessary public works and purchased goods contracts on behalf of the Port to address this emergency situation, provided further, that if a contract is awarded without competitive bidding due to this emergency, the Executive Director is further delegated authority to make a written finding of the existence of an emergency and shall duly file such declaration with the Commission and into the Port's records no later than two weeks following the award of the such contract(s), all as allowed by RCW 39.04.280(2)(b).
3. Dollar Limitation. This Resolution applies only to the purchase of goods and services where the total value is not greater than \$300,000 for any single procurement.
4. Sunset. This Resolution will remain in effect until December 31, 2020, unless extended by this Port of Tacoma Commission.

ADOPTED by a majority of the members of the Port of Tacoma Commission at regular meeting held on the 19<sup>th</sup> day of March 2020, a majority of the members being present and voting on this resolution and signed by its President and attested by its Secretary under the official seal of said Commission in authentication of its passage this 19<sup>th</sup> day of March 2020.

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John A. McCarthy, President  
Port of Tacoma Commission

ATTEST:

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Don Meyer, Secretary  
Port of Tacoma Commission

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Item No.: 3B  
Date of Meeting: March 19, 2020

**COVID-19 Response:**  
**Waiver of Competition**  
**Solicitation Requirements**

March 19, 2020



## Action Requested

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