

COMMISSION AGENDA

Item No. _____

DATE: October 29, 2008Meeting of 11/06/08**TO:** Timothy J. Farrell, Executive Director**FROM:** Dorcas Nepple, Contracts Director**SUBJECT:** RESOLUTION 2008-16 TO EXEMPT CERTAIN GROUPS OR CLASSES OF CONTRACTS FROM THE COMPETITIVE SELECTION PROCESS FOR PERSONAL SERVICES

A. ACTION REQUESTED

Request Commission authorization of Resolution 2008-16 to exempt certain groups or classes of contracts from the competitive selection process for personal services.

B. BACKGROUND

At the meeting of September 4, 2008, Commissioners were briefed on new legislation, Chapter 53.19 RCW, establishing open competition requirements for personal services contracts. Personal services, as described in the RCW, are those contracts to hire consultants with professional or technical expertise for the purpose of accomplishing a specific study, project, or task not reasonably required in connection with a public works project. Such contracts are awarded based on best value, a combination of qualifications and price. Examples of personal services include, accounting services, appraisal services, environmental planning, grant writing, graphic design, lobbying services, market research, public relations and strategic planning, to name a few.

The statute mandates open competition for contracts above \$50,000. Personal service contracts from \$50,000 to \$200,000 only require evidence of competition—showing the Port requested quotes from two or more vendors. For those contracts greater than \$200,000, the statute requires a formal competitive solicitation.

The RCW also clarifies where the following personal services are expressly exempt or not subject to the requirements noted above:

- Contracts under \$50,000 (contracts shall not be structured to evade competitive solicitation).
- Emergency contracts – must be made available for public inspection and filed with Commission within 7 days.

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- Sole source contracts – Justification shall be based on the uniqueness of the service; sole availability at the location required; or warranty or defect correction service obligations of the consultant.
- Contracts which are reasonably required in connection with a public works project (i.e., strategic planning for the purpose of building a terminal).
- Contracts for professional services which are entered into under chapter 39.80 RCW (A&E).
- Contracts awarded to companies that furnish a service where the tariff is established by the utilities and transportation commission or other public entity.
- Intergovernmental agreements awarded to any governmental entity, whether federal, state, or local and any department, division, or subdivision thereof.
- Contracts awarded for services to be performed for a standard fee, when the standard fee is established by the contracting agency or any other governmental entity and a like contract is available to all qualified applicants.
- Contracts for services which are necessary to the conduct of collaborative research if prior approval is granted by the funding source.
- Contracts for the employment of expert witnesses for the purposes of litigation or legal services to supplement the expertise of port staff.

The statute further allows the Port Commission to waive certain personal service agreements from open competition requirements where it is determined that a competitive selection process is not appropriate or cost-effective. Staff has identified the following regularly issued personal service contracts as meeting the standard for exemption:

- Port of Tacoma representatives, domestic and overseas.
- Employee benefits vendors (including health benefits, and other benefits where to change vendors would be disruptive to Port employees).
- Executive management coaches.
- Certain non-profit and community entities providing a special service to the Port, as well as a demonstrated social benefit for the citizens of Pierce

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County, such as the Economic Development Board, or the World Trade Center.

- A joint effort with Port customers or terminal operators where the customer or terminal operator has an existing consulting arrangement.

None of the groups or classes of contracts identified in the resolution shall preclude the Director of Contracts from following a competitive selection process when sufficient time and the opportunity exist to obtain the best value for services.

C. CONCLUSION

Request Commission authorization of Resolution 2008-16 to exempt certain groups or classes of contracts from the competitive selection process for personal services.

cc: Deborah Givens

**PORT OF TACOMA
RESOLUTION NO. 2008-16**

A RESOLUTION of the Port Commission of the Port of Tacoma, Washington, exempting specific classes or groups of contracts from the competitive solicitation process for personal services.

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, Purchased services and professional services for architect and engineering, land surveying and landscape architects are not subject to the requirements of Chapter 53.19 RCW; 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 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:

NOW, THEREFORE, BE IT RESOLVED by the Port Commission of the Port of Tacoma, as follows:

Pursuant to Chapter 53.19 RCW, the Port Commission formally endorses the provisions set forth regarding the solicitation of personal services except for the following classes or groups of contracts which are hereby exempt from the competitive solicitation process:

- Port of Tacoma representatives, domestic and overseas.
- Benefit vendors.
- Executive management coaches.
- Certain non-profit and community entities which provide a special service as well as a demonstrated social benefit for the citizens of Pierce County.
- Through a joint effort with Port customer or terminal operators where the customer or terminal operator has an existing consulting arrangement.

None of the identified groups or classes of contracts shall be precluded from following the competitive selection process when the Director of Contracts determines there is sufficient time and the opportunity exists to obtain the best value for services.

ADOPTED by a majority of the members of the Port Commission of the Port of Tacoma at a regular meeting held on the **6th day of November 2008**, 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 **6th day of November 2008**.

President of the Port Commission
of the Port of Tacoma

ATTEST:

Secretary of the Port Commission
of the Port of Tacoma

I, **COMMISSION SECRETARY**, the duly chosen, qualified and Secretary of the Port Commission of the Port of Tacoma, DO HEREBY CERTIFY that the foregoing resolution is a true and correct copy of Resolution **No. 200X-XX** of said Commission, duly adopted at a regular meeting thereof, held on the **6th day of November 2008**, and duly authenticated in open session by the signatures of the Commissioners present and voting in favor thereof and the seal of the Commission.

Secretary of the Port Commission
of the Port of Tacoma