

PORT OF OLYMPIA COMMISSION
Resolution 2015-14

A Resolution, of the Port of Olympia Commission, providing for the delegation of authority to the Executive Director and his/her designees for matters related to Port Contracts and Acquisitions Policies

WHEREAS, Section 53.12.270 of the Revised Code of Washington provides authority to the Port Commission for delegation of powers to the Executive Director; and

WHEREAS, the Port Commission has adopted policy directives delegating administrative authority to the Executive Director and his/her designees for the purpose of expeditious administration of the Port; and

WHEREAS, the Port Commission has from time to time found it necessary to amend and revise such directives due to changes in law and/or operations of the Port; and

WHEREAS, the Port Commission now wishes to provide a master policy directive providing for the delegation of authority to the Executive Director or his or her designee for matters related to Port Contract and Acquisitions Policies, and

WHEREAS, with the revision to Exhibit "A", this resolution supersedes Resolution 2012-09 Contracts and Acquisitions, and

WHEREAS, the Executive Director will keep the Commission apprised of changes to Port administrative policies.

THEREFORE, BE IT RESOLVED to insure uniform application of these policies, questions or requests for interpretation shall be directed to the Executive Director.

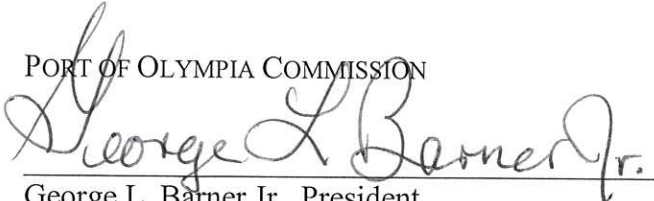
BE IT FURTHER RESOLVED that the master policy directive of the Port Commission of the Port of Olympia as set forth as Exhibit "A" attached to this Resolution and incorporated herein by such reference is for the purpose of providing for the delegation of authority to the Executive Director or his or her designee for matters related to Port Contracts and Acquisitions Policies.

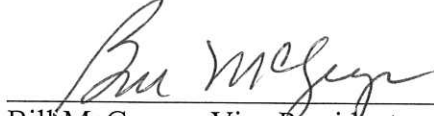
BE IT FURTHER RESOLVED that the Port of Olympia Commission delegates the authority to the Executive Director to create procedures for the above listed policies. In addition, the Port Commission delegates the authority to the Executive Director to create other administrative policies and procedures as deemed necessary to ensure proper conduct by the Port of Olympia employees.

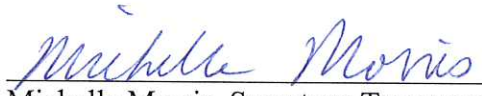
BE IT FURTHER RESOLVED to ensure transparency in all aspects of Port operations, the Port will comply with legal requirements associated with public meetings, public records, and will ensure that information surrounding Port decisions are made available to the public through all reasonable means.

ADOPTED BY THE Port of Olympia Commission this 28th day of September, 2015.

PORT OF OLYMPIA COMMISSION


George L. Barner Jr., President


Bill McGregor, Vice President


Michelle Morris, Secretary-Treasurer

**PORT OF OLYMPIA COMMISSION
Resolution 2015-14**

**Exhibit A - Index of Contracts and Acquisitions Policies
Contracts and Acquisitions**

**A Resolution, of the Port of Olympia Commission, providing for the delegation of authority
to the Executive Director and his/her designees for matters related to Port Contracts and
Acquisitions Policies**

1. Public Works Contracting (Policy 1004)
 - Utilization of Port Crews
 - Competitive Bidding Requirements – Exemptions
2. Purchased Services Agreements including Contracts for Acquisition of Utilities, Material, Equipment, Supplies, and Purchased Services (Policy 1005)
3. Architectural, Engineering, and Technical Services, Including Surveyors and Landscape Architects (Professional Services) (Policy 1001)
 - Personal Services
 - Amendments to Professional and Personal Services
4. Open Order Contracts (Policy 1007)
5. Grant Application & Acceptance (Policy 1008)
6. Legal Services and Other Representation (Policy 1009)
 - Adjustment and Settlement of Claims Other Than Claims Subject to Litigation
 - Authority to Wave Attorney Client Privilege
7. Disadvantaged Business Enterprise Program for Federal Aviation Administration Funded Projects at the Olympia Regional Airport Policy (Policy 1010)

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**Exhibit A
Contracts and Acquisitions**

A Resolution, of the Port of Olympia Commission, providing for the delegation of authority to the Executive Director and his/her designees for matters related to Port Contracts and Acquisitions Policies

1. Public Works Contracting (Policy 1004)

A. Major Public Works Construction Work Contracts:

1. For all contracts which require the performance of work, and where the estimated total cost is estimated to exceed \$300,000, Commission approval shall be required for:
 - a. The solicitation of bids;
 - b. The award of contract to the low responsive and responsible bidder; and
 - c. The acceptance of the work as complete.

The Executive Director or designee is authorized to carry out, without prior referral to the Commission, all other actions required by applicable statutes or necessary for contract administration, including the public opening of sealed bids, preliminary to the acts required to be performed by the Commission at open meeting.

2. Change Orders for Major Construction Work Contracts:

Where major Public Works contracts for the performance of work have been awarded and under which the work is in progress, and individual changes in plans and/or specifications are necessary to properly accomplish the work, the Executive Director is authorized to execute individual change orders to the contract provided the following conditions are met:

- a. The accumulated total of all change orders does not exceed 10% of the original contract amount,
- b. The revised total of the contract is within the approved project budget.
- c. Any time extension for completion of said contract which accompanies said change order does not exceed the total of forty-five (45) days, except a change order extending the contract determined time beyond forty-five (45) days where it is to be a result of fire or other casualties not the fault of the contractor; strikes, riots and other civil disorders; unsuitable weather, or other acts which result in suspension of work by order of the Port's Engineer supervising the contract.

- d. If the project scope does not exceed the Commission approved Capital Budget line item; in all other cases, the change order will be brought before the Commission before obligation of any funds.

B. Small Works Roster Construction Contracts:

1. Pursuant to RCW 53.08.120, where the total contract price, including applicable taxes and change orders, does not exceed Three Hundred Thousand Dollars (\$300,000) and the contract award conforms, as nearly as practicable, to the requirements of RCW 39.04.155, and the work is within the authorized project budget, the Executive Director is authorized to carry out, without prior referral to the Commission, all actions required by applicable statutes or necessary for contract administration, including:
 - a. The solicitation of bids;
 - b. The award of contract, giving weight to the contractor submitting the lowest and best proposal, and whenever it would not violate the public interest, such contracts shall be distributed equally among contractors, on the small works roster; and
 - c. The acceptance of the work as complete.

2. Change Orders for Small Works Construction Contracts:

Where small works contracts for the performance of work have been awarded and under which the work is in progress, and individual changes in plans and/or specifications are necessary to properly accomplish the work, the Executive Director is authorized to execute individual change orders to the contract provided the following conditions are met:

- a. The accumulated total of the original contract plus all change orders does not exceed \$300,000.
- b. The revised total of the contract is within the approved project budget.
- c. Any time extension for completion of said contract which accompanies said change order does not exceed the total of forty-five (45) days, except a change order extending the contract determined time beyond forty-five (45) days where it is to be a result of fire or other casualties not the fault of the contractor; strikes, riots and other civil disorders; unsuitable weather, or other acts which result in suspension of work by order of the Port's Engineer supervising the contract.
- d. If the project scope does not significantly vary from the Commission approved Capital Budget, in all other cases, it will be brought before the Commission before obligation of any funds.

C. Emergency Construction Contracts:

If needed for the immediate execution of a contract for work, the Executive Director, pursuant to the procedures of RCW 39.04.020, (as may be amended or succeeded), is authorized to declare and make appropriate findings that an emergency situation exists, waive the competitive bidding requirements, and execute all contracts necessary to address the emergency situation.

The Executive Director shall notify the Commission within 48 hours of the finding of emergency.

The Executive Director or his or her designee shall submit to the Port Commission the proposed ratification of the finding of emergency and any contracts awarded and/or executed pursuant to that finding at the next regularly scheduled Commission meeting.

“Emergency” means unforeseen circumstances beyond the control of the Port that either: (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.

D. Reports

Notwithstanding the authorities granted in these preceding Section 2. A, B and C, the Executive Director shall keep the Commission advised of all contractual obligations by providing quarterly reports listing all purchase orders issued over \$100,000, and all open contracts, including, but not limited to, the date of award, authorized and original award amounts, all amendments, change orders, and amounts spent.

Utilization of Port Crews:

- A. Consistent with RCW 39.04.020, RCW 53.08.120 and RCW 53.08.135, the Executive Director is authorized to use necessary Port Crew workers for operations and maintenance of facilities pursuant to Port Commission-approved labor agreements, if applicable.
- B. Port Commission approval is required for public works projects, which are new construction or major modifications of Port facilities to be carried out by Port crews when the total estimated cost exceeds One Hundred Thousand (\$100,000). For projects less than \$100,000, the Executive Director may authorize the Port Crew work, provided the funds are within the approved project capital budget.

Competitive Bidding Requirements – Exemptions (RCW 39.04.280):

When the competitive bidding requirements are waived, the Executive Director shall require documentation be filed stating the nature of the purchase or work, and the justification for determining the exemption criteria was met.

2. Purchased Services Agreements (Policy 1005)

Contracts for Acquisition of Utilities, Materials, Equipment, Supplies and Purchased Services

The Executive Director shall have the responsibility for following all statutory requirements and procedures in connection with all contracts for the acquisition of utilities, materials, equipment, supplies and purchased services. Utilities, materials, equipment, supplies and services (including services provided by public agencies) may be acquired on the open market, pursuant to published tariffs, or by competitive bidding when necessary for the normal maintenance and operations of the Port, and no prior Port Commission approval shall be required but shall, where appropriate, be approved as part of normal monthly expenses and shall be within authorized budgets. Where a requirement exists for formal competitive bidding, the Executive Director may execute contracts for the acquisition of utilities, materials, equipment, supplies and purchased services when:

- A. The contract or purchase order price for one year does not exceed Three Hundred Thousand (\$300,000), or if specifically identified in the annual budget, the amount shown in such budget, and the contract provides for no more than two (2) options to extend the contract for one (1) year periods, provided that the basic contract or purchase order price and any contract extensions must be within appropriate annual budget limits.

3. Professional Services (Policy 1001)

Architectural, Engineering, and Technical Services, Including Surveyors and Landscape Architects. (Professional Services)

The Executive Director is authorized to contract with qualified Professional Services providers to provide such services as required for maintenance, engineering work or small projects of the Port.

Professional services means professional services rendered by any persons contracting to perform activities within the scope of the professional practice of architecture, engineering, land surveying and landscape architect as defined in RCW Chapters 18.08, 18.43, and 18.96, including as required for preliminary engineering, planning, environmental permitting, construction permitting, project scoping, construction management; or for similar purposes reasonably required in connection with public works. Professional services shall be with qualified firms that are licensed in the State of Washington to provide such services.

Selection and reimbursement for such services shall follow all required statutory procedures and shall be consistent with normal established fees paid for such services.

Where necessary in the conduct of normal Port operations, the Executive Director may arrange for such services subject to the following conditions:

- A. The competitive selection process was utilized, and the fee to the same firm on any single project or closely related work does not exceed the amount of fifty thousand dollars (\$50,000), and the funds are within the approved project capital budget.
- B. The competitive selection process was not utilized, and the fee to the same firm on any single project or closely related work does not exceed the amount of twenty five thousand dollars (\$25,000), and the funds are within the approved project capital budget.

The Executive Director will endeavor to use a variety of firms, including small business and women-owned business firms, based on the nature of the work and the expertise of the firms.

Personal Services:

The Executive Director shall be responsible for obtaining personal services when deemed necessary in carrying out normal Port operations and provided all applicable legal requirements are met.

Personal services shall be provided by a consultant with professional or technical expertise 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 of RCW 39.04.010(4). Personal services do not include purchased services as defined in RCW 53.19.010(8) or professional services procured using the competitive selection requirements in Chapter 39.80 RCW (A&E).

- A. The Executive Director is authorized to contract for such services where the estimated cost of the proposed service does not exceed the amount of twenty-five thousand (\$25,000), and the funds are within the approved appropriate annual budget.

- B. Selection, contracting and payment for all such services shall follow all required statutory procedures. All Port of Olympia policies and procedures shall conform to RCW 53.19.
- C The Executive Director is authorized to make a determination as to whether a substantial change in the scope of work specified in the contract warrants the work to be awarded as a new contract.

Amendments to Professional and Personal Services:

Where contracts for services are subject to approval by the Commission, increases in the approved contract amount may be approved by the Executive Director without prior approval of the Commission for amounts not to exceed 10% of the last Commission approved total, provided the funds are within the approved appropriate annual budget.

4. Open Order Contracts (Policy 1007)

Open Order Contract is defined by the Port of Olympia as a contract for alteration, repair, renovation, and maintenance of public infrastructure, or consultant services, that is bid and awarded without a specific scope of work, but is categorized around specific types of work or trades. Open Order contracts involve multiple work orders on properties owned by the Port of Olympia. The contract has a pre-defined expiration date, and a set “not to exceed” amount. Open Order contracts are not to be used for contracts estimated greater than \$300,000.

The Executive Director is authorized to acquire services using the open order contracting method, when the total contract does not exceed \$300,000, and is within the approved appropriate budget.

Selection, contracting and payment for all such services shall follow all required statutory procedures.

5. Grant Application & Acceptance (Policy 1008)

- A. The Executive Director or designee is authorized to pursue and accept, without prior referral to the Commission, all grant opportunities, when the Grantor does not require official Commission action, under the following condition:
 - 1. The program(s) or project(s) are listed in the Port Commission Adopted Annual Operating Budget, Capital Investment Plan, or Strategic Plan.
 - 2. The program(s) or project(s) are not listed in the documents noted in (1) above, *and* the grant requires a Port contribution of new capital funds or annual operating expenses estimated not to exceed \$300,000.

6. Legal Services and Other Representation (Policy 1009)

The Executive Director and Commission, shall be responsible for management and supervision of all legal services required by the Port and for legal services associated with litigation in which the Port has an interest, direct or indirect.. For purposes of this policy, “litigation” shall mean the assertion of any position, right or responsibility by or against the Port (or in which the Port may have an interest) which has been filed in any court of general jurisdiction, be it state or federal, or any quasi-judicial or administrative forum. The Executive Director and Port Legal Counsel shall confer with the Commission on legal issues for guidance and policy direction.

A. Legal Services

The Executive Director, in consultation with the Port Commission, is authorized to retain Port Legal Counsel, to provide legal services that arise in the conduct of Port business as general counsel to the Port. Such engagement shall be upon authorization given by the Executive Director, when satisfied that such representation is necessary to the adequate protection of the Port's legal rights and interests. When Port Legal Counsel represents the Port in litigation, the Executive Director should also be satisfied that such representation is necessary to the adequate preparation and representation of the Port's position in such litigation and shall, whenever practicable, include consideration of an evaluation prepared by Port Legal Counsel of the litigation and an estimate of the probable cost of legal fees, expert fees and other litigation costs.

B. Engagement of Other Legal Counsel Representatives

In connection with litigation or other legal matters in which the Port has a direct or indirect interest, the Executive Director may engage, or cause to be engaged through Port Legal Counsel, other attorneys or firms to represent the Port in specific areas or on specific matters. Such engagement shall be upon authorization given by the Executive Director, when satisfied that such representation is necessary to the adequate protection of the Port's legal rights and interests. When engaged to represent the Port in litigation, the Executive Director shall also be satisfied that the engagement is necessary for the adequate preparation and representation of the Port's position in such litigation and shall, whenever practicable, include consideration of an evaluation prepared by the Port's General Counsel of the litigation and an estimate of the probable cost of legal fees, expert fees and other litigation costs.

C. Engagement of Experts

The Executive Director may engage or cause to be engaged through Port Legal Counsel or other attorneys or firms retained pursuant to Paragraph B above, such experts as may be necessary to the orderly preparation of litigation in which the Port has a direct or indirect interest, within limitations otherwise prescribed in Sections 7 and 8 herein. Such engagement shall be upon authorization given by the Executive Director after having been satisfied that such expenditure is necessary to the adequate preparation and representation of the Port's position in such litigation and shall wherever practicable include evaluation of the litigation and an estimate of the probable cost of such experts.

D. Settlement of Claims Subject of Litigation

Any matter which is the subject of litigation may be compromised and settled by the Executive Director or designee without prior reference to the Commission provided that all of the following conditions are met:

- (1) The amount in controversy as stated in the pleadings does not exceed One Hundred Thousand (\$100,000.00); and
- (2) The Port's Legal Counsel or other retained attorneys or firms shall certify to the Executive Director that such compromise and settlement is justified on the basis of the following:

1. Claims filed against the Port
 - a. The likelihood that a judgment rendered in the case would be in the amount claimed, or higher than the amount claimed, or that there is

reasonable cause to believe that there is considerable exposure of the liability for the Port; or

b. The likelihood that the expenses involved in litigation would be unnecessarily high in relation to the amount claimed, or the likely result.

2. Claims filed on behalf of the Port

a. That the determination to settle the claim outweighs the risk of continuing the litigation; or

b. That the settlement of the claim would provide prompt payment to the Port and eliminate extensive delays; or

c. The proposed offer of settlement is reasonable in light of the claim asserted.

Adjustment and Settlement of Claims Other Than Claims Subject to Litigation: (except those as referenced above)

The Executive Director shall be responsible for the observance of necessary procedures whereby the adjustment and final settlement of all claims, either against or on behalf of the Port, shall be carried out. Necessary procedures in the handling of such claims shall include the following:

A. For purposes of this section, "Claim" shall mean the assertion of any position, right or responsibility by or against the Port, but not including (1) accounts receivable or (2) claims asserted by or against the Port which have become the subject of litigation as defined in Section 9 above.

B. No claims against the Port shall be considered unless and until proper notice has been serviced by the claimant upon the Port.

C. Any individual claim which exceeds Twenty-Five Thousand Dollars (\$25,000) may be processed in all respects (except for final approval and payment) by the Executive Director and Port Counsel. Claims which in the opinion of the Executive Director may exceed Twenty-five Thousand Dollars (\$25,000) shall be reported to the Port Commission promptly.

D. Any single claim not exceeding Twenty-five Thousand Dollars (\$25,000), and which will be paid from the Port's current year operating revenues, may be adjusted and settled and paid by the Executive Director provided that all of the following conditions are met:

1. Port Legal Counsel or other retained attorneys or firms shall certify to the Executive Director that payment of the claim is justified on the basis of the following:

a. Claims filed against the Port:

1) A substantial likelihood that the Port is or could be found liable; or

2) The likelihood that a judgment rendered in the case would be in the amount claimed, or higher than the amount claimed or that there is reasonable cause to believe that there is considerable exposure of liability for the Port; or

- 3) The likelihood that the expenses involved litigation would be unnecessarily high in relation to the amount claimed, or the likely result.
- b. Claims filed on behalf of the Port:
- 1) That the determination to settle the claim outweighs the risk of resorting to litigation;
 - 2) That the settlement of the claim would provide prompt payment of the Port and eliminate extensive delays; and
 - 3) The proposed offer of settlement is reasonable in light of the claim asserted.
2. All such claims, when paid, shall be reported to the Port Commission monthly.

Authority to Waive Attorney-Client Privilege:

The Executive Director has authority to waive the Port's attorney-client privilege when, after consultation with the Commission, and upon recommendation of Port Legal Counsel, it is in the best interest of the Port to do so. This authority to waive attorney-client privilege cannot be delegated, and no other member of Port staff nor any individual Commissioner has authority to waive the attorney-client privilege on behalf of the Port.

7. Disadvantaged Business Enterprise Program for Federal Aviation Administration Funded Projects at the Olympia Regional Airport (Policy 1010)

The Olympia Regional Airport has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U. S. Department of Transportation (DOT), 49 CFR Part 26. The Olympia Regional Airport has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Olympia Regional Airport has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Olympia Regional Airport to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

- a. To ensure nondiscrimination in the award and administration of DOT – assisted contracts;
- b. To create a level playing field on which DBEs can compete fairly for DOT – assisted contracts;
- c. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- d. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- e. To help remove barriers to the participation of DBEs in DOT assisted contracts;
- f. To assist the development of firms that can compete successfully in the market place outside the DBE Program.