



AGENDA\*  
Regular Commission Meeting  
Port of Portland Headquarters  
7200 N.E. Airport Way, 8<sup>th</sup> Floor  
January 9, 2019  
9:30 a.m.

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**Minutes**

Approval of Minutes: Regular Commission Meeting – December 12, 2018

**Executive Director**

Approval of Executive Director's Report – December 2018

**Public Comments**

**General Discussion**

Confederated Tribes of the Grand Ronde	<i>DAVID HARRELSON</i>
Federal, State and Local Government Relations Updates	<i>ANN GRAVATT IVO TRUMMER EMERALD BOGUE</i>
Port of Portland's Equity Plan	<i>BOBBI STEDMAN STEVE NAKANA</i>

**General Discussion and Public Hearing**

Port of Portland Transportation Improvement Plan	<i>PHIL HEALY</i>
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**Consent Items**

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| 1. CITY OF GRESHAM ENTERPRISE ZONE BOUNDARY CHANGE<br>Requests consent to a boundary amendment of the Gresham Enterprise Zone.   | <i>EMERALD BOGUE</i> |
| 2. PROCUREMENT CONTRACT – CATERPILLAR BULLDOZER – NAVIGATION DIVISION<br>Requests approval to award a procurement contract to Peterson Machinery Co. for the purchase of a Caterpillar bulldozer for the Port of Portland Navigation Division. | <i>CHET THOMAS</i>   |

**Action Item**

3. EXEMPTION FROM COMPETITIVE BIDDING FOR ON-CALL  
GENERAL CONTRACTING PROGRAM

*KEN WILLHITE*

Requests approval of an exemption from competitive bidding requirements, enabling the Port of Portland to use a request for proposals process to procure public improvement contracts for relatively small-scale public improvement projects at various Port facilities and locations.

**CITY OF GRESHAM ENTERPRISE ZONE BOUNDARY CHANGE**

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January 9, 2019

Presented by: Emerald Bogue  
Regional Affairs Manager**REQUESTED COMMISSION ACTION**

This agenda item requests consent to a boundary amendment of the Gresham Enterprise Zone, located within Port of Portland (Port) boundaries, to provide an incentive to encourage existing or new companies to invest and create jobs within the zone.

**BACKGROUND**

The Enterprise Zone program was enacted by the Oregon Legislature in 1985. In the 2005 legislative session, the statute for the Enterprise Zone program, ORS 285C.065, was changed to require the governing bodies of port districts to consent by resolution to Enterprise Zone applications by a city or county within the boundaries of the port. This change was requested to ensure coordination of economic development activities within port districts. Since then, the Port Commission routinely receives requests from jurisdictions as they move forward with Enterprise Zone re-designations and/or boundary changes.

**Proposed Boundary Amendment**

The proposed boundary amendment will incorporate four new properties totaling approximately 41 acres located in the Southshore Industrial Area. The site was recently acquired by Trammell Crow Company for the development of Blue Lake Corporate Park, currently under construction, comprising two buildings totaling nearly 450,000 square feet. The City of Gresham is proposing the amendment to the Gresham Enterprise Zone to expand the availability of an important economic development tool for attracting family wage jobs and new investment to the City of Gresham.

**Gresham Enterprise Zone Activity**

The Enterprise Zone program allows a 100 percent property tax abatement for up to five years on new qualified capital assets of eligible businesses within the enterprise zone boundary. Land, existing structures and existing machinery and equipment are not eligible for the abatement. State program requirements include: increasing employment by 10 percent, or one job, whichever is greater; maintaining minimum employment levels during the abatement period; and entering into a "First Source Hiring Agreement" with Worksource Oregon, an agreement by the employer to use the Oregon Employment Department as its first source from which to hire qualified candidates before hiring from other sources.

The Gresham Enterprise Zone was originally established in 2006, and was reauthorized in 2016. In the 12 years since establishing the program, the City of Gresham has approved 21 applications for the use of this incentive for 14 companies investing more than \$700 million and creating hundreds of family wage jobs in the City of Gresham. The tool has been used by

## CITY OF GRESHAM ENTERPRISE ZONE BOUNDARY CHANGE

January 9, 2019

Page 2

existing Gresham companies to support ongoing investment and growth. Three companies, Boeing of Gresham, Teeny Foods and ON Semiconductor have had multiple Enterprise Zone applications to support their growing operations and continued investment in the City of Gresham.

The program has also been used successfully to attract new companies bringing family wage jobs and investment to the City of Gresham, including Subaru, which invested over \$30 million in their 600,000-square-foot master distribution facility, and Element Six Technologies, which is investing over \$80 million in their 54,000-square-foot advanced manufacturing facility currently under construction. Both projects are located within the Gresham Visa Business Park.

Overall, the Enterprise Zone program is an important tool for encouraging job creation and additional investment by existing companies and attracting new companies to the Gresham community.

### Gresham Enterprise Zone Local Criteria

The Gresham Enterprise Zone program requires eligible companies to comply with a number of local criteria in order to be authorized for the property tax abatement program. Criteria include:

- A minimum investment of \$1 million.
- Job quality criteria:
  - Average compensation (wages plus benefits) for production positions must be 150% of the Portland Metro minimum wage
  - Average compensation (wages plus benefits) for all other facility jobs must be 200% of the Portland Metro minimum wage
  - Provision of non-mandated benefits to employees
- Payment of a community service fee, calculated at 25% of abated taxes, in years four and five of exemption or every year of exemption for companies investing more than \$25 million.
- Workforce Development Criteria:
  - Demonstration that employees are being offered opportunities at career pathways through training resources.
  - Demonstration that companies are using local hiring resources to fill immediate employment needs and are also participating in local programs and activities to help build their future employee pipeline in the Gresham and east Multnomah County area.
- Development of a procurement plan to increase purchasing with Gresham and East Multnomah County businesses.

## CITY OF GRESHAM ENTERPRISE ZONE BOUNDARY CHANGE

January 9, 2019

Page 3

### **FINANCIAL IMPACT**

Under the current levy, the Port will forgo approximately \$0.0673 per \$1000 of *future* assessed value until the end of the exemption period of each participating company (i.e., three-to-five years). The impact on Port property tax revenue is expected to be minimal. For example, foregone tax revenue to the Port is approximately \$8,763 over a five-year period on a \$25 million investment. Upon completion of the exemption period, the property will be fully taxed. The Enterprise Zone boundary change was approved by the Gresham City Council on December 18, 2018. The City of Gresham has requested that the Port provide a resolution consenting to this boundary change.

### **EXECUTIVE DIRECTOR'S RECOMMENDATION**

The Executive Director recommends that the following resolutions be adopted:

BE IT RESOLVED, That the Port of Portland Commission consents to a request by the City of Gresham for a boundary amendment of the Gresham Enterprise Zone, located within Port of Portland boundaries; and

BE IT FURTHER RESOLVED, That the Executive Director or his designee is authorized to execute the necessary documents on behalf of the Port of Portland Commission in a form approved by counsel.

**EQUIPMENT PROCUREMENT CONTRACT – CATERPILLAR BULLDOZER – NAVIGATION DIVISION**

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January 9, 2019

Presented by: Chet Thomas  
Project Engineer

**REQUESTED COMMISSION ACTION**

This agenda item requests approval to award an equipment procurement contract to Peterson Machinery Co. for the purchase of a Caterpillar D8T bulldozer for the Port of Portland (Port) Navigation Division in the amount of \$840,602.82.

**BACKGROUND**

The Port’s Navigation Division uses three bulldozers to perform shore work as part of the Port’s duties under its channel maintenance dredging contract with the U.S. Army Corps of Engineers (USACE). Under the contract, in addition to providing a pipeline dredge, the Port must provide “attendant plant,” such as the bulldozers.

One of the three bulldozers, a 2001 Caterpillar D8R, has logged 17,500 hours and is past the end of its useful life. The sand and water in which the bulldozers operate is abrasive to their components. This bulldozer’s major components have been replaced with rebuilt components once before, and its engine and undercarriage are now due for replacement parts. Staff has determined it is not cost-effective to further rebuild the existing machine given its high hours and wear indicators. The Port plans to replace this bulldozer under the Port’s ongoing program to replace bulldozers that have high hours.



EQUIPMENT PROCUREMENT CONTRACT – CATERPILLAR BULLDOZER – NAVIGATION  
DIVISION

January 9, 2019

Page 2

**PROCUREMENT DETAILS**

This procurement includes the following key items:

- Caterpillar D8T bulldozer with blade installed.
- Diesel engine meets U.S. EPA Tier 4 emissions standards.
- Caterpillar Premier five-year/7,500 hours extended warranty.

**SCHEDULE**

Receive price quote	December 4, 2018
USACE authorization	December 4, 2018
<b>Commission approval (award equipment procurement contract)</b>	<b>January 9, 2019</b>
Manufacture	January 2019 – April 2019
Delivery and begin service	April 2019

**PROCUREMENT PROCESS**

The Port will participate in a national cooperative purchasing program through Sourcewell (formerly NJPA), a Minnesota-based municipal contracting agency, to purchase the new bulldozer. Using a competitive process, Sourcewell has contracted with various vendors that allow cooperative purchasing by public agencies that are members of Sourcewell. Sourcewell holds a bulldozer procurement contract with Peterson Machinery Co. The Port is a member of Sourcewell and has the authority to participate in the cooperative purchasing program under ORS 279A.210.

On December 4, 2018, the Port received a price quote from Peterson Machinery Co. to purchase a new Caterpillar D8T bulldozer under the Sourcewell contract. The quote was \$840,602.82, which is within the Port's project budget (the quoted price represents a 21% discount off retail pricing). The Port will contract directly with Peterson Machinery Co. by issuing a purchase order under the Sourcewell contract.

**Small Business Participation**

Based on the nature of the cooperative purchasing program (and because no small businesses sell heavy equipment in the area), the Port's Small Business Enterprise Program did not establish a participation goal for this contract.

EQUIPMENT PROCUREMENT CONTRACT – CATERPILLAR BULLDOZER – NAVIGATION  
DIVISION

January 9, 2019

Page 3

**BUDGET**

<b>Procurement contract</b>	<b>\$841,000</b>
Port staff and contracted services	\$7,000
Contingency	\$27,000
Total budget	\$875,000

The contingency, representing three percent of the project cost, is considered reasonable given the risk profile for the procurement.

The project costs will be funded by the General Fund, which is composed primarily of revenues from the Port's maritime and industrial business lines and property taxes. The USACE has authorized the Port to proceed with this project as a reimbursable capital expenditure under the Port's channel maintenance contract with the USACE. The Port expects to be reimbursed via monthly payments over the five-year depreciable life of the new bulldozer.

**EXECUTIVE DIRECTOR'S RECOMMENDATION**

The Executive Director recommends that the following resolutions be adopted:

BE IT RESOLVED, That approval is given to award an equipment procurement contract for the purchase of a Caterpillar D8T bulldozer for the Port of Portland Navigation Division to Peterson Machinery Co., in accordance with the terms presented to the Commission; and

BE IT FURTHER RESOLVED, That the Executive Director or his designee is authorized to execute the necessary documents on behalf of the Port of Portland Commission in a form approved by counsel.



**EXEMPTION FROM COMPETITIVE BIDDING FOR ON-CALL GENERAL CONTRACTING SERVICES PROGRAM**

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January 9, 2019

Presented by: Ken Willhite  
Sr. Mgr. Project Development  
Engineering**REQUESTED COMMISSION ACTION**

This agenda item requests approval of an exemption from competitive bidding requirements, enabling the Port of Portland (Port) to use a competitive, qualifications-based request for proposals (RFP) process to procure a “class” of public improvement contracts for relatively small-scale public improvement projects at various Port facilities and locations.

**BACKGROUND**

The Port is seeking to use an “on-call” contracting structure to deliver relatively small-scale public improvement projects. The Port intends to award three-to-five contracts, each to a different general contractor. This program (the “On-Call General Contracting Program” herein) will be administered by the Engineering Department.

The On-Call General Contracting Program would only be used to deliver limited types of work. Projects delivered under this class of contracts will have the following, primary defining characteristics:

1. Relatively small-scale projects that have limited complexity and/or risk (approximately \$1 million construction contract value, or less).
2. Projects that can be performed under one of two specific pricing mechanisms outlined below.

Large or complex projects not consistent with the intended use of the program will be delivered by other available contracting methods.

The On-Call General Contracting Program will differ in various respects from the Port’s current on-call construction contracting structure, which is known as the PDX Job Order Contracting (JOC) program. Primarily, the On-Call General Contracting Program will not require the use of a third-party vendor to set unit pricing, as the JOC program does. This will eliminate the cost of the vendor pricing administrator and reduce related administrative costs. Existing JOC program contracts will be allowed to expire at the end of their terms, in February 2019.

**PROJECT ORDERS**

When the need arises to engage a contractor within the program, the Port will define a specific scope of work with sufficient information for the contractor(s) to submit pricing. Once pricing is final, the Port will issue a Project Order to the successful contractor, which directs the contractor to perform the work.

## EXEMPTION FROM COMPETITIVE BIDDING FOR ON-CALL GENERAL CONTRACTING SERVICES PROGRAM

January 9, 2019

Page 2

The Port intends to distribute the work among On-Call General Contracting Program contractors as equitably as possible. However, work may not be distributed equally, as contractor selection will be dependent on pricing, small business participation levels and other factors.

The Port will use one of two available methods to determine Project Order pricing. Under the preferred method, pricing will be established by formally inviting bids from the pool of general contractors within the program. This will result in competitive pricing in a strategic low-bid process. Under the other method, the Port will negotiate a price with a designated contractor from the pool. This method will only be utilized on projects with special or unique characteristics, such as tight schedule constraints, adjacent work requiring coordination, when certain minimum qualifications are required, and/or when the Port has determined that a certain contractor is the best fit. For this method, the designated contractor will provide the Port with a quotation utilizing pricing markups previously established under the contract.

Evaluation of pricing under both methods will consider costs; small business participation; workforce diversity; safety performance; and whether the contractor has the appropriate financial, material, equipment, facility, and personnel resources to meet all contractual requirements, as well as a satisfactory record of previous performance and integrity.

### **SMALL BUSINESS PARTICIPATION**

The contractor selection evaluation process under both pricing methods will consider small business participation levels, using the same goal-setting structure the Port uses with public improvement contracts generally:

- For Project Orders of \$500,000 or more, fixed small business participation goals will be set. To set a goal, the Port's Small Business Program will review the project scope, compare it with the availability of certified small business contractors and suppliers, then set a reasonable goal based on a percentage of contract value. The selected contractor will be required to establish that it will meet the goal, or alternately, to show that it made good faith efforts to meet the goal.
- For Project Orders of less than \$500,000, the Port will encourage contractors to meet the Port's overall Port-wide small business participation goal, which is currently 20%.

Small business utilization is tracked using specialized software and the data is compared with the project goal as work proceeds. If a contractor is not meeting its goal, a Port Small Business Program representative will request information to determine why and help develop a plan to increase utilization.

### **EXEMPTION FROM COMPETITIVE BIDDING**

With limited exception under Oregon law, public agencies must deliver public improvement projects by selecting contractors based upon competitive bid, often referred to as the design-bid-build (DBB, or "low bid") method. Using a competitive bid process, a public improvement contract is awarded to the responsive bidder that submits the lowest-priced bid.

## EXEMPTION FROM COMPETITIVE BIDDING FOR ON-CALL GENERAL CONTRACTING SERVICES PROGRAM

January 9, 2019

Page 3

Oregon law also allows a public agency's contract review board to grant an exemption from competitive bidding requirements, allowing agencies to award public improvement contracts using an alternative contracting method. Alternative methods allow public agencies to consider factors in addition to price when selecting a contractor, such as experience, qualifications, safety and small business participation.

Upon obtaining the exemption, the Port intends to award this class of public improvement contracts through a competitive RFP process. Prospective On-Call General Contracting Program general contractors will be evaluated based on stated evaluation criteria in the RFP. The following are examples of the evaluation criteria that will be used:

- Overall experience, including a description of the type of projects typically performed.
- Experience managing multiple job/task orders and subcontractors.
- Experience organizing and delivering similar construction work on a project-by-project basis.
- Ability to respond on short notice to engage a subcontractor team.
- Pricing based on the methods described above.
- Strategies to maximize utilization of small businesses, and whether the proposer is a certified small business.
- Diversity, equity and inclusion policies and procedures.

The Port anticipates spending up to approximately \$8,000,000 per year to complete projects under the On-Call General Contracting Program. Each will be funded under various project budgets. Based on a three-year project forecast, the Port may spend up to \$25,000,000 under these contracts over that period. Accordingly, depending on the number of contracts awarded, contractors selected through the RFP process will each be issued a contract allowing the Port to spend up to \$5,000,000 – \$8,000,000 with that contractor over a three-year initial term.

As discussed in the "Findings in Support of an Exemption from Competitive Bidding" (Findings) that are attached as Exhibit A, this selection process is considered unlikely to encourage favoritism in awarding the contract or to substantially diminish competition for the contract. It would also likely result in substantial cost savings and other substantial benefits to the Port. Notice of the RFP will be advertised publicly and posted on the Port's online vendor contracting portal.

After public notice, and as required under Oregon law, the Port held a public hearing on December 27, 2018, to take comments on the draft Findings. The attached final Findings summarize the results of the hearing. The Port now seeks the Commission's approval of the Findings, acting in its capacity as the Port's contract review board. The Port also requests that the contract review board grant an exemption from competitive bidding to allow the Port to procure the above-described class of public improvement contracts using an RFP.

EXEMPTION FROM COMPETITIVE BIDDING FOR ON-CALL GENERAL CONTRACTING SERVICES PROGRAM

January 9, 2019

Page 4

**SCHEDULE**

Publish Findings	December 11, 2018
Public Hearing	December 27, 2018
<b>Contract Review Board approval (exemption from competitive bidding)</b>	<b>January 9, 2019</b>
Commission approval (award public improvement contract)	March 13, 2019

**RISKS**

Risk: Few or no responses to RFP

Mitigation Strategies:

- Outreach through Port’s Small Business Program contacts
- Outreach to local organizations such as OAME and NAMC
- Discussions with current JOC contractors and other business organizations

**EXECUTIVE DIRECTOR'S RECOMMENDATION**

The Executive Director recommends that the following resolutions be adopted:

BE IT RESOLVED, That the Port of Portland Commission, in its capacity as the Port of Portland Contract Review Board, approves the findings set forth in the attached Exhibit A, “Findings in Support of an Exemption from Competitive Bidding: On-Call General Contracting Services Program” dated January 9, 2019; and

BE IT FURTHER RESOLVED, That the Port of Portland Commission, in its capacity as the Port of Portland Contract Review Board, specifically exempts from competitive bidding requirements the “On-Call General Contracting Services Program,” consistent with the terms presented to the Commission.



**FINDINGS IN SUPPORT OF AN EXEMPTION  
FROM COMPETITIVE BIDDING**

**On-Call General Contracting Services Program  
Port of Portland Facilities (2018-8274)**

**DATE OF DRAFT FINDINGS: DECEMBER 11, 2018**

**DATE OF FINAL FINDINGS: JANUARY 9, 2019**

**Background**

The Port of Portland (Port) awards numerous public improvement contracts each year to accomplish a wide array of construction projects, ranging from small to large building improvements, system modifications, equipment installations, pavement-related civil projects, and various other capital improvements. The primary contracting methods available under the Public Contracting Code (Code) to deliver public improvements include competitive sealed bidding (low bid) solicitations<sup>1</sup> and, when an exemption from competitive bidding is obtained, requests for proposals (RFP).

Competitive solicitations generally require a considerable amount of time to conduct (weeks or months) and require many steps to solicit bids or proposals and execute construction contracts. Some projects, however, require quick commencement of construction to meet operational or other business needs. For those projects, the time necessary to conduct a separate competitive procurement conflicts with schedule demands.

The Port seeks an approved, competitive, alternative contracting method to quickly engage construction contractors for certain, specified types of work. Allowing the Port to adjust its contracting procedures to achieve that quickness, in limited cases, will help the Port meet business objectives in a manner that best suits the specific circumstances, yet still maintains the Port's procurement integrity.

**Alternative Contracting Methods for Public Improvement Projects**

The Code embraces alternative contracting methods and is intended to “[p]rovide a public contracting structure that can take full advantage of evolving procurement methods as they emerge within various industries, while preserving competitive bidding as the standard for public improvement contracts unless otherwise exempted.”<sup>2</sup>

Similarly, the Port's Contracting Rules (promulgated under the Code and approved by Commission) are intended to “maximize the Port's flexibility in adjusting its contracting procedure to the specific circumstances of each procurement, and to ensure that the Port receives the maximum benefit from the public funds expended on public contracts.”<sup>3</sup>

Under the Code, an agency's local contract review board (CRB) may direct the use of alternative contracting methods that “take account of market realities and modern practices and are consistent with the public policy of encouraging competition.”<sup>4</sup>

An agency's CRB directs the agency to use an alternative contracting method by granting an exemption from competitive bidding.<sup>5</sup> In granting an exemption, the CRB must require and

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<sup>1</sup> ORS 279C.335(1); ORS 279C.375(1)

<sup>2</sup> ORS 279A.015(6)

<sup>3</sup> Port Contracting Rule A.015

<sup>4</sup> ORS 279C.335(4)(a)

<sup>5</sup> ORS 279C.335(2)

approve or disapprove written “findings”<sup>6</sup> that support the award of the contract (or a class of contracts) without the competitive bidding requirement.<sup>7</sup> The findings must show that the exemption of the contract (or a class of contracts) complies with the Code’s minimum requirements to grant an exemption.<sup>8</sup>

In making findings to support an exemption for a “class” of public improvement contracts (i.e. a series of contracts for one or multiple projects), an agency must identify the class’ defining characteristics such as: project descriptions or locations, time periods, contract values, methods of procurement, or other factors that distinguish the limited and related class of public improvement contracts from the agency’s overall construction program.<sup>9</sup>

### **Proposed Contracting Method: On-Call General Contracting Services Program**

The Port is seeking to use an “on-call” contracting structure to deliver relatively small-scale public improvement projects. The Port intends to award three to five contracts, each to a different general contractor. Currently referred to as “On-Call General Contracting Services,” this program (the “On-Call General Contracting Program” herein) will be administered by the Engineering Department.

The On-Call General Contracting Program would only be used to deliver limited types of work. Projects delivered under this class of contracts will have the following, primary defining characteristics:

1. Relatively small-scale projects that have limited complexity and/or risk (approximately \$1.0 million construction contract value, or less).
2. Projects that can be performed under a low-bid (Solicitation Method) or buy-out (Selection Method) pricing strategy (see “Pricing” below).

Examples of the kinds of projects which may qualify for the On-Call General Contracting Program are listed on the attached Appendix A. Large or complex projects not consistent with the intended use of the On-Call General Contracting Program will be delivered by other available contracting methods.

The On-Call General Contracting Program will differ in various respects from the Port’s current on-call construction contracting structure, which is known as the PDX Job Order Contracting (JOC) program. Primarily, the On-Call General Contracting Program will not require the use of a third-party vendor to set unit pricing, as the JOC program does. This will eliminate the cost of the vendor pricing administrator and reduce related administrative costs. Existing JOC program contracts will be allowed to expire at the end of their terms, in February 2019.

### **Proposed Procurement Method; Contract Values**

Upon obtaining the exemption, the Port intends to award this class of public improvement contracts through a competitive RFP process. Prospective On-Call General Contracting Program general contractors will be evaluated based on stated evaluation criteria in the RFP. The following are examples of the evaluation criteria that will be used:

- Overall experience, including a description of the type of projects typically performed.
- Experience managing multiple job/task orders and subcontractors.
- Experience organizing and delivering similar construction work on a project-by-project basis.
- Ability to respond on short notice to engage a subcontractor team.

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<sup>6</sup> “Findings” means the justification for a conclusion that an agency, in seeking an exemption from competitive bidding, reaches based on the considerations set forth in this document under the heading “Findings.” ORS 279C.330(2)

<sup>7</sup> ORS 279C.335(4)(b)

<sup>8</sup> ORS 279C.335(4)(b)

<sup>9</sup> ORS 279C.335 (3)

- Pricing based on the Solicitation/Selection Method as described below.
- Strategies to maximize utilization of small businesses, and whether the proposer is a certified small business.
- Diversity, equity, and inclusion policies and procedures.

The Port anticipates spending up to approximately \$8,000,000 per year to complete projects under the On-Call General Contracting Program (each will be funded under various project budgets). Based on a three-year project forecast, the Port may spend up to \$25,000,000 under these contracts over that period. Accordingly, depending on the number of contracts awarded, contractors selected through the RFP process will each be issued a contract allowing the Port to spend up to \$5,000,000 - \$8,000,000 with that contractor over a three-year initial term.

### **Issuance of Project Orders**

When the need arises to engage an On-Call General Contracting Program contractor, the Port will define a specific scope of work with sufficient information for the contractor(s) to submit pricing. Once pricing is final the Port will issue a Project Order to the successful contractor, which directs the contractor to perform the work.

The Port intends to distribute the work among On-Call General Contracting Program contractors as equitably as possible. However, work will not be distributed equally, as contractor selection will be dependent on pricing, small business participation levels, and other factors.

### Pricing

The Port will use one of the following methods to determine Project Order pricing:

1. Solicitation Method:

Under this method, which is preferred, pricing will be established by formally inviting bids from the pool of general contractors within the On-Call General Contracting Program. This will result in competitive pricing in a strategic low-bid process.

2. Selection Method:

Under this method the Port will negotiate a price with a designated contractor based on the “buy-out” process summarized below. This method will be limited to projects with special or unique characteristics. For example, projects with tight schedule constraints, adjacency of work currently being performed under a similar Project Order, when certain qualifications are required, and/or when the Port has determined that a certain contractor is the best fit. The designated contractor will provide the Port with a quotation utilizing pricing markups previously-established under the contract. This quotation may include:

- A detailed breakdown of direct labor costs based on relevant prevailing wage rates, direct material costs, direct equipment costs; and associated markups.
- A detailed breakdown of subcontractor costs and associated markup for each element of the work, based on the evaluation of multiple subcontractor bids and the total cost of the work, what is included in/excluded from the bid, and the values of those included/excluded items.

### Small Business Participation

Evaluation under both pricing methods will also consider small business participation levels. The Port plans to set fixed small business participation goals on all Project Orders above \$500,000. To set a goal, the Port’s Small Business Program will review the project scope, compare it with the availability of certified small business contractors and suppliers, then set a reasonable goal based on a percentage of contract value. The selected contractor will be required to establish that it will meet the goal, or alternately to show that it made good faith efforts to meet the goal.

For Project Orders less than \$500,000 the Port will encourage contractors to meet its overall Port-wide small business participation goal, which is currently 20%.

Small business utilization is tracked using specialized software and the data is compared with the project goal as work proceeds. If a contractor is not meeting its goal, a Port Small Business Program representative will request information to determine why and help develop a plan to increase utilization. In addition to setting goals for Project Orders, as mentioned above the Port will establish RFP selection criteria that may result in selecting certified small businesses for the pool of general contractors.

### Other Selection Factors

Evaluation of pricing under both methods will also consider workforce diversity, safety history, and “responsibility” criteria similar to those under ORS 279C.375. The latter includes whether the contractor has the appropriate financial, material, equipment, facility, and personnel resources to meet all contractual requirements, and a satisfactory record of previous contract performance and integrity.

### **Bid Security and Bonding Requirements**

Under 279C.365(5) and ORS 279C.380, contractors are required to provide bid security and payment and performance bonds for public improvement contracts with an estimated value of more than \$100,000. To help reduce barriers to entry for certified small business firms, the Port also intends to request that the Port’s CRB exempt all or part of each contract in the On-Call General Contracting Program from bid security and bonding requirements, as allowed for under ORS 279C.390. Such approval will enable the Port to determine, on a case by case basis, whether to require bid security and bonding based on the Port’s risk evaluation. Bid security and/or bonding may not be required for all Project Orders, but will be required when it is the Port’s best interests.<sup>10</sup>

### **Findings**

Under the Code, the Port’s CRB may exempt a public improvement contract (or class of public improvement contracts) from competitive bidding upon approval of certain findings submitted by Port staff that justify the exemption. The two required Findings are underlined below, with supporting information following each:

1. The exemption is unlikely to encourage favoritism in awarding the public improvement contracts or substantially diminish competition for the public improvement contracts.

Using the Port’s established and proven RFP contract award process will ensure that the exemption is unlikely to encourage favoritism or substantially diminish competition. The Port will award these contracts in the same manner it currently awards all competitively-procured contracts that were solicited under an RFP. Notice of the RFP will be advertised as required by law, and the Port will also provide notice via the Port’s online vendor portal.

2. Awarding the contract under the exemption will likely result in substantial cost savings and other substantial benefits to the agency.

The On-Call General Contracting Program will likely result in substantial cost savings and other substantial benefits by creating schedule efficiencies and reducing overhead costs for the Port, its tenants, and its contractors. The on-call delivery method will enable small-scale projects to be delivered with less stringent design document standards and allow for negotiation with the contractor on scope elements and construction timelines. This delivery method will also help expedite urgent projects and should reduce the number of costly change orders that might otherwise have been issued to complete them.

(a) Type, cost, and amount of the contract.<sup>11</sup>

These will be on-call public improvement contracts with values estimated at \$5,000,000 - \$8,000,000 each for the initial three-year term.

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<sup>10</sup> ORS 279C.390(2) allows an agency to require bid security and bonding even though the contract has been exempted from the bonding requirement.

<sup>11</sup> ORS 279C.335(2)(b)



(b) Other factors.<sup>12</sup>

Where applicable, Port staff have provided the following supporting information:

A. How many persons are available to bid. There are multiple firms in the Oregon/Washington region that are capable of performing this work and available to bid.

B. The construction budget and the projected operating costs for the completed public improvement. Construction costs of contracts awarded under the On-Call General Contracting Program are estimated at approximately \$25 million for their initial three-year term. Awarding contracts under the exemption is not expected to impact operating costs.

C. Public benefits that may result from granting the exemption. On-call contracting delivery methods can increase small business subcontractor participation levels on projects. See "Small Business Participation" above.

D. Whether value engineering techniques may decrease the cost of the public improvement. Due to the nature of the On-Call General Contracting Program, work to be delivered will be well-defined and not subject to significant value engineering, therefore this measure is not expected to apply to this exemption.

E. The cost and availability of specialized expertise that is necessary for the public improvement. While the Port expects to benefit from these contractors' various areas of specialized expertise, there is no requirement for unique or specialized expertise in order to propose. It is expected that there will be an adequate number of qualified competitors available to propose as general contractors.

F. Any likely increases in public safety. The safety of the general public may be enhanced through the use of these contracts, by developing a pool of contractors that become familiar with Port facilities, processes, and procedures, enhancing the safety culture on all Project Orders.

G. Whether granting the exemption may reduce risks to the Port or the public that are related to the public improvement. Beyond the safety risk management benefit described in paragraph F above, the ability to use the on-call delivery method is expected to reduce other risks such as loss of revenue to the Port and its tenants, concessionaires, and other operators that could result from unplanned activities or interruption of operations.

H. Whether granting the exemption will affect the sources of funding for the public improvement. The project funding sources will not be affected by the On-Call General Contracting Program.

I. Whether granting the exemption will better enable the Port to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement. The current market for construction in Oregon is very active. There is a surplus of work available and contractors are facing challenges in obtaining adequate qualified labor to meet the demand. In this environment of rising labor and material costs, contractors have become more selective in the projects they choose to pursue. The net result is that annual cost escalation rates are much higher than normal. The exemption from competitive bidding will enhance the attractiveness of the On-Call General Contracting Program to the contractor market as compared to a standard, price-only based procurement, which should result in added competition and reduced overall costs.

J. Whether granting the exemption will better enable the Port to address the size and technical complexity of the public improvement. The types of projects to be delivered by the On-Call General Contracting Program are expected to be smaller, less complex projects. Therefore, this factor is not being considered as part of this exemption.

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<sup>12</sup> ORS 279C.335(2)(b)

K. Whether the public improvement involves new construction or renovates or remodels an existing structure. The On-Call General Contracting Program contemplates both new construction and renovation, as well as asset preservation projects, as shown in Appendix A.

L. Whether the public improvement will be occupied or unoccupied during construction. The facilities may be either occupied or unoccupied during construction.

M. Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions. The work on individual Project Orders may require one or multiple phases of construction.

N. Whether the Port has, or has retained under contract, and will use Port personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the Port will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract. The Port has significant institutional knowledge related to on-call project delivery programs. Past projects delivered under similar Port programs have been successful. Individual Port staff with the necessary expertise will develop the RFP and participate in negotiating, administering and enforcing the contract terms. Key participants that have extensive experience with the RFP contracting process include representatives from Engineering, Contracts and Procurement, and Legal. The Port's construction managers, project engineers, construction inspectors and project managers have many years of experience administering and enforcing public improvement contracts of this type.

## **Public Hearing**

Under the Code, before the Port's CRB approves the Findings proposed above and before granting the exemption from competitive bidding, the Port must hold a public hearing to allow the Port to take comments on the draft findings for an exemption from the competitive bidding requirement.<sup>13</sup> Draft findings summarizing the requested exemption from competitive bidding were published in compliance with the Code's notice requirements, and a public hearing was held on December 27, 2018 to allow interested parties to appear and present comments on the proposed exemption. There were no requests to view the Findings nor any public comment.

## **Summary**

Port staff find that the proposed exemption from competitive bidding (i) is unlikely to encourage favoritism in awarding the contract or substantially diminish competition for the contract, and (ii) will likely result in substantial cost savings and other substantial benefits to the Port. As a result, Port staff conclude that the proposed exemption from competitive bidding is consistent with the Code's stated policy of embracing alternate contracting methods when appropriate. Port staff recommends that the On-Call General Contracting Services Program be exempted from the Code's competitive bidding requirements.

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<sup>13</sup> ORS 279C.335(5)

## APPENDIX A

### Potential Projects

The following projects may qualify for delivery through the On-Call General Contracting Program:

- AVI Upgrade
- Basin 5 Regional Stormwater Treatment (5A)
- Basin 6 Central Ramp E. Stormwater Pipe Replacement
- Basin 6 Runway 10R-28L & TWY C5 Storm Pipe Replacement
- CCC Child Play Area
- DD - Elrod Hangar Demolition
- DD Basin 8 Outfall (Culvert) Upsizing
- DD T4 B416 Lay Berth Improvements
- DD TTD Terminal Demolition
- EV Charging Station Install
- FedEx Apron Shift and Nose Tether Installation
- GRE Joint Rehab
- HIO Hangar(s) 3999 Roofs
- HIO Hangar(s) 4141 Roofs
- HIO Fog Seal PVMT TWY D, C, L, RWY 13L, 02
- HIO MX Bldg Renovation
- HIO MX Bldg Roof Replacement
- HQ / Communications Center Paging System Improvements
- IAH Signage Improvements
- IT HQ CCTV Upgrade
- Marine Premise Isolation Backflow Replacements
- NAV New Storage Building
- P2 Structure Crack Repairs and Epoxy Topping
- PDX Ext Pet Relief Area
- PDX Terminal Revolving Doors Rehab
- PDXNext CU Improve Prog 19/20
- PDXNext FIDS Expansion
- PDXNext S Term Heating Water Fittings
- QX and GA Ramp Joint Rehab
- T2 Gearlocker, T4 Toyota Guard Shack, Warehouse 4, AWC, T6 Guard Shack Roof Replace
- T4 & T6 Gate Arm Replacements
- T4 B401 Upstream Dolphin Pile Rehabilitation
- T4 Building No. 320, T4 Gearlocker, and T6 Gearlocker Roof Replacements
- T6 AWC Pavement Seal Year 2
- T6 Stormwater Treatment Improvements
- Terminal Exterior Enclosure Rehab
- Terminal People Movers FY 19/20
- Terminal People Movers FY 20/21
- Terminal People Movers FY 21/22
- TTD Control Tower Systems Rehab
- TTD Fuel Tank Facility Relocate
- Vanport Wetland Pump Station Replacement
- Vendor Inspection Relocation