

Port of Olympia

# Master Policy Resolution

## 2008-17

Adopted July 28, 2008

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Port of Olympia  
Specific Policy Directives of  
Administrative Authority of  
Executive Director and Designees

**I. Real Property Agreements**

A. Types of Agreements

The following directives of this Article I apply to all agreements for use of Port real property, including but not limited to leases, license agreements, rental agreements, operating agreements, memorandums of understanding, and use agreements (all hereinafter referred to as “Real Property Agreements or Agreements”).

B. General and Real Property Agreement Policy

Except as provided in Paragraph I.C., all real property of the Port shall be used pursuant to an appropriate written instrument approved by the Port Commission and accompanied by security in accordance with law.

Prior to the execution of any Real Property Agreement, the Executive Director may enter into preliminary discussions with all parties involved. The Executive Director will apprise the Commission, in Executive Session, of the status of negotiations. Request for authority to execute the Agreement will be presented to the Commission in public session, and will follow all other applicable laws and Port Commission created Lease Policy.

C. Real Property Agreement Procedures

The Executive Director is authorized to perform the following actions without Port Commission approval, but must provide the Port Commission a report summarizing actions:

1. Real Property Agreements may be approved and signed by the Executive Director provided the Port’s standard Agreement form is used (except for provisions inapplicable), Agreement terms conform to proper real estate practices and the guidelines set forth in the Lease Policy, and there is no financial obligation of the Port for improvements.
2. To the extent assignments, subleases, or options are permitted in the basic Agreement the same may be approved by the Executive Director, provided; other substantive terms of the Agreement are unchanged; any option or options; rental adjustments consistent with Port Lease Policy are made; and provided an amendment to the Agreement may be approved by the Executive Director if the scope of the amendment is

otherwise within the authority of the Executive Director under this Resolution.

3. Easements, licenses and permits ancillary to the normal operation of the Port may be granted by the Executive Director.
- D. The Executive Director is charged with the responsibility to insure that all Agreement terms are complied with and is authorized to take necessary measures to cause compliance or to protect the Port's legal position, including but not limited to the giving of all notices provided for in the Agreement.

## **II. Real Property Agreement Security and Insurance**

The Executive Director is authorized to take all necessary actions on behalf of the Port Commission in connection with Agreement surety bonds, Agreement surety, rental insurance, or other security (hereinafter referred to as "Agreement Security") and insurance coverage required pursuant to any Agreements of the Port, including of the following actions:

- A. Where the Agreement is not in default, to release any Agreement Security where an adequate substitute security has been provided.
- B. To approve any Agreement Security or insurance submitted in fulfillment of the requirements of any agreement, including substitute or replacement coverage for any terminated bond or other Agreement Security.
- C. To approve any substitute or modification of insurance, and to release any insurance company when substitute or replacement insurance coverage has been provided.

## **III. Real Property Transactions**

- A. When the Port Commission authorizes the acquisition of real property by negotiated purchase or condemnation, the Executive Director shall take all necessary steps, including appraisals, to secure the title of such property for the Port. The acquisition price of individual properties (or ownership's) shall in no case exceed the Port's appraisal without further specific Commission approval. When several parcels are authorized for purchase by the Port Commission, the total price paid for all such properties shall not exceed the Port's appraisal, and budget, without further specific Commission approval.
- B. When the Port Commission authorizes the sale of Port real property, the Executive Director shall be empowered to take all necessary administrative steps including the acquisition of appraisals in order that execution of the conveyance instrument by the Commission may occur. After execution of the instrument by the Commission, the Executive Director is authorized to take any and all other necessary steps, including delivery, to finalize the sale.

**IV. Policy Governing Public Works Contracting:****A. Work Contract Awards**

For all contracts, which require the performance of work, Commission approval shall be required for:

- (1) The solicitation of bids;
- (2) The award of contract to the low responsive and responsible bidder;
- and
- (3) 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.

Where the total contract price does not exceed One Hundred Thousand Dollars (\$100,000) 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, and including:

- (1) The solicitation of bids;
- (2) The award of contract; and
- (3) The acceptance of the work as complete.

If the project scope significantly varies from the Commission approved Capital Budget, it will be brought before the Commission before obligation of any funds.

When any emergency shall require the immediate execution of a contract for work, the Executive Director, pursuant to the procedures of R.C.W. 39.04.020, and R.C.W.39.30.020 (as they may be amended or succeeded), is authorized to make a finding of the existence of such emergency and execute any contracts necessary to respond to the existing emergency, provided that the Executive Director shall, within seven working days following the commencement of work or execution of the contract, whichever occurs first, request Port Commission ratification of the finding of emergency and any contracts awarded and/or executed pursuant to that finding.

**B. Change Orders:**

Where 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 necessitated in order to properly accomplish the work, the

Executive Director is authorized to execute individual change orders to the contract provided the following conditions are met

1. The accumulated total of all change orders does not exceed 10% of the original contract amount, or \$25,000, whichever is greater.
2. The revised total of the contract is within the approved project budget.
3. Any time extension for completion of said contract which accompanies said change order does not exceed 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.

In all other instances when the work is in progress and changes are necessary in order to properly accomplish the work, the Executive Director is authorized, without prior Commission approval, to execute change orders to the contract. Variances in contract price or time will be reported to the Commission when requesting final acceptance of the contract.

#### C. Reports

Notwithstanding the authorities granted in the preceding Sections A and B, the Executive Director shall keep the Commission advised of all contracts by providing quarterly reports listing all open contracts, including, but not limited to, the date of award, authorized and original award amounts, and all amendments.

### V. Utilization of Port Crews

- A. The Executive Director is authorized to use necessary workers for operations and maintenance of facilities pursuant to Port Commission approved labor agreements.
- B. The Executive Director shall be responsible for obtaining prior Port Commission approval 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 work, provided the funds are within the approved project capital budget.

**VI. Contracts for Acquisition of Utilities, Materials, Equipment, Supplies, and 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 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 services subject to the following conditions:

- A. The contract or purchase order price for one year does not exceed One Hundred Thousand (\$100,000) , 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.
- B. The award is made to a bidder who has submitted a proposal based on the plans and specifications on file, or, where permissible, based upon his own plans and specifications and accompanied by a bid proposal deposit as may be required, and which is, as nearly as practicable, in accordance with the requirements of R.C.W. 53.08.120, (as it may be amended or succeeded).
- C. The successful bidder has provided, where required, a performance bond with sureties, which comply with the requirements of the applicable law.

**VII. Competitive Bidding Requirements – Exemptions (RCW 39.04.280)**

The Executive Director is authorized to waive competitive bidding requirements for public works and contracts for purchases for:

- (1) Purchases that are clearly and legitimately limited to a single source of supply;
- (2) Purchases involving special facilities or market conditions;
- (3) Purchases in the event of an emergency;
- (4) Purchases of insurance or bonds; and
- (5) Public works in the event of an emergency.

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.

**VIII. Reimbursable Services**

The Executive Director is authorized to enter into agreements pursuant to which the Port will provide reimbursable services, when such services are part of normal Port operations or incidental thereto.

**IX. Architectural, Engineering, and Technical Services, Including Surveyors, Interior Designers and Landscape Architects**

The Executive Director is authorized to contract with qualified architectural, engineering, technical testing and inspection firms, surveyors, interior designers and landscape architects, licensed in the State of Washington to provide such services as required for maintenance, engineering work or small projects of the Port. Selection and reimbursement for such services shall follow all required statutory procedures and shall be consistent with normal established fees paid for such services. The Executive Director may arrange for such services when 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. Port Commission approval shall be required for sole source selections when the fee will exceed twenty-five (\$25,000), provided that documented justification is presented in accordance with RCW 39.30.020. The Executive Director will endeavor to use a variety of firms (including minority and women-owned business firms) based on the nature of the work and the expertise of the firms.

**X. Professional Services**

Except as provided in Section VI, the Executive Director shall be responsible for obtaining professional services where deemed necessary in carrying out normal Port operations and provided all applicable legal requirements are met. The Executive Director may arrange 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.

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.

**XI. Personal Services**

Except as provided in Section VI, the Executive Director shall be responsible for obtaining personal services where deemed necessary in carrying out normal Port operations and provided all applicable legal requirements are met. The Executive Director may arrange for such services where the estimated cost of the proposed service does not exceed the amount of ten thousand (\$10,000), and the funds are within the approved appropriate annual budget.



**XII. Amendments to Architectural, Engineering, Professional, Consultant and Personal Services:**

Where services are formally approved 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, or \$50,000.00, whichever is less, provided the funds are within the approved appropriate annual budget.

**XIII. Legal Services and Other Representation**

The Executive Director, Commission, and appointed Port Counsel shall be responsible for management and supervision of all legal services required by the Port and for litigation in which the Port has an interest, direct or indirect. For purposes of this section, "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 quasijudicial or administrative forum. The Executive Director and Port Counsel shall confer with the Commission on all legal issues for guidance and policy direction.

**A. Legal Services**

The Executive Director, in consultation with the Port Commission, is authorized to retain law firms, through Port Counsel as necessary, to provide legal services. Retained legal counsel may act solely on behalf of the Port or jointly with other interested parties. Payment for legal services other than litigation shall be by reimbursement not to exceed established hourly rates plus expenses. In litigation matters, legal counsel shall be reimbursed at a rate not to exceed their established hourly rate plus expenses.

**B. Engagement of Other 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 the Port Counsel, other representatives to act solely on behalf of the Port or jointly with other interested parties. Such representatives shall be reimbursed at their established hourly rates plus expenses or on another basis which is standard for their services.

**C. Engagement of Experts**

The Executive Director may engage or cause to be engaged through the Port Counsel, 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 Section IX. 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

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 resorting to 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.

**XIV. 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 to the extent covered in Section XII, or (2) claims asserted by or against the Port which have become the subject of litigation as defined in Section X 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) of the Port's estimated current year gross operating revenues may be adjusted and settled and paid by the Executive Director provided that all of the following conditions are met:
1. The Port Counsel 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.

#### **XV. Adjustment and Write-off of Accounts Receivable**

The Executive Director is authorized to establish procedures to (1) make adjustments to accounts receivable for valid business reasons which do not constitute a gift of public funds, or (2) to write off any uncollectible account which does not exceed Twenty-five Thousand Dollars (\$25,000) which is deemed to be uncollectible shall be referred to the Port Commission for final approval of writing off that account.

**XVI. Insurance Programs**

The Executive Director shall be authorized to negotiate and obtain appropriate policies of insurance to cover Port property, liability, employee coverage, and other areas appropriately included within a comprehensive insurance program. The Executive Director is authorized to approve changes or modifications within the policies of insurance, including programs to provide deductible provisions, so long as such programs are promptly and regularly reported to the Port Commission so it is kept informed of basic changes made in the overall insurance program of the Port.

**XVII. Trade Development Programs**

The Executive Director is authorized, consistent with statutory limitations, to develop and carry out programs of trade, advertising (including the use of advertising firms) within budgetary authority and promotion of the Port, including its properties, facilities and services. This may include participation in programs and agreements designed to provide shippers which use or may use the Port of Olympia with the most competitive service and lowest possible, freight rates including negotiation of warehouse rates, consolidation of traffic and prepayment of freight charges by the Port, and all necessary activities related to the intermodal movement of interstate and foreign cargo.

**XVIII. Marine Terminal Tariffs and Fees**

The Executive Director may establish rates and tariffs necessary for marine terminal customers.

**XIX. Rules and Regulations**

The Executive Director is authorized to implement any administrative rules and regulations necessary for the efficient operation of the Port, such as Port of Olympia Policies, as adopted by the Port of Olympia Commission.

**XX. Sale of Personal Property**

The Executive Director is authorized pursuant to R.C.W. 53.08.090 to sell and convey surplus personal property of the Port pursuant to the requirements of R.C.W. 53.08.090-092 (as amended or succeeded). In no case shall surplus personal property of the Port be sold to any Port commissioner or Port employee or to members of their immediate families without the specific approval of the Port Commission. This provision does not prohibit commissioners, employees, and members of their immediate families from bidding on excess Port property sold at public auction.

**XXI. Banking Services**

The Executive Director is authorized to negotiate for banking services, and enter into agreements for such services. Procedures shall be established of the

deposit/disbursal of Port funds recognizing the requirements cited in R.C.W. 53.36.010 and providing for an adequate system of internal control.

## **XXII. Authorization of Expenditures**

The Executive Director is authorized to establish an adequate system to control purchase of materials, supplies and services. Such system should take into consideration the nature of the purchases and the dollar amounts involved. No funds shall be expended unless the purchase invoices have been properly approved in accordance with the provisions of the system established.

## **XXIII. Imprest Working Funds (Petty Cash/Change Funds)**

The Executive Director is authorized to establish various working funds. The working funds provide for petty cash purchases/change funds, and the dollar amount thereof shall be recorded on the Port's balance sheet. The Executive Director is also authorized to establish and maintain procedures for the creation and control of such funds.