



# **Purchasing and Contracting Policy**

Effective June 13, 2023

**PURCHASING AND CONTRACTING POLICY ESTABLISHING GUIDELINES FOR THE ACQUISITION OF EQUIPMENT, MATERIALS, SERVICE, PROFESSIONAL & PERSONAL SERVICES, AND PUBLIC WORKS FOR THE CHELAN DOUGLAS REGIONAL PORT AUTHORITY.**

**POLICY:** The Chelan Douglas Regional Port Authority (the “Port”) will acquire equipment, materials, services and public works in a manner that is consistent with statutory provisions of the Revised Code of Washington (“RCW”) and in accordance with Port Resolutions, resulting in the most effective delivery of goods and services considering not only cost but value received.

**PURPOSE:** The purpose of this Policy is to establish guidelines, responsibilities and practices to be followed by the Port in acquiring equipment, materials and services to accomplish its overall mission. The guidelines set forth in this Policy are intended to assure compliance with state and federal laws and develop a uniform purchasing and contracting system. This Policy does not provide additional legal rights to parties not otherwise provided by law.

**AUTHORITY:** The authority to establish and from time to time amend the Policy and guidelines rests with the Chief Executive Officer of the Port through the “Delegation of Authority” Resolution, approved and adopted annually by the Board of Directors of the Port.

**SUPERSEDES:** This Policy supersedes and replaces all previous policies and resolutions adopted by the Port, or its predecessors, relating to purchasing and contracting guidelines, except those policies and resolutions explicitly incorporated herein, including the Chelan Douglas Regional Port Authority Federal Procurement Standards Policy, and those policies and resolutions adopted contemporaneously herewith.

***Chelan Douglas Regional Port Authority***

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**Jim Kuntz, Chief Executive Officer**

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## 1. DEFINITIONS

**Bid Limits.** Contract, project, or purchase dollar amount inclusive of tax, which define bidding requirements. Formal competition is required above bid limits in order to encourage fairness, open competition, and efficiency. Below bid limits, agencies have varying degrees of flexibility in establishing purchasing and contracting procedures to be followed by the Port which complies with any statutory bid limits and requirements.

**Competitive Solicitation.** A documented process providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria, in which criteria other than price may be the primary basis for consideration. The experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirement, quality of previous performance, and compliance with statutes and rules relating to contracts or services.

**Emergency.** A set of unforeseen circumstances beyond the control of the Port that either: (1) Present a real, immediate threat to the proper performance of essential functions; or (2) May result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

**Formal Competition.** Above bid limits specified in statutes, formal competition and bidding is required. Typically, formal solicitations are more rigorous or time-intensive, and likely apply to larger and more complex contracts and purchases. The exact formal procedures are laid out in this Policy and additional Port documents. Usually, formal competition requires public advertisement for a specified time and in a particular manner, sealed bids, and public bid opening. as the contract must be awarded to the lowest responsive, responsible bidder, and the bid results must be published on the Port's website and remain for one year from the opening date.

**Informal Competition.** State statutes allow many agencies to follow less stringent competitive requirements for projects below a certain threshold by selecting businesses from a small works roster or a vendor list. For public works projects, eligible agencies can use the small public works roster process for projects below \$350,000 for port districts. For purchases, eligible agencies may use a vendor list up to a certain amount, with the maximum dollar limit depending on the agency's statutes and adopted policies. The Port's limits as they relate to the level and requirements of competitive bidding are established and provided below in this Policy.

**Minimal Competition.** Below bid limits, competitive bidding, informal or formal, is not required. No requirement to seek multiple or written quotes. Agencies may seek quotes directly from individual vendors or a vendor may be selected from the small works roster.

**Ordinary Maintenance.** Maintenance work performed by the regular employees of the state, or any county, municipality, or political subdivision created by its laws.

**Personal Services.** Professional or technical expertise provided by a consultant to accomplish a specific study, project, task, or other work statement which may not reasonably be required in connection with a public works project (not including professional architecture and engineering services).

**Professional Architecture and Engineering Services.** Professional services provided by a consultant that fall under architecture, engineering, land surveying, or landscape architecture.

**Project Manager.** The person assigned to execute the project or task.

**Public Works.** All work, construction, alteration, repair, or improvement, other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein.

**Purchased Services.** Services provided by a vendor to accomplish routine, continuing, and necessary functions. "Purchased Services" includes, but is not limited to, services for equipment maintenance and repair; operation of a physical plant; security; computer hardware and software maintenance; data entry; and computer time-sharing, contract programming, and analysis.

**Purchasing.** Purchases of goods, equipment, supplies, or materials that are not connected with a public works project.

**Responsible Bidder/Contractor.** A contractor who meets the criteria in RCW 39.04.350 as follows:

- a. Has a certificate of registration in compliance with Chapter 18.27 RCW.
- b. Has a current state unified business identifier number.
- c. If applicable, has industrial insurance coverage for the bidder's employees working in Washington, an employment security department number, and a state excise tax registration number.
- d. Is not barred from bidding on any public works contract under RCE 39.06.010 or 39.12.065(3).

- e. If bidding on a public works project subject to the apprenticeship utilization requirements, not have been found out of compliance by the washing state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes for the one-year period immediately preceding the date of the di solicitation.
- f. Has training on the requirements related to public works and prevailing wage; and
- g. Within the three-year period immediately preceding the date of the bid solicitation have not been determined by a final and dining citation and notice of assessment issued by the department of labor and industries or through ha civil judgment entered by a court of limited or general jurisdiction to have willfully violated any provision of Chapters 49.46, 49.48. pr 49.52 RCW.

**Sole Source.** A consultant providing a professional or technical expertise, or a contractor providing goods or services of such a unique nature that the consultant or contractor is clearly and justifiably the only practicable source to provide the goods or services. The justification shall be based on the uniqueness of the service, sole availability at the location required, or warranty or defect correction service obligations of the consultant.

**Unit Priced Contract.** A competitively bid contract in which public works are anticipated on a recurring basis to meet the business or operational needs of a port district, under which the contractor agrees to a fixed period indefinite quantity delivery of work, at a defined unit price, for each category of work.

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## **2. GENERAL GUIDELINES FOR PURCHASING AND CONTRACTING**

The following outlines General Guidelines for making purchases and contracting:

### **2.1. Individual Authority**

The “Delegation of Authority” is adopted annually via Port Resolution and gives the Chief Executive Officer (“CEO”) administrative powers and duties. Those duties and powers include the ability to delegate purchasing authority to specific individual staff members.

### **2.2. Local Preference**

All things being equal in terms of cost, delivery and vendor support, preference will be given to vendors and/or service providers operating in Chelan and Douglas Counties.

### **2.3. Conflicts of Interest**

“Employees have an obligation to conduct business within guidelines that prohibit actual, potential, or perceived conflicts of interest.” (*See Port Personnel Handbook- Policy No. 805: Conflicts of Interest*). Moreover, if an employee has any influence on transactions involving purchases or contrast, it is imperative that he or she disclose stop a supervisor as soon as possible the existence of any actual or potential conflict of interest so that safeguards can be established to protect all parties.

### **2.4. Availability of Funds**

Employees with purchasing/contracting authority shall ensure that purchases are initiated only where budgeted funds within a particular account are sufficient to cover the anticipated cost. This applies to both operating budget line items and capital budget accounts.

Project Managers (*those persons introducing and supporting capital and maintenance projects*) are responsible for the general oversight of all project costs, i.e., work orders, contracts, purchase orders, etc., verifying that the aggregate project costs do not exceed the authorized budget line item.

If it is anticipated that the project budget may be insufficient for a specific purchase, the project manager should review available options for completing the funding first with the Director of Finance.

### **2.5. Capital Purchases and Projects**

New Capital Purchases are expenditures used in the operation of the Port which are more than \$5,000 in cost and have a useful life longer than one year.

Maintained and Repair projects are “capitalized” if the work costs more than \$10,000 and increases the useful life or enhances the use of the asset.

All proposed Capital Projects and Capital Maintenance projects are approved through the annual budget and/or supplemental budget process. Any proposed expenditures are for products or services that have not been approved through the formal budget process are subject to the latest version of the Delegation of Authority.

## **2.6. *Emergency Purchases***

When an emergency shall require the immediate acquisition of materials, equipment, supplies, services, or public works, the CEO is authorized to make a finding of the existence of such emergency and execute any contract to respond to the emergency provided that the CEO shall, at the first Board of Directors meeting following the finding of the existence of an emergency, or in no event later than the fourteen (14) days after the contract has been awarded (or for Personal Service Contracts seven (7) days), request Board of Directors ratification of the finding of an emergency and any contract awarded or executed pursuant to this authority., Emergency purchasing shall only be used to avoid immediate hazard to life, to preserve Port property, or to prevent significant service disruptions. Such emergency purchases are not subject to the competitive pricing and/ or formal bid processes.

## **2.7. *Contract Log***

Pursuant to RCW 53.08.440, the Port shall maintain and update quarterly a contract log, listing all current contracts, on the Port’s website. At a minimum, the log must identify the contractor, purpose of contract, effective dates, period of performance, the cost of the contract and funding source, any modifications to the contract, including amendments and change orders, and how the contract was procured (competitively or sole source basis).

## **2.8. *Length of Contracts***

The Port shall not enter into contracts with auto renewal clause unless approved by the CEO. Initial contract terms shall not exceed two years unless the project duration will be longer. Contracts can allow for up to two, one-year renewals. If deemed necessary, longer initial contract terms or additional renewals shall be subject to review and approval by the Board of Directors. However, unit-priced contracts may be executed for an initial contract term not to exceed three years, with the Port having the option of extending or renewing the unit-priced contract for one additional year.



## **2.9. Insurance Requirements**

All service providers, vendor, contractors and suppliers delivering goods or performing services on behalf of the Port must have insurance against claims for injuries to persons or damages to property which may arise or in connection with the performance by the service provider/supplier, their agents, representatives, employees, or subcontractors. Proof of insurance and naming the Chelan Douglas Regional Port Authority, Port of Chelan County, and Port of Douglas County as an additional insured on their policy is required and shall be made a term of the purchase or service contract.

## **2.10. Responsible Contractors**

Before selecting a contractor or vendor, the Project Manager shall verify their debarment and responsible contractor status. Additionally, each contractor and vendor will certify to their debarment and/or responsible contractor status under the purchase or service contract.

## **2.11. Diversity in Contracting**

The Port will ensure that minority and women-owned firms and veteran-owned firms are afforded the maximum practicable opportunity to compete for and obtain public contracts under this Policy.

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### 3. SERVICE CATEGORIES, PUBLIC WORKS, OTHER PURCHASES AND LEVELS OF COMETITIVE SOLICITATION

This section provides guidance on determining the appropriate category of services and/or purchases before a particular contract as well as the appropriate method of solicitation.

#### 3.1. Professional Services

3.1.1 General: Professional Services are rendered by any person, other than as an employee of the agency, contracting to perform activities within the general definition of professional practice. They are services which provide professional or technical expertise to accomplish a specific study, project, task, or other work statement. AS defined in Chapter 39.80 RCW, Professional Services include, but are not limited to, architects (Chapter 18.08 RCW), engineers and land surveyors (Chapter 18.43 RCW), and landscape architects (Chapter 18.96 RCW).

3.1.2 Examples of Professional Services: All engineering disciplines, land surveyors, architects, and landscape architects, environmental consulting, hazardous material inspections, and construction materials testing and inspections (if consultant is providing professional judgment by providing analysis of testing for compliance with specifications in their reports).

3.1.3 Solicitation Procedure: \*

| ACTIVITY                                   | < \$50K  | \$50K-\$100K  | >\$100K  |
|--|--|---|--|
| <b>LEVEL OF COMPETITIVE SOLICITATION</b>   | Minimal  | Informal  | Formal   |
| <b>TYPE OF SOLICITATION</b>                | Consulting Services Roster, pursuant to Port Resolution 2021-09 (Review of Qualifications) | Consulting Services Roster, pursuant to Port Resolution 2021-09 (RFP to Minimum of 3)** | Detailed scope description, Public Request for Proposals & Evaluation Criteria |
| <b>ADVERTISEMENT METHOD (# TO SOLICIT)</b> | Public Notice Required - See Section 3.1.4   | Public Notice Required - See Section 3.1.4  | Public Notice Required   |
| <b>SOLICITATION APPROVAL</b>               | CEO  | CEO   | Board of Directors   |

*\*Staff may elect to use a Formal Solicitation for any value when appropriate. If the project includes grant funding, the conditions of the grant may require a specific method of advertisement and other aspects of the solicitation process; wherever a discrepancy exists between port and grand funded methods, the more stringent set of methods shall apply.*

3.1.4 Public Notice Required: Professional Services are required to be procured under the provisions of Chapter 39.80 RCW. RCW 39.80.030 required that the Port publish its need for Professional Services in advance, concisely stating the general scope and the nature of the project or work for which services are required. The notice must also provide the address of a representative of the Port who can provide additional details. Compliance with this requirement may be accomplished by either:

- a. Publishing an announcement each time the service is needed; or
- b. Announcing generally to the public the Port's projected requirements for any category or type of professional services, such as the annual Consultant Services Roster advertisement.

3.1.5 Basis of Award: Professional Services are awarded using the Qualifications-Based Selection (QBS) requirements. QBS is a competitive procurement process in which the Port reviews the qualifications of professional service firms and where price cannot be used as a selection criterion, to select the most qualified firm for the project. The most qualified firm will be selected as follows:

- a. For contracts below \$50,000, using a QBS process, the Port will review the qualifications of the appropriate firms on the Consulting Services Roster who have indicated the capability of performing the kind of services being contracted.
- b. For contracts between \$50,000 and \$100,000, the Port will utilize a request for proposals to provide a description of the project, solicit firm qualifications, and provide evaluation criteria from at least three (3) firms on the Consulting Services Roster.
- c. For Contracts above \$100,000, the Port will utilize a public request for proposals to provide a description of the project, solicit firm qualifications, and provide evaluation criteria.

After the most qualified firm has been chosen, the Port will negotiate a contract for a fair and reasonable price, taking into account the estimated value of the services to be rendered as well as the scope, complexity, and professional nature thereof. If the Port cannot negotiate a contract with the firm at a price that is fair and reasonable, negotiations with that firm will be formally terminated and the Port will select the next most qualified firm(s) until an agreement is reached or the process is terminated.

3.1.6 Competitive Solicitation Exemption: All Professional Service contracts shall be entered into pursuant to the QBS detailed above except for:

- a. Emergency contracts; and
- b. Contract amendments. Professional Service contracts will not be amended in lieu of open competition if the added work is not similar in scope and size.

3.1.7 Form of Contract: For contracts up to \$50,000, the Port should use a standard short format agreement referred to as “Short Form Professional Services Agreement.” For contracts in excess of \$50,000 the Port should use a standard format referred to as a “Standard Agreement for Professional Services.”

3.1.8 Signing Authority: The CEO may, without prior Board of Director approval, execute contracts up to \$50,000.

3.1.9 Board of Director Action/Notification: Board of Director action is required if the limits of the “Signing Authority” will be exceeded.

## **3.2 Personal Services**

3.2.1 General: As defined in Chapter 53.19 RCW, Personal Services means technical expertise provided by a consultant to render an opinion or recommendation or to accomplish a specific study, project, tasks, service or other work statement which may not reasonably be required in connection with a public works project and the activity or product is mostly intellectual in nature. Personal Services do not include architecture and engineering services, nor should they be confused with purchased services, which are generally routine, repetitive, or mechanical in nature and support an agency’s day-to-day operations.

3.2.2 Examples of Personal Services: Accounting, comprehensive plans, legal services, management analyses, grant writing, and public relations. Certain personal services may require licensing or certification by state agencies, such as accounting, legal, or medical services.

3.2.3 Solicitation Procedure: \*

[Intentionally left blank.]

| ACTIVITY                                   | < \$50K                   | \$50K - \$200K | >\$200K                           |
|--|---------------------------|----------------|-----------------------------------|
| <b>LEVEL OF COMPETITIVE SOLICITATION</b>   | Minimal                   | Informal       | Formal                            |
| <b>TYPE OF SOLICITATION</b>                | general scope description | detailed scope | description & evaluation criteria |
| <b>ADVERTISEMENT METHOD (# TO SOLICIT)</b> | 1-3                       | 3 minimum      | Public Notice Required            |
| <b>SOLICITATION APPROVAL</b>               | CEO                       |                |                                   |

*\*Staff may elect to use a Formal Solicitation for any value when appropriate. If the project includes grant funding, the conditions of the grant may require a specific method of advertisement and other aspects of the solicitation process; wherever a discrepancy exists between port and grand funded methods, the more stringent set of methods shall apply.*

3.2.4 Basis of Award: Pursuant to Chapter 53.19 RCW, for contracts above \$50,000, the selection of Personal Services shall include a documented competitive solicitation process demonstrating that eh Port has solicited responses from an appropriate number of firms thereby providing an equal and open opportunity to qualified parties and culminating in a selection based on specific evaluation criteria developed and included in the Informal and Formal solicitations which may include such factors as: (1) the consultant’s fees or costs (does not necessarily need to be the primary basis for consideration), (2) ability, (3) capacity to undertake the projects, (4) experience, (5) reputation for responsiveness to time limitations, (6) responsiveness to solicitation requirements, and (7) quality of previous performance on Port projects.

3.2.5 Competitive Solicitation Exemption: As provided in RCW 53.19.020, all Personal Service contracts shall be entered into pursuant to competitive solicitation, except for:

- a. Contracts under \$50,000;
- b. Contracts awarded to companies that furnish a service where the tariff is established by the utilities and transportation commission or other public entity;
- c. Intergovernmental agreements awarded to any governmental entity;

- d. Contracts awarded for services to be performed for a standard fee, when the standard fee is established by the contracting agency or any other governmental entity and a like contract is available to all qualified applicants;
- e. Contracts for services that are necessary to the conduct of collaborative research if prior approval is granted by the funding source;
- f. Contracts for professional services which are entered into under chapter 39.80 RCW;
- g. Contracts for the employment of expert witnesses for the purposes of litigation or legal services to supplement the expertise of port staff;
- h. Emergency contracts
- i. Sole source contracts. Personal Services may be selected on a "Sole Source" basis if the consultant providing technical expertise is of such a unique nature that the consultant is clearly and justifiable the only practicable source to provide the service; the justification shall be based on either the uniqueness of the service or sole availability at the location required. The person making the selection shall provide a *Sole-Source Justification* memo to the Board of Directors justifying the sole source selection prior to the start date of the contract;
- j. Contract Amendments, provided, however, that the substantial change in the scope of work specified in the contractor or which are substantial additions to the scope of work specified in the formal solicitation must be submitted to the Board of Directors for a determination of whether the change warrants a new contract as required by RCW 53.19.060. Personal Service contracts will not be amended in lieu of open competition if the added work is not similar in scope and size; and
- k. Other specific contracts or classes or groups of contracts exempted from the competitive solicitation process by the Board of Directors when it has been determined that a competitive solicitation process is not appropriate or cost-effective, including purchases involving special facilities or market conditions.

3.2.6 Form of Contract: The Port uses a standard format referred to as a “Standard Agreement for Personal Services” which is processed by the Project Manager. A Short-Form Contract may also be issued to the engage Personal Services in lieu of a “Standard Agreement for Personal Services” if all of the following conditions are met:

- a. The project scope is clearly defined by tasks and deliverables either of the Short-Form Contract or in correspondence from the Consultant to be attached to the Short-Form Contract;
- b. The project scope can be completed in a short term, typically within thirty (30) days;
- c. Cost for the service is under \$10,000;
- d. Liability is not required because consultant is not work on Port property; and
- e. Professional liability insurance is not required.

3.2.7 Signing Authority: The CEO may, without prior Board of Director approval, execute all Personal Services contracts, regardless of contract amount.

### **3.3 *Purchased Services***

3.3.1 General: Purchased Services are those provided by vendors for routine, necessary, and continuing functions of a local government agency, mostly relating to physical activities. These services are usually repetitive, routine, or mechanical in nature, support the agency’s day-to-day operations, involve the completion of specific tasks or projects, and involve minimal decision-making. There are a number of purchased services that hover a grey line between purchased services and public works contracting. If a particular contract is very near the line, the Port endeavors to take the conservative approach and consider it a public works contract.

3.3.2 Examples of Purchased Services: Delivery/courier service, landscape maintenance, building maintenance (janitorial), herbicide and pesticide application services, recycling/disposal/ litter pickup service, vehicle inspection-lubricating-repair services, computer hardware and software maintenance, and security services.

3.3.3 Solicitation Procedure: \*

[Intentionally left blank.]

| ACTIVITY                                   | < \$50K                   | \$50K-\$300K  | >\$300K  |
|--|---------------------------|---|--|
| <b>LEVEL OF COMPETITIVE SOLICITATION</b>   | Minimal                   | Informal  | Formal   |
| <b>TYPE OF SOLICITATION</b>                | General scope description | Detailed scope description & evaluation criteria                                      | Detailed scope description & evaluation criteria |
| <b>ADVERTISEMENT METHOD (# TO SOLICIT)</b> | 1-3<br>Open Market        | Small Works Roster, pursuant to RCW 39.04.155 and Port Resolution 2021-09 (3 minimum) | Public Notice Required                           |
| <b>SOLICITATION APPROVAL</b>               | None                      | CEO (under \$100k)/BOD (over \$100k)  | Board of Directors                               |

*\*Staff may elect to use a Formal Solicitation for any value when appropriate. If the project includes grant funding, the conditions of the grant may require a specific method of advertisement and other aspects of the solicitation process; wherever a discrepancy exists between port and grand funded methods, the more stringent set of methods shall apply.*

3.3.4 Prevailing Wage: Some Purchased Services require Prevailing Wages to be paid even though they are not subject to Public Works bidding requirements. These Purchased Services include: (1) building maintenance services (janitorial), (2) groundskeeping, (3) traffic control (flagging), and (4) fire extinguisher service and replacement. The foregoing services providers must file a *Statement of Intent to Pay Prevailing Wages* prior to when the work is performed, and payment is made and an *Affidavit of Wages Paid* upon completion. Prevailing wage requirements must be included in the Solicitation provided by the Port.

3.3.5 Basis of Award: The selection of Purchased Services shall include a documented competitive solicitation process demonstrating that the Port has solicited responses from an appropriate number of vendors thereby providing an equal and open opportunity to qualified parties and culminating in a selection based on specific evaluation criteria developed and included in the Informal and Formal solicitation which may include such factors as: (1) the vendor's fees or costs (does not necessarily need to be the primary basis for consideration), (2) ability, (3) capacity to undertake the project, (4) experience, (5) reputation for responsiveness to time limitations, (6) responsiveness to solicitation requirements, and (7) quality of previous performance on Port projects.



3.3.6 Competitive Solicitation Exemption: All Purchased Service contracts shall be entered into pursuant to competitive solicitation, except for:

- a. Emergency contracts;
- b. Sole source contracts, the person making the selection shall provide a Sole-Source Justification memo to the Board of Directors justifying the sole source selection prior to the start date of the contract.
- c. Contract amendments. Purchase Service contracts will not be amended in lieu of open competition if the added work is not similar in scope and size; and
- d. Purchases involving special facilities or market conditions.

3.3.7 Form Contract: The Port uses either a Service Agreement or Short-form Contract depending on the length, size and scope of services provided, insurance requirements, and prevailing wage requirements. Services that (1) span more than one billing cycle, (2) require insurance, and (3) require prevailing wages to be paid should be procured using a Service Agreement. In the even a service spans more than one fiscal year, Board of Director approval is required, or the contract must include language that makes the contract contingent upon further budget appropriation and Board of Director approval.

3.3.8 Signing Authority: The CEO may, without prior Board of Director approval, execute Purchased Service contracts up to \$50,000 as long as funds for such Purchased service are within the overall approved budget.

3.3.9 Board of Director Action/ Notification: Board of Director action is required if the limits of the “Signing Authority” will be exceeded.

### **3.4 Public Works**

3.4.1 General: Public Work means all work, construction, alteration, repair, or improvement *other than ordinary maintenance*, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein. “Ordinary maintenance” is defined in WAC 296-127-010(7)(b)(ii) as maintenance work performed by the regular employees of the state or any county, municipality, or political subdivision created by its laws.

3.4.2 Examples of Public Works: New construction, building/structure remodeling and repairs, road construction and repairs (including striping), and all other work involving – construction, alteration, enlargement, improvement,

repairs, and/or demolition which, by law, constitutes a lien or charge on any property of the state or of a municipality.

3.4.3 Solicitation Procedure: \*

| ACTIVITY                                   | <\$5K                         | \$5K - \$50K  | \$50K - \$350K   | >\$350K                            |
|--|-------------------------------|---|--|------------------------------------|
| <b>LEVEL OF COMPETITIVE SOLICITATION</b>   | None                          | Minimal   | Informal   | Formal                             |
| <b>TYPE OF SOLICITATION</b>                | general scope and description | general scope and nature, including materials and equipment to be furnished**             |  | detailed plans & scope description |
| <b>ADVERTISEMENT METHOD (# TO SOLICIT)</b> | Open Market, 1 – 3            | Small Works Roster, Pursuant to RCW 39.04.155 and Port Resolution 2021-09 (3 min.)<br>*** | Small Works Roster, Pursuant to RCW 39.04.155 and Port Resolution 2021-09 (5 min.) | Public Notice Required             |
| <b>SOLICITATION APPROVAL</b>               | None                          | CEO   | CEO (under \$100k)/BOD (over \$100k)   | Board of Directors                 |

*\*Staff may elect to use a Formal Solicitation for any value when appropriate. If the project includes grant funding, the conditions of the grant may require a specific method of advertisement and other aspects of the solicitation process; wherever a discrepancy exists between port and grand funded methods, the more stringent set of methods shall apply.*

*\*\*This does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes.*

*\*\*\* See section 3.4.10 for Awarding Public Works without Bids*

3.4.4 Small Works Roster Process: The Port Board of Directors established the implementation of the small works roster processing Resolution 2021-09. The small works roster may be used to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement or real property which the estimated cost is \$350,000 or less. The small works roster shall consist of all responsible contractors who have requested to be on the list, and where required by law are properly licensed or registered to perform such work in this state. Annually, the Port shall publish, in a newspaper of general circulation within the jurisdiction, a notice of the existence of the small works roster and, through such publication, solicit the names of contractors for said small works roster. Contractors

desiring to be placed on the small works roster must keep current records of any applicable licenses, certification, registration, bonding, insurance, or other appropriate matters and, where requested, provide the same to the Port as a condition of being placed on the small works roster. In addition, responsible contractors shall be added to the small works roster at any time if they submit a written request to the Port and necessary records. The Port may alternatively use the MRSC small works roster to seek qualified contractors.

**3.4.5 Solicitation Procedure:** For Public Works contracts solicited using the small works roster process, the Port shall obtain telephone, written or electronic quotations from the appropriate number of contractors for the size of the contract on the small works roster who have indicated the capability of performing the kind of work being contracted, and in a manner that will equitably distribute the opportunity among the contractors. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation.

For contracts between \$50,000 and \$350,000, quotations must be invited from a minimum of five (5), but up to all of the appropriate contractors on the small works roster. If the estimated cost of the contract is more than \$250,000 and the Port chooses to solicit quotations from less than all the appropriate contractors on the small works roster, it must notify the remaining contractors on the small works roster that quotations are being sought. Notice under this section may be made by: (1) publishing notice in a legal newspaper in general circulation in the area where the work is being done, (2) mailing a notice to the contractors, or (3) sending notice to the contractors by electronic means.

For contracts between \$5,000 and \$50,000 (Limited Public Works projects), quotations must be invited from a minimum of three (3) appropriate contractors from the small work roster.

**3.4.6 Solicitation Procedure for Unit-Priced Public Works Project:** In addition to the above solicitation procedure, for the purpose of bid evaluation, Unit-Priced contracts must be competitively bid, with invitations including: (1) estimated quantities of the anticipated type of work or trades and (2) specifications on how the Port will issue or release work assignments, work orders, or task authorizations pursuant to a unit priced contract for projects, tasks, or other work based on the hourly rates or unit priced bid by the contractor.

3.4.7 Prevailing Wages: Chapter 39.12 RCW requires contractors and subcontractors to pay prevailing wages to all workers for all public works and maintenance contracts, regardless of the dollar value of the contract. These contractors and subcontractors must file a *Statement of Intent to Pay Prevailing Wages* prior to when the work is performed, and payment is made and an *Affidavit of Wages Paid* upon completion. Prevailing wage requirements must be included in the Solicitation provided by the Port.

3.4.8 Basis of Award: Public Works contracts must be awarded in accordance with the requirements in RCW 53.08.120 and RCW 39.04.350. Contracts will be awarded to the lower responsible bidder in accordance with RCW 39.04.350.

3.4.9 Procedure for Awarding Public Works without Bids: In addition to using the small work roster process, pursuant to RCW 53.08.120(c), port districts also have the option to construct any Public works projects by soliciting on the open market and without calling for bids (solicit 1-3 contractors for quotes), whenever the estimated cost of the work or improvement, including the cost of material, supplies, and equipment, will not exceed \$40,000. Under this statute, Public Works projects cannot be divided into units of work or classes of work to voice calling for bids. Port staff must utilize their best effort to reach out to qualified contractors, including certified minority and woman-owned contractors and must also document the selection process for audit requirements and retention.

3.4.10 Competitive Solicitation Exemption: RCW 39.04.280 provides the following uniform exemptions to competitive bidding requirements for Public Works contracts:

- a. Emergency contracts;
- b. Sole source contracts. The person making the selection shall provide a Sole-Source Justification memo to the Board of Directors justifying the sole source selection prior to the start date of the contract;
- c. Purchases of insurance or bonds
- d. Contract amendments. Public Works contracts will not be amended in lieu of open competition if the added work is not similar in scope and size; and
- e. Purchases involving special facilities or market conditions.

3.4.11 Form of Contract: The Port contracts for Public Works using either a Short Form Contract for Limited Public Works (LPW) projects under \$40,000 or a Public Works Contract for projects over \$40,000.

3.4.12 Retainage and Bond Requirements:

a. Retainage. Chapter 60.28 RCW requires contract retainage on “public improvement contract” unless the contract is for a federally funded transportation project. Often contracted maintenance will not involve making any “public improvement.” If so, there is no requirement for any contract retainage on a maintenance contract.

For projects awarded under the small works roster or Limited Public Works processes established in the is Policy, the Port may waive the retainage requirements of RCW 60.28.011(1)(a), thereby assuming the liability for contractor’s nonpayment of laborers, mechanics, subcontractors, material persons, suppliers, taxes, increases, and penalties under Titles 50, 51, and 82 RCW that may be due from the contractor for the project. However, the Port has the right of recovery against the contractor for any payments made on the contractor’s behalf. Recovery of unpaid wages and benefits shall be the first priority for actions filed against the contract.

b. Bond. RCW 39.08.010 requires a contract bond on state or local government contracts with any person or corporation to perform any work. That is a broad requirement that applies to contracted ordinary maintenance. RCW 39.08.015 places liability on the public entity when the entity fails to obtain the required contract bond.

For projects awarded under the Limited Public works process established in this Policy, the Port may waive the bond requirements of RCW 39.08.010.

Additionally, for contracts below \$150,000, at the option of the port contractor or the general contractor/construction manager, the Port may, in lieu of the bond, retain ten percent (10%) of the contract amount for a period of thirty (30) days after date of final acceptance, or until receipt of all necessary releases from the department of revenue, the employment security department, and the department of labor and industries and settlement of any liens filed under Chapter 60.28 RCW, whichever is later. The recovery of unpaid wages and benefits shall be the first priority for any actions filed against retainage held by the Port.

3.4.13 Signing Authority: The CEO may, without prior Board of Director approval, execute contracts up to \$50,000 as long as funds for such contract are within the overall approved budget.

3.4.14 Board of Director Action/Notification: Board of Director action is required if the limits of the “Signing Authority” will be exceeded. The Board of Directors will be provided an updated contract long on a quarterly basis containing all Public Works contracts awarded.

### **3.5 *Design Build Contracting for Public Works Projects***

3.5.1 Chapter 39.10 RWC authorizes alternative public works contracting procedures, including design-build procedures, because under certain circumstances, alternative public works contracting procedures may best serve the public interest if such procedures are implemented with an open and fair process based on subjective and equitable criteria. With Board of Director approval, Design-Build Contracting can be utilized for public works projects in which the total projects cost is over \$2,000,000 and where:

- a. The construction activities are highly specialized, and a design-build approach is critical in developing the construction methodology; or
- b. The projects selected provide opportunity for greater innovation or efficiencies between the designer and the builder; or
- c. Significant savings in project delivery time would be realized.

### **3.6 *Federal Procurement Standards Policy***

3.6.1 Incorporation: The Chelan Douglas Regional Port Authority Federal Procurement Standard Policy establishes Policies and Procedures to implement federal regulations and establishes code of conduct regarding the Port’s purchasing and contracting decisions to ensure efficient, fair, and professional administration of Federal grant funds in compliance with federal regulation and law. The Federal Procurement Standard Policy is Attached to this Policy as Exhibit B and incorporated herein by this reference.

### **3.7 *Cooperative Purchasing***

3.7.1 General: The Chelan Douglas Regional Port Authority may participate in, sponsor, conduct or administer a cooperative purchasing agreement with one or more public bodies or agencies for the purpose of achieving economies of scale, increased efficiency or reduced administrative

expenses, in accordance with RCW 39.34.030, as it now is or may be amended.

3.7.2 Piggyback Contracts: The Port may opt to fulfill its purchasing requirements by obtaining goods and services from contracts made available by Federal, State or other governmental agencies or purchasing cooperatives. Since these contracts were competitively bid by the lead agency, such as purchases may be made by the Port without further competitive solicitation, provided they are in the best interest of the Port. The Project Manager will review and approve all contracts to ensure they meet the requirements of RCW 39.04.030. The Port must have an interlocal purchasing agreement or equivalent, with the federal state or public entity to utilize that entities' contracts.

3.7.3 Purchasing Cooperatives:

a. The Port may join a purchasing cooperative, provided that the purchasing cooperative meets the requirements of RCW 39.34.030 as it stands now or may be amended. The Board of Directors shall take appropriate action prior to the Port becoming a member.

b. Individual Entities: The Port may enter into an interlocal agreement or other similar agreement with another public agency for the purposes of cooperative purchasing. The Board of Directors shall take appropriate action to approve such an agreement.

c. Piggyback Purchases: Prior to utilizing contracts available from a purchasing cooperative or individual entity, the Project Manager shall work with the end user to ensure that the contract meets the requirements of RCW 39.34.030 as it stands now or may be amended.

d. State Contracts: the Port may utilize State of Washington contracts, as well as State of Oregon contracts, without verifying that the contract meets the requirements of RCW 39.34.030.

**3.8 Other Purchases - Goods, Equipment, Materials, and Supplies**

3.8.1 General: Other Purchases refers to buying of goods, equipment, materials, and supplies, as long as the purchase is *not* made in connection with a *Public Works* project. If the Purchase is made in connection with a Public Works project, it must follow the Public Works bidding requirements detailed in Section 3.4 above. Moreover, the solicitation and bidding requirements in this Policy for Other Purchases do not apply to the purchases

of goods, equipment, materials, and supplies where the cost will not exceed \$5,000. In making such purchases, however, the Port will endeavor to obtain the lowest practical price for such equipment, materials, and supplies.

3.8.2 Examples of Materials, Equipment, and Supplies: Supplies, computer hardware/software & other electronics, vehicles, equipment, and tools.

3.8.3 Solicitation Procedure: \*

| ACTIVITY                                   | \$5K-\$50K                | >\$50K   |
|--|---------------------------|--|
| <b>LEVEL OF COMPETITIVE SOLICITATION</b>   | Minimal                   | Formal   |
| <b>TYPE OF SOLICITATION</b>                | general scope description | detailed scope description & evaluation criteria |
| <b>ADVERTISEMENT METHOD (# TO SOLICIT)</b> | Open Market (3 minimum)   | Public Notice Required                           |
| <b>SOLICITATION APPROVAL</b>               | None                      | CEO  |

*\*Staff may elect to use a Formal Solicitation for any value when appropriate. If the project includes grant funding, the conditions of the grant may require a specific method of advertisement and other aspects of the solicitation process; wherever a discrepancy exists between port and grant funded methods, the more stringent set of methods shall apply.*

3.8.4 Basis of Award: The selection of Other Purchases shall include a documented competitive solicitation process demonstrating that the Port has solicited responses from an appropriate number of vendors thereby providing an equal and open opportunity to qualified parties and culminating in a selection based on specific evaluation criteria developed and included in the Formal solicitation which may include such factors as:

(1) the vendor's fees or costs (does not necessarily need to be the primary basis for consideration), (2) ability, (3) capacity to undertake the work, (4) reputation, (5) responsiveness to time limitations, (6) responsiveness to solicitation requirements, and (7) quality of previous performance.

3.8.5 Competitive Solicitation Exemption: RCW 39.04.280 provides the following uniform exemptions to competitive bidding requirements for Purchas contracts:

- a. Emergency contracts;
- b. Sole source contracts. The person making the selection shall provide a Sole-Source Justification memo to the Board of Directors



justifying the sole source selection prior to the start date of the contract;

c. Purchases of insurance or bonds;

d. Contract Amendments. Purchas contracts will not be amended in lieu of open competition if the added work is not similar in scope and size; and

e. Purchases involving special facilities or market conditions.

f. RCW 39.30.045 authorizes the acquisition of supplies, materials, and equipment through an auction conducted by an agency of the State of Washington, an agency of the United States, any municipality or other government agency, or private property if the items can be obtained at a competitive price.

g. RCW 39.33.010 authorizes the acquisition of surplus property from governmental agencies without the use of competitive quotes or bids.

3.8.6 Form of Contract: Purchase Order or Credit Card.

3.8.7 Signing Authority: The CEO may, without prior Board of Director approval, execute Purchase Orders up to \$50,000.

3.8.8 Board of Direction Action/Notification: Board of Director action is required if the limits of the "Signing Authority" will be exceeded.

[Intentionally left blank.]

## 4. Legal References

### 4.1 *RCWs:*

Chapter 39.12 RCW  
Chapter 53.08 RCW  
Chapter 53.19 RCW  
Chapter 60.28 RCW  
Chapter 39.10 RCW  
Chapter 39.04 RCW  
Chapter 39.08 RCW

### 4.2 *Port Policies and Resolutions*

Port Delegation of Authority- Adopted by Resolution annually  
Port Resolution No. 2021-10 -Adopting Port Purchasing and contracting  
Policy  
Port Resolution No. 2021-09 – Adopting Small Works and Consulting  
Services Rosters  
Port Federal Procurement Standards Policy

### 4.3 *Other References*

MRSC Contracting for Services  
Personal Services Contracting Manual for Washington Ports

[Intentionally left blank.]

## **5. Appendix**

### Exhibit A - CDRPA Federal Procurement Standards Policy

[Intentionally left blank.]

**CHELAN DOUGLAS REGIONAL PORT AUTHORITY  
FEDERAL PROCUREMENT STANDARDS POLICY**

**(1) PURPOSE**

The purpose of this policy is to establish and maintain internal controls to provide reasonable assurance that expenditures of Federal funds for Airport projects are managed in compliance with all applicable Federal regulations and with the terms and conditions of the specific grant or award.

When procuring property and services that involve the expenditure of Federal funds, the Airport will follow the procurement standards set forth herein which are intended to comply with 2 CFR § 200.318 - §200.326, or the purchase procedures set forth by RCW or in the Chelan Douglas Regional Port Authority Administrative Policies, whichever is more restrictive.

Nothing herein is intended to affect or modify the authority to approve purchases or execute contracts, whether such authority resides with the Governing Board of the Port Authority or as delegated to the Chief Executive Officer or Airport Director.

**(2) CODE OF CONDUCT IN CONTRACTING.**

The Port Authority establishes the below code of conduct regarding its procurement decisions to ensure efficient, fair and professional administration of Federal grant funds in compliance with 2 CFR §200.112, 2 CFR §200.318 and other applicable Federal and state standards, regulations, and laws.

**2.1 Conflicts of Interest.** No employee, officer, elected official, or agent of the Port Authority shall participate directly or indirectly in the selection, award, or administration of any contract if a conflict of interest, either real or apparent, would be involved. Such a conflict would arise when any of the following has a financial or other interest in the firm competing for the award:

**2.1.1** An employee, officer, or agent involved in making the award;

**2.1.2** His/her relative (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister);

**2.1.3** His/her partner; or

**2.1.4** An organization which employs or is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

**2.2 Gratuities, Kickbacks, and Use of Confidential Information.** No officer, employee, or agent of the Port Authority shall ask for or accept gratuities, favors, or items of more than nominal value (i.e. inexpensive hat with logo) from any contractor, potential

contractor, or party to any subcontract, and shall not knowingly use confidential information for actual or anticipated personal gain.

**2.3 Exempt Transactions.** The following services and purchasing activities are exempted from the application of this policy:

- Electrical, water, or other utility services by a municipality engaged in the business of providing such services at the same rates and on the same terms as are available to the general public.
- A publication of legal notices required by law to be published, upon competitive bidding at rates not higher than prescribed by law for members of the general public.
- Corporate discounts available to the general public or all government agencies.

**2.4 Remedies.** To the extent permitted by Federal, state or local laws or regulations, violation of these standards may cause penalties, sanctions or other disciplinary actions to be taken against the Port Authority's elected officials, employees or agents, or the contractors, potential contractors, subcontractors or their agents. Any potential conflict of interest will be disclosed in writing to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.

**(3) PROCUREMENT METHODS** Procurements shall be made by one of the following methods:

- (a) Micro-purchase (less than \$3,000 for non-construction projects, \$2,000 for construction projects covered by the Davis-Bacon Act);
- (b) Small purchase (\$3,000 - \$150,000);
- (c) Competitive sealed bid (invitation for bid/IFB);
- (d) Competitive proposal (request for proposals/RFP);
- (e) Architectural engineering services (A&E); or
- (f) Emergency procurement and other than full and open competition including sole source.

Services not covered under this policy include:

- Audit services provided under the authority of the Washington State Auditor's Office;
- Repair services provided by or through the manufacturer or manufacturer's authorized service dealer;
- Electrical, water or other utility services by a municipality; and
- Legal advertisements

**3.1 Micro-Purchase Procedures.** For purchases of materials, equipment, supplies, work and/or services for the Port Authority for which the total price is valued at less

than \$3,000 (a “micro-purchase”), the Port Authority may obtain only one quote, provided it is reasonable. To the extent practicable the Port Authority shall make such micro-purchases equitably among qualified suppliers and no favoritism should be shown. The Port Authority shall document its determination that the price is reasonable to the best of the Port Authority’s ability, even if informally. However, no formal cost or price analysis is required. Rather, the execution of a contract or purchase order by the authorized Port Authority contractor shall serve as the determination that the price obtained is reasonable, which may be based on the authorized Port Authority contractor’s prior experience or other factors.

**3.2 Small Purchase Procedures.** For any amounts above the micro-purchase threshold, but not exceeding \$150,000, the Port Authority may use small purchase procedures for the acquisition of materials, equipment, supplies, work and/or services. Under small purchase procedures, to the greatest extent feasible, and to promote competition, small purchases should be distributed among qualified sources. The Port Authority should obtain a reasonable number of quotes (preferably three, if possible). Quotations for Small Purchases (QSP), or quotes, may be obtained orally (either in person or by phone), by fax, in writing, or through e-procurement. Award shall be made to the responsive and responsible vendor that submits the lowest cost to the Port Authority. If award is to be made for reasons other than lowest price, documentation shall be maintained in the contract file. The Port Authority shall not break down requirements aggregating more than the small purchase threshold (or the Micro Purchase threshold) into several purchases that are less than the applicable threshold merely to: (1) permit use of the small purchase procedures or (2) avoid any requirements that applies to purchases that exceed the Micro Purchase threshold. Whenever possible, such services should be solicited from the Port Authority’s Small Works Roster. The Small Works Roster requirement may be waived for special services and circumstances defined by board action or these Procurement Policies.

To determine the reasonableness of the price, a comparison with other offers shall generally be sufficient and no further analysis is required. If a reasonable number of quotes are not obtained to establish reasonableness through price competition, the authorized Port Authority contractor shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the authorized Port Authority contractor personal knowledge at the time of purchase, or any other reasonable basis.

**3.3 Competitive Sealed Bids.** Competitive sealed bidding, also known as Invitation for Bids (IFB), shall be used for all contracts that exceed the small purchase threshold and that are not specifically outlined or excepted by another method of procured contained in this policy or authorized by law.

**3.3.1** An IFB will be used in cases where each of the following conditions is present:

- (a) A complete, adequate, and realistic statement of work, specification, or purchase description is available;

- (b) There is a reasonable expectation that two or more responsible bidders are willing and able to compete effectively for the work;
- (c) The procurement generally lends itself to a firm fixed price contract;
- (d) The award can be made principally on the basis of price and those price-related factors listed in the IFB; and
- (e) The selection of the successful bidder can be made principally on the lowest price.

**3.3.2** A pre-bid/proposal conference may be held in the competitive sealed bid situation for the purpose of answering questions and clarifying the requirements and specifications relevant to the IFB. Notice for such pre-bid/proposal conference shall be advertised and stated in the general requirements section of the IFB or RFP, if applicable. Nothing herein shall preclude the answering of questions or issuance of additional instructions to, or amendments of, the IFB.

**3.3.3** The following requirements generally apply to procurement by competitive sealed bid, in addition to any other requirements specifically set forth in a particular IFB:

- (a) The IFB shall be publicly advertised in an appropriate publication or website posting at least once each week for 2 consecutive weeks before the date fixed for opening the bids.
- (b) Bids shall be solicited from an adequate number of known suppliers with sufficient response time prior to the date set for opening the bids.
- (c) The bidding documents will include any specifications and pertinent attachments, describing the item or services sought in order for the bidder to properly respond.
- (d) The IFB shall specify the Port Authority's right to award the contract to other than the low bidder and its right to reject any or all bids for a sound documented reason.
- (e) A public bid opening will be held at the date and time specified.
- (f) The Port Authority will announce that the bid review will be completed by staff, recommended to the Board of Directors, and the date the contract will be awarded.

**3.4 Competitive Proposal- Request for Proposal (RFP).** A request for Proposal (RFP) shall be used when: the nature of the procurement does not lend itself to sealed bidding; more than one source is willing to submit a proposal; and either a fixed price or cost-reimbursement type contract is to be awarded.

**3.4.1 RFPS** should be used when one or more of the following is present:

- (a) The property or services to be acquired are described in a performance or functional specification; or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing the contract award on factors other than price are present;
- (b) There is uncertainty about whether more than one bid will be submitted in response to an invitation to bid;
- (c) Due to the nature of the procurement award does not need to be based exclusively on price or price-related factors and the importance of cost or price may vary; and/or
- (d) Separate discussions with individual offeror(s) are expected to be necessary after they have submitted their proposals.

**3.4.2** The following requirements apply to procurement by competitive proposals:

- (a) The RFP shall be publicly advertised in an appropriate publication or website at least once each week for two consecutive weeks before the date fixed for opening of the bids;
- (b) All evaluation factors and their relative importance will be identified in the RFP;
- (c) Proposals will be solicited from an adequate number of sources;
- (d) The Port Authority will use written procedures for conducting technical evaluations of the proposals received and for selecting the successful vendors; and
- (e) Awards will be made to the responsible Proposer whose proposal is the most advantageous to the Port Authority, with price and other factors considered.

**3.4.3 Architectural, Engineering and other Related Services.** The Port Authority shall use qualifications based procured procedures as set forth in RCW Chapter 39.80 for the acquisition of architectural and engineering services, such as program management, architectural engineering, design, surveying, mapping and related services (“A&E Services”). The following shall apply to procurement of A&E Services:

- (a) The Port Authority shall cause to be distributed a concise announcement of the general scope and nature of the project or work for which the services are required;
- (b) Offerors’ qualifications will be evaluated to determine award;



- (c) Price is excluded from the evaluation process;
- (d) Negotiations will first be conducted only with the most qualified offeror;
- (e) Only after failing to agree on a fair and reasonable price with the most qualified offeror can negotiation begin with the next most qualified offeror until a contract award can be made to the offeror whose price is determined to be fair and reasonable.

**3.5 Noncompetitive Proposals.** Procurement by noncompetitive proposals (sole- or single-source) may be used only when the award of a contract is inappropriate for the small purchase procedures, sealed bids, cooperative purchasing, or competitive proposals, and if one of the following is present:

**3.5.1 Adequate competition.** The Port Authority determines that competition is adequate after soliciting from several sources and after determining that specifications are not unduly restrictive and changes cannot be made to encourage greater competition. A cost analysis must be performed in lieu of a price analysis when this situation occurs.

**3.5.2 Sole Source/Emergency/Approval.** The item is available only from a single source, based on a good faith review of available sources; a sufficient emergency exists for the procurement requirement will not permit a delay resulting from competitive solicitation or the Federal awarding agency expressly authorizes non-competitive proposals in response to a written request from the Port Authority.

**3.5.3 Procedures.** The following procedures apply when less than full and open competition is available:

- (a) Offers will be solicited from as many potential sources as practicable under the circumstances;
- (b) If an offer is solicited from only one source, that decision must be adequately justified in writing, consistent with all applicable state and Federal standards;
- (c) If applicable and the Federal awarding agency requests, the proposed procurement shall be submitted to the Federal agency for pre-procurement decision award review.

**(4) CONTRACT PROVISIONS** All contracts made by the Port Authority under any Federal award must contain provisions covering the following, set forth in 2 CFR 200 Appendix II, as applicable.

Adopted by the Chelan Douglas Regional Port Authority Board of Directors  
on September 10<sup>th</sup>, 2019.

ELECTRONIC CODE OF FEDERAL REGULATIONS

**e-CFR data is current as of April 5, 2019**

Title 2 → Subtitle A → Chapter II → Part 200 → Subpart F → Appendix

**Title 2: Grants and Agreements**

**PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS**

**Subpart F—Audit Requirements**

**APPENDIX II TO PART 200—CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS**

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm

or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See §200.322 Procurement of recovered materials.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014]

Need assistance?