

Procurement Changes

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Disclaimer

- This presentation provides a general overview of procurement issues for Ports in Washington State. It is understood that specific situations related to procurements including Public Works must be evaluated on an individual basis in conjunction with appropriate legal advice.

Outline

- Port District Bid Limits
- Unit Price Contracts



2018 Legislative Changes

Engrossed Substitute Senate Bill 6329

- Any port district may construct any public work, as defined in RCW 39.04.010, **by contract without calling for bids** whenever the estimated cost ... **will not exceed the sum of \$40,000**
- A port district may **procure public works with a unit priced contract ... based on hourly rates or unit pricing** for one or more categories of work or trades

Port Bid Limits



Public Works - Definition

RCW 39.04.010(4)

- “Public Work” means **all work**, construction, alteration, repair, or improvement **other than ordinary maintenance, executed at the cost of** the state or municipality, or which is **by law a lien or charge** on any property therein

Ordinary Maintenance - Definition

WAC 296-127-010(7biii)

- **Ordinary maintenance** which is defined as **work not performed by contract** and that is performed on a **regularly scheduled basis** (e.g., daily, weekly, monthly, seasonally, semiannually, but not less frequently than once per year), to service, check, or replace items that are not broken;.....

Port District Statute

Contracts for Labor & Material - RCW 53.08.120(2c)

- Construct **public work** as defined in 39.04.010
- By contract **without calling for bids** when **estimated costs** do not exceed \$40,000
- Does **not permit division of work** to avoid calling for bids
- **Managing official** to make best effort to reach out to **qualified contractors** including **M/WBE contractors**

Best Practices

Port Bid Limits

- Port district **establish policies and procedures** to define use of bid limit procurement process
- Define **contract terms and conditions** including **bond and retainage** requirements
- **Clearly define delegations of authority** as appropriate
- Maintain **flexibility**
- **Competition, transparency and accountability**
- Prepare **documentation**

Other Considerations

Port Bid Limits

- Define which **procurement process bid limits will be applied to**, competitive bid 39.04.010 or small works 39.04.155
- What form of **contract** is needed
- How should **sales tax** be treated
- Change order costs **exceed project estimate**
- **Prevailing wage** intents and affidavits
- DOR Notice of completion (over \$35K)

Unit Price Contracting



Port District Statute

Contracts for Labor & Material - RCW 53.08.120(3)

- Procure **public work** as defined in 39.04.010 with a **unit priced contract**
- For completing **anticipated types of work** based on **hourly rates or unit pricing**
- Unit priced contract means a **competitively bid contract** for public works **anticipated on a recurring basis to meet business or operational needs**

Port District Statute (cont'd)

Contracts for Labor & Material - RCW 53.08.120(3)

- Contractor agrees to a fixed period **indefinite quantity delivery of work** at a **defined price**
- Initial contract term **not to exceed 3 years**
- Port district has option to extend or renew for an **additional year**
- Invitations shall include, for bid evaluation, **estimated quantities of anticipated types of work or trades**

Port District Statute (cont'd)

Contracts for Labor & Material - RCW 53.08.120(3)

- Invitations to **specify how port will issue or release work** on the hourly or unit prices bid
- Award contract to **lowest responsible bidder**
- When possible, Port must invite at least 1 **proposal from M or WBE qualified contractor**
- Contractor must **pay prevailing wages** for all work performed

Port District Statute (cont'd)

Contracts for Labor & Material - RCW 53.08.120(3)

- Work performed on each work order must pay prevailing wage rates **in effect for the contract year**
- Prevailing wage rates shall be **updated annually**
- **Intents and affidavits** shall be **submitted annually** for all **work completed** within the **previous 12 month period**

Best Practices

Unit Priced Contracting

- Port district **establish policies and procedures** to define process for unit price procurement
- Define **contract terms and conditions** including **bond and retainage** requirements
- Define “**anticipated on a recurring basis** to meet the **business or operational need**”
- Define how work will be released and **method of establishing cost** based on contract unit pricing

Best Practices (cont'd)

Unit Priced Contracting

- Define **how unit prices will be adjusted annually** for changes to prevailing wage rates
- Define what constitutes a **change in the authorized work or basis of unit price**
- Define how **out of scope work** will be addressed
- Maintain **flexibility**
- **Competition, transparency and accountability**

Other Considerations

Unit Priced Contracting

- What form of **contract document** is needed to **define unit price work** (plans, specs, standards etc.)
- Consider specifying a **minimum contract earned value**
- What type of **subcontractors** may be needed
- **Apprenticeship** requirements may apply to total contract value
- **Prevailing wage** intents and affidavits annually
- When to **release retainage**

Procurement Changes

Questions

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