



Location: To be conducted virtually: Microsoft Teams Meeting

Date: Thursday, October 28, 2021

Time: 4:00 p.m. – 5:00 p.m.

Teams Call: Members of the public are invited to participate in the virtual meeting by telephone or video by using the following phone number and meeting ID: 1-425-653-6586 Meeting ID: 357 391 827#

Directors: Lora Ueland, Harold Scoggins, Brenda Bauer, Kurt Triplett, Chris Elwell, Dan Yourkoski

Alternates: Brad Miyake, Kristin Meitzler, Mark Schmidt, Matt Morris, Dwight Dively, Shawn Hayes

Agenda Details:

1. Call to Order – Board Chairperson 4:00 p.m.
2. Roll Call – All 4:01 – 4:03 p.m.
3. Approve the Minutes – Board Chairperson 4:04 – 4:05 p.m.

(Decision: Motion to approve the minutes from the 9-23-21 Regular Meeting of the PSERN Board of Directors)

4. Public Comment – Board Chairperson 4:06 – 4:09 p.m.

Board Chairperson to open floor for public comment. Members of the public are invited to address the Board of Directors for a period of time not to exceed three minutes.

5. Draft Procurement Policy – Zak Tomlinson 4:10 – 4:40 p.m.

(Discussion)

6. Administrative Staffing Recruitment Update – David Mendel 4:41 – 4:45 p.m.

(Discussion)

7. PSERN Board of Directors Officer Report – Board Officers 4:46 – 4:48 p.m.

(Discussion)

8. BoD 2022 Meeting Schedule – David Mendel 4:49 – 4:52 p.m.

(Discussion)

9. Review Action Items – Board Chairperson 4:53 – 4:55 p.m.

10. Executive Session – (If needed) 4:56 – 5:00 p.m.

Next Meeting: December 9, 2021



Meeting of the PSERN Board of Directors - Minutes

Location: Conducted virtually: Microsoft Teams Meeting

Date: Thursday, September 23, 2021

Time: 4:00 p.m. – 5:00 p.m.

Attendees:

- **Directors:** Lora Ueland, Harold Scoggins, Brenda Bauer, and Kurt Triplett.
- **Alternates:** Kristin Meitzler and Mark Schmidt.
- **Attendees:** Spencer Bahner, Mahak Chopra, Armand Eichhorn, Hank Krajewski, Dino Lamanna, Christopher Lombard, David Mendel, Tony Minor, Kimberly Number, Zak Tomlinson, and Michael Webb.

Minutes:

1. Call to Order – Board Chairperson 4:02 p.m.
2. Roll Call – All 4:02 – 4:03 p.m.
3. Public Comment – Board Chairperson 4:03 – 4:03 p.m.
There were no public comments.
4. Approve the Minutes – Board Chairperson 4:03 – 4:04 p.m.

(Decision: Motion to approve the minutes from the 8-26-21 Meeting of the PSERN Board of Directors)

MOTION: A motion was made to approve the minutes of the August 26th, 2021 meeting of the PSERN Board of Directors by [Brenda Bauer](#). The motion was seconded by [Kurt Triplett](#). Members unanimously approved the motion.

5. Procurement Policy Update – Zak Tomlinson 4:10 – 4:18 p.m.
 - A draft policy is in development and should be available to share in the next few weeks.
 - The policy will be compliant with current laws, auditor guidelines, and yet be flexible for ease of use.
 - The state’s new increased latitude with piggyback agreements will be addressed.
 - Equity and inclusion language should also be discussed for inclusion in the policy. The City of Seattle and the Port of Seattle’s procurement policy can be viewed for example language.
6. Administrative Staffing Updates – David Mendel 4:04 – 4:09 p.m.
 - The PSERN Project cannot continue to provide administrative support beyond the end of the year.
 - Recruitment for the administrative position should be now to ensure there is no gap in support.
 - An analysis of the job duties of current administrative positions in King County, when compared to the job duties of the proposed PSERN administrative position, demonstrate that an Administrative Level III job classification is suitable for the recruitment.
 - The Board came to a consensus decision to move forward with contracting with King County for the hiring of the administrative position.

- MOTION: A motion was made to approve the Administrator III job classification for use in the recruitment of the PSERN administrative position by [Brenda Bauer](#). The motion was seconded by [Kurt Triplett](#). Members unanimously approved the motion.
- MOTION: A motion was made to approve the hiring plan provided in the September 2021 meeting materials packet for use in the recruitment of the PSERN administrative position by [Brenda Bauer](#). The motion was seconded by [Kurt Triplett](#). Members unanimously approved the motion.
 - It was further stated that the plan would be used as general guidelines for the recruitment and only substantive changes would need to be brought back to the board for a decision.
- MOTION: A motion was made to approve the job announcement provided in the September 2021 meeting materials packet for use in the recruitment of the PSERN administrative position by [Brenda Bauer](#). The motion was seconded by [Kurt Triplett](#). Members unanimously approved the motion.

7. PSERN Board of Directors Officer Report – Board Officers 4:09 – 4:11 p.m.

- BUDGET REPORT:
 - The remaining balance as of August 26, 2021 is \$1,843,870.
 - Seed Money amounting to \$1,856,158
 - Costs include
 - Recruitment Costs = \$9000
 - Insurance = \$678 (through August 2021) + \$2810 (\$200 increase of the insurance premium for 2021-2022)
 - The costs for legal consultation and staff salary / benefits are yet to be determined.
 - The PSERN Board of Directors will approve the operating budget once the Executive Director is onboard.
- It was noted that the Joint Board’s Cyber Security presentation and report should be shared with Mike Webb with the related recommendations addressed in the Board’s future work plan.

8. Work Plan Updates – David Mendel 4:23 – 4:26 p.m.

- Proposed changes were shared with the Board.
- Decisions on the changes and related updates will be reserved for the work of the Executive Director, once he is onboard in November 2021.

9. Review Action Items – Board Chairperson 4:26 – 4:27 p.m.

- Initiate recruitment for the PSERN administrative position.
- Share the PSERN security report and related Joint Board presentation with Mike Webb.
- At a future meeting discuss the planning of a PSERN retreat in 2022.

10. Executive Session – (If needed)

- There was no executive session

Next Meeting: October 28, 2021

Adjourn: 4:23 p.m.

PSERN Staff Report Agenda Item #5

Title: Draft Procurement Policy
Meeting Date: October 28, 2021
Staff Contact: David Mendel
Action: Discussion



BACKGROUND:

Creating an appropriate procurement policy for PSERN will help ensure the organization acts consistently with applicable laws and that procurement is executed and managed at the highest professional and ethical standards. Moreover, it is a goal that a procurement policy be established prior to PSERN entering into complex procurement processes.

The intent of this staff report is to introduce for discussion a draft PSERN procurement policy, developed by Zak Tomlinson of the Pacifica Law Group. The draft policy was provided to the Board of Directors in their meeting materials packet for their October 28, 2021 meeting. The expectation is that the draft policy can be reviewed, revised as needed, finalized, and then voted on for approval at a future meeting of the PSERN Board of Directors. Prior to the approval of a procurement policy one issue needs to be addressed.

Issue 1: Does the provided draft procurement policy need any changes or revisions prior to its adoption?

ANALYSIS:

The following analysis addresses the issue identified in the previous section.

Issue 1: Does the provided draft procurement policy need any changes or revisions prior to its adoption?

The October 28th, 2021 meeting of the PSERN Board of Directors provides the initial opportunity for the Board to discuss the draft policy and provide suggestions for any needed revisions to the document. The provided draft procurement policy was loosely based on the current Valley Communications Center (VCC) purchasing and contracting policy, but there are significant revisions, both in substance and style. Per its author, one primary driver of the substantive changes is the different mix of entities, including revisions based on requirements applicable to King County in particular.

In the draft version of the policy, comments are provided to the reader by its author identifying areas where suggestions were made and where further discussion by the PSERN Board and the Executive Director may be needed. Following the Board's review of the document and the conclusion of its discussion and revision process, the policy can then be voted on for adoption by the Board at a future meeting.

ADDITIONAL INFORMATION:

None

CONCLUSION:

The preceding analysis explored issues related to the draft PSERN procurement policy. Following the PSERN Board of Directors review, related discussions, and the adoption of suggested revisions the policy could then be voted on by the Board for adoption.

STAFF REPORT REFERENCE DOCUMENTS:

Draft PSERN Procurement Policy.

**PUGET SOUND EMERGENCY RADIO NETWORK (PSERN) OPERATOR
PROCUREMENT POLICY**

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1.0 PURPOSE

The Puget Sound Emergency Radio Network Operator (hereinafter, PSERN) establishes this policy to ensure uniform, efficient, and competitive procurement to achieve the greatest attainable levels of quality and value permitted by law, and to ensure that all public procurement is executed and managed at the highest professional and ethical standards.

Commented [ZT1]: PSERN or PSERN Operator.

2.0 GOVERNING LAWS

This policy is governed by the relevant laws of the State of Washington; relevant federal laws, and any additional federal or grant requirements when applicable. When a conflict occurs, unless otherwise required by applicable law, the stricter of the law, rule or regulation, prevails. This policy does not create any enforceable rights or causes of action in third parties and does not in any way limit PSERN to procure goods and services in accordance with state and federal law.

Commented [ZT2]: For Discussion. I think it's best to be generic here given diversity in contracting requirements between the various entities.

3.0 DEFINITIONS

A&E Services: Services rendered by a consultant or any person, other than an employee of the agency, contracting to perform activities within the scope of the general definition of professional practice in RCW 18.08 (Architects), RCW 18.43 (Engineers and Land Surveyors) or RCW 18.96 (Landscape Architects).

Board: The Board of Directors of PSERN as provided and defined by the PSERN Operator ICA.

Bid or Proposal: An offer to provide goods and/or services in response to a solicitation for bids or proposals issued by PSERN.

Bidder or Proposer: Any person, firm, partnership or corporation or combination thereof that formally submits a bid, proposal or offers to provide goods and/or services in response to a solicitation for bids or proposals or a request for qualifications issued by PSERN.

Change: Any change, supplement, amendment, alteration or addendum to an existing Contract.

Contract: A written agreement between PSERN and one or more entities enforceable by law.

Emergency: Unforeseen circumstances beyond the control of PSERN that either a) present a real, immediate threat to the proper performance of essential functions; or b) will likely result in material loss or damage to property, bodily injury, or loss of life, if immediate action is not taken.

Executive Director: The Executive Director of PSERN as provided and defined by the PSERN Operator ICA.

Goods: Goods generally are tangible objects, typically including, without limitation, materials, supplies, or equipment.

ITB: Invitation to Bid, issued in connection with a formal bid of a Public Works project.

PSERN: The PSERN Operator, the governmental agency formed under RCW 39.34.030(3)(b) that is organized as a nonprofit corporation under chapter 24.06 RCW as authorized by the Interlocal Cooperation Act for the purpose of owning, operating, maintaining, managing and ongoing upgrading/replacing of the Puget Sound Emergency Radio Network system.

Commented [ZT3]: Should we refer to the entity as PSERN or PSERN Operator (or something else).

PSERN Operator ICA: The Puget Sound Emergency Radio Network Operator Interlocal Cooperation Agreement.

Public Work: Public Work means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at PSERN's cost as defined in RCW 39.04.010. Ordinary maintenance, in the context of Public Works contracts, is defined as work that is typically performed at least once per year.

Request for Proposals (RFP): Solicitation of proposals for professional services, or purchases of equipment, materials or supplies not associated with a Public Work.

Request for Qualifications (RFQ): Solicitation of statements of qualifications for a certain project or to establish an Architect and Engineering services roster.

Services: Services rendered by a consultant or any person, other than an employee of the agency and other than A&E Services or services that would constitute a Public Work. By way of example, and without limitation, Services includes consulting contracts, non-A&E professional services (such as by accounting, real estate, legal and other professional occupations), healthcare insurance coverage, investment consultants, training, and software licensing, support, and maintenance agreements. Specifically, for the purposes of this policy, Services includes the purchase of software programs (for example, and without limitation, "software as a service" (SAAS)), whether provided by on-site installation or provided through cloud-based methodology.

Taxes: All amounts and thresholds contained herein shall be inclusive of applicable sales and use taxes at the time of soliciting for bids/proposals.

Unit Priced Contracts: A competitively bid contract for Public Works (as opposed to procurements) needed on a recurring basis, where the contractor agrees to a fixed period, indefinite quantity delivery of work, at a defined unit price for each category of work.

4.0 **AUTHORIZATION AMOUNTS AND SIGNATURE REQUIREMENTS**

Commented [ZT4]: For general discussion, including both titles and limits.

- 4.1 **Up to \$10,000.** The Executive Director or any Department Head (or any person filling those roles in an authorized acting capacity) or their designees has authority to procure A&E Services, Goods, other Services, or Public Works with an estimated cost up to \$10,000, and the Executive Director, Department Head, or designee may sign these authorizations when signature is required.
- 4.2 **10,000 to \$50,000.** The Executive Director, Deputy Director, or Finance Manager (or any person filling those roles in an authorized acting capacity) may authorize procurement of A&E Services, Goods, other Services, or Public Works with an estimated cost from \$10,000 up to \$50,000. A Department Head (or any person filling that role in an authorized capacity) has the same authorization authority within the same monetary limits, but only for purchases that relate directly to, and are necessary for, the operations of the department managed by that Department Head.
- 4.3 **\$50,000 or more.** The Executive Director or designee may authorize procurement of A&E Services, Goods, other Services, or Public Works with an estimated value of \$50,000 or more, and the Executive Director or designee has authority to sign these procurements when signature is required.

5.0 A&E SERVICES, SERVICES, AND GOODS

5.1 A&E Services

PSERN shall procure A&E Services in accordance with the requirements of RCW 39.80 as follows:

- 5.1.1 **Process:** PSERN may select a firm to provide A&E Services as follows:
 - .1 Publish an RFQ soliciting statements of qualifications to provide A&E Services on a single project. PSERN shall evaluate the statements of qualifications received in response to the RFQ and select the most highly qualified firm without regard to price; or
 - .2 Select a qualified firm from a roster or list maintained in accordance with the requirements of RCW 39.80.030. PSERN may maintain its own roster and/or may utilize any roster maintained by a Party to the PSERN Operator ICA or the Municipal Research & Services Center of Washington (MRSC).
- 5.1.2 **RFQ Requirements:** PSERN shall publish RFQs in advance, concisely stating the general scope and nature of the project or work for which services are required; and providing the name and telephone number of a staff contact who can provide additional details.

5.1.3 Negotiation: PSERN shall enter into negotiations with the selected firm, including pricing of the A&E Services to be provided. If a satisfactory contract cannot be negotiated, PSERN shall formally terminate the negotiations with that firm and attempt to negotiate a contract with the next most qualified firm. The process continues until an agreement is reached or the search is terminated.

5.2 Services

PSERN may procure Services using the method it determines will provide the greatest attainable levels of quality and value, including without limitation, advertised bid, request for quote, request for proposal, or direct negotiation and contract, so long as the procurement is within overall budget capacity.

5.3 Goods

PSERN shall procure Goods as follows.

5.3.1 Requirements: The following requirements apply to purchases of Goods, except as otherwise provided by this Policy.

- .1 **\$0 to \$10,000.** PSERN may procure Goods with an estimated value of less than \$10,000 using the method it determines will provide the greatest attainable levels of quality and value.
- .2 **\$10,000 to \$50,000.** PSERN may procure Goods with an estimated value between \$10,000 and \$50,000 by obtaining, where practical, at least three competitive quotes.
- .3 **\$50,000 or more.** PSERN shall procure Goods with an estimated value of \$50,000 or more using the competitive solicitation process provided by **Section 5.3.2:**

5.3.2 Competitive Solicitation Process. Where competitive solicitation of Goods is required by this Policy, PSERN shall comply with the following process:

- .1 PSERN shall prepare specifications and shall publish an advertisement for bids containing (a) the time and place where bids will be opened, (b) the time after which bids will not be received, (c) the materials, equipment, supplies, or services to be purchased, and that the specifications may be seen at the office of the clerk of the county legislative authority. The advertisement shall be published at least once at least fourteen days prior to the last date upon which bids will be received. The bids shall be in writing, may be in either hard copy or electronic form as specified by the county,

Commented [ZT5]: For discussion and in consideration of the different requirements between King County and the various Cities.

Commented [ZT6]: This threshold presents certain issues w/r/t differences in the County and City policies.

and shall be filed with the clerk. The bids shall be opened and read in public at the time and place named in the advertisement. Contracts requiring competitive bidding under this section may be awarded only to the lowest responsible bidder. Immediately after the award is made, the bid quotations shall be recorded and open to public inspection and shall be available by telephone inquiry. Any or all bids may be rejected for good cause.

5.3.3 Waiver. PSERN's Executive Director may waive purchasing requirements for the purchase of Goods for the following:

- .1 Emergencies. Emergencies in accordance with the requirements of Section 9;
- .2 Sole Source. Purchases clearly and legitimately limited to a single source of supply; or
- .3 Special Facilities or Market Conditions. Purchases that are subject to special facilities or market conditions.

Staff shall prepare a memo for the Executive Director outlining the reasons for the requested waiver. If the Executive Director authorizes the waiver, the purchase may be completed by direct negotiation or any other appropriate means.

5.3.4 Auctions: PSERN may purchase Goods at auctions conducted by the United States government or any of its agencies, or by the State of Washington and any of its political subdivisions, without being subject to the bidding requirements of this policy.

5.3.5 Recycled Products: Nothing in this Section shall prohibit PSERN from preferentially purchasing products made from recycled materials or products that may be recycled or reused, pursuant to Chapter 43.19A RCW.

5.3.6 Interagency Agreements: Nothing in this policy shall prohibit PSERN from purchasing goods through an Interagency Agreement entered into in accordance with Section 8.

6.0 PUBLIC WORKS

6.1 General Process (Non-Small Works)

6.1.1 Competitive Bidding: Except as otherwise allowed by this Policy (including the Small Works procedures authorized in Section 6.2), PSERN shall solicit all Public Works contracts through a formal Invitation to Bid

Commented [ZT7]: For discussion including differences between the County and City requirements.

process.

Commented [ZT8]: I would suggest that (at least initially) any formal public works documents be reviewed by counsel.

6.1.2 Notice: PSERN shall provide public notice of all Invitations to Bid. Such notice shall:

- .1 Call for sealed bids in a newspaper of general circulation a least one (1) time, and at least thirteen (13) days prior to the last date upon which bids will be received;
- .2 Generally describe the nature of the contemplated Public Work and include an estimate of the contemplated cost; and
- .3 Direct prospective bidders to a location (physical or electronic) where such bidders can review the full Invitation to Bid, including the contract documents, plans, and/or specifications.

6.1.2 Invitation to Bid: The full Invitation to Bid shall include:

- .1 A direction to bidders as to when and where to submit sealed bids;
- .2 Contract Documents (including plans and specifications, as appropriate) containing all applicable public works requirements, including the bond, retainage and prevailing wage requirements identified in Section 6.5;
- .3 A requirement that the bidders submit subcontractor lists in accordance with RCW 39.30.060;
- .4 A requirement that the bidders submit a signed statement in accordance with RCW 39.04.350 (2);
- .5 A requirement that the bidders include a bid bond of a minimum of 5%, which must be in the form of a surety bond, cash, cashiers or certified check;
- .6 Any supplemental bidder responsibility criteria; and
- .7 Bid protest procedures, as appropriate;

6.1.3 PSERN shall open bids at the time and place identified in the Invitation to Bid. After bid opening, the Project Manager will comply with RCW 39.04.105 which requires within two business days of the bid opening on a public works project that is the subject of competitive bids, the municipality must provide, if requested by a bidder, copies of the bids the municipality received for the project.

6.1.4 PSERN shall evaluate the bids and determine which bidder is apparent low responsive and responsible bidder, as defined by RCW 39.04.350.

6.1.5 PSERN shall allow at least two full business days after providing bidders with copies of all bids before executing a contract for the project. Intermediate Saturdays, Sundays, and legal holidays are not counted.

6.2 Limited and Small Works

6.2.2 General. PSERN may, as an alternative to the procedures established by Section 6.1, use the small works roster process where the estimated Contract amount for a Public Works project is \$350,000 or less.

6.2.3 Authorization. Pursuant to its Resolution [REDACTED] the PSERN Administration Board has determined that the small works roster provisions set forth in RCW 39.04.155 would provide an efficient process for the award and construction of small Public Works projects for PSERN. The Administration Board authorized staff to establish a small works roster procedure for Public Works contracts pursuant to **RCWs 35A.40.210, 35.23.352, and 39.04.155.**

.1 Authorization under \$50,000; Limited Public Works. The Executive Director may elect to use a “Limited Public Works” process for Public Works under \$50,000, as follows: PSERN must obtain at least three electronic or written quotes from the appropriate roster and must equitably distribute opportunities for these projects among contractors willing to perform the work.

.2 Authorization between \$50,000 and \$250,000. The Executive Director may elect to use a “Small Works” process for Public Works estimated to cost between \$50,00 and \$250,000, as follows: PSERN shall invite at least five telephone, written, or electronic quotes from contractors on the appropriate roster that appear capable of performing the work and in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. If preferred, PSERN may use this process for contracts under \$50,000 instead of the Limited Public Works process.

.3 Authorization between \$250,000 and \$350,000. The Executive Director may elect to use a “Small Works” process for Public Works estimated to cost between \$250,000 to \$350,000, as follows: PSERN shall invite at least five telephone, written, or electronic quotes from contractors on the appropriate roster that appear capable of performing the work and in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster.

PSERN may invite quotations from less than the full roster applicable to the project, but if it does so, it must also notify all other contractors on the roster that PSERN is seeking quotations for the project. Notice under this section may be made by (i) publication in a newspaper of general circulation in the area where the work is to occur, (ii) mailed notice, or (iii) electronic notice.

6.2.3 Invitation for Quotations and Award.

- .1 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.
- .2 PSERN shall award contracts to the lowest responsible bidder, as defined in RCW 39.04.010 and RCW 39.04.350.
- .3 PSERN may not favor certain contractors on the small works roster over other contractors on the small works roster who perform similar services. PSERN must equitably distribute the contractors it selects from the roster by not favoring certain contractors on the roster over other contractors. At the time bids are solicited, PSERN's representative shall not inform a contractor of the terms or amount of any other contractor's bid for the same project.
- .4 A written record shall be made by the PSERN representative of each contractor's bid on the project and of any conditions imposed on the bid. Immediately after an award is made, the bid quotes obtained shall be recorded, open to public inspection, and available by telephone inquiry or electronic request.

6.2.4 Rosters.

- .1 **Adoption of Other Agency Roster.** PSERN may use the small works roster created and maintained by MRSC, or any other state or local agency that maintains a roster for shared use.
- .2 **Independent PSERN Roster.** If PSERN creates and maintains its own small works roster, it shall do the following:
 - **Maintaining the roster.** The small works roster shall consist of all responsible contractors who have requested to be on the roster and, where required by law, are properly licensed or registered to perform such work in the State of Washington. As may be requested by PSERN staff, contractors desiring to be placed on a roster must keep current records of any applicable

licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with PSERN.

- **Publication.** PSERN shall publish at least once a year a notice of the existence of the roster and solicit the names of contractors for such roster in a newspaper of general circulation within the jurisdiction. Responsible contractors shall be added to a roster if they submit a written request and any records requested by PSERN. With the exception of PSERN's owner agencies, an interlocal contract or agreement between PSERN and other local governments establishing a small works roster to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the small works roster provisions.

- .3 **Electronic rosters.** If any PSERN department wishes to maintain its own rosters or use rosters maintained by other agencies, it shall keep the roster on file in paper and/or electronic format.

6.2.5 Bond, Retainage, and Wages. All provisions of Section 6.5 (relating to performance and payment bonds, contract retainage, and prevailing wages) apply equally to contracts entered under this small works roster process, except as authorized under this section.

- .1 **Retainage waiver.** The Executive Director may waive the retainage requirements for any project awarded under the small works roster process, but in doing so, PSERN may be required to assume liability for a contractor's failure to pay wages, failure to pay for materials or services, and failure to pay taxes that may be due from the project.

- .2 **Limited Public Works; bond and retainage not required.** The Executive Director or any department head may waive contract retainage and contract bonds on any Limited Public Works contract. If not so required, PSERN may be required to assume liability for a contractor's failure to pay wages, failure to pay for materials or services, and failure to pay taxes that may be due from the project.

6.2.8 List of projects awarded from roster. PSERN must post a list of contracts awarded using the small works process at least once every year. At a minimum, the list must contain the name of the contractor that was awarded the contract, the contractor's registration number, the contract amount, a brief description of the contract work, and the date of contract award. The list must also state the location where the bid quotations for the awarded contracts are available for public inspection. In addition to these requirements, for Limited Public Works contracts only, PSERN must also maintain a list of the contractors contacted and the contracts awarded during

the previous twenty-four months.

6.3 Electronic Data / Telecommunications Equipment, Software or Services

6.3.1 Authority. As an alternative to the public bidding and small works processes above, PSERN may purchase electronic data processing or telecommunications equipment, software, or services pursuant to the RCW 39.04.270 “competitive negotiation” request for proposal (RFP) process. At a minimum, competitive negotiation must include the following process:

- .1 Publication.** PSERN must publish the RFP in a newspaper of general circulation at least 13 days before the last date on which the proposals will be received.
- .2 RFP Content.** The RFP must identify significant evaluation factors, including price, and their relative importance. PSERN must provide reasonable procedures for technical evaluation of the proposals, identification of qualified sources, and selection for awarding the contract.
- .3 Award.** PSERN must make the award to the qualified bidder whose proposal is most advantageous to PSERN. PSERN may reject all proposals for good cause and request new proposals.

6.3.2 Public Works. To the extent such purchase of telecommunications and data processing equipment or software falls within the definition of “Public Work” as defined by this Policy, PSERN must still require retainage, prevailing wages, and performance and payment bonds as provided by Sections 6.5. Note that public works contracts made through competitive negotiation under this section, even if the contract amount falls within the limits for small works contracts, cannot utilize the bond and retainage waivers for small works unless the contracts are procured using the small works process.

6.4 Unit Priced Contracts

6.4.1 Procedure. As an alternative to the public bidding and small works processes above, PSERN may enter into Unit Priced Contracts pursuant to RCW 36.32.235 and RCW 35.23.352(12).

6.4.2 Contract Term. The initial term of any Unit Priced Contract shall not exceed one year. PSERN, at its option, may agree to an extension of the initial term for one additional year.

6.4.3 Bid Requirements. Invitations for unit price bids must include, at a minimum, estimated quantities of the work and the manner in which

PSERN will issue work orders, based on the hourly rates or unit prices bid, and specify how PSERN 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 prices bid by the contractor.

6.4.4 Bid Award; Minority or Woman Contractors. Unit Priced Contracts must be awarded to the lowest responsible bidder. Whenever possible, PSERN must invite at least one proposal from a certified minority or woman contractor that qualifies for the work. If PSERN issues a Unit Priced contract(s) in any calendar year, it must make an annual report to the Department of Commerce that includes the total number of bids awarded to certified minority or women contractors, including a description of the how notice was provided to those contractors.

6.4.5 Prevailing Wages. Unit Price contractors must pay prevailing wages based on the prevailing wage rates in effect at the beginning date for each contract year. Intents and affidavits for prevailing wages paid must be submitted for all work completed within the previous twelve-month period.

6.4.6 Retainage and Bond. PSERN and the Unit Price contractor should comply with the provisions of chapter 60.28 RCW. Current advice from the State Department of Labor and Industries (L&I) is that each Unit Price Contract must conduct contract closeout at the expiration of each twelve-month Unit Price Contract Period, even if the contract is for a multi-year term. The closeout process should include submission of appropriate affidavits and releases required by law. L&I has not provided direction on performance and payment bond requirements, if any. PSERN staff should consult with L&I for clarification on retainage and bond requirements before issuing a notice for bids on a Unit Priced Contract.

6.5 General Public Works Requirements

6.5.1 Retainage Requirements.

.1 Retainage required. Unless otherwise provided herein, for all Public Works contracts, PSERN shall reserve a contract retainage not to exceed five percent (5%) of the moneys earned by the contractor for the protection and payment of: (1) The claims of any person arising under the contract; and (2) the state with respect to taxes, increases, and penalties imposed pursuant to Titles 50 (Unemployment), 51 (Industrial Insurance), and 82 (Excise Tax) RCW which may be due from such contractor.

.2 Waiver. For contracts of \$35,000 or less, the Executive Director or any Department Head may consider and grant a request to waive

these retainage requirements.

- .3 **Release of retainage.** Except as otherwise required by law, PSERN will release the contract retainage sixty (60) days after PSERN issues its Final Acceptance of the Project or at the most reasonably practical time immediately thereafter, subject to (1) confirmation that no claims concerning nonpayment of prevailing wage rates have been filed with the Department of Labor & Industries; (2) submission by contractor of approved Statements of Intent to Pay Prevailing Wage and Affidavits of Wages Paid; (3) receipt of all necessary releases from the Departments of Revenue, Labor and Industries, and Employment Security (to the extent the departments issue such releases as a matter of law or policy); and (4) settlement of any liens filed under RCW 60.28.
- .4 **Retainage Bond.** PSERN shall otherwise release all or part of the contract retainage in accordance with the requirements of RCW 60.28.011, including upon provision of a retainage bond by contractor that conforms to the requirements of RCW 60.28.011(6).

6.5.2 Payment and Performance Bonds.

- .1 **General Bond Requirement.** Except as otherwise provided herein, PSERN shall require Payment and Performance Bonds for all Public Works contracts in an amount of at least 100% of the contract for the purpose of completion of projects and fulfillment of claims and liens, regardless of whether such contract is subject to competitive bidding requirements.
- .2 **\$150,000 or Less.** PSERN may waive the requirement for a payment and performance bond for contracts of \$150,000 or less, at the option of contractor, and instead retain ten percent (10%) of the contract amount for a period of thirty (30) days after final acceptance of the work or until receipt of all necessary releases from the Departments of Revenue, Labor and Industries, and Employment Security (to the extent the departments issue such releases as a matter of policy), and settlement of any liens filed under RCW 60.28, whichever time period is greater. Exercising this ten percent (10%) bond waiver option must be in addition to, and may not be combined with, the five percent (5%) retainage requirement.

- 6.5.3 **Prevailing Wage.** PSERN must require all contractors to pay prevailing wages on all Public Works and as otherwise provided by law. For Public Works contracts, a “Statement of Intent to Pay Prevailing Wages” must be received from the contractor and all subcontractors before any payment is made, and an “Affidavit of Wages Paid” must be received from the

contractor and all subcontractors following PSERN's final acceptance of the contracted work.

6.5.4 Bidder Responsibility Criteria. A contractor under consideration for award of a Public Works project shall submit a sworn statement to PSERN in accordance with the requirements of RCW 39.04.350(1) and (2) certifying the bidder is in compliance with all bidder responsibility criteria identified in RCW 39.04.350(1) and (2) and with the requirements of Chapter 39.06 RCW pertaining to unregistered or unlicensed contractors, subcontractors, or other violators.

6.5.5 Notice of Completion: Upon completion of a Public Works Contract with a value over \$35,000, PSERN shall provide the "Notice of Completion of Public Works Contract" to the Washington State Departments of Revenue, Labor and Industries and Employment Security. PSERN shall not make any payment from contract retainage to any person, until PSERN has received certifications from all three departments that all taxes, increases, and penalties due from the contractor, and all taxes due and to become due with respect to the contract have been paid in full or that they are, in each department's opinion, readily collectible without recourse to the state's lien on the retained percentage.

7.0 CHANGES TO CONTRACTS

7.1 Change Order. All material Changes to Contracts are required to be memorialized at the earliest possible time in writing in a change order or other equivalent document.

7.2 Bid Requirement. Bids are not required when unforeseen extra work becomes necessary under a valid preexisting contract. However, a change in scope and purposes deviating substantially from the original plans so as to constitute a new undertaking may constitute a separate project and may require a separate contract process.

7.3 Minor Changes. The Department Head is authorized to sign contract change orders or amendments that (a) that involve only a minor extension of time for the contractor to perform; or (b) do not cumulatively exceed the original Contract price by more than 20%.

Commented [ZT9]: For discussion.

7.4 Major Changes. All other change order or amendments must be signed by the Executive Director. If the Executive Director is unavailable to execute the change order, and if a Department Head determines that an emergency exists that requires immediate approval of the change order or amendment, the Department Head may execute the change order or amendment and must subsequently inform the Executive Director as soon as possible.

8.0 INTERAGENCY AGREEMENTS

- 8.1 Authorization:** PSERN is authorized to procure Services and Goods from the contracts of another public agency (or group of public agencies) in accordance with the requirements of the Interlocal Cooperation Act, RCW 39.34.30.
- 8.2 Confirmation:** PSERN shall confirm the following prior to utilizing another agency's contract:
- 8.2.1** The contract has not expired and will be open and active for the relevant period.
 - 8.2.2** The contract allows for use by other agencies.
 - 8.2.3** The contract was awarded by a public agency. For purposes of this policy, a "public agency" means any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi-municipal corporations, special-purpose districts, and local service districts; any agency of the state government; any agency of the United States; any tribe recognized as such by the federal government; and any political subdivision of another state.
 - 8.2.4** The original bid or solicitation notice was posted on a website of a public agency, purchasing cooperative or similar service provider; or that there was an access link provided on the state's web portal to the notice.
 - 8.2.5** The awarding agency complied with its own bidding requirements. For purposes of this requirement, PSERN may either (1) review and retain the procurement documentation from the awarding agency; or (2) obtain a signed certification from the awarding agency attesting that it met its own bid requirements.
- 8.3 Federal Agencies.** PSERN may purchase Services and Goods from or through a federal agency (including GSA) without going through the additional processes described in this policy. PSERN has passed an Administration Board Resolution _____ to authorize purchasing from a federal agency or through a federal government contract.

9.0 EMERGENCIES

When any emergency requires an immediate contract, change order, or amendment to an existing contract, the Executive Director shall have the power to make and enter into that contract, change order, or amendment without strict compliance to either the bidding or other applicable contract

approval requirements set forth in this policy. However, the Executive Director must issue a written basis for the emergency determination no later than two weeks following award of the emergency contract and file the written basis with PSERN.

10.0 SOCIAL EQUITY

PSERN is committed to socially-responsible procurement and promoting social equity through our contracts. PSERN shall work to ensure open and fair procurements, competitive and fair pricing, environmentally-sustainable solutions, best labor practices, access to equal benefits and utilization of women- and minority-owned businesses, when applicable, in its contracts.

11.0 OTHER

11.1 Real Property Interests. The Administration Board specifically authorizes the Executive Director to do the following:

11.1.1 To acquire and convey property interests by lease or purchase.

11.1.2 To enter into all lease agreements where PSERN is the lessor.

11.2 Surplus property. Except for real property, or utility equipment and property as provided for in RCW 35.94.040, or property that is sold to another governmental entity that is valued over fifty thousand dollars (\$50,000), as provided for in RCW 39.33.020, the Executive Director, upon a Department Head's recommendation, is authorized to surplus equipment or property the Executive Director determines is surplus to PSERN's needs, and the Executive Director dispose of such surplus equipment or property in such a way to secure the best interests of PSERN.

REVIEWED, APPROVED AND ADOPTED this ____ day of _____, 2021.

Commented [ZT10]: Additional Federal Requirements for Discussion

Proposed 2022 PSERN Board of Directors Meeting Dates (Meeting Time: 4:00 p.m. to 5:00 p.m.)

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