



King County

**Metropolitan King County Council
Committee of the Whole**

Staff Report

Agenda item No:	5	Date:	September 21, 2009
Motion No:	2009-0545	Prepared by:	Clifton Curry

SUBJECT

A MOTION extending a waiver from competitive bidding and solicitation requirements to assure timely availability and acquisition of emergency design, construction and other required services, materials and equipment necessary to protect King County citizens, facilities, roads and other assets from the threat of flooding in the Green River valley.

SUMMARY

Under current county code, the executive can, after the Proclamation of Emergency, waive many of the county’s procurement and contracting requirements in order to address the effects of an emergency or disaster. On August 29, 2009, the council adopted Ordinance 16639, which allows the executive to proclaim an emergency and to waive procurement and other standard rules and procedures in anticipation of a flood due to the compromised condition of the Howard Hanson Dam.

On September 10, 2009, the executive issued a Proclamation of Emergency and waiver from competitive procurement and solicitation requirements for actions necessary to protect King County citizens and King County roads, buildings, and other assets associated with possible damage from flooding related to the condition of the Howard Hanson Dam.

Under King County Code 4.16.050(A) and (B), waivers, when the combined total of contracts is over \$250,000 or the exceeds appropriation authority, stay in effect until the executive terminates the order, the council terminates the order by ordinance, or it expires ten calendar days after there have been contracts entered into, *unless the council extends the waiver by motion beyond the ten day period.* This motion would extend the waiver for Howard Hanson Dam related procurement through the end of the year to December 31, 2009.

Background When an emergency or disaster occurs, federal, state, and local governments have the ability to suspend or waive a variety of regular county requirements. In King County Code:

"Emergency" or "disaster" means an event or set of circumstances such as fire, flood, explosion, storm, earthquake, epidemic, riot or insurrection, which demands the immediate preservation of order or of public health or the restoration to a condition of usefulness of any public property the usefulness of which has been destroyed, or where delay will result in financial loss to the county or for the relief of a stricken community overtaken by such occurrences or which reaches such a dimension or degree of destructiveness or warrants the executive to proclaim a state of emergency."

The "Proclamation of Emergency," also known as a Declaration of Emergency, allows the executive to suspend or waive a variety of county requirements. According to county code, after a proclamation the executive may issue a waiver of the requirements of K.C.C. 4.04, 4.16, 4.18, 12.16 and 12.18 with reference to any contract relating to the county's lease or purchase of tangible personal property or services, contracts for public works as defined by RCW 39.04.010, or to the selection and award of professional and/or technical service consultant contracts. The code allows these waivers to continue in force until terminated by order of the executive or through action by the council by ordinance.

The code requires that for waivers for contracts *entered into*, which when combined, encumber funds either *in excess of \$250,000 or in excess of appropriation*, must be transmitted to the Clerk of the Council no later than 10:00 a.m. the second business day after the waiver is issued. These waivers shall continue in force until terminated by order of the executive or action of the council by ordinance, or until it expires ten calendar days after there have been contracts entered into. *Under these provisions, the council may extend a waiver beyond the 10 day period by motion.*

Potential Flooding After the record rainfall in January 2009, the U.S. Army Corps of Engineers (Corps) discovered two depressions on the right abutment adjacent to the Howard Hanson Dam. The Howard Hanson Dam, which is owned, operated, and managed exclusively by the Corps, is the primary flood protection facility for all of the lower Green River Valley.

The Corps is currently assessing the damage to the right abutment and has indicated that it will reduce the amount of water stored behind the dam in order to protect the integrity of the facility. Reducing the amount of stored water increases the risk of flooding downstream in the Green River Valley.

The Corps has jurisdiction over the Howard Hanson Dam, however, the levees and other flood protection facilities along the Green River are not part of the Corps' flood control system related to the dam. These locally controlled levees and flood control protections were designed only to supplement – not replace – the flood protection provided by the dam. Nonetheless, King County and the King County Flood Control District (District) are working to help prepare for potential flooding in the Green River Valley. The District is a local special-purpose government that provides funding and policy oversight for

flood protection projects in King County. King County develops and implements the annual work program for the district.

The District, the county, and cities in the Green River Valley are all working on emergency response preparations. This includes significant outreach to citizens and businesses and identifying and obtaining resources such as informational materials, emergency supplies, sandbags and other critical emergency response equipment and supplies. The Committee of the Whole has been receiving briefings on county flood preparation planning and potential mitigation efforts.

Proposed Motion This proposed motion extends the emergency procurement waiver period beyond the ten-day standard identified in county code to December 31, 2009, because the executive anticipates that contracts will exceed the \$250,000 threshold and appears to be proactively asking for a waiver extension. Nevertheless, the executive has not informed the council of having used any waivers yet, or shown how the waivers will exceed \$250,000 or existing appropriation authority. Consequently, the council would be extending a waiver period that has not been invoked yet. Under this motion, the council would extend a waiver period without knowing what contracts were for, the amounts of the anticipated contracts, or knowing where potential appropriation authority was being overtaken. The council would retain the right to take action on these waivers through ordinance. Furthermore, it is unclear on how this waiver extension would affect the executive's supplemental budget authority request for flood mitigation and planning.

Proposed Amendment An amendment to Proposed Motion 2009-0545 (Attachment 2) is being offered to preserve legislative oversight of the procurement process for the acquisition of design, construction and other required services, supplies, materials and equipment necessary to implement actions to protect King County citizens, roads, buildings and other assets from flooding due to the diminished capacity of the Howard Hanson Dam.

The amendment to Proposed Motion 2009-0545 conditions the extension of the emergency waiver on the filing of such waivers, which will provide the Council with information about the emergency expenditures being made by the Executive.

Additionally, the proposed amendment would require the Executive to provide a detailed report regarding emergency expenditures within 90 days of determining an emergency. The Executive is already required to provide a detailed report within 45 days; however, with the extension of the waiver through December 31, 2009, this additional 90-day report will allow for continue oversight of the emergency expenditures.

Finally, the proposed amendment would grant the Council authority, by motion, to rescind the extension of the waiver.

The proposed amendment provides legislative oversight in that if the Executive does not provide the required waivers or report, or the Council rescinds the extension, no further contracts or purchases may be made without complying with non-emergency contracting provisions.

Supplemental Information re. Contract Activity At the request of councilmembers, Executive staff have provided a preliminary summary of contract activity to date to which the proposed waivers would apply. *See* Attachment 5.

ATTACHMENTS

1. Proposed Ordinance 2009-0545
2. Proposed Amendment 1
3. Proclamation of Emergency, September 10, 2009.
4. Transmittal Letter
5. Preliminary Green River Flood Prep-Response Contract Award Info

INVITED

1. Pam Bissonette, Assistant County Executive
2. Caroline Whalen, Program Project Director, DES



Signature Report

September 21, 2009

Motion

Proposed No. 2009-0545.1

1 A MOTION extending a waiver from competitive bidding
2 and solicitation requirements to assure timely availability
3 and acquisition of emergency design, construction and
4 other required services, materials and equipment necessary
5 to protect King County citizens, facilities, roads and other
6 assets from the threat of flooding in the Green River valley.

7
8 WHEREAS, in Ordinance 16639, King County amended its code to proactively
9 address the significant threat of flooding in the Green River valley due to the diminished
10 capacity of Howard Hanson dam, and

11 WHEREAS, the King County executive on September 10, 2009, issued a
12 Proclamation of Emergency declaring that the release of additional waters from the
13 Howard Hanson dam poses a threat of significant flooding throughout the Green River
14 valley, causing substantial injury and damage to persons and property located in and near
15 such valley, and thereby constitutes an emergency, a copy of the Proclamation is attached
16 hereto, and

17 WHEREAS, pursuant to K.C.C. 4.16.050.A and K.C.C. 12.52.030.B.2, the
18 Proclamation of Emergency also waived the competitive procurement requirements of
19 state and county law, stating in relevant part as follows:

20 "In order to prepare for, prevent or respond to such emergency, the
21 requirements of K.C.C. 4.04., 4.16, 4.18, 12.16 and 12.18.095 and,
22 pursuant to RCW 38.52.070(2), the requirements of competitive bidding
23 and public notice are hereby waived with reference to any contract relating
24 to the county's lease or purchase of supplies, equipment, personal services
25 or public works as defined by RCW 39.04.010, or to any contract for the
26 selection and award of professional and/or technical consultant contracts,"
27 and

28 WHEREAS, under KCC 4.16.050 A. and B., such a waiver stays in effect until
29 terminated by order of the executive, terminated by action of the council by ordinance or
30 it expires, which is ten calendar days after there have been contracts entered into, which
31 combined, encumber funds either in excess of two hundred fifty thousand dollars or in
32 excess of appropriation, unless the council extends the waiver by motion beyond the ten
33 day period, and

34 WHEREAS, an extension of the waiver from the competitive procurement
35 requirements of state and county law is necessary at this time because the magnitude of
36 the expenses to be incurred will almost immediately exceed the two-hundred-fifty-
37 thousand-dollar limit.

38 NOW, THEREFORE, BE IT MOVED by the council of King County:

Motion

39 The September 10, 2009, waiver of the competitive procurement requirements of
40 state and county law is extended through December 31, 2009, in order to acquire design,
41 construction and other required services, supplies, materials and equipment necessary to
42 implement actions to protect King County citizens, roads, buildings and other assets from
43 flooding due to the diminished capacity of the Howard Hanson dam.
44

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

ATTEST:

Attachments A. Local Proclamation of Emergency--King County

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Sept. 21, 2009

jb

Sponsor: Ferguson

Proposed No.: 2009-0545

1 **AMENDMENT TO PROPOSED MOTION 2009-0545, VERSION 1**

2 On page 3, at the beginning of line 39, insert "A."

3 On page 3, line 43, after "dam" insert:

4 ". However, the extension of the waiver has the following conditions:

5 1. The executive must file with the clerk of the council no later than 10:00 a.m.
6 the second business day after the extension is issued all waivers for contracts that,
7 combined for the emergency, exceed two hundred fifty thousand dollars, or are in excess
8 of appropriation. Eleven copies of the waivers shall be filed with the clerk of the council,
9 for distribution to all councilmembers;

10 2. The executive shall report, in detail, such emergency expenditures to the
11 county council within ninety days of determining an emergency. Eleven copies of the
12 report shall be filed with the clerk of the council, for distribution to all councilmembers;
13 and

14 3. The council may, by motion, rescind this extension of the waiver.

15 B. In the event that the executive does not file waivers required or provide a
16 detailed report as required in subsection A. of this motion, or the council rescinds this
17 extension, no further contracts or purchases may be made without complying with the

18 nonemergency contracting provisions of K.C.C. chapters 4.04., 4.16, 4.18, 12.16 and
19 12.18"

20

21 **EFFECT: The proposed amendment would:**

22 **1. Attach the above-stated conditions to the Executive's exercise of the**
23 **waiver of competitive procurement requirements; and**

24 **2. Specify the consequence of (a) the Executive's failure to provide the**
25 **waivers or report required by the motion or (b) the Council's rescission of the**
26 **extension granted by the motion.**



King County

LOCAL PROCLAMATION OF EMERGENCY KING COUNTY

WHEREAS, damage discovered in January on the right abutment at the federally-owned and operated Howard Hanson Dam has dramatically increased the risk of significant flooding in King County's Green River Valley for years to come; and

WHEREAS, the federal government has the sole responsibility from Congress for ensuring operation of the Howard Hanson Dam for the purposes of protecting the residents and businesses in the Green River Valley from the ravages of flooding; and

WHEREAS, the Howard Hanson Dam is the primary flood protection facility for the entire Green River Valley stretching from unincorporated areas of King County nearest the dam, through the cities of Auburn, Kent, Renton, Tukwila, and to the Duwamish River in South Seattle; and

WHEREAS, the Green River watershed encompasses an area of approximately 492 square miles; and

WHEREAS, the Howard Hanson Dam was designed to hold back up to 106,000 acre-feet of water (34,540,206,000 gallons) to protect the Green River Valley from flooding; and

WHEREAS, as a result of the damage to the abutment of the Howard Hanson Dam, the U.S. Army Corps of Engineers has determined that it may have to operate the dam at only approximately one-third of its normal capacity to prevent a breach of the entire dam; and

WHEREAS, to maintain the capacity restrictions that protect the dam during major rain storms, the U.S. Army Corps of may have to release up to 70,000 acre-feet of water (22,809,570,000 gallons) into the Green River Valley that could normally be retained behind the dam; and

WHEREAS, such releases will result in significant and potentially devastating flooding of the Green River Valley; and

WHEREAS, in the Pacific Northwest, rains and rain storms of significant size and duration typically occur during the months of October through March annually; and

WHEREAS, a significant release of water from the Howard Hanson Dam into the Green River Valley is most likely to occur when soils are already saturated and tributaries throughout the valley are already pouring substantial quantities of water into the Green River; and

WHEREAS, the levees and similar facilities along the Green River were never designed to replace the protection that the Howard Hanson Dam was designed to provide; and

WHEREAS, in 2007 King County created a Flood Control District (FCD) to fund approximately \$35 million per year in levee improvements over approximately ten years (2008-2018); and



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WHEREAS, despite the additional FCD funding, it is not possible for local jurisdictions to prevent or mitigate the potential flooding from the Howard Hanson Dam, because reconstructing levees to provide flood protection in place of protection from the Howard Hanson Dam, even if it were feasible, would cost hundreds of millions of dollars and take decades to complete; and

WHEREAS, the construction of the Howard Hanson Dam and the flood protection that it was designed to provide allowed the Green River Valley to develop into the largest warehouse and distribution hub in the entire Pacific Northwest; and

WHEREAS, a large portion of the groceries, medical supplies, gasoline, and other critical necessities for the entire region pass through the Green River Valley through critical infrastructure below the Howard Hanson Dam, including the BNSF International Gateway rail line and major state highways; and

WHEREAS, the Howard Hanson Dam also allowed the Green River Valley to develop into a major high-tech aerospace manufacturing center that is vital to our national security; and

WHEREAS, the impacts of flooding in the Green River Valley are far-reaching and devastating. They include the likelihood of widespread electricity and natural gas outages, contaminated water, sewage backups into residences and businesses, disrupted communications, flooded and impassable transportation corridors, damage to critical infrastructure including roads and bridges, and massive amounts of debris that cannot be removed until waters recede; and

WHEREAS, approximately 35,000 people live in the Green River Valley, and flooding from the Howard Hanson Dam this fall could displace as many as 22,000 residents from their homes, according to a Federal Emergency Management Agency (FEMA) report; and

WHEREAS, FEMA also determined that flooding in the Green River Valley this fall could result in almost \$4 billion in property damage, including substantial damage to hundreds of buildings. This includes destruction of homes, places of worship, shops, manufacturing facilities, and other businesses, warehousing and distribution operations, transportation and communications infrastructure, medical facilities, and critical public facilities; and

WHEREAS, an independent study in October 2007 by ECONorthwest Inc. determined that a shutdown of the county's floodplains would result in lost economic output of at least \$46 million per day, most of which would occur in the Green River Valley; and

WHEREAS, the U.S. Army Corps of Engineers has estimated that it could take as long as five years to design and construct permanent repairs for the right abutment at the Howard Hanson Dam, thus placing the entire Green River Valley and all its residents and businesses under a continuous threat of significant flooding every October through March for years to come; and;

WHEREAS, the sheer magnitude of the ongoing threat of additional billions of gallons of water pouring into the Green River Valley requires immediate emergency response preparations that far exceed the capacity of local jurisdictions or even the State of Washington; and



King County

WHEREAS, local jurisdictions are expending significant resources to work to respond to the diminished capacity of the Howard Hanson Dam; and

WHEREAS, flooding resulting from the diminished capacity of the Howard Hanson Dam will overwhelm local resources, and local jurisdictions should not have to bear the burden of emergency response operations, planning, and recovery as a result of the diminished capacity of the federally-owned and operated Howard Hanson Dam; and

WHEREAS, the damage to the abutment at the Howard Hanson Dam has created an emergency which necessitates activation of the King County Emergency Management Plan and utilization of emergency powers granted pursuant chapter 38.52. RCW and K.C.C. Chapter 12.52; and

WHEREAS, the emergency will require the waiver of procurement procedures for emergency purchases under K.C.C. 12.52.030.B.2. and 4.16.050.

NOW, THEREFORE, BE IT PROCLAIMED BY THE KING COUNTY EXECUTIVE, KURT TRIPLETT

SECTION 1

That it is hereby declared that the release of additional waters from the Howard Hanson Dam poses a threat of significant flooding throughout the Green River Valley, causing substantial injury and damage to persons and property located in and near such Valley, and thereby constitutes an emergency, pursuant to King County Code Chapter 12.52.

SECTION 2

In order to prepare for, prevent or respond to such emergency, the requirements of K.C.C. 4.04., 4.16, 4.18, 12.16 and 12.18.095 and, pursuant to RCW 38.52.070(2), the requirements of competitive bidding and public notice are hereby waived with reference to any contract relating to the county's lease or purchase of supplies, equipment, personal services or public works as defined by RCW 39.04.010, or to any contract for the selection and award of professional and/or technical consultant contracts.

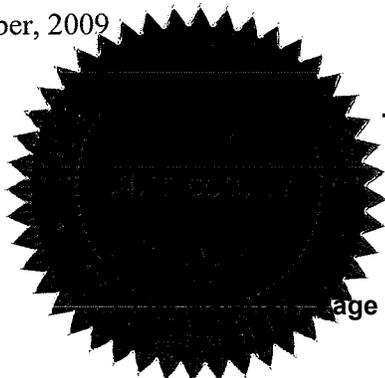
SECTION 3

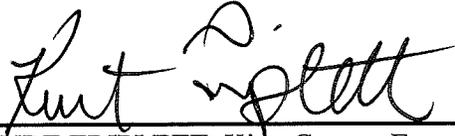
Permit procedures for public work projects are hereby postponed, consistent with K.C.C. 12.52.030.B.10.

SECTION 4

The State of Washington and the United States governments are hereby requested to declare state and federal emergencies, respectively, as a result of the emergency caused by the Howard Hanson Dam.

DATED this 10th day of September, 2009




KURT TRIPLETT, King County Executive
State of Washington

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September 11, 2009

The Honorable Dow Constantine
Chair, King County Council
Room 1200
C O U R T H O U S E

Dear Councilmember Constantine:

We are faced with a very serious and unprecedented situation in the Green River Valley due to recent damage at the federally owned and operated Howard Hanson Dam. We are informed by the Army Corps of Engineers (USACE) that damage to the dam's impoundment structure could lead to widespread flooding in the Green River Valley as early as November of this year. Such flooding would cause significant economic loss, displacement of many residents and business, and harm and disruption to core county functions like the operation of the Maleng Regional Justice Center and the Earlington elections facility.

In response to this emergency, on September 10, 2009, I issued a Proclamation of Emergency and waiver from competitive procurement and solicitation requirements for actions necessary to quickly protect King County citizens and King County roads, buildings, and other assets. A copy of the Proclamation is enclosed. Also enclosed is a motion to extend the emergency procurement waiver period beyond the ten-day standard identified in KCC 4.16.050(B) and thereby allow the county to encumber funds in excess of two hundred fifty thousand dollars with the procurement waiver still in effect.

My Proclamation follows the King County Council's recent adoption of Ordinance 16639, which allows the Executive to proclaim an emergency and to waive procurement and other standard rules and procedures in anticipation of a flood due to the compromised condition of the Howard Hanson Dam. Under KCC 4.16.050(A) and (B), such a waiver stays in effect until (1) terminated by order of my office, (2) terminated by action of the council by ordinance, or (3) it expires, which is ten calendar days after there have been contracts entered into, which combined, encumber funds either in excess of \$250,000 or in excess of appropriation, unless the council extends the waiver by motion beyond the ten day period. The enclosed motion will extend the waiver through the end of the year. We are requesting the waiver at this time

The Honorable Dow Constantine

September 11, 2009

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because the magnitude of the expenses relating to this emergency situation will almost immediately exceed the \$250,000 limit.

A supplemental appropriation request will soon be transmitted to the council, providing the council with a detailed description of the flood threat and the county's anticipated costs for flood planning and mitigation. The supplemental request will address 2009 costs only and will not cover the cost of actual flood response or restoration costs incurred following the occurrence of a flood event. If necessary, a second emergency proclamation and procurement waiver will be transmitted to the council to address any 2010 Green River Valley response and recovery needs.

Thank you for your consideration of this important legislation. If you have any questions regarding this motion, please call Pam Bissonnette, Assistant County Executive at, 206-263-9600.

Sincerely,

Kurt Triplett
King County Executive

Enclosures

cc: King County Councilmembers

ATTN: Tom Bristow, Interim Chief of Staff

Saroja Reddy, Policy Staff Director

Anne Noris, Clerk of the Council

Frank Abe, Communications Director

Pam Bissonnette, Assistant County Executive

Beth Goldberg, Deputy Director, Office of Management and Budget

James J. Buck, County Administrative Officer, Department of Executive Services (DES)

Robin Friedman, Director, Office of Emergency Management, DES

Ken Guy, Director, Finance and Business Operations Division (FBOD), DES

David Leach, Manager, Procurement and Contracts Services Section, FBOD, DES

Preliminary Green River Flood Prep-Response Contract Award Info
 Prepared by Executive Staff
 18 Sep 2009

Responsible Agency	Work	Vendor	Type	Contract	Description	Forecasted Amount	Comments
Facilities Maintenance Division	Move Elections Office to Airport Operations Center (in progress)						
	Mechanical Svcs	Puget Sound Refrig	New		HVAC equipment repair	\$ 15,000.00	Emergency contract in process
Waterwater Treatment Division	Maintain South Treatment Plant, Black River pump station and Interurban pump station in working order -						
	Lease of generators	NC Power	New lease	TBD	Provide generators to plant and pump sites - estimated useage	\$ 2,496,856.00	Emergency Lease agreement in process
	Installation of generators	TBD	New construction contract	TBD	Provide electrical, fueling and staging for and installation of generators.	\$ 1,700,000.00	Emergency contract in process
Elections	Relocation of elections equipment	Pitney Bowes	New	TBD	Disassemble and reassemble at new location mail sorting equipment - complete testing on reassembled equipment.	\$ 50,000.00	Emergency contract in process
	Total of leases and contracts pending					\$ 4,261,856.00	