

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No. 5f

ACTION ITEM

Date of Meeting December 10, 2013

DATE: November 26, 2013

TO: Tay Yoshitani, Chief Executive Officer

FROM: Ralph Graves, Managing Director, Capital Development

SUBJECT: Consolidated Rental Car Facility Project Contract MC-0315405 Change Order No. 1348 - Electrical Cumulative Impact

| | | | |
|------------------------------------|---------------|---------------------------|---------------------------|
| Amount of This Request: | \$0 | Source of Funds: | Customer Facility Charges |
| Est. Total Project Cost: | \$363,952,172 | | |
| Est. State and Local Taxes: | \$24,323,353 | Est. Jobs Created: | N/A |

ACTION REQUESTED

Request Commission authorization for the Chief Executive Officer to issue a change order for the Consolidated Rental Car Facility (RCF) project to pay \$1,840,940, which is the undisputed amount of a claim from the contractor for electrical issues on the project and applicable sales tax. There is no additional funding associated with this request, as there is adequate project budget to cover the expenditure.

SYNOPSIS

The Consolidated Rental Car Facility (RCF) opened May 17, 2012 and serves thirteen rental car companies operating at Seattle-Tacoma International Airport. Since completion of the project, Port staff has been engaged in project close out activities which include the settlement of contractor claims.

The Port received a certified claim on May 30, 2013, from the contractor on this project requesting payment for increased costs to perform electrical work on this project. The amount of the electrical claim received is, inclusive of interest, \$19,439,279.99. The claim document stated that the subcontractor had incurred increased costs for impacts on labor productivity, increased field overhead, increased home office overhead and additional unsettled change order costs, schedule delays, acceleration costs and claim preparation expenses. Port staff has completed its review of the claim submitted and has validated that only limited payment is due for the impact on labor productivity arising from the cumulative impact of multiple change orders. Staff's analysis concludes that \$1,681,223 should be paid to the contractor for the cost of these impacts plus required Washington State sales tax. Port staff does not find entitlement for any other parts

COMMISSION AGENDA

Tay Yoshitani, Chief Executive Officer

November 22, 2013

Page 2 of 4

of the claim submitted. The total anticipated payment, including sales tax, is \$1,840,940. As a result of earlier project savings and prior Commission authorizations, adequate budget exists to cover this requested expenditure. As a result, no additional funds are requested within this authorization request.

BACKGROUND

The Port issued a number of change orders to Turner Construction Company, the GC/CM contractor on the consolidated rental car facility project. The primary electrical subcontractor on the project has claimed that the amount of changed work was excessive and that the added work caused an impact to its ability to efficiently perform the work. The Port received, through the GC/CM, several notices from this electrical subcontractor during the construction of the work that they were incurring inefficiencies. Although earlier requests for equitable adjustment were submitted to the Port, those requests were superseded by a final, all-encompassing claim. The Port did not receive that claim from the contractor until May 30, 2013, which was over a year after the facility opened on May 17, 2012. As noted above, the value of the claim is, inclusive of interest, \$19,439,279.99. The claim received was quite lengthy, addressed some complex issues, but lacked some significant detail. It has taken Port staff many months to review and analyze it. Port has now completed its review of the electrical claim and finds that the electrical subcontractor is entitled to \$1,681,223 for the labor productivity impact of cumulative change orders on the project. This amount includes \$1,572,298 for the electrical subcontractor and \$108,925 for the general contractor's fee. Other portions of the claim have been denied. Assuming the electrical subcontractor protests this decision, the remainder of the claim will be submitted to a formal dispute resolution process.

Current state law, RCW.39.04.360, requires the Port to issue a change order for the value of extra work not in dispute. As such, we are requesting authorization to issue this change order. Assuming Turner Construction and the electrical subcontractor protest, the remaining part of the claim will be resolved through a formal dispute resolution process.

FINANCIAL IMPLICATIONS

There are no financial implications.

Budget/Authorization Summary

The following budget and authorization summary is for RCF Construction (CIP #C100266).

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|------------------|-----------------------|
| Original Budget | \$360,793,256 |
| Revised Scope | \$5,787,330 |
| Program Savings | <u>(\$17,021,741)</u> |
| Budget Transfers | \$13,743,327 |
| Current Budget | \$363,302,172 |

COMMISSION AGENDA

Tay Yoshitani, Chief Executive Officer

November 22, 2013

Page 3 of 4

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|--|---------------|
| Budget Increase | \$650,000 |
| Revised Budget | \$363,952,172 |
| Previous Authorizations | \$357,933,654 |
| Authorization Transfers | \$22,549,195 |
| Current request for Authorization | <u>\$0</u> |
| Total Authorizations, including this request | \$380,482,849 |
| Remaining Budget to be Authorized | \$0 |

Source of Funds

The RCF construction project (CIP #C100266) is included in the 2014-2018 capital budget and plan of finance as a committed project. The source of funds for this project, as identified in the plan of finance, includes Customer Facility Charge (CFC) revenues, bonds backed by CFC revenues, and other Aviation sources.

A total of \$17,021,741 has been previously identified as savings for the RCF Construction project. The total anticipated payment, including sales tax, is \$1,840,940. In order to fully fund this anticipated payment, \$650,000 of previously identified savings needs to be returned to the project budget.

Contract Information

The following information relates to the contract and competitive award:

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|--|--------------------------------|
| Contract award date: | May 30, 2008 |
| Original period of performance: | May 30, 2008, to April 1, 2011 |
| Previous contract extensions: | 333 Days |
| <u>Current Contract Completion Date:</u> | <u>February 28, 2012</u> |

Contract extension this change order: 0 Days

Revised Contract Completion Date: N/A

| | |
|--|-----------------------|
| Original contract amount: | \$224,837,739.00 |
| Previous Change Order Nos. 001 – 1347: | \$9,353,961.00 |
| Current contract amount | \$234,191,700.00 |
| <u>CO 1348 Amount Construction Contingency</u> | <u>\$1,580,884.00</u> |
| Revised contract amount: | \$235,772,584.00 |

COMMISSION AGENDA

Tay Yoshitani, Chief Executive Officer

November 22, 2013

Page 4 of 4

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|---|---------------------|
| Original 2% MACC Contingency | \$3,334,160.00 |
| Previous Authorizations | \$1,993,668.00 |
| Current 2% MACC Contingency | \$1,340,492.00 |
| <u>CO 1348 Amount 2% MACC Contingency</u> | <u>\$100,339.00</u> |
| Revised 2%MACC Contingency | \$1,240,153.00 |
| | |
| Total Request, Change Order | \$1,681,223.00 |

ALTERNATIVES CONSIDERED

Pursuant to Section 39.04.360 of the Revised Code of Washington, the Port is required to issue a change order for the undisputed amount of the claim. If the Port does not do so, interest will accrue on the unpaid amount at the rate of one percent per month. The Port has completed its technical review of the contractor's claim and concluded that \$1,681,223, exclusive of sales tax, is due. If the Port does not pay this amount, the contractor may bring suit against the Port and collect interest on the amount. In addition, the contractor may be able to recover attorneys' fees and costs for wrongful withholding of the funds. As a result, the staff has not meaningfully considered other alternatives to this request.

ATTACHMENTS TO THIS REQUEST

None.

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

May 22, 2012, Final Monthly Staff Briefing on the Consolidated Rental Car Facility Program.